



PROVINSIE VRYSTAAT

PROVINSIALE KOERANT

PROVINCIAL GAZETTE

FREE STATE PROVINCE

Uitgee op Gesag

Published by Authority

NO. 77

BLOEMFONTEIN, 2 NOVEMBER 2001

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KANTOOR VAN DIE PREMIER

OFFICE OF THE PREMIER

No. 6

2 November 2001

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Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

No. 6 van 2001: Vrystaat Provinsiale Behuisingswysigingswet, 2001

No. 6 of 2001: Free State Provincial Housing Amendment Act, 2001

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Free State Provincial Housing Act, 1999; to abolish the Free State Provincial Housing Board; to regulate the transfer of its assets to the Department of Local Government and Housing; to establish the advisory panel; to provide for the functions of the Member of the Executive Council responsible for housing with regard to housing development; to regulate the accountability of the Head of Department; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Free State Province, as follows:-

(Afrikaans text signed by the Premier)
(Assented to 31 October 2001)

Amendment of section 1 of Act 7 of 1999

1. Section 1 of the Free State Provincial Housing Act, 1999 (Act No. 7 of 1999) (hereinafter "the Act"), is hereby amended –

(e) by the deletion of the definition of "Board";

(f) by the deletion of the definition of "executive committee";

(g) by the deletion of the definition of "former Board"; and

(h) by the substitution for the definition of "municipality" of the following definition:

" 'municipality' means a Local Municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)".

Repeal of sections 2, 3, 4, 5, 6, 7 and 8 of Act 7 of 1999

2. Sections 2, 3, 4, 5, 6, 7 and 8 of the Act are hereby repealed.

Insertion of sections 2A, 2B, 2C and 2D in Act 7 of 1999

3. The following sections are hereby inserted after section 1 of the Act:

"Abolishment of the Free State Provincial Housing Board"

2A. The Free State Provincial Housing Board is hereby abolished.

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Transfer of assets

2B. All the assets, liabilities, rights and obligations of the Free State Provincial Housing Board are hereby transferred to the Department.

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Establishment of panel

- 2C. (a) The MEC must establish a panel of not more than six persons to advise the MEC on any matter relating to housing development.
- 15 (b) A panel shall consist of one or more fit and proper persons who have knowledge, qualifications or experience in the field of housing development.
- 20 (c) Members of the panel shall be appointed in accordance with a procurement policy that is consistent with section 217 of the Constitution, and must be appointed only after the MEC has through the media and by notice in the *Provincial Gazette* invited nominations of persons as candidates for the respective positions on the panel.
- 25 (d) A member of a panel is appointed for the period determined by the MEC at his or her appointment and may subject to paragraph (c) be reappointed on the termination of that period.
- 30 (e) The MEC may at any time terminate the membership of a member of the panel for reasons which are just and fair.
- 35 (f) A member of the panel, other than a person who is in the full-time employment of the State, is paid an allowance determined by the MEC with the approval of the Member of the Executive Council responsible for finance in the province.
- 40 (g) A member of the panel ceases to be a member if –
- (i) he or she resigns;
- (ii) his or her estate is sequestrated;
- (iii) he or she becomes of unsound mind;
- (iv) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; and
- 45 (v) he or she becomes a member of Parliament, a provincial legislature, a municipal council, the cabinet or the Executive Council of a province.

Promoting public participation

- 5 2D. (1) The MEC may establish a participation forum with regard to the provincial government's policy, legislative role and funding role in regard to housing in the Province, with the objective:
- 10 (e) to participate in policy, legislation and funding allocation with regard to housing development as are consistent with the general principles applicable to housing development;
- 15 (f) to ensure transparency, accountability and equity in the administration of housing development;
- (g) to promote the participation of all relevant stakeholders in the housing development process; and
- (h) to create an environment in which all role players can meet their respective obligations.
- 20 (2) The meeting of the participation forum shall take place at such time and place as the MEC may determine.
- (3) The MEC shall serve as chairperson of the participation forum."

25 **Insertion of sections 3A and 3B in Act 7 of 1999**

5. The following sections are hereby inserted after section 2D:

30 **"Restriction on voluntary sale of state-subsidised housing**

- 35 3A. (1) Notwithstanding any provisions to the contrary contained in any other law, it shall be a condition of every housing subsidy, as defined in the Housing Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person shall not sell or otherwise alienate his or her dwelling or site within a period of eight years from the date on which the property was acquired by that person unless the dwelling or site has first been offered to the Department.
- 40 (2) The Department to which the dwelling or site has been offered as contemplated in subsection (1) shall endorse in its records that the person wishes to vacate his or her property and relocate to another property and is entitled to remain on a waiting list of beneficiaries requiring subsidized housing.

- 5
- (3) When the person vacates his or her property the Department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the Department for the title deeds of the property to be endorsed to reflect the Department's ownership of that property.
- 10
- (4) No purchase price or other remuneration shall be paid to the person vacating the property, but such person will be eligible for obtaining another state-subsidised house, should he or she qualify therefor.

Restriction on involuntary sale of state-subsidised housing

- 15
- 3B. (1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Housing Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person's successors in title or creditors in law, other than creditors in respect of credit-linked subsidies, shall not sell or otherwise alienate his or her dwelling or site, unless the dwelling or site has first been offered to the Department at a price not greater than the subsidy which the person received for the property.
- 20
- (2) The offer to the Department shall be made in writing and shall be accepted or rejected by the MEC within a period of 60 days from date of receipt thereof.
- 25
- (3) If the offer is accepted, the purchase price shall be determined, subject to the provisions of subsection (1) –
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- (iii) by agreement between the MEC and the person or creditor concerned; or
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- (iv) if an agreement contemplated in paragraph (i) cannot be reached, by a valuer acceptable to both parties and registered as such in terms of the Valuers' Act, 1982 (Act No. 23 of 1982).
- 40
- (4) The purchase price as determined in terms of subsection (3) shall be financed by the MEC out of the Fund.
- 45
- (5) The MEC may grant exemption, either conditionally or unconditionally, from the provisions of subsection (1) in respect of any dwelling or site to which the provisions of that subsection apply.
- (6) The Registrar of Deeds shall –

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- (iv) make such endorsement on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of subsection (1) apply in respect of such dwelling or site;
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- (v) cancel any such endorsement or entries where an exemption has been granted unconditionally under subsection (5) or where satisfactory proof has been submitted that conditions imposed under subsection (5) has been complied with; or
- (vi) make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5).
- 15
- (7) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the Department, unless the Registrar is provided with a certificate signed by the Head of the Department, to the effect that such dwelling or site has been offered for sale to the Department in terms of subsection (1) and that –
- 20
- (i) the offer has been rejected; or
- (ii) an exemption has been granted under subsection (5), either unconditionally or subject to the conditions set out in the certificate.”
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Amendment of section 9 of Act 7 of 1999

7. Section 9 of the Act is hereby substituted for the following section:

- 30
- “9. (1) The MEC must, in addition to any other functions conferred or imposed upon him or her by or under this Act or the Housing Act –
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- (e) determine provincial policy in respect of housing development;
- (f) promote the adoption of provincial legislation to ensure effective housing delivery;
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- (g) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;
- 45
- (h) co-ordinate housing development in the Province;

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- (j) when a local municipality cannot or does not perform a duty imposed by or under the Housing Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; [and]
- 10
- (f) prepare and maintain a multi-year plan in respect of the execution in the Province of every national housing programme and every provincial housing programme;
- (g) establish a departmental committee to evaluate and assess project applications;
- 15
- (h) establish a body in the Department to administer the transferred housing assets; and
- (i) determine a procurement policy which is consistent with section 217 of the Constitution, 1996 in relation to housing development.
- 20
- (3) The MEC may –
- (a) approve projects and finance approved projects; and
- 25
- (b) accredit municipalities and allocate funds to accredited municipalities.”

Amendment of section 10 of Act 7 of 1999

9. Section 10 of the Act is hereby amended by –

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- (4) the substitution for the word “Board” where it appears of the word “Department”;
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- (5) the substitution for subsection (3) of the following subsection:
- 40
- “(3) **[Notwithstanding anything to the contrary in the Exchequer Act, 1994 (Act No. 1 of 1994, all] All** the available money of the Fund may be utilised for the purposes as set out in this Act or the Housing Act.”;
- 45
- (6) the insertion after subsection (4) of the following subsection, while the existing subsections become subsections (6), (7), (8), (9) and (10):
- “(5) All housing matters that have a direct or indirect financial implication must be submitted to the Head of Department to recommend or not recommend, before submission to the MEC for approval.”; and

- (7) the substitution for the newly numbered subsection (6) of the following subsection:

5 “[(5)] (6) The Head of Department –

(c) is for the purposes of the [Exchequer Act, 1994] Public Finance Management Act, 1999 (Act No. 1 of 1999), and the regulations made thereunder, the accounting officer in relation to the money in the Fund;

10 (b) shall, subject to the provisions of this Act be responsible for the administration of the Fund and in particular for –

15 (i) [all] expenditure out of the Fund that he or she recommended as contemplated in subsection (5); and

20 (ii) the collection for the credit of the Fund of all moneys due or accruing to the [Board] Department and the prosecution of all claims in favour of the [Board] Department, whether under contract or otherwise.”

25 **Saving**

7. Anything done under the Act by the Board, established under the repealed section 2 of the Act, is deemed to have been done by the MEC.

30 **Short title**

8. This Act is called the Free State Provincial Housing Amendment Act, 2001.