

THE HOUSING BILL 2009

A Bill for:

An ACT of Parliament to provide for the effective coordination, facilitation, capacity building and monitoring of the housing and human settlement sector; to establish the Kenya Housing Authority and the National Social Housing and Infrastructure Fund for the provision of housing and for connected purposes.

PRELIMINARY

Commencement

This Act may be cited as the Housing Act, 2009 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

In this Act unless the context otherwise requires

Adequate housing means housing with adequate space, privacy, safety, lighting, ventilation, and security of tenure, basic and social infrastructural services and free from environmental hazards.

House means a building or immovable structure or any part thereof that is meant for human habitation

Social housing means adequate housing targeting low income segments of the population comprising a combination of subsidised rental housing or low-cost home ownership, including slum upgrading usually funded by public resources or grants and managed by a public agency, non-governmental organisation or community-based organization.

Human settlements means the totality of the human community - whether city, town or village - with all the social, material, organizational, spiritual and cultural elements that sustain it.

Low-cost housing means a housing unit comprising a minimum of two habitable rooms, cooking area and sanitary facilities and covering a gross floor area of between 30 to 60

square metres for each household with basic – infrastructure and services of standards stipulated by law

Residential unit means any house used by any human being for sleeping or in which any human being dwells.

Social infrastructure includes schools, social halls, health centres, market centres and other recreational facilities.

OBJECTIVES OF THE ACT

The object and purpose of this Act is to;

- Provide for the effective coordination, facilitation, capacity building and monitoring of the housing and human settlements sector.
- Facilitate progressive realization of the right to adequate housing. to which Kenya a party
- Coordinate, facilitate, monitor and build capacity in housing and human settlements.
- Enable the Government to adhere to the provisions of any international treaty, convention or other agreement relating to housing to which Kenya is a party
- Coordinate, facilitate, monitor and build capacity in housing and human settlements.
- Mobilize resources for the provision of housing.
- Facilitate access to adequate housing for all in sustainable human settlements.
- Promote the development and adoption of appropriate technology materials and ideas.

ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY

Establishment of the Kenya Housing Authority.

There is established an Authority to be known as the Kenya Housing Authority. The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of:

- suing and being sued
- Taking, purchasing, or otherwise acquiring, holding, charging or disposing of moveable and immovable property
- Entering into contracts
- Borrowing money

- Doing or performing all other things or acts necessary for the proper performance of its functions under his Act, which may lawfully be done or performed by a body corporate?

Board of Authority

The Authority shall be managed by a Board comprising of

- A non-executive chairperson who shall be appointed by the President from amongst three suitable persons with knowledge and at least ten years experience in the field of housing and urbanization, submitted by the Minister
- The Permanent Secretary in the Ministry responsible for housing or his representative
- The Permanent Secretary in the Ministry responsible for finance or his representative
- The Permanent Secretary in the Ministry responsible for local authorities or his representative
- The Permanent Secretary in the Ministry responsible for lands or his representative
- The Permanent Secretary in the Ministry responsible for health or his representative.
- The Attorney General or his representative
- The Director-General who shall be an ex-officio member and secretary of the Board;
- One representative appointed by the Minister from amongst two nominees of the Institution of Surveyors of Kenya
- One representative appointed by the Minister from amongst two nominees of the Architectural Association of Kenya
- One representative appointed by the Minister from amongst two nominees of the Housing Professionals Registration Board

Powers of the Board

The Board shall have all the powers necessary for the proper performance of the functions of the Authority under this Act and, in particular but without prejudice to the generality of the foregoing; the Board shall have power to;

- The Board shall have all the powers necessary for the proper performance of the functions of the Authority and also it shall have power to receive any gifts, grants, donations or endowments made to the Authority and make disbursements there from in accordance with the provisions of this Act.
- Enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established.
- Open a banking account or banking accounts for the funds of the Authority; and
- Offer services to any person upon such terms as the Board may from time to time determine.

Functions of the Authority

- Exercise general supervision and control over all matters relating to housing and human settlement and the United Nations Human Settlements Programme.
- Provide leadership and coordination of the housing and human settlements sector;
- Develop and enforce estate management and maintenance standards and procedures;
- Monitor and evaluate developments in the housing sector
- Liaise with other institutions on disaster preparedness and post disaster response interventions on housing and human settlements
- Promote new and innovative forms of housing and land tenure system that will meet the needs of the poor and vulnerable
- Facilitate access to adequate housing for all in sustainable human settlements;
- Receive returns of housing data from approving board in respect of building plans and other housing related matters
- Identify land for housing and secure it
- Promote the provision of special housing needs, including, but not limited to, the needs of persons with disabilities

FINANCIAL PROVISIONS

Financial year

The financial year of the Authority shall be the period of twelve months commencing on the 1st July and ending on the 30th June in the next succeeding year.

Funds and Resources of the Authority

- The funds of the Authority shall consist of monies paid to it from National Housing and Infrastructure Fund.
- Money appropriated by Parliament for the purposes of the Authority.
- Funds accruing from investments made by the Authority.
- Grants, loans, gifts or donations from any other source, provided for the use of the Authority.
- Revenue earned from the activities of the Authority under this Act
- Any other funds received by the Authority in the performance of its functions under this Act.

Housing Investment Programme

- The Authority shall, once in every five years, in consultation with the Authority, prepare a housing investment programme for approval by the Minister responsible for finance
- The housing investment programme prepared under subsection shall outline development and maintenance priorities costed with respect to specified housing programmes and such other detail as may be specified.
- All annual work programmes prepared or implemented by the Authority shall be based on the approved five-year housing investment programme.

Annual Budget

- The Authority shall, not later than three months before the end of each financial year, cause to be prepared and submitted to the Minister an annual budget based on the five-year housing investment program in respect of the ensuing financial year comprising estimates of expected recurrent, maintenance, development and capital expenditure of the Authority in the said financial year.

Annual Report

The Authority shall after the end of each financial year but within a period of four months submit to the minister this report dealing generally with the activities and operations of the Authority. The report includes:

- Information with regard to the operations policy of the Authority
- An assessment of the degree to which performance targets agreed upon between the Authority and the Minister have been achieved
- An assessment of the adequacy of housing funding
- The degree to which sources for housing financing have been exploited and the cost of housing operations reduced
- A report on the progress achieved coordination between the Authority and regional entities, including any challenges encountered and proposals for the future
- Generally a report on the degree to which the objectives of this Act have been realized and the levels of compliance with the provisions of this Act

- Each report submitted in relation to that financial year by the Controller and Auditor General

Minister's Power of Direction

- The Minister shall oversee the performance of the activities of the Authority and may, in writing give the Authority directions on matters of policy not inconsistent with the provisions of this Act.

Regulations

- The Minister may, in consultation with the Authority, make regulations for the better performance out of its functions under this Act.
- Minister may make regulations
 1. Relating to the use, safety or maintenance of housing and human settlements;
 2. Relating to the erection of structures on, near, or over houses and human settlement areas falling within its responsibility
 3. For the drainage of streets, lands, compounds and buildings
 4. Respecting the level, width and construction of roads and streets within housing projects
 5. For the removal, demolition or alteration of any projection, structure or thing obstructing a road or likely to cause damage or inconvenience to users of the housing project; and
 6. Prescribing the fees payable for services provided by the Authority
- Regulations made under subsection may prescribe in respect of any contravention of any provision thereof, a fine not exceeding one hundred thousand shillings only or imprisonment for a period of six months, or both, and may also prescribe in the case of continuing offences an additional penalty in respect of each day in which the offence continues.

Administrative Expenses of the Authority

- The operational, administrative and management expenses of the Authority shall be met from such proportion of the Fund as may be determined from time to time by the Board and approved by the Minister

Functions of Director of Housing

- The Director of housing shall be the chief Government adviser on all matters relating to housing and human settlement and shall have a regulatory and supervisory function in the housing and human settlements sector
- Issue licenses and register housing developers and investors and determine standards for the provision of housing to consumers
- Issue guidelines on the functioning of the one-stop-shop approval system and ensure the proper functioning of the system
- Develop and ensure compliance with guidelines for the collection of consumers deposits for intended housing developments
- Ensure that housing and human settlements development projects are carried out in accordance with provisions of this Act
- Develop guidelines for the pricing of houses and develop, issue and enforce guidelines for eviction and resettlement
- Issue permits to authorize developers to receive deposits on intended housing developments
- Ensure compliance with the standard maintenance manuals

FACILITATION

- The Authority may facilitate the provision of housing and infrastructure through any of the following agencies
 1. Local authorities
 2. National Housing Corporation;
 3. Mortgage finance companies;
 4. Banks and non-bank financial institutions;

5. Building societies;
 6. Private housing developers;
 7. Housing cooperatives;
 8. Any other agency appointed by the Minister through the Gazette on the advice of the Authority.
- The Authority shall determine the agencies that it may use to discharge any of its functions under this Act.
 - An implementing agency specified under subsection may apply for project funding or guarantee thereof
 - The Authority shall, within a period not exceeding ninety days of receipt of an application for project funding may determine the application.

Approval committees

- The Authority shall establish approval committees in each local authority for the purpose of approving building plans and other housing matters
- . The Minister may, from time to time, designate local authorities within which an approval committee shall be established.
- An approval committee shall consist of;
 1. The District Housing Officer who shall be the chairperson.
 2. The Town Clerk who shall be the secretary;
 3. The District Physical Planning Officer.
 4. The District Local Government Officer.
 5. The District Environment Officer.
 6. The District Water Officer.
 7. The District Public Health Officer
- An approval Committee may co-opt such other persons it deems fit to assist it approval committee in its deliberations.

Finance for Housing

The Authority shall facilitate access to finance for housing development and related infrastructure and in that regard shall

- Channel through financial institutions including micro-finance institutions and cooperatives such sums from the Fund as shall be necessary to facilitate low cost housing financing initiatives.

- Promote introduction and acceptability of securities alternative to land and tangible property for mortgage financing;
- Liaise with the Central Bank of Kenya for appropriate legislation, regulations and prudential guidelines governing mortgage finance institutions and building societies that will enhance the channelling of funds to housing.
- Petition the Ministry of Finance for stamp duty concessions for first-time homeowners constructing or buying houses of a value or at such designated locations as may be determined by the Authority from time to time.
- Petition the Government for the re-assignment of public and for the purpose of low-cost housing and slum upgrading;
- Apply to the Commissioner of Lands for compulsory acquisition of any private land necessary for public housing;
- Petition the Ministry of Finance for the enhancement of mortgage interest tax relief for home buyers.

Land for Housing Development

The Authority shall facilitate access to land for housing, human settlements development and related infrastructure and in that regard shall.

- Seek concessions on land rents and rates chargeable on land for development of low-cost housing.
- Safeguard land zoned for purposes of housing and human settlements from reallocation.
- Ensure that allottees of urban land zoned for housing develop the land within the period stipulated in the terms of allotment failing which the Authority shall invoke its powers under section.
- Participate in land use planning and management.

Infrastructure for Housing Development.

The Authority shall facilitate installation, expansion and improvement of infrastructural facilities and services for housing development and in that regard shall.

- Coordinate the development of infrastructural maintenance guidelines articulating roles for developers, local authorities and communities.
- Promote joint ventures between local authorities, developers and landowners in urban and rural areas employing re-adjustment models.
- Levy an infrastructure fee on land for housing and human settlements development; subject to approval by the Minister and the Minister for lands in consultation with Treasury

Estate Management and Maintenance

The Authority shall;

- Develop, review and enforce estate management and maintenance regulations and guidelines
- Formulate acceptable estate management and maintenance standards.
- Encourage neighbourhood associations to participate in estate management and maintenance matters to complement local authorities in that regard
- Provide a framework for joint management of common facilities by neighbourhood associations
- Inspect and certify every five years that all residential buildings meet acceptable maintenance status and subject thereto issue a certificate of maintenance:

Establishment of National Housing Fund

There is a fund established and is known as the National Housing and Infrastructure Fund.

The Fund shall vest in the Authority

The sources of the Fund shall consist of;

- Such monies as may be appropriated out of the consolidated Fund for the purpose of this Act.
- An amount of money from the Exchequer as may be agreed upon by the Ministries of Housing and Finance for the first 10 years.
- Monies accruing from the repayment of the capital and interest of any loan made by the Authority.
- Funds from the capital markets through issuance of housing bonds in the stock exchange.
- monies received by the Authority from any other source

The Fund shall be administered by the Director-General under the direction of the Board.

Administration and utilization of the fund

- The Authority shall in consultation with the Minister, prescribe the criteria for eligibility to the Fund including lending limits, repayment terms, applicable interest thereon, extension of grants and any other related matters.
- The Authority shall prescribe the procedure for applying for funds from the Fund.
- The Board shall approve all expenditure from the Fund.
- There may be finances from the fund approved for expenditure in respect of the following elements of housing development.
 1. Housing infrastructure
 2. Affordable housing finance
 3. Research on appropriate building materials and technologies;
 4. Slum upgrading and redevelopment.
- All expenditure from the Fund shall be subject to an annual budget which shall be approved by the Board in accordance with this Act before the beginning of the financial year to which the budget relates.

Special Programmes

- The Minister shall, on the advice of the Authority, gazette such special programmes as shall be necessary to fulfil the objects of this Act.
- The Authority may fund a special programme gazetted under sub-section (1).
- A special programme that is funded by the Authority shall have independent management structures but shall be accountable to the Authority with regard to the funds received from the Authority and in that regard the Authority shall;
 1. Require each special programme to formulate and submit to the Authority annual budgets for funding.
 2. Periodically report to the Minister on the status and progress of each special programme for further direction where necessary.
 3. Require each special programme to submit strategic plans, annual work plans, accounts and project implementation reports for review and advice.
 4. Advise the Minister on degazettement of any special programme.

Accounts and Reports the Fund

- The Authority shall keep proper books and records of accounts of the income, expenditure and assets of the Fund.
- The Accounts of the Fund shall be audited in accordance with the Public Audit Act, 2003.
- The accounts and records of the fund as well as minutes of deliberations in awarding or declining funding shall be made available to the public for inspection at the offices of the Authority during normal business hours on payment of the prescribed fee: Provided that the principle of confidentiality of information shall not be violated.

RESEARCH MONITORING AND EVALUATION

Research on Housing

The Authority shall promote research on housing, building materials and technologies, and shall in that regard-

- Collaborate with other institutions in the funding and coordination of research;
- Advise the Minister on recommendations to the Ministry of Finance on tax concessions in respect of building materials from time to time to ameliorate housing construction costs;
- Ensure that new technologies and building materials are tested and certified by relevant institutions to uphold set standards.
- Promote wider adoption and application of building bylaws and planning regulations as revised from time to time
- Promote use of indigenous architecture that is suitable to local environments.

- Promote the adaptation of internationally acceptable measurement criteria to help set appropriate standards for housing development and to enable monitoring of progress

Maintenance of Housing Data, Records and Information System

- The Authority shall establish and maintain a national housing data bank and information system and the objects of the data bank and information system shall be to:
 1. Record information for the purposes of development, implementation and monitoring of the housing sector
 2. Provide reliable information for purposes of planning development
 3. Collect, compile and analyse categorized data in respect of housing development including, data categorized according to gender, age and geographical location
- For purposes of establishing and maintaining a data bank, the Authority shall;
 1. Obtain access to existing sources of information
 2. Coordinate information required for the purposes of the data bank with other official sources of information
 3. Require periodical feedback as shall be deemed necessary for housing development from various actors in the housing sector
 4. Designate specific agencies including local authorities, relevant professional bodies and the provincial administration as agents of the Authority in undertaking this mandate where necessary.

Monitoring of Housing Developments

- Require any person or institution to provide any information necessary for the purposes of the data bank or information system and determine the form and manner in, and the time within which such information shall be supplied.
- Render to local authorities, public or private bodies or individuals any assistance required for purposes of performing their duties
- Link the data bank or the information system to any other data bank, information system or other system within or outside the Authority
- Provide information to the partners
- Any person who fails to comply with the provisions of subsection above commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both

Obligations of Data Providers

Local authorities, public and private bodies and individuals shall be under an obligation to;

- Collaborate with the Authority in performing their duties and exercising their powers in terms of this section

- Support the objects for which the data bank and information system have been established
- Refrain from any act or omission, which may prejudice the effective functioning of the data bank and information system

Monitoring and Evaluation of Housing Developments

- The Authority shall formulate and develop a dynamic monitoring and evaluation system as well as processes that will ensure proper feedback in order to respond to any constraints identified in the housing sector

CAPACITY BUILDING

Establishment of Housing Professionals Registration Board

- There is established a Board to be known as the Housing Registration Board which shall be a body corporate with perpetual succession and a common seal and be capable of suing and being sued and of acquiring, holding and alienating property
- The Registration Board shall consist of;
 1. Eight members qualified as housing practitioners from different academic backgrounds or fields and appointed by the Minister
 2. The Director-General
 3. A Secretary who shall be an ex-officio member and shall be principal officer of the Board
- The Registration Board shall elect a chairman from its membership and regulate its procedures.
- The quorum of the Board shall be five members.
- A housing practitioner
- The Chairperson and members of the Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years
- The operation costs of the Registration Board and the Institute established under this part shall where necessary be subsidised by the Authority.

Powers of the Registration Board

- Set regulations for the qualification, admission, registration and discipline of housing practitioners
- Set standards of ethics for housing practitioners

- Promote awareness and creation of information in relation to issues affecting housing practitioners

Professional Development and Ethics

In carrying out its functions, the Registration Board shall establish an Institute to undertake the following

- Conduct continuous professional development programmes and training for housing professionals
- Promote awareness creation and information on housing issues and developments
- Promote ethics and facilitate career progression for housing professionals
- Undertake such other programmes and activities as shall be decided by the Registration Board.
- Set and administer professional examinations provided for under this section

DISPUTE RESOLUTION

- All disputes and complaints relating to matters pertaining to the implementation of the provisions of this Act shall, in the first instance except where the Authority is a party, be referred to the relevant regional office for arbitration
- Any party dissatisfied with the decision of the Authority or any of its authorised officers may, within thirty days from the date of the decision, appeal to the Housing Tribunal established under section

Establishment of the Housing Tribunal

- There is established a tribunal to be known as the Housing Tribunal which shall consist of the following members
 1. A Chairman appointed by the Minister
 2. An advocate of the High Court of Kenya
 3. A lawyer registered as a housing practitioner appointed by the Minister
 4. One person nominated by the Registration Board appointed by the minister
 5. One person nominated by the Non-Governmental Organization Council from a housing related civil society organization.
- All appointments to the Tribunal shall be for a term of three years renewable once and shall be by name and Gazette Notice issued by the Minister.
- There shall be paid to the chairperson and the members of the Tribunal such remuneration and allowances as the Minister shall determine on the advice of the Judicial Service Commission.
- The Minister shall in consultation with the Registrar of the High Court, appoint a public officer who is qualified as an advocate of the High Court of Kenya

Jurisdiction of the Tribunal

The Tribunal shall have jurisdiction to hear and determine

- All complaints made to it directly by any body, authority or person in relation to any matter provided for under this Act
- Appeals from decisions of the regional offices
- Appeals from decisions of the Director-General
- Any other matter brought before it in accordance with the provisions of this Act.

Proceedings of the Tribunal

- The Tribunal shall;
 1. Be guided, but not bound by the rules of evidence as set out in the Evidence Act
 2. Ensure that its proceedings are open to the public save where the Tribunal, for good cause, otherwise direct
 3. Not admit a member who has a direct interest in any matter which is the subject of the proceedings before it.
 4. Upon any complaint or appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or **decision made shall be** notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be;
- The Tribunal may;
 1. Take evidence on oath and for that purpose administer oath
 2. On application by a party or on its own motion summon and hear any person as a witness.
 3. Make such orders for the purposes of securing the attendance of any person at any place where it is sitting, make discovery or order production of any document concerning a matter before it or the investigation of any contravention of this Act as it deems necessary or expedient
- Any party who;
 1. Fails to attend the Tribunal after having been required to do so under subsection
 2. Refuses to take oath or affirmation before the Tribunal or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal
 3. Knowingly gives false evidence or information which is misleading before the Tribunal
 4. Fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal
 5. At any sitting of the Tribunal wilfully threatens or ridicules any members or officers of the Tribunal

Awards

- Upon hearing any complaint, referral or appeal, the Tribunal shall
 1. Make such order including an order for costs as it may deem fit
 2. Confirm, set aside or vary any order or decision in question

3. Exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which an appeal is brought
- All decisions of the Tribunal shall be signed by all the members who sat in the hearing and determination of that dispute.

Appeals

- Any party person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court
- No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired.
- Notwithstanding the provisions of above where the Director-General is satisfied that immediate action must be taken to avert crisis, the Director-General shall have the power to take such reasonable action or steps, including the powers to stop any undertaking until the appeal is determined.
- Upon the hearing of an appeal under this section, the High Court may;
 1. confirm, set aside or vary the decision or order in question
 2. remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to direct
- The decision of the High court on any appeal under this section shall be final.

Immunity

- It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal
- The chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for any act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith believed themselves to have jurisdiction to do or order to be done the act complained of; and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

General

- Any person who contravenes the provisions of this Act commits an offence and where no special penalty is provided shall be liable to imprisonment for a term not exceeding 3 years or to a fine not exceeding five hundred thousand shillings or both such fine and imprisonment.

Provisions of other Acts

- Any written law in force immediately before the coming into force of this ACT relating to the housing and human settlement sector shall have effect subject to such modification as may necessary as to give effect to this ACT.

Rules and Regulations

- The minister may make such rules and regulations generally for the better carrying out of the provisions of this Act