

REPUBLIC OF SOUTH AFRICA

HOUSING AMENDMENT BILL

(As introduced in the National Assembly as a section 76 Bill)

(MINISTER OF HOUSING)

[B 21—99]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BEHUISING

(Soos ingedien in die Nasionale Vergadering as 'n artikel 76-wetsontwerp)

(MINISTER VAN BEHUISING)

[W 21—99]

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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.

BILL

To amend the Housing Act, 1997, so as to recognise the Social Housing Foundation as a national institution; to provide for committees for the South African Housing Development Board and for the co-optation of persons to that Board; to further regulate the transfer of movable and immovable property to the provincial housing development boards and the phasing out of certain housing subsidies; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 107 of 1997

1. Section 3 of the Housing Act, 1997 (in this Act referred to as the principal Act), is hereby amended— 5
- (a) in the Afrikaans text by the substitution in subsection (6) for the expression “(3)(h)” of the expression “(4)(h)”; and
 - (b) by the insertion after subsection (6) of the following subsection:

“(6A) The Social Housing Foundation, registered as a company in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), under the name National Housing Finance Development Foundation, is deemed to be a national institution established by the Minister under subsection 4(h).”

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Amendment of section 5 of Act 107 of 1997

2. Section 5 of the principal Act is hereby amended by the addition of the following subsections: 15
- “(8) The Minister may—
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| <ul style="list-style-type: none"> (a) establish one or more committees for the Board; (b) co-opt one or more persons to the Board, for a specific purpose relating to the functions of the Board referred to in subsection (2). (9) The Minister may appoint to a committee of the Board, established in terms of subsection (8)(a), one or more persons from any or all of the following categories: <ul style="list-style-type: none"> (a) members of the Board; (b) officers of the Department; (c) officers of one or more provincial administrations; | } 20 |
| <ul style="list-style-type: none"> (a) members of the Board; (b) officers of the Department; (c) officers of one or more provincial administrations; | } 25 |

- (d) other persons whom the Minister considers to have the necessary specialised knowledge or skills relating to the specific purpose for which the committee is established.
- (10)(a) Subject to the directions of the Board, a committee of the Board may exercise the powers of the Board, and must perform the duties of the Board, in relation to the specific purpose for which the committee is established. 5
- (b) The Board may determine rules and procedures regarding the manner in which that committee exercises the powers and performs the duties of the committee.
- (11) Any person whom the Minister co-opts to the Board in terms of subsection (8)(b) exercises his or her powers and performs his or her duties subject to the directions of the Board. 10
- (12) A member of a committee of the Board or a person co-opted to the Board, except if he or she is an officer of the Department or a provincial administration, is paid the allowances determined in terms of subsection (6).” 15

Amendment of section 14 of Act 107 of 1997

3. Section 14 of the principal Act is hereby amended—

- (a) by the insertion in paragraph (b) of subsection (4) after the word “scheme” of the words “or individual dwelling”;
- (b) by the substitution for paragraph (c) of subsection (4) of the following paragraph: 20
- “(c)(i) Any—
- (aa) movable and immovable property acquired by the premier of a province; and
- (bb) immovable property of the Republic developed by the premier of a province, 25
- by means of a loan or advance or other finance contemplated in paragraph (b), pass to the provincial housing development board for such province.
- (ii) Subsection (2)(b), (c) and (d) applies, with the changes required by the context, to immovable property, or a registrable claim or right in respect thereof, transferred in terms of subparagraph (i).”;
- (c) by the substitution for paragraph (d) of subsection (4) of the following paragraph: 30
- “(d)(i) The net proceeds derived from the recovery of any loan granted to a natural person by a municipality for the purposes of acquiring individual dwellings as contemplated in subsection (4)(b), must be paid into the separate operating account of such municipality referred to in section 15(5). 35
- [(i)] (ii) Subsection (3)(a) to (e) applies, with the changes required by the context, in respect of any immovable property of a municipality or the premier of a province acquired by means of a loan, advance or other finance contemplated in paragraph (b). 40
- [(ii)] (iii) The net proceeds of any letting or sale or other alienation in terms of subparagraph [(i)] (ii), read with subsection (3)(a) to (e), in respect of immovable property which was acquired by— 45
- (aa) a municipality, must be paid into the separate operating account of such municipality referred to in section 15(5);
- (bb) [a] the premier of a province, must be paid into the provincial housing development fund for such province or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993, despite its repeal by section 20. 50
- [(iii)] (iv) The net proceeds of the recovery of any loan referred to in subparagraph (i) or of any letting or sale or other alienation referred to in subparagraph [(ii)] (iii) must be utilised for housing development in accordance with national housing policy and a housing development project approved by— 55

(aa) in the case of [subparagraph (ii)(aa)] subparagraphs (i) and (iii)(aa), the MEC after consultation with the provincial housing development board in question;

(bb) in the case of subparagraph [(ii)(bb)] (iii)(bb), the MEC.

[(iv)] (v) Every municipality must, in accordance with the directives of the MEC, furnish the MEC with monthly reports regarding the sale of immovable property by the municipality in terms of this paragraph, including the basis for the determination of selling prices. 5

[(v)] (vi) If the MEC is not satisfied with such basis for the determination of selling prices, the MEC may determine directives for this purpose.”; and 10

(d) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(a) The Minister must, within one year of the commencement of the Housing Amendment Act, 1999, institute a national housing programme to phase out [within one year of the commencement of this Act] every housing subsidy granted in terms of— 15

(i) the Housing Act, 1966;

(ii) the Development and Housing Act, 1985;

(iii) the Housing Act (House of Representatives), 1987; 20

(iv) the Development Act (House of Representatives), 1987; or

(v) the Housing Development Act (House of Delegates), 1987.”.

Amendment of section 15 of Act 107 of 1997

4. Section 15 of the principal Act is hereby amended by the substitution in paragraph (a) of subsection (2) for the expression “section 14(2)” of the expression “section 14(2) or (4)(c)”. 25

Short title

5. This Act is called the Housing Amendment Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE HOUSING AMENDMENT BILL, 1999

Content of Bill

1. To enable the Minister to provide finance to the Social Housing Foundation and to ensure that its mandate is executed, the Foundation has to be recognised as a national institution as contemplated in section 3 of the Housing Act, 1997 (Act No. 107 of 1997). It is proposed that this be achieved by the insertion of a new subsection in section 3 of the Housing Act, 1997 (“the Act”).

2. Since the coming into operation of the Act, a need has been identified to empower the Minister to either co-opt one or more persons to the South African Housing Development Board, established in terms of section 5(1) of the Act, or to establish a committee for the Board for a specific purpose, such as the investigation of the role of women in housing, and to compensate such persons for their services. This need has arisen because of the limited size of the Board, and it is proposed that it be addressed by the amendment of section 5 of the Act.

3. The Act should also be amended to further regulate the transfer of immovable property to a provincial housing development board (“PHDB”). In terms of section 14 of the Act the transfer of immovable property of the former National Housing Board to a PHDB is to be effected by way of a request by the PHDB to the Registrar of Deeds. The Registrar of Deeds then effects the transfer by endorsing his or her registers and the relevant title deeds. No transfer duty and related transfer costs are payable. Section 14 also provides for the transfer to a PHDB of immovable property of the Premier which was acquired by means of a loan or advance as contemplated in section 14(4) of the Act. However, due to an oversight, a provision regarding an applicable transfer process concerning such properties has been omitted, and consequently section 14 should be adjusted accordingly.

4. Section 14 of the Act also provides for the extinguishing of certain debts and other obligations of a municipality or a Premier towards the former National Housing Board. The provision is, however, only applicable where the debt or other obligations were incurred as a result of a project or scheme. It has now come to light that instances exist where individual loans were granted to municipalities for reissuing to individuals for the acquisition of dwellings and that the extinguishing of such debt has not been catered for by the provision concerned. Section 14 should therefore be amended in order to provide for the extinguishing of the said debt.

5. In terms of section 14(9) of the Act housing subsidies granted in terms of former housing legislation need to be phased out within one year of the commencement of the Act. Due to several factors such as practical implications, lack of capacity and affordability problems, which could not be foreseen at the time of drafting, this requirement cannot be met. As a result section 14(9)(a) of the Act should be amended to provide for the institution of a national housing programme within one year of the commencement of this amendment Act to phase out the said housing subsidies.

6. Section 15 of the Act provides for the transfer to municipalities of property vesting in a PHDB. Property that has passed to the PHDB from the Premier is not, however, covered and section 15 should thus be amended in order to attain the execution of the general objects of the Act in this regard.

Parliamentary procedure

7. In the opinion of the Department of Housing and the State Law Advisers, the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within the functional area of housing, listed in Schedule 4 to the Constitution.

