

HOUSING ACT 107 OF 1997

[ASSENTED TO 27 NOVEMBER 1997]

[DATE OF COMMENCEMENT: 1 APRIL 1998]

(English text signed by the President)

as amended by

Housing Amendment Act 28 of 1999
Housing Second Amendment Act 60 of 1999
Housing Amendment Act 4 of 2001

ACT

To provide for the facilitation of a sustainable housing development process; for this purpose to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of national housing programmes; to repeal certain laws; and to provide for matters connected therewith.

Preamble

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS the Parliament of the Republic of South Africa recognises that-
housing, as adequate shelter, fulfils a basic human need;
housing is both a product and a process;
housing is a product of human endeavour and enterprise;
housing is a vital part of integrated developmental planning;
housing is a key sector of the national economy;
housing is vital to the socio-economic well-being of the nation;

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

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INTRODUCTION (s 1)

1 Definitions

In this Act, unless the context otherwise indicates-

'Code' means the National Housing Code contemplated in section 4;

[Definition of 'code' inserted by s. 1 (a) of Act 4 of 2001.]

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'Department' means the Department of Housing;

'Director-General' means the Director-General: Housing;

'Fund' means the South African Housing Fund referred to in section 11 (1);

'head of department' means the officer of a provincial administration in charge of the department of a provincial administration responsible for the administration of housing matters in a province;

'housing development' means the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to-

- (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and
- (b) potable water, adequate sanitary facilities and domestic energy supply;

'housing development project' means any plan to undertake housing development as contemplated in any national housing programme;

'MEC' means the member of the Executive Council of a province responsible for housing matters in the province in question;

'Minister' means the Minister of Housing;

'municipality' means a municipality as defined in section 10 of the Local Government Transition Act, 1993 (Act 209 of 1993);

'national housing policy' means the national policy in respect of housing development determined by the Minister in terms of section 3 (2)(a);

'national housing programme' means any national policy framework to facilitate housing development, including, but not limited to, any housing assistance measure referred to in section 3 (5) or any other measure or arrangement to-

- (a) assist persons who cannot independently provide for their own housing needs;
- (b) facilitate housing delivery; or
- (c) rehabilitate and upgrade existing housing stock, including municipal services and infrastructure;

'procurement' means the process by which organs of state procure goods, services and works from, dispose of movable property, hire or let anything, or grant rights to the private sector;

[Definition of 'procurement' inserted by s. 1 (b) of Act 4 of 2001.]

'provincial housing development board'

[Definition of 'provincial housing development board' deleted by s. 1 (c) of Act 4 of 2001.]

'provincial housing development fund' means a provincial housing development fund contemplated in section 12 (2).

PART 1 GENERAL PRINCIPLES (s 2)

2 General principles applicable to housing development

(1) National, provincial and local spheres of government must-

- (a) give priority to the needs of the poor in respect of housing development;

- (b) consult meaningfully with individuals and communities affected by housing development;
- (c) ensure that housing development-
 - (i) provides as wide a choice of housing and tenure options as is reasonably possible;
 - (ii) is economically, fiscally, socially and financially affordable and sustainable;
 - (iii) is based on integrated development planning; and
 - (iv) is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance;
- (d) encourage and support individuals and communities, including, but not limited to, co-operatives, associations and other bodies which are community based, in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of, the community;
- (e) promote-
 - (i) education and consumer protection in respect of housing development;
 - (ii) conditions in which everyone meets their obligations in respect of housing development;
 - (iii) the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;
 - (iv) the process of racial, social, economic and physical integration in urban and rural areas;
 - (v) the effective functioning of the housing market while levelling the playing fields and taking steps to achieve equitable access for all to that market.
 - (vi) measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination by all actors in the housing development process;
 - (vii) higher density in respect of housing development to ensure the economical utilisation of land and services;
 - (viii) the meeting of special housing needs, including, but not limited to, the needs of the disabled;
 - (ix) the provision of community and recreational facilities in residential areas;
 - (x) the housing needs of marginalised women and other groups disadvantaged by unfair discrimination; and
 - (xi) the expression of cultural identity and diversity in housing development;
- (f) take due cognisance of the impact of housing development on the environment;
- (g) not inhibit housing development in rural or urban areas;
- (h) in the administration of any matter relating to housing development-
 - (i) respect, protect, promote and fulfil the rights in the Bill of Rights in Chapter 2 of the Constitution;
 - (ii) observe and adhere to the principles of co-operative government and intergovernmental relations

referred to in section 41 (1) of the Constitution; and

(iii) comply with all other applicable provisions of the Constitution;

- (i) strive to achieve consensus in regard to the policies of the respective spheres of government in respect of housing development;
- (j) observe and adhere to the principles in Chapter 1 of the Development Facilitation Act, 1995 (Act 67 of 1995), in respect of housing development;
- (k) use public money available for housing development in a manner which stimulates private investment in, and the contributions of individuals to, housing development;
- (l) facilitate active participation of all relevant stakeholders in housing development; and
- (m) observe and adhere to all principles for housing development prescribed under subsection (2).

(2) (a) The Minister may, by notice in the *Gazette*, prescribe-

- (i) any principle for housing development in addition to, and consistent with, the principles set out in subsection (1) (a) to (l); and
- (ii) any principle set out in subsection (1) (a) to (l) in greater detail, but not inconsistent therewith.

(b) The Minister must, before prescribing any such principle, cause a draft of such principle to be published in the *Gazette* and must consider any comment on such draft principle received from any person during a period of 30 days after such publication.

(3) (a) A list of notices published in terms of subsection (2) (a) in the *Gazette* during the period covered in the list, must, within 14 days after the publication of any such notice in the *Gazette*, be submitted to Parliament for approval.

(b) Such list of notices must in respect of each notice state the number and title of the notice and the number and date of the *Gazette* in which it was published.

(c) If Parliament disapproves of any principle in such notice or any provision of such principle, such principle or provision ceases to have effect, but without prejudice to-

- (i) the validity of anything done in terms of such principle or provision before it so ceased to have effect; and
- (ii) any right or liability acquired or incurred in terms of such principle or provision before it so ceased to have effect.

PART 2 **NATIONAL GOVERNMENT (ss 3-6)**

3 Functions of national government

(1) The national government acting through the Minister must, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163 (a) of the Constitution, establish and facilitate a sustainable national housing development process.

(2) For the purposes of subsection (1) the Minister must-

- (a) determine national policy, including national norms and standards, in respect of housing development;
- (b) set broad national housing delivery goals and facilitate the setting of provincial and, where appropriate, local government housing delivery goals in support thereof;

- (c) monitor the performance of the national government and, in co-operation with every MEC, the performance of provincial and local governments against housing delivery goals and budgetary goals;
- (cA) determine a procurement policy, by not later than April 2002, which is consistent with section 217 of the Constitution in relation to housing development;

[Para. (cA) inserted by s. 2 (a) of Act 4 of 2001.]

- (d) assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their duties in respect of housing development;
- (e) support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and perform their duties in respect of housing development;
- (f) promote consultation on matters regarding housing development between the national government and representatives of
 - (i) civil society;
 - (ii) the sectors and subsectors supplying or financing housing goods or services;
 - (iii) provincial and local governments; and
 - (iv) any other stakeholder in housing development;
- (g) promote effective communication in respect of housing development.

(3) For the purposes of subsection (2) (a) 'national norms and standards' includes norms and standards in respect of permanent residential structures, but are not limited thereto.

(4) For the purposes of performing the duties imposed by subsections (1) and (2) the Minister may-

- (a) establish a national institutional and funding framework for housing development;
- (b) negotiate for the national apportionment of the state budget for housing development;
- (c) prepare and maintain a multi-year national plan in respect of housing development;
- (d) allocate funds for national housing programmes to provincial governments, including funds for national housing programmes administered by municipalities in terms of section 10;
- (e) allocate funds for national facilitative programmes for housing development;
- (f) obtain funds for land acquisition, infrastructure development, housing provision and end-user finance;
- (g) institute and finance national housing programmes;
- (h) establish and finance national institutions for the purposes of housing development, and supervise the execution of their mandate;
- (i) evaluate the performance of the housing sector against set goals and equitableness and effectiveness requirements; and
- (j) take any steps reasonably necessary to-
 - (i) create an environment conducive to enabling provincial and local governments, the private sector, communities and individuals to achieve their respective goals in respect of housing development; and

- (ii) promote the effective functioning of the housing market.

(5) The following housing assistance measures, which were approved for financing out of the Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966 (Act 4 of 1966), are deemed to be national housing programmes instituted by the Minister under subsection (4) (g):

- (a) The Housing Subsidy Scheme;
- (b) The Guidelines for the Discount Benefit Scheme to promote Home Ownership, subject to section 17;
- (c) The Hostels Redevelopment Programme: Policy for the Upgrading of Public Sector Hostels;
- (d) The Criteria and Procedures governing the Allocation of the Bulk and Connector Infrastructure Grant until it is phased out on a date determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development.

(6) The following national institutions financed out of the Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966, are deemed to be national institutions established and financed by the Minister under subsection (4) (h):

- (a) The Mortgage Indemnity Fund (Pty) Ltd;
- (b) The National Housing Finance Corporation;
- (c) The National Urban Reconstruction and Housing Agency.

(6A) The Social Housing Foundation, registered as a company in terms of section 21 of the Companies Act, 1973 (Act 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).

[Sub-s. (6A) inserted by s. 1 (b) of Act 28 of 1999.]

(6B) The Minister must, by notice in the *Gazette*, from time to time publish updated lists of-

- (a) national housing programmes instituted or deemed to have been instituted under subsection (4) (g);
- (b) national institutions established and financed or deemed to have been established and financed under subsection (4) (h),

and must indicate in the notice that details of those national housing programmes and of the role and functions of those national institutions are contained in the Code.

[Sub-s. (6B) inserted by s. 2 (b) of Act 4 of 2001.]

(7) Every provincial government and municipality must, in accordance with the procedure determined by the Minister, furnish such reports, returns and other information as the Minister requires for the purposes of this Act.

(8) When exercising any executive authority in terms of this section, the Minister must co-ordinate with the other Ministers in question and may not encroach upon the executive authority of any of such Ministers.

(9) The Minister may, when a provincial government through the MEC cannot or does not fulfil an obligation in terms of this Act, intervene by taking any appropriate steps in accordance with section 100 of the Constitution to ensure fulfilment of that obligation.

[Sub-s. (9) added by s. 2 (c) of Act 4 of 2001.]

4 National Housing Code

(1) The Minister must publish a code called the National Housing Code.

[Sub-s. (1) substituted by s. 3 (a) of Act 4 of 2001.]

(2) The Code -

- (a) must contain national housing policy;
- (b) may, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163 (a) of the Constitution, include administrative or procedural guidelines in respect of-
 - (i) the effective implementation and application of national housing policy;
 - (ii) any other matter that is reasonably incidental to national housing policy.

(3) The Minister must furnish a copy of the Code to every provincial government and municipality.

(4) If national housing policy is amended during any year, the Minister must-

- (a) as soon as possible, give notice of such amendment to every provincial government and municipality; and
- (b) within three months after the end of such year, publish a revised Code, and furnish a copy thereof to every provincial government and municipality.

(5) Any new national housing policy applies notwithstanding that such policy has not yet been included in a revision of the Code.

(6) The Code shall be binding on the provincial and local spheres of Government.

[Sub-s. (6) added by s. 3 (b) of Act 4 of 2001.]

5 Establishment of panel

(1) The Minister must establish a panel of persons to advise the Minister on any matter relating to housing development.

(2) A panel shall consist of not more than six fit and proper persons who have knowledge, qualifications or experience in the field of housing development.

(3) Members of a panel shall be appointed in accordance with procurement policy that is consistent with section 217 of the Constitution, and must be appointed only after the Minister has through the media and by notice in the *Gazette* invited nominations of persons as candidates for the respective positions on the panel.

(4) A member of a panel is appointed for the period determined by the Minister at his or her appointment, and may, subject to subsection (3), be reappointed on the termination of that period.

(5) The Minister may at any time terminate the membership of a member of a panel for reasons which are just and fair.

(6) A member of a panel other than a person who is in the full-time employment of the State, is paid an allowance determined by the Minister with the approval of the Minister of Finance.

(7) A member of the panel ceases to be a member if-

- (a) he or she resigns;
- (b) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10 (1) (c) of the

Agricultural Credit Act, 1966;

- (c) he or she becomes of unsound mind;
- (d) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; and
- (e) he or she becomes a member of Parliament, a provincial legislature, a municipal council, the cabinet or the Executive Council of a Province.

[S. 5 substituted by s. 4 of Act 4 of 2001.]

6 National housing data bank and information system

(1) The Director-General must establish and maintain a national housing data bank (in this section referred to as the 'data bank') and, associated therewith, a national housing information system (in this section referred to as the 'information system').

(2) The objects of the data bank and information system are to-

- (a) record information for the purposes of the development, implementation and monitoring of national housing policy;
- (b) provide reliable information for the purposes of planning for housing development;
- (c) enable the Department to effectively monitor any aspect of the housing development process;
- (d) provide macro-economic and other information with a view to integrating national housing policy with macro-economic and fiscal policy and the co-ordination of housing development with related activities;
- (e) serve and promote housing development and related matters; and
- (f) collect, compile and analyse categorized data in respect of housing development, including, but not limited to, data categorized according to gender, race, age and geographical location.

(3) For the purposes of subsection (1) the Director-General must-

- (a) as far as possible obtain access to existing sources of information;
- (b) co-ordinate information required for the purposes of the data bank with other official sources of information; and
- (c) take into account the reasonable needs of provincial governments and municipalities for information regarding housing development.

(4) For the effective performance of the duties imposed by subsection (3) the Director-General may-

- (a) require any provincial government or municipality to provide any information reasonably required for the purposes of the data bank or information system and determine the form and manner in, and time within, which such information is to be supplied;
- (b) render to provincial governments and municipalities any assistance reasonably required for performing their duties contemplated in paragraph (a) and subsection (5);
- (c) link the data bank or the information system or both the data bank and information system to any other data bank, information system or other system within or outside the public administration;
- (d) subject to other legislation prohibiting or regulating the disclosure of information, limit or refuse access by any person or category of persons to any information in the data bank or information system, or in any

part of that bank or system-

- (i) that was obtained from
 - (aa) any state source, if access by any such person or category of persons to such information in or at that source is limited or prohibited; or
 - (bb) any source other than a state source on the condition that such information would not be accessible to any such person or category of persons;
 - (ii) if the disclosure of such information would unfairly prejudice any person or give any person any unfair advantage over any other person;
 - (e) determine and collect, for the benefit of the Fund, fees payable for the supply of, or the granting of access to, any information or category of information in the data bank and information system; and take any steps reasonably necessary to carry out his or her duties or to achieve the objects of the data bank and information system.
- (5) Provincial governments and municipalities must-
- (a) co-operate with the Director-General in performing his or her duties and exercising his or her powers in terms of this section;
 - (b) support the objects for which the data bank and information system have been established; and
 - (c) refrain from any act which may prejudice the effective functioning of the data bank and information system.

PART 3 **PROVINCIAL GOVERNMENT (ss 7-8)**

7 Functions of provincial governments

(1) Every provincial government, through its MEC, must, after consultation with the provincial organisations representing municipalities as contemplated in section 163 (a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.

[Sub-s. (1) substituted by s. 5 (a) of Act 4 of 2001.]

- (2) For the purposes of subsection (1) every provincial government must through its MEC-
- (a) determine provincial policy in respect of housing development;
 - (b) promote the adoption of provincial legislation to ensure effective housing delivery;
 - (c) 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;
 - (d) co-ordinate housing development in the province;
 - (e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development;
 - (f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; and
 - (g) 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, which is consistent with national housing policy and section 3 (2) (b), in accordance with the guidelines that the Minister approves for the financing of such a plan with money from the Fund.

[Sub-s. (2) amended by s. 5 (b) of Act 4 of 2001.]

(3) An MEC must-

- (a) administer every national housing programme and every provincial housing programme which is consistent with national housing policy and section 3 (2) (b), and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve-
 - (i) any projects in respect thereof; and
 - (ii) the financing thereof out of money paid into the provincial housing development fund as contemplated in section 12 (2);
- (b) determine provincial housing development priorities in accordance with national housing policy;
- (c) apply procurement policy in respect of housing development determined by the Minister in terms of section 3 (2) (c); and
- (d) administer the assets contemplated in section 14.

[Sub-s. (3) added by s. 5 (c) of Act 4 of 2001.]

(4) (a) The MEC must establish a panel of not more than six persons to advise the MEC on any matter relating to housing development.

(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.

(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 relevant *Provincial Gazette* invited nominations of persons as candidates for the respective positions on the panel.

(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.

(e) The MEC may at any time terminate the membership of a member of the panel for reasons which are just and fair.

(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 relevant province.

(g) A member of the panel ceases to be a member if-

- (i) he or she resigns;
- (ii) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10 (1) (c) of the Agricultural Credit Act, 1966;
- (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
- (v) he or she becomes a member of Parliament, a provincial legislature, a municipal council, the cabinet or

the Executive Council of a Province.

[Sub-s. (4) added by s. 5 (c) of Act 4 of 2001.]

(5) The MEC may, subject to any conditions he or she may deem appropriate in any instance-

- (a) delegate any power conferred on him or her by this Act; or
- (b) assign any duty imposed upon him or her by this Act,

to an officer or employee of the department responsible for the administration of housing matters in a province, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies: Provided that the delegation or assignment does not prevent the person who made the delegation or assignment from exercising that power or performing that duty himself or herself.

[Sub-s. (5) added by s. 5 (c) of Act 4 of 2001.]

8

[S. 8 repealed by s. 6 of Act 4 of 2001.]

PART 4 LOCAL GOVERNMENT (ss 9-10B)

9 Functions of municipalities

(1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to-

- (a) ensure that-
 - (i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;
 - (ii) conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed;
 - (iii) services in respect of water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economically efficient;
- (b) set housing delivery goals in respect of its area of jurisdiction;
- (c) identify and designate land for housing development;
- (d) create and maintain a public environment conducive to housing development which is financially and socially viable;
- (e) promote the resolution of conflicts arising in the housing development process;
- (f) initiate plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction;
- (g) provide bulk engineering services, and revenue generating services in so far as such services are not provided by specialist utility suppliers; and
- (h) plan and manage land use and development.

(2) (a) Any municipality may participate in a national housing programme in accordance with the rules applicable to such programme by-

- (i) promoting a housing development project by a developer;
- (ii) subject to paragraph (b), acting as developer in respect of the planning and execution of a housing development project on the basis of full pricing for cost and risk;
- (iii) entering into a joint venture contract with a developer in respect of a housing development project;
- (iv) establishing a separate business entity to execute a housing development project;
- (v) administering any national housing programme in respect of its area of jurisdiction in accordance with section 10;
- (vi) facilitating and supporting the participation of other role players in the housing development process.

(b) If a municipality has been accredited under section 10 (2) to administer national housing programmes in terms of which a housing development project is being planned and executed, such municipality may not act as developer, unless such project has been approved by the relevant provincial housing development board.

(3) (a) A municipality may by notice in the *Provincial Gazette* expropriate any land required by it for the purposes of housing development in terms of any national housing programme, if-

- (i) it is unable to purchase the land on reasonable terms through negotiation with the owner thereof;
- (ii) it has obtained the permission of the MEC to expropriate such land before the notice of expropriation is published in the *Provincial Gazette*; and
- (iii) such notice of expropriation is published within six months of the date on which the permission of the MEC was granted.

(b) Sections 1, 6 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act 63 of 1975), apply, with the changes required by the context, in respect of the expropriation of land by a municipality in terms of paragraph (a), and any reference in any of those sections-

- (i) to the 'Minister' and the 'State' must be construed as a reference to the chief executive officer of the relevant municipality and the relevant municipality, respectively;
- (ii) to 'section 2' must be construed as a reference to this subsection; and
- (iii) to 'this Act' must be construed as a reference to this Act.

10 Administration of national housing programmes by municipalities

(1) Any municipality may apply in writing to the MEC in the form determined by the MEC to be accredited under subsection (2) for the purposes of administering one or more national housing programmes.

(2) (a) If the MEC is satisfied that the municipality which made an application under subsection (1) complies with the criteria for the accreditation of municipalities as determined by the Minister after consultation with the MEC, the MEC must accredit the municipality for the purposes of administering one or more of the national housing programmes mentioned in the application.

(b) Despite the repeal of the Housing Arrangements Act, 1993 (Act 155 of 1993), by section 20, any criteria determined under section 11B (2) of that Act are regarded to be criteria determined under paragraph (a), until amended or substituted under that paragraph.

(3) (a) Subject to the directions of the MEC consistent with the national housing policy, any municipality that has been accredited under subsection (2) may administer any national housing programme in respect of which accreditation has been granted.

(b) For the purposes of such administration, but subject to subsection (4), such municipality may exercise such powers and must perform such duties of the relevant provincial housing development board as are necessary for the administration of such national housing programme.

(c) (i) Any municipality accredited under subsection (2) must be regularly reviewed by the MEC on the basis of adequate performance against the criteria for accreditation referred to in that subsection.

(ii) If any such municipality fails to so perform, the MEC may intervene and take the steps necessary to ensure adequate performance.

(4) (a) The MEC may, after consultation with the relevant provincial housing development board, out of money paid into the relevant provincial housing development fund as contemplated in section 12 (2), allocate to any municipality accredited under subsection (2) and situated in the province in question such amounts as the MEC considers necessary.

(b) The officer designated as the accounting officer as contemplated in section 12 (2) (b) must out of money allocated under paragraph (a) transfer to such municipality such money as required by it for the purposes of the administration of-

(i) the Housing Subsidy Scheme referred to in section 3 (5) (a); and

(ii) any other national housing programme.

(c) Such accounting officer remains the accounting officer in respect of any money transferred in terms of paragraph (b) (i).

(d) A municipality must maintain separate accounts into which money transferred in terms of paragraph (b) (i) and (ii) must be deposited and out of which all disbursements in connection with the administration of the national housing programme in question must be made.

(e) Any disbursement of money transferred in terms of paragraph (b) (i) to a vendor as defined in section 1 of the Value-Added Tax Act, 1991 (Act 89 of 1991), must be made by the municipality acting as the agent of the provincial administration in question.

(f) (i) The chief executive officer of such municipality must as soon as possible after, but within two months of 31 March in each year, submit detailed statements signed by that officer showing the results of the previous year's transactions and the balance sheets in respect of the accounts referred to in paragraph (d) to the officer designated as the accounting officer as contemplated in section 12 (2) (b).

(ii) Such accounting officer must, within five months after the end of the financial year, incorporate such statements and balance sheets into the statements and balance sheets required to be prepared by that officer in terms of any applicable provincial legislation.

(g) (i) The books and statements of account and balance sheets in respect of the money transferred in terms of paragraph (b) must be audited by the Auditor-General.

(ii) The Auditor-General may require any person (including any person in the employ of the municipality in question) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit.

(5) (a) Any municipality accredited under subsection (2) must, in the performance of its functions contemplated in this section, carry out the policy directives of the MEC consistent with national housing policy including the rules of any applicable national housing programme.

(b) If requested to do so by the MEC, a municipality accredited under subsection (2) must report to the MEC on the activities of the municipality in terms of this section.

10A Restriction on voluntary sale of state-subsidised housing

(1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the 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 relevant provincial housing department.

(2) The provincial housing 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 subsidised housing.

(3) When the person vacates his or her property the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the provincial housing department for the title deeds of the property to be endorsed to reflect the department's ownership of that property.

(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.

[S. 10A inserted by s. 7 of Act 4 of 2001.]

10B Restriction on involuntary sale of state-subsidised housing

(1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the 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 relevant provincial housing department at a price not greater than the subsidy which the person received for the property.

(2) Any such offer to the provincial housing department shall be made in writing and shall be accepted or rejected by the MEC within a period of 60 days from receipt thereof.

(3) If such offer is accepted, the purchase price shall be determined, subject to the provisions of subsection (1), by agreement between the MEC and the person or creditor concerned or, in the event of no agreement being reached, by a valuer acceptable to both parties and registered in terms of the Valuers' Act, 1982 (Act 23 of 1982).

(4) The purchase price as determined in terms of subsection (3) shall be financed by the MEC out of the provincial housing development fund.

(5) An MEC may grant exemption from the provisions of subsection (1), either conditionally or unconditionally, in respect of any dwelling or site to which the provisions of that subsection apply.

(6) The Registrar of Deeds concerned shall-

- (a) make such endorsements 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;
- (b) cancel any such endorsements 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) have been complied with; or
- (c) make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5).

(7) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the provincial government unless the Registrar of Deeds is provided with a certificate, signed by the head of department, to the effect that such dwelling or site has been offered for sale to the provincial department of housing in

terms of subsection (1) and that-

- (a) the offer has been rejected; or
- (b) an exemption has been granted under subsection (5), either unconditionally or subject to the conditions set out in the certificate.

(8) The Minister may, by notice in the *Gazette*, make rules on the granting of exemption in terms of subsection (5) as well as the amount that must be paid by the person or creditor concerned for the granting of such exemption.

[S. 10B inserted by s. 7 of Act 4 of 2001.]

PART 5

FINANCING OF HOUSING DEVELOPMENT (ss 11-12)

11 South African Housing Fund

(1) The South African Housing Fund established by section 12B (1)(a) of the Housing Arrangements Act, 1993 (Act 155 of 1993), continues to exist for the purposes of financing activities in terms of this Act, despite the repeal of that Act by section 20.

(2) The Fund consists of-

- (a) all money which immediately before the commencement of this Part stood to the credit of the Fund or subject to this section, was payable to the Fund;
- (b) all money appropriated by Parliament to strengthen the capital of the Fund; and
- (c) and contributions from any source for the purposes of housing development.

(3) Despite anything to the contrary in the Exchequer Act, 1975 (Act 66 of 1975), all the available money of the Fund may be utilised for the purposes as set out in this act.

(4) Any money in the Fund which is not required for immediate use, must be invested with the Commissioner for Public Investments.

(5) (a) The Director-General is -

- (i) for the purposes of the Exchequer Act, 1975, and the regulations made thereunder, the accounting officer in respect of the money in the Fund; and
- (ii) responsible for the administration of the Fund.

(b) The Director-General is not the accounting officer in respect of money after it has been paid out in accordance with section 12.

(6) The financial year of the Fund is 1 April of any year to 31 March of the following year.

(7) (a) The Director-General must as soon as possible after, but within four months of 31 March in each year, submit detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund to the Minister.

(b) The Minister must without delay submit to Parliament such statements and balance sheet.

(8) (a) The books and statements of account and balance sheet of the Fund must be audited by the Auditor-General.

(b) The Auditor-General may require any person (including any municipality, company or other body and any

person in the employ of such municipality, company or body) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit.

12 Allocation of money in Fund to provincial governments

(1) (a) The Minister may allocate money out of the Fund for the purposes of financing the implementation in a province of any national housing programme and any provincial housing programme, which is consistent with national housing policy and section 3 (2) (b).

(b) The criteria for the allocation of money in terms of paragraph (a) must, subject to paragraph (c), be determined by the Minister after consultation with every MEC.

(c) The Minister may, in determining the amount of any allocation in terms of paragraph (a) in respect of any particular province, take into account any credit balance in the relevant provincial housing development fund and the balance of any money payable to such fund as contemplated in subsection (4)(d).

(2) Any money allocated under subsection (1) (a) must, subject to subsection (3), be paid into a provincial housing development fund to be established by provincial legislation, which legislation must provide for-

- (a) the money so paid to be withdrawn from such fund only for the purposes of the implementation in the province of national housing programmes and provincial housing programmes, which are consistent with national housing policy and section 3 (2) (b);
- (b) the designation of an officer of the provincial administration as the accounting officer in respect of the money in such fund, and for such officer to be responsible for the administration of the fund;
- (c) the regulation of such accountability and administration, including reporting by such officer to the provincial legislature on all matters affecting such fund;
- (d) the manner in which the accounts and records of such fund are to be kept, the preparation of detailed annual statements showing the results of the transactions and the balance sheet of the fund and their submission to the provincial legislature by the MEC; and
- (e) the auditing of the books and statements of account and balance sheet of such fund by the Auditor-General.

(3) Until a provincial housing development fund has been established as contemplated in subsection (2), the money allocated under subsection (1) (a) must be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993 (Act 155 of 1993), despite its repeal by section 20.

(4) (a) Any money allocated under subsection (1) (a) must be paid into the relevant provincial housing development fund by the Director-General in such amounts as may from time to time be required for the purposes of the implementation in the relevant province of any national housing programme or any provincial housing programme, which is consistent with national housing policy and section 3 (2) (b).

(b) The Director-General may not make any payment contemplated in paragraph (a) unless he or she has received a requisition from the accounting officer contemplated in subsection (2) (b) or an officer of the provincial administration designated for that purpose by that accounting officer, in which he or she has certified that the money is required to meet expenditure that is reasonably expected to be incurred within the period for which the requisition has been submitted.

(c) Such requisition must be submitted in the form, at the intervals and in respect of the periods the Director-General determines.

(d) The balance of any money allocated under subsection (1) (a) in respect of a financial year which was not expended, remains payable to the provincial housing development fund in question and must, in accordance with this subsection, be paid into such fund when required for the purposes of the implementation in the relevant province of any national housing programme or any provincial housing programme, which is consistent with national housing policy and

section 3 (2) (b).

PART 6
TERMINATION OF HOUSING ARRANGEMENTS (ss 13-17)

13 Abolition of National Housing Board

The National Housing Board (in this Part referred to as the 'former Board') established by section 2 of the Housing Arrangements Act, 1993 (Act 155 of 1993), is, subject to sections 8 (10), 12 (3), 14 and 15, hereby abolished.

14 Arrangements regarding assets and liabilities of National Housing Board

(1) (a) Movable property of the former Board, and all rights, liabilities and obligations of that Board in respect of such movable property pass, subject to this subsection and section 15, to the Provincial Government for the province in which such property is mainly utilised.

(b) If any such movable property was utilised in more than one province, the respective heads of the departments of the provinces in question must agree in which province such property is mainly utilised.

(c) In the absence of such agreement, the province in which such movable property was mainly used must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act 42 of 1965).

(d) To achieve an equitable result such agreement or arbitration may provide for the payment of compensation out of the provincial housing development fund of one province to the credit of the provincial housing development fund of another province.

(2) (a) Immovable property of the former Board, and all the rights, liabilities and obligations of that Board in respect of such immovable property, pass, subject to subsection (3) and section 15, to the Provincial Government for the province in which such property is situated.

(b) The Registrar of Deeds concerned must, at the request of a Provincial Government to which immovable property or any registrable claim or right has passed in terms of this section and on submission to him or her of the relevant title deeds and other documents and a certificate contemplated in paragraph (c), make the necessary endorsements in his or her registers and on the title deeds and other documents concerned to give effect to such passage.

(c) The head of department must, for the purposes of paragraph (b), issue a certificate to the effect that the immovable property, claim or right mentioned in the certificate is immovable property or a claim or right that has passed to the relevant Provincial Government in terms of this section.

(d) No transfer duty, stamp duty or registration fee is payable in respect of a passage contemplated in paragraph (b).

(3) (a) (i) Any undeveloped land which has passed to a Provincial Government in terms of subsection (2) must, subject to subparagraph (ii), be utilised for housing development in accordance with national housing policy and a housing development project approved by the MEC.

(ii) Any such land which, in the opinion of the Provincial Government, is not or will not in the future be suitable for such utilization, must be sold by such board at a fair market value or, if it is not possible to so sell it, such land must be sold in the best interests of the State at a price approved by the MEC.

(b) Any dwelling or residential erf which has passed to a Provincial Government in terms of subsection (2) and which is -

- (i) suitable for letting or sale in terms of any national housing programme, must be let or sold by such Provincial Government in accordance with such programme;
- (ii) not suitable for letting or sale in terms of any national housing programme, must subject to subsection (8), be let or sold by such board at a fair market value or, if it is not possible to so let or sell it, be leased or

sold in the best interests of the State at a rental or price approved by the MEC.

(c) Any business premises or business erf which has passed to a Provincial Government in terms of subsection (2), must be sold by such Provincial Government at a fair market value or, if it is not possible to so sell it, such business premises or erf must be sold in the best interests of the State at a price approved by the MEC.

(d) (i) Any erf which has passed to a Provincial Government in terms of subsection (2) and which has been set aside for use in connection with any service to be provided by a department of state or provincial administration, must be sold by such Provincial Government at a fair market value to the department of state or provincial administration, as the case may be, having responsibility for the provision of the service concerned, unless such department or administration informs the Provincial Government that the erf in question is not required for such use.

(ii) If it is not possible or feasible to sell such erf at a fair market value, it must be sold in the best interests of the State at a price approved by the MEC.

(iii) Any such erf which is not required by such department or provincial administration may be utilised by the Provincial Government for housing development in accordance with national housing policy and a housing development project approved by the MEC.

(iv) If such erf is not required by such Provincial Government for housing development, it must be sold at a fair market value or, if it is not possible to sell such erf at a fair market value, it must be sold in the best interests of the State at a price approved by the MEC.

(e) If a Provincial Government wishes to alienate any immovable property that has passed to such Provincial Government in terms of subsection (2), other than property contemplated in paragraphs (a) to (d), the Provincial Government may do so at a fair market value or, if it is not possible for such property to be alienated at a fair market value, it must be alienated in the best interests of the State at a price approved by the MEC.

(f) The net proceeds of any sale, letting or alienation contemplated in paragraphs (a) to (e) must-

- (i) be paid into the provincial housing development fund for the province in question 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 (Act 155 of 1993), despite its repeal by section 20; and
- (ii) be utilised for housing development in accordance with national housing policy and a housing development project approved by the MEC.

(g) (i) A project or scheme which immediately before the commencement of this section was in the process of execution by the former Board in terms of any law repealed by section 20 on land which has passed to a Provincial Government in terms of subsection (2), must be duly completed by such Provincial Government.

(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the relevant provincial housing development fund as contemplated in section 12 (2).

(iii) The rights, liabilities and obligations of the former Board arising out of any contract in connection with such project or scheme pass to such Provincial Government.

(4) (a) (i) Any claim of the former Board arising out of a contract of sale of immovable property passes to the Provincial Government for the province within which such property is situated.

(ii) The net proceeds of such claim must be-

- (aa) paid into the provincial housing development fund for that 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; and
- (bb) utilised for housing development in accordance with the national housing policy and a housing development project approved by the MEC.

(b) Any debt or other obligation of a municipality or the premier of a province towards the former Board in respect of any project or scheme or individual dwelling which was financed by means of a loan, advance or other finance which was approved in terms of-

- (i) the Housing Act, 1966 (Act 4 of 1966);
- (ii) the Development and Housing Act, 1985 (Act 103 of 1985);
- (iii) the Housing Act (House of Representatives), 1987 (Act 2 of 1987);
- (iv) the Development Act (House of Representatives), 1987 (Act 3 of 1987); or
- (v) the Housing Development Act (House of Delegates), 1987 (Act 4 of 1987),

is hereby extinguished.

[Para. (b) amended by s. 3 (a) of Act 28 of 1999.]

(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,

by means of a loan or advance or other finance contemplated in paragraph (b), pass to the Provincial Government 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).

[Para. (c) substituted by s. 3 (b) of Act 28 of 1999.]

(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).

(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).

(iii) The net proceeds of any letting or sale or other alienation in terms of subparagraph (ii), read with subsection (3) (a) to (e), in respect of immovable property which was acquired by-

- (aa) a municipality, must be paid into the separate operating account of such municipality referred to in section 15 (5);
- (bb) 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.

(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 (iii) must be utilised for housing development in accordance with national housing policy and a housing development project approved by-

- (aa) in the case of subparagraphs (i) and (iii) (aa), the MEC;

[Item (aa) substituted by s. 8 (b) of Act 4 of 2001.]

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

(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.

(vi) If the MEC is not satisfied with such basis for the determination of selling prices, the MEC may determine directives for this purpose.

[Para. (d) substituted by s. 3 (c) of Act 28 of 1999.]

(e) (i) A project or scheme which immediately before the commencement of this section was in the process of execution by a municipality or the premier of a province using money provided by means of a loan, advance or other finance which was approved in terms of any law referred to in paragraph (b), must be duly completed by the municipality or the Provincial Government of that province, as the case may be.

(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the relevant provincial housing development fund as contemplated in section 12 (2).

(f) (i) The right of the former Board to recover any loan, advance or other finance granted to any natural person or housing utility company in any province in terms of any law referred to in paragraph (b), passes to the Provincial Government for that province.

(ii) Any money recovered by the Provincial Government by virtue of the right that so passes to that board, must be paid into its provincial housing development fund and must be utilised for housing development in accordance with the national housing policy and a housing development project approved by the MEC.

(g) (i) If any juristic person provided any welfare facility using money lent to such juristic person by the former Board or a municipality out of any loan, advance or other finance which was approved under any law referred to in paragraph (b), the Provincial Government to which the right to recover such loan has passed or the municipality as the case may be, may, with the approval of the MEC in consultation with the member of the Executive Council responsible for welfare in the province in question, absolve such juristic person from its obligation to repay the loan or any part thereof.

(ii) Where the sale or other alienation of any welfare facility provided or acquired out of any loan, advance or other finance approved under any law referred to in paragraph (b) is subject to the approval of the Minister, the MEC in consultation with the member of the Executive Council responsible for welfare in the province in question may grant such approval on such conditions as he or she may determine.

[Para. (g) substituted by s. 1 of Act 60 of 1999.]

(5) (a) Any rights, liabilities and obligations of the former Board arising out of any loan agreement or the issue of any debentures, bills or stocks pass to the national government.

(b) (i) Any shares or other interest in any company held by or vesting in the former Board in terms of section 10 (1) of the Housing Arrangements Act, 1993, pass, subject to subparagraph (ii), to the national government.

(ii) Any shares in Lanok (Pty) Ltd held by the former Board must be disposed of by the Minister after consultation with the Executive Councils of the provinces of Western Cape and Northern Cape.

(c) Any rights, liabilities and obligations of the former Board arising out of any contract entered into between that Board and any person in terms of any national housing programme pass-

(i) in the case of a national contract, to each Provincial Government;

(ii) in the case of a contract relating to a particular province, to the Provincial Government of that province.

(d) Any rights, liabilities and obligations of the former Board arising out of the agreement between the Mortgage

Indemnity Fund (Pty) Ltd and mortgage lenders in terms of the national relocation assistance programme pass to each Provincial Government.

(6) For the purposes of this section any reference in any document to the National Housing Board must be construed as a reference to the Provincial Government in question.

(7) (a) The net proceeds derived by a Provincial Government or municipality from any municipal infrastructure that has passed to such Provincial Government in terms of subsection (2) or has been provided by such municipality by means of a loan, advance of, other finance contemplated in subsection (4) (b), must be utilised by the Provincial Government or municipality, as the case may be, for housing development in accordance with national housing policy.

(b) Such housing development must be carried out in accordance with a housing development project approved by-

- (i) in the case of the Provincial Government, the MEC;
- (ii) in the case of the municipality, the MEC.

[Sub-para. (ii) substituted by s. 8 (c) of Act 4 of 2001.]

(8) No rights, liabilities or obligations of any person are extinguished merely by reason of-

- (a) the abolition of the former Board by section 13;
- (b) any passage referred to in subsection (1) or (2); or
- (c) the extinction of any debt or other obligation by subsection (4) (b).

(9) (a) The Minister must, within one year of the commencement of the Housing Amendment Act, 1999, institute a national housing programme to phase out every housing subsidy granted in terms of-

- (i) the Housing Act, 1966;
- (ii) the Development and Housing Act, 1985;
- (iii) the Housing Act (House of Representatives), 1987;
- (iv) the Development Act (House of Representatives), 1987; or
- (v) the Housing Development Act (House of Delegates), 1987.

[Para. (a) substituted by s. 3 (d) of Act 28 of 1999.]

(b) Such national housing programme must contain time limits to phase out the various categories of housing subsidies.

(c) The Minister must report quarterly to the parliamentary committees for housing of the National Assembly and the National Council of Provinces on the progress with the implementation of such national housing programme.

(10) (a) If the disposal of the assets, rights, liabilities and obligations of the former Board is not sufficiently dealt with in this section. the Minister may, after consultation with each MEC, issue such directives regarding the management and disposal thereof as are necessary in order to achieve the purposes of this section.

(b) Any directives so issued must be consistent with this Act.

[S. 14 amended by s. 8 (a) of Act 4 of 2001.]

15 Transfer of certain property from provincial housing development boards to municipalities

(1) (a) Any movable property that has passed to a Provincial Government in terms of section 14 (1), and any rights, liabilities and obligations in respect of such movable property, must, subject to this subsection and subsection (3), be transferred not later than a date determined by the Minister after consultation with the MEC, by such Provincial Government to the municipality within whose area of jurisdiction such property is mainly utilised.

(b) If any such movable property is utilised within the area of jurisdiction of more than one municipality, the head of department in the province in which the municipalities in question are situated must determine or, if such municipalities are not situated in the same province, the heads of the departments of the provinces in question, must agree on, in which municipality's area of jurisdiction such property is mainly utilised.

(c) In the absence of an agreement contemplated in paragraph (b) or (d) (i) the municipality in whose area of jurisdiction such movable property is mainly used or the payment of compensation, as the case may be, must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act 42 of 1965).

(d) To achieve an equitable adjustment of the respective financial positions of municipalities in question-

- (i) the head of department or heads of departments referred to in paragraph (a) may direct and agree on, respectively, the payment of compensation by one municipality to another municipality; or
- (ii) arbitration referred to in paragraph (c) may determine the payment of compensation by one municipality to another municipality.

(2) (a) Any immovable property which has passed to a Provincial Government in terms of section 14 (2) or (4) (c) and has not already been sold or alienated as provided in section 14 (3) (a) to (e), and any rights, liabilities and obligations in respect of such immovable property, must, subject to subsections (3) and (4), be transferred, not later than a date determined by the Minister after consultation with the MEC, by the Provincial Government to the municipality within whose area of jurisdiction such property is situated.

[Para. (a) amended by s. 4 of Act 28 of 1999.]

(b) If such immovable property is situated in the areas of jurisdiction of more than one municipality, the Provincial Government in question must transfer the property to the municipality agreed upon between the MEC and the municipalities in question.

(3) Movable or immovable property may only be transferred to a municipality in terms of subsection (1) or (2) if such municipality in the opinion of the MEC, after consultation with the municipality, has the capacity to administer such movable or immovable property in accordance with national housing policy.

(4) (a) Section 14 (3) (a) to (g) applies, with the changes required by the context, in respect of any land transferred to a municipality in terms of subsection (2).

(b) Any reference in section 14 (3) (a) to (g) to a Provincial Government and a provincial housing development fund must be construed as a reference to the relevant municipality and the municipality's operating account as contemplated in subsection (5), respectively.

(c) The net proceeds of any letting, sale or other alienation in terms of paragraph (a) must be utilised by the municipality for housing development in accordance with national housing policy and a housing development project approved by the MEC.

[Para. (c) substituted by s. 9 (b) of Act 4 of 2001.]

(5) A municipality to which any movable or immovable property is transferred in terms of this section must maintain a separate operating account through which all matters contemplated in this section and section 16 must be transacted.

(6) Section 14 (2) (b), (c) and (d) applies, with the changes required by the context, to immovable property or a registrable claim or right transferred in terms of this section, and the reference to the head of department in section 14 (2)

(c) must be construed as a reference to the chief executive officer of the municipality in question.

(7) The redundancy or not of any person employed in the provincial administration of a province arising out of the transfer of any movable or immovable property to a municipality as contemplated in this section must be determined in accordance with the laws governing the public service.

[S. 15 amended by s. 9 (a) of Act 4 of 2001.]

16 Transfer of money in certain funds to municipal operating accounts

(1) Any money which at commencement of this section stands to the credit of or is payable to-

- (a) the Community Facility Account;
- (b) the Rent Reserve Fund; or
- (c) the Maintenance and Renewal Fund,

of a municipality, which funds have been established by virtue of the relevant law referred to in section 14 (4) (b), must be transferred to the separate operating account of such municipality referred to in section 15 (5).

(2) The money so transferred must be utilised by a municipality for housing development in accordance with the national housing policy and a housing development project approved by the MEC.

[Sub-s. (2) substituted by s. 10 of Act 4 of 2001.]

17 Termination of Discount Benefit Scheme

(1) Any person who is eligible for a discount in terms of the Guidelines for Discount Benefit Scheme to promote Home Ownership mentioned in section 3 (5) (b) (in this section referred to as 'the Scheme') in respect of immovable property which-

- (a) passes to a Provincial Government in terms of section 14 (2) or (4) (c) or transfers to a municipality in terms of section 15 (2); or
- (b) was acquired by a municipality by means of a loan, advance or other finance contemplated in section 14 (4) (b), must lodge a written claim for the granting of such discount with the relevant Provincial Government or municipality, as the case may be, on or before the date determined by the MEC by notice in the *Official Gazette* of the province in question for the lapsing of the Scheme in respect of the province.

(2) A date determined in terms of subsection (1) may not be later than a date determined by the Minister after consultation with the MEC concerned.

(3) Any claim for a discount received by a Provincial Government or municipality before the date determined in terms of subsection (1) must, despite subsection (4), be duly considered and disposed of by such Provincial Government or municipality, as the case may be, in accordance with the Scheme.

(4) The Scheme lapses in respect of a province on the applicable date determined in terms of subsection (1).

[S. 17 amended by s. 11 of Act 4 of 2001.]

PART 7 GENERAL PROVISIONS (ss 18-21)

18 Delegation

(1) The Director-General or the head of department may, for the effective execution of the provisions of this Act-

- (a) delegate any power conferred on him or her by this Act; or
- (b) assign any duty imposed upon him or her by this Act, except any duty as accounting officer in terms of section 11 (5) or 12 (2)(b),

to an officer or employee of the department or the relevant provincial administration, as the case may be, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies.

(2) Any officer or employee to whom any power has been so delegated or duty has been so assigned, must exercise such power or perform such duty subject to the conditions that the person who made the delegation or assignment considers necessary.

(3) Any such delegation or assignment-

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or assignment from exercising such power or performing such duty himself or herself; and
- (c) may at any time be withdrawn in writing by such person.

19 Annual report

- (1) The Director-General must annually submit to the Minister a report on activities in terms of this Act.
- (2) The Minister must without delay submit such report to Parliament.

20 Repeal of laws

Subject to this Act, the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof.

21 Short title and commencement

This Act is called the Housing Act, 1997, and takes effect on a date determined by the President by proclamation in the *Gazette*.

Schedule LAWS REPEALED BY SECTION 20

| No. and year of law | Short title | Extent of repeal |
|---------------------|-----------------------------|------------------|
| Act 4 of 1966 | Housing Act, 1966 | The whole. |
| Act 47 of 1967 | Housing Amendment Act, 1967 | The whole. |
| Act 80 of 1968 | Housing Amendment Act, 1968 | The whole. |
| Act 65 of 1969 | Housing Amendment Act, 1969 | The whole. |
| Act 73 of 1970 | Housing Amendment Act, 1970 | The whole. |
| Act 19 of 1971 | Housing Amendment Act, 1971 | The whole. |
| Act 40 of 1975 | Housing Amendment Act, 1975 | The whole. |
| Act 124 of 1977 | Housing Amendment Act, 1977 | The whole. |

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|-----------------|---|----------------------|
| Act 21 of 1978 | Housing Amendment Act, 1978 | The whole. |
| Act 76 of 1979 | Slums Act, 1979 | The whole. |
| Act 109 of 1979 | Housing Amendment Act, 1979 | The whole. |
| Act 11 of 1980 | Housing Amendment Act, 1980 | The whole. |
| Act 28 of 1982 | Housing Amendment Act, 1982 | The whole. |
| Act 63 of 1983 | Housing Amendment Act, 1983 | The whole. |
| Act 72 of 1984 | Housing Amendment Act, 1984 | The whole. |
| Act 103 of 1985 | Development and Housing Act, 1985 | The whole. |
| Act 49 of 1986 | Housing Amendment Act, 1986 | The whole. |
| Act 68 of 1986 | Abolition of Influx Control Act, 1986 | Section 16. |
| Act 2 of 1987 | Housing Act (House of Representatives), 1987 | The whole. |
| Act 3 of 1987 | Development Act (House of Representatives), 1987 | The whole. |
| Act 4 of 1987 | Housing Development Act (House of Delegates), 1987 | The whole. |
| Act 97 of 1987 | Housing Amendment Act, 1987 | The whole. |
| Act 43 of 1989 | Development and Housing Amendment Act (House of Assmby), 1989 | The whole. |
| Act 94 of 1989 | Housing Amendment Act (House of Representatives), 1989 | The whole. |
| Act 95 of 1989 | Development Amendment Act (House of Representatives), 1989 | The whole. |
| Act 91 of 1990 | Housing and Development Amendment Act (House of Representatives), 1990 | The whole. |
| Act 62 of 1992 | Development and Housing Amendment Act (House of Assembly), 1992 | The whole. |
| Act 134 of 1992 | Provincial and Local Authority Affairs Amendment Act, 1992 | Sections 2, 3 and 4. |
| Act 56 of 1993 | Local Government Affairs Amendment Act, 1993 | Sections 25 and 26. |
| Act 76 of 1993 | Shortend Registration Procedures of Land Amendment Act (House of Representatives), 1993 | The whole. |
| Act 101 of 1993 | Housing Amendment Act, 1993 | The whole. |
| Act 108 of 1993 | General Second Amendment Act, 1993 | Sections 10. |
| Act 155 of 1993 | Housing Arrangements Act, 1993 | The whole. |
| Act 191 of 1993 | Housing Matters Amendment Act, 1993 | The whole. |
| Act 198 of 1993 | Development Housing Amendment Act (House of Assembly), 1993 | The whole. |

| | | |
|-----------------|--|--|
| Act 199 of 1993 | Housing Development Amendment Act (House of Delegates), 1993 | The whole. |
| Act 8 of 1994 | Housing Amendment Act, 1994 | The whole. |
| Act 33 of 1994 | Housing Second Amendment Act, 1994 | The whole. |
| Act 67 of 1995 | Development Facilitation Act, 1995 | The entries in the Schedule in respect of Act 2 of 1987 and Act 3 of 1987. |
| Act 6 of 1996 | Housing Amendment Act, 1996 | The whole. |
| Act 88 of 1996 | Abolition of Restrictons on the Jurisdiction of the Courts Act, 1996 | Sections 34 to 38 and 83 to 85. |