

# LIMPOPO PROVINCE HOUSING ACT 8 OF 1998

[ASSENTED TO 5 MAY 1999][DATE OF COMMENCEMENT: 21 JULY 2000]

*(English text signed by the Premier)*

## ACT

**To provide for the promotion and facilitation of housing development within the Limpopo Province; to lay down general principles; to establish the Limpopo Province Housing Development Board; to establish the Limpopo Province Housing Development Fund; to set out the powers and duties of the Member of the Executive Council responsible for Housing in regard to the accreditation of local authorities and the establishment of housing programmes, 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 resources, to achieve the progressive realisation of this right;

AND WHEREAS the Legislature of the Limpopo Province 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 community.

## 1 Definitions

In this Act, unless the context otherwise indicates -

**"Board"** means the Limpopo Province Housing Development Board established in terms of this Act;

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

**"data bank"** means the national housing data bank contemplated in the Housing

Act, 1997 (Act 107 of 1997);

**"department"** means the Department of the provincial government responsible for housing;

**"Former board"** means the Provincial Housing Board established under the Housing Arrangements Act, 1993 (Act 155 of 1993);

**"Fund"** means the Limpopo Province Housing Development Fund established in terms of this Act;

**"head of department"** means the most senior officer of the Department;

**"Housing Act"** means the Housing Act, 1997 (Act 107 of 1997);

**"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, 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 privacy and providing adequate protection against the elements;
- (b) potable water, adequate sanitary facilities, waste disposal and domestic energy supply;

**"housing development project"** means any plan or proposal to undertake housing development as contemplated in any national housing programme or provincial programme;

**"Member"** means member of the Board contemplated in this Act;

**"MEC"** means the Member of the Executive Council responsible for housing matters in the province;

**"Minister"** means the Minister of Housing;

**"municipality"** means a municipality as defined in section 108 of the Local Government Transition Act, 1993 (Act 209 of 1993);

**"national housing programme"** means a national plan to facilitate housing development including, but not limited to, any housing assistance measure or other arrangement or measure intended to assist persons who cannot independently provide for their own housing needs or to facilitate housing delivery or to rehabilitate and upgrade existing housing stock, including

municipal services and infrastructure;

"**Province**" means the Limpopo Province;

"**this Act**" includes regulations; and

"**Regulations**" means regulations made under this Act.

## **2 Application of the Act**

The provisions of this Act apply throughout the Province.

## **3 Principles underpinning housing development in the Province**

Policy concerning housing development and the implementation thereof in the province must be based on the following principles:

- (1) After consultation with the provincial organisation representing municipalities as contemplated in section 163(a) of the Constitution, the Limpopo Province Government must do everything in its power to promote and facilitate the provision of housing in the province within the framework of national policy in respect of housing development.
- (2) For the purposes of subsection (1), the provincial government must -
  - (a) determine provincial policy in respect of housing development that -
    - (i) upholds the principles referred to in or prescribed under section 2 of the Housing Act;
    - (ii) complies with the provisions of the code referred to in section 4 of the Housing Act;
  - (b) adopt any legislation to ensure effective housing delivery;
  - (c) support and strengthen the capacity of municipalities to effectively perform their duties and responsibilities in respect of housing development;
  - (d) co-ordinate housing and related activities in the province;
  - (e) support local government in the exercise of its powers, the performance of its functions and execution of its duties and responsibilities;
  - (f) carry out the duties and responsibilities of local government in terms of this Act whenever a municipality is not able to do so itself; and

- (g) prepare a multi-year plan in respect of the execution of national and provincial housing programmes in the province in accordance with guidelines that the Minister may approve for the financing of such a plan with money from the South African Housing Fund.

#### **4 General powers and duties of the member of the executive council**

In addition to other powers assigned to him or her by this Act or other legislation, the MEC must -

- (a) carry out the duties and responsibilities and exercise any power of the provincial government referred to in section 3;
- (b) establish norms, standards, frameworks and provincial policies which are not inconsistent with the Housing Act in order to deal effectively with matters pertaining to housing development that require to be dealt with uniformly across the Province;
- (c) present the provincial legislature with an annual report on the activities of the Board;
- (d) present the Minister of Housing with provincial motivations for fund allocations from the South African Housing Fund to the Limpopo Province Housing Development Fund for the purpose of funding national and provincial housing programmes in the province;
- (e) report to the provincial legislature on progress in the province with housing programmes, the activities of accredited municipalities and the transactions of the Limpopo Province Housing Development Fund, and to present the provincial legislature with the annual statements and balance sheet of the Limpopo Province Housing Fund, the report concerned to be made within 90 days after 31 December of each year, or if the provincial legislature is not then in session, within 14 days after the commencement of the provincial legislature's next session;
- (f) accredit any municipality which may apply for accreditation; provided that the municipality concerned satisfies the accreditation criteria;
- (g) allocate moneys from the Limpopo Province Housing Development Fund to any accredited municipality; provided that the municipality concerned maintains separate accounts for the administration of national and provincial housing programmes;
- (h) establish targets in respect of housing delivery in the Province;
- (i) encourage and develop new and innovative ways of reducing the cost of housing

developments and diversifying the type of design and layout used in provincial projects; and

- (j) establish provincial housing programmes, including housing assistance measures.

## **5 Establishment of the Limpopo Province Housing Development Board**

There is hereby established a Board called the Limpopo Province Housing Development Board.

## **6 Composition of the Board**

- (1) The Board comprises not more than nine (9) and not less than five (5) members.
- (2) The Board must broadly reflect the race and gender composition of South Africa and the geographic composition of the Province.
- (3) The MEC must appoint members of the Board only after -
  - (a) the MEC has consulted other members of the Executive Council of the province;
  - (b) the Committee dealing with housing matters in the provincial legislature has made recommendations to the MEC after a transparent and open process of considering persons so nominated; and
  - (c) following the procedures in section 6(9).
- (4) A member or alternate member must -
  - (a) be a fit and proper person; and
  - (b) possess knowledge, qualifications or experience in the field of housing development.
- (5) The MEC must designate one of the members of the Board as the chairperson and another member as the vice-chairperson of the Board.
- (6) Whenever the chairperson of the Board is absent or unable to fulfil any of the functions of the chairperson, the vice-chairperson of the Board must act as chairperson of the Board.
- (7) Whenever both the chairperson and the vice-chairperson of the Board are absent or unable to fulfil any of the functions of the chairperson, the MEC may designate another member of the Board to act as chairperson of the Board.

- (8) If a member of the Board other than its chairperson or vice-chairperson requests, the MEC may appoint an alternate member to act for that member in his or her stead when he or she is absent from a meeting of such Board.
- (9) The MEC must appoint the members of the Board by -
- (a) calling for nominations for members of the board by publishing a notice in the *Provincial Gazette* and four newspapers circulating in the province;
  - (b) publishing the names of the proposed members of the Board in the same way as the notice referred to in (a) and setting a date by which persons wishing to object on the proposed names may do so;
  - (c) taking into account comments or objections received in respect of proposed appointments; and
  - (d) for the purpose of this subsection, nominations should be called from these sectors:
    - (i) Sectors and subsectors supplying or financing housing goods or services in the province;
    - (ii) organisations and community-based groups in civil society representing the interest of consumers of housing goods and services in the Province; and
    - (iii) those institutions regulating housing in the province and the political parties.
- (10) The MEC must by notice in the *Provincial Gazette* and one newspaper circulating in the Province, publish a list of the members of the Board within one (1) month of their appointment.

## **7 Powers and duties of the Board**

- (1) The Board must -
- (a) advise the MEC on matters pertaining to housing;
  - (b) monitor the implementation of national and provincial housing policy;
  - (c) promote policy adherence in the execution of national and provincial housing programmes in the province by monitoring delivery in terms of agreed criteria;
  - (d) promote programme and project performance in the execution of national and provincial housing programmes in the province including monitoring the

implementation of national and provincial housing programmes in respect of policy adherence by accredited municipalities;

- (e) carry out the policy directives of the MEC not inconsistent with national policy;
  - (f) to report to the MEC on activities of the Board regularly and when called upon to do so by the MEC;
  - (g) carry out the duties and functions pertaining to housing development assigned to the Board by the MEC;
  - (h) perform the functions, powers and duties of the Provincial Housing Development Board and administer the assets, liabilities and obligations of the Provincial Housing Development Board in accordance with the directives of the MEC and subject to sections 14, 15 and 16 of the Housing Act; and
  - (i) administer or appoint agents to administer national or provincial housing programmes within the Province.
- (2) The Board may -
- (a) with prior approval of the MEC, establish a subcommittee to assist it in the performance of its functions;
  - (b) determine the composition of a subcommittee;
  - (c) assign any of its functions to the subcommittee, without divesting itself of these functions and may amend or rescind a decision of the subcommittee, but may not alter or rescind any decision under or pursuant to which any person has acquired any right or incurred any obligation or liability unless the person concerned has consented thereto;
  - (d) dissolve a subcommittee established under paragraph (a) at any time;
  - (e) in administering programmes -
    - (i) approve projects in terms of national or provincial housing programmes;  
and
    - (ii) approve the financing of approved projects out of the Fund,subject to procurement legislation, contract any service that may be reasonably necessary for the purpose of enabling the Board to exercise its powers and carry out its duties, and the cost of such service may be met with money allocated from the fund.

## **8 Conditions of Service**

- (1) A member of the Board, other than a person who is in the employment of the State, must be appointed on such conditions of service as the MEC may determine.
- (2) A member of the Board may be paid such allowances as the MEC may determine with the concurrence of the Member of the Executive Council responsible for financial matters in the Province.

## **9 Terms of office of a member**

A member of the Board must, subject to subsections (1) and (3) of section 10, hold office for the period determined by the MEC at his or her appointment, but not exceeding three years, and may be re-appointed on the termination of this period.

## **10 Circumstances in which office must or may be vacated**

- (1) A member or alternate member of the Board must vacate his or her office if -
  - (a) he or she resigns;
  - (b) without the leave of the Board, he or she is absent from three consecutive meetings of the Board;
  - (c) his or her estate is sequestered or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act 28 of 1966);
  - (d) he or she is medically declared to be of unsound mind;
  - (e) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; and
  - (f) he or she becomes a member of Parliament, a Provincial Legislature, the Council of a Municipality, the Cabinet or the Executive Council of a Province or a member of the National Council of Provinces.
- (2) (a) A member of the board may not be present during, or take part in the discussion of, or the making of a decision on, any matter before the Board in which -
  - (i) the member concerned or his or her spouse, immediate family member, business partner or associate or employer, other than the State;
  - (ii) the business partner or associate or employer, other than the State, or his or her spouse, has a direct or indirect financial interest.



(b) A member of the board must in the manner and at intervals the MEC determines, disclose any direct or indirect financial interest -

- (i) the member concerned or his or her spouse, immediate family member, business partner or associate or employer, other than the State has in housing development;
- (ii) the business partner or associate or employer, other than the State, of his or her spouse, has in housing development.

(c) For the purpose of this paragraph -

- (i) "spouse" includes a person with whom the member lives as if they were married or with whom the member habitually cohabits;
- (ii) "immediate family member" means a parent, child, brother or sister.

(d) Circumstances which raise a potential conflict of interest between a Member of the Board and his or her functions in the Board by virtue of circumstances stated in (a), (b) and (c) above shall lead to an automatic disqualification of such a member from membership of the Board.

- (3) The MEC may, at any time, terminate the period of office of a member of the Board if in the opinion of the MEC, reasonable grounds exist to effect a termination and provided that the member is first given the opportunity of making representations.

## **11 Meetings of the Board**

- (1) The first meeting of the Board must be held at such time and place as the MEC may determine, and consecutive meetings of the Board must be held at such times and places as the chairperson of the Board may determine.
- (2) The chairperson or, in his or her absence, the vice-chairperson may convene a special meeting of the Board when considered necessary.
- (3) The quorum for a meeting of the Board is more than half of the appointed members.
- (4) The decisions of the Board will be taken by a majority vote of the members attending any particular meeting; provided that the chairperson will have a casting vote in addition to his or her deliberate vote.
- (5) The attendance and procedure at meetings of the Board must be determined by the Board subject to the directions of the MEC, if any.

- (6) The administrative functions of the Board must be performed by officers and employees of the Department designated by the head of department.

## **12 Establishment of the Limpopo Province Housing Development Fund**

- (1) There is hereby established a fund called the Limpopo Province Housing Development Fund.
- (2) The fund comprises -
- (a) moneys allocated to the fund by the Minister in terms of section 12(1) of the Housing Act;
  - (b) moneys which stood to the credit of the fund referred to in section 13 of the Housing Arrangements Act, 1993 (Act 155 of 1993), immediately before the acceptance of this Act which money shall devolve upon the fund;
  - (c) moneys realised as a result of the sale, letting or allocation of assets contemplated in section 14(3)(a) to (g) of the Housing Act;
  - (d) moneys realised as the result of any claim arising out of a contract of sale of immovable property as contemplated by section 14(4)(a)(ii)(aa);
  - (e) moneys realised as the result of the sale of movable or immovable property of the premier of the province as contemplated in section 14(4)(c);
  - (f) moneys realised by virtue of the right of the provincial housing development board to recover any loan, advance or other finance as contemplated in section 14(4)(f) and 14(4)(g);
  - (g) moneys realised by the provincial housing development board from any municipal infrastructure as contemplated by section 14(7)(a) of the Housing Act, 1997;
  - (h) all moneys appropriated by the provincial legislature for housing development;
  - (i) all moneys donated to the fund for housing development of related purposes; and
  - (j) other moneys lawfully obtained and paid into the fund.
- (3) Withdrawal of money from the fund:
- (a) Money in the fund the source of which is an allocation in terms of section 12(1) of the Housing Act, may be paid out of the Fund only for the purpose of

implementing a national housing programme or a provincial housing programme which is consistent with national housing policy and section 3(2)(b) of the Housing Act;

- (b) money in the fund the source of which is in terms of section 14 of the Housing Act, may be paid out of the fund only for the purpose of housing development in accordance with national housing policy and a housing development project approved by the MEC;
- (c) money may be paid out of the fund to a municipality in terms of section 10(4) of the Housing Act periodically, after the municipality concerned has provided a written and signed detailed request estimating the amount of money required for the administering of one or more national housing programmes or provincial housing programmes for the following period; provided that the amount must be approved by the MEC;
- (d) a periodic reconciliation, supported with vouchers or receipts of money spent administering one or more national housing programmes or provincial housing programmes, must be submitted by the municipality for the preceding period, failing which no further payments to the municipality in terms of this section will be made;
- (e) money may be paid out of the fund for the maintenance of and recurrent expenditure related to assets of the Board subject to approval by the MEC; and
- (f) money may be paid out of the fund for the financing of any matter provided for in this Act subject to approval by the MEC.

### **13 Functions of head of department in relation to the fund**

- (1) The head of department is the accounting officer in relation to the moneys in the fund.
- (2) Subject to this Act and the Housing Act, the head of department must be responsible for the administration of the fund and in particular for -
  - (a) expenditure out of the fund; and
  - (b) the collection for the credit of the fund, of moneys due or accruing to the fund and the prosecution of all claims in favour of the fund or the Board, whether under contract or otherwise.
- (3) The accounting books of the fund will be kept in compliance with generally accepted accounting principles and any requirements of the provincial Treasury.
- (4) As soon as possible after 31 March of each year, the head of department must

submit to the MEC detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund.

#### **14 Functions of member of executive council in relation to the fund**

- (1) The MEC may, in consultation with the provincial treasury, prescribe -
  - (a) the details of the management of the Fund;
  - (b) the procedure relating to payments from the Fund and the repayment to the fund of amounts issued therefrom;
  - (c) the rates of interest to be charged in respect of moneys issued out of the Fund which may vary according to the purpose for which such moneys are to be used;
  - (d) the manner in which accounts of the Fund are to be kept; and
  - (e) any other matter which he or she considers necessary or expedient to prescribe in relation to the control of the Fund.
- (2) The MEC must lay statements and balance sheet upon the Table in the Provincial Legislature within 14 days of receipt thereof by him or her if the Provincial Legislature is in session, or if the Provincial Legislature is not in session, within 14 days after the commencement of its next session.

#### **15 Auditing of books and statements of accounts**

- (1) The Auditor-General must audit the books and statements of accounts and balance sheet of the Fund annually.
- (2) The Auditor-General may require any person (including any local government, company or other body or a person employed by a local government, company or body) to make available, for examination, books, registers and documents in his or her possession or under his or her control that would, in the opinion of the Auditor-General, facilitate the carrying out of the audit referred to in subsection (1).

#### **16 Abolition of the Provincial Housing Board**

The Provincial Housing Board (in this part referred to as the "former Board") for the province in section 11(1) of the Housing Arrangements Act, 1993 (Act 155 of 1993), is hereby abolished.

#### **17 Abolition of the Executive Committee of provincial housing board**

The Executive Committee of the Provincial Housing Board established under

section 11(1)(a) of the Housing Arrangements Act, 1993 (Act 155 of 1993), is hereby abolished.

## **18 Transfer of assets, liabilities, rights, duties and obligations of the former board**

- (1) On the date of commencement of this Act, all assets, liabilities, rights, duties and obligations of the Provincial Housing Board abolished in section 16 of this Act, pass to the Limpopo Province Housing Development Board established by section 5 of this Act.
- (2) Subject to this Act and other applicable laws, all assets, liabilities, rights, duties and obligations in respect of such movable and immovable assets transferred to the Limpopo Province Housing Development Board in terms of subsection (1), must be disposed of in accordance with the MEC's directive in a manner consistent with sections 14 and 15 of the Housing Act.

## **19 Powers and functions of the department**

- (1) The department must -
  - (a) establish a secretariat to be accountable to the head of department, for performing all secretarial functions for the board;
  - (b) provide provincial data and information for the national housing data bank and the national housing information system;
  - (c) establish an audited register of assets under the management of the Provincial Housing Development Board;
  - (d) make arrangements for the transfer of housing assets, liabilities, rights, duties and obligations to accredited municipalities;
  - (e) administer the Provincial Housing Development Fund and ensure that the annual provincial allocation from the South African Housing Fund is spent;
  - (f) administer individual subsidy applications approved by the Board;
  - (g) assess project applications for housing development submitted to the Board;
  - (h) set up mechanisms to assist the Board to monitor the implementation of approved housing programmes in the province;
  - (i) evaluate the impact of programmes and projects, giving due regard to loopholes and bottlenecks which impede the achievement of provincial objectives and targets; and

- (j) establish mechanisms for the accreditation of local authorities as determined in the Housing Act.

## **20 Assignment of powers and function by MEC**

- (1) The MEC may assign a power of function that must be exercised or performed in terms of this Act to a Municipal Council.
- (2) An assignment contemplated in subsection (1) must -
  - (a) be made in terms of an agreement between the MEC and a Municipal Council; and
  - (b) take effect upon proclamation by the Premier in the *Provincial Gazette*.

## **21 Delegation of powers and assignment of duties**

- (1) The MEC may, subject to the conditions as he or she may determine -
  - (a) delegate a power conferred upon him or her under this Act, except the power to make regulations; and
  - (b) assign any of his or her duties in terms of this Act, to the head of department or a person employed by the department.
- (2) The head of department may, for the effective execution of the provisions of this Act -
  - (a) delegate a power conferred on him or her by this Act; and
  - (b) assign a duty imposed upon him or her by this Act, except a duty as accounting officer, to an officer or employee of the department, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies.
- (3) An officer or employee to whom a power has been so delegated or duty has been so assigned, must exercise the power or perform the duty subject to the conditions that the person who made the delegation or assignment considers necessary.
- (4) A delegation or assignment -
  - (a) must be in writing;
  - (b) does not prevent the person who made the delegation or assignment from exercising this power or performing this duty himself or herself; and
  - (c) may at any time be withdrawn in writing by the person who granted it.

## **22 Annual Report**

- (1) The head of department must annually submit to the MEC a report on activities of the Department on the Board in terms of this Act.
- (2) The MEC must submit the report to the Provincial Legislature upon receipt.

## **23 Regulations**

The MEC may, by notice in the *Provincial Gazette*, make regulations not inconsistent with this Act or the Housing Act, regarding any matter including -

- (a) the accreditation of local authorities;
- (b) provincial housing development programmes; and
- (c) generally, any matter which the MEC deems necessary or sensible to prescribe in order to achieve the objects of this Act.

## **24 Short title and commencement**

This Act shall be called the Limpopo Province Housing Act, 1998, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.