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THE PRESIDENCY

No. 1072

30 September 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 23 of 2008: Housing Development Agency Act, 2008.



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*(English text signed by the President.)
(Assented to 23 September 2008.)*

ACT

To establish the Housing Development Agency; to provide for its functions and powers; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the State has a constitutional imperative to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of everyone to have access to adequate housing in terms of section 26 of the Constitution;

AND WHEREAS a significant factor in the lack of adequate delivery of housing to low-income earners has been the delay in the identification, acquisition, assembly and release of state-owned and private land;

AND WHEREAS there is a need to establish the Housing Development Agency which must fast-track the processes of housing development;

AND WHEREAS in terms of section 3(4)(h) of the Housing Act, 1997, the Minister may establish and finance national institutions for the purposes of housing development, and supervise the execution of their mandate;

AND ACKNOWLEDGING that in terms of Schedule 4 of the Constitution housing is a functional area of concurrent national and provincial legislative competence;

AND FURTHER ACKNOWLEDGING that there are serious challenges that hinder the realisation of housing for all, that there is a need to accelerate the delivery of housing, to enhance and secure the required skills;

AND FURTHER ACKNOWLEDGING that there is an urgent need for government to address the increasing backlog in respect of housing delivery together with a critical shortage of skills and capacity to provide housing in some provinces and municipalities.

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

ARRANGEMENT OF SECTIONS

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Definitions

1. In this Act, unless the context indicates otherwise—

“**acquire**” means to acquire in any manner, including by way of expropriation;

“**Agency**” means the Housing Development Agency, established by section 3;

“**Board**” means the Governing Board contemplated in section 9;

“**chief executive officer**” means the chief executive officer appointed in terms of section 17;

“**chief financial officer**” means the chief financial officer appointed in terms of section 17;

“**communal land**” means communal land as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004);

“**develop**” means improving or undertaking the development of land acquired by the Agency or the Agency giving subcontracts to developers to improve or to undertake the development of the acquired land by erecting buildings or structures for the purposes of housing delivery;

“**Director-General**” means the Director-General in the national department responsible for housing;

“**land**” includes a right in land;

“**landed property**” means land with improvements including buildings, structures and services;

“**mandate**” means the mandate of the Agency contemplated in section 3(4)(h) of the Housing Act, 1997 (Act No. 107 of 1997), and provided for in section 8 of this Act;

“**Minister**” means the Minister responsible for housing;

“**municipality**” means a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 5

“**organ of state**” means an organ of state contemplated in section 239 of the Constitution of the Republic of South Africa, 1996;

“**prescribe**” means to prescribe by regulation made under this Act;

“**priority housing development areas**” means land identified by the Agency for housing purposes where buildings or structures will be built for the purpose of housing delivery; 10

“**province**” means a provincial government acting through the Member of the Executive Committee responsible for housing;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 15

“**relevant authority**” means provincial and local government including traditional authorities;

“**this Act**” includes regulations made under this Act.

Purpose of Act 20

2. The purpose of this Act is to provide for the—

- (a) establishment of the Agency which will facilitate the acquisition of land and landed property, in a way that complements the capacities of Government across all spheres;
- (b) objects, roles, powers and duties of the Agency; and 25
- (c) fast-tracking of land acquisition and housing development services for the purpose of creating sustainable human settlements.

Establishment of Agency

3. (1) The Housing Development Agency is hereby established as a juristic person.

(2) The Agency operates as a national public entity with its executive authority vested in the Minister. 30

Objects of Agency

4. The objects of the Agency are to—

- (a) identify, acquire, hold, develop and release state, communal and privately owned land for residential and community purposes and for the creation of sustainable human settlements; 35
- (b) project manage housing development services for the purposes of the creation of sustainable human settlements;
- (c) ensure and monitor that there is centrally coordinated planning and budgeting of all infrastructure required for housing development; and 40
- (d) monitor the provision of all infrastructure required for housing development.

Role of Agency

5. (1) The Agency must, in consultation with the relevant owner, identify, acquire, hold, develop and release state, privately and communal owned land for residential and community purposes for the creation of sustainable human settlements. 45

(2) The Agency must ensure that there is funding for the provision of all infrastructure that is required for housing development in which it is involved.

(3) The Minister may, in consultation with the relevant MEC, where there is lack of capacity in any organ of state to identify, acquire, hold, develop and release land for residential and community purposes for the creation of sustainable human settlements— 50

- (a) advise the organ of state to conclude an agreement with the Agency to offer assistance in terms of the Agency's skill and expertise; or
 - (b) direct the Agency to engage with the organ of state with a view to conclude the agreement contemplated in paragraph (a).
- (4) Nothing in this Act detracts from the power of a province and municipality to identify, acquire, hold, develop and release land for residential or community development without recourse to the Agency, in terms of their functions under the Housing Act, 1997 (Act No. 107 of 1997).

Land which may be acquired

6. (1) The Agency may, after consultation with the land owner, identify, acquire and hold land—
- (a) registered or vested in the State or any organ of state and which it is prepared to dispose of;
 - (b) privately owned; or
 - (c) communal land
- for residential or community development purposes.
- (2) Subject to section 25 of the Constitution of the Republic of South Africa, 1996, the Minister may expropriate land for the purposes of creating sustainable human settlements.
- (3) Sections 6 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with the changes required by the context to the expropriation of land, and a reference in that Act to—
- (a) Minister must be construed as a reference to the Minister responsible for housing; and
 - (b) section 2 must be construed as a reference to subsection (2).
- (4) Any consultation between organs of state in terms of this Act must be done in terms of Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Functions of Agency

7. (1) The Agency must—
- (a) develop a development plan to be approved by the Minister in consultation with the relevant authorities in the provinces and municipalities;
 - (b) develop strategic plans with regard to the identification and acquisition of state, privately and communal owned land which is suitable for residential and community development;
 - (c) prepare necessary documentation for consideration and approval by the relevant authorities as may be required in terms of any other applicable law;
 - (d) monitor progress of the development of land and landed property acquired for the purposes of creating sustainable human settlements;
 - (e) enhance the capacity of organs of state including skills transfer to enable them to meet the demand for housing delivery;
 - (f) ensure that there is collaboration and intergovernmental and integrated alignment for housing development services;
 - (g) identify, acquire, hold, develop and release state, privately and communal owned land for residential and community development;
 - (h) undertake such project management services as may be necessary, including assistance relating to approvals required for housing development;
 - (i) contract with any organ of state for the purpose of acquiring available land for residential housing and community development for the creation of sustainable human settlement;
 - (j) assist organs of state in dealing with housing developments that have not been completed within the anticipated project period;
 - (k) assist organs of state with the upgrading of informal settlements; and
 - (l) assist organs of state in respect of emergency housing solutions.