

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (MORTGAGE LOANS)
(AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020. Citation.

2. Regulation 3 of the Retirement Benefits (Mortgage Loans) Regulations, 2009, hereinafter referred to as the principal Regulations, is amended— L.N. 85/2009.

(a) by deleting the definition of “house”.

(b) by inserting the following paragraph immediately after paragraph (b) of the definition of “institution”—

(c) any other entity offering a residential house for sale.

(c) by inserting the following new definitions in proper alphabetical sequence—

“residential house” means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas and “house” shall have the same meaning as residential house.

“spouse” has the meaning assigned to it in section 2 of the Marriage Act, 2014.

No. 4 of 2014

3. The marginal note to regulation 10 of the principal Regulations is amended by inserting the words “in relation to the assignment of benefits” immediately after the word “trustees”.

4. The principal Regulations are amended by inserting the following new Part immediately after regulation 12—

PART III—PURCHASE OF RESIDENTIAL HOUSES

Application for approval.

13. (1) A member may utilise a portion of the member’s accrued benefits to purchase a residential house from an institution.

(2) Every scheme shall prescribe the minimum requirements to be met by their members for an application made under these Regulations.

(3) Every scheme shall prescribe the procedure to be followed in relation to the purchase of a residential house under these Regulations.

(4) A member who wishes to utilise a portion of the member’s accrued benefits to purchase a residential house shall apply in writing to the trustees in the manner prescribed by the scheme.

(5) The trustees may require the applicant under paragraph (4) to supply such additional information as may be required for the processing of the application.

(6) The trustees shall determine the application under paragraph (4) within ninety days of the application being lodged, and where an application is not granted, the trustees shall notify the applicant of the reasons thereof in writing.

Portion of benefits.

14. (1) The portion available to a member for the purchase of a residential house at the time of the application under regulation 13 (4) shall be the lower of—

(a) in a defined contribution scheme, an amount not exceeding forty per cent of the member’s accrued benefits:

Provided that such sum shall not exceed seven million shillings;

(b) in a defined benefits scheme, an amount not exceeding forty per cent of the

member's accrued benefits as determined by an actuary:

Provided that such sum shall not exceed seven million shillings; or

- (c) the purchase price of the residential house which shall not exceed the market value of the residential house.

(2) The member may opt to utilise the member's additional voluntary contributions to top up the portion of the benefits available to the member for the purchase of the residential house.

(3) The member's funds contained in a post-retirement medical fund shall not be used to determine the accrued retirement benefits of the member or be used for the purchase of a residential house under these Regulations.

(4) Where the applicant is a member of more than one scheme that have been established by the same sponsor, the trustees shall, on the option of the member, combine the member's accrued benefits in determining the proportion available to the member.

(5) For the purpose of determining the amount available to a member, the trustees shall take into account—

- (a) in the case of a defined contribution scheme, the proportion of remitted contributions; or
- (b) in the case of a defined benefits scheme, the funding level of the scheme where it falls below one hundred per cent according to the scheme's most recent actuarial valuation.

General requirements.

15. (1) Each scheme shall prescribe in the scheme rules the procedure to be followed when a member wishes to utilise a portion of the member's accrued benefits for the purchase of a residential house.

(2) A residential house eligible to be purchased under these Regulations shall only be a house that has been certified for occupation before the intended purchase.

(3) A member shall only be permitted to utilise the member's accrued benefits only once for the purchase of a residential house under these Regulations.

(4) A member who is paid a pension by the scheme, or who has taken early retirement, or has

attained retirement age shall not be eligible to utilise a portion of the member's retirement benefits to purchase a residential house.

(5) Where a member and the member's spouse are both members of the same scheme or different schemes, the trustees shall prescribe in the scheme rules the manner in which the member and member's spouse may combine their accrued benefits and utilise the total amount for the purchase of a residential house.

(6) For the purpose of determining the accrued benefits of a member who has retired before attaining retirement age, the funds applied to the purchase of a residential house under these Regulations shall—

- (a) in the case of a defined contribution scheme, be deemed to have been drawn from the member's contribution together with the earned investment income, and any balance shall be applied from the employer's contribution and employer's earned investment income thereon; and
- (b) in the case of a defined benefits scheme, as shall be determined by an actuary.

(7) Where a member already has mortgage facility from any other institution at the time of the application under regulation 13 (4), that member shall not be allowed to utilise the member's accrued benefits to offset the balance on that mortgage facility.

(8) The trustees of a scheme shall cause the title of the residential house to be encumbered so as to prevent the transfer of the house to any other person unless any of the following occurs—

- (a) the member retires before attaining retirement age;
- (b) the member dies;
- (c) the member becomes incapacitated by ill health or permanent disablement to the extent that it would occasion the member's retirement before attaining retirement age; or
- (d) the member is emigrating from Kenya to another country without the intention of returning to Kenya, and approval has been granted by the Authority for the encumbrance to be removed.

- Duties of trustees in relation to purchase of residential houses.
16. The trustees of a scheme shall—
- (a) consider applications under regulation 13 and determine whether or not they comply with the provisions of the Act and these Regulations;
 - (b) verify the institutions from which the purchase of the residential house is to be made in accordance with these Regulations;
 - (c) ensure the terms of sale between the member and the vendor of the residential house are documented;
 - (d) retain copies of titles of all purchases of residential houses under these Regulations; and
 - (e) keep and maintain records of all transactions relating to the purchase of residential houses under these Regulations.
- Reports.
17. The trustees of a scheme shall submit to the Authority a report of the assignment of benefits and purchase of residential houses by members at least once in every three months from the date of the commencement of the financial year of the scheme.
- Liability by trustees.
18. Where a member utilises a portion of the member's accrued benefits for the purchase of a residential house, the trustees shall be liable to the member for the portion of the member's accrued benefits that remain unutilised.
- Expenses.
19. The member who wishes to purchase a residential house under these Regulations shall bear the transaction costs and taxes relating to the purchase.
- Appeals.
20. Any appeals against a decision of the trustees in relation to the purchase of a residential house under these Regulations shall be heard and determined in accordance with the provisions of the Act.
- Approval by the Authority.
21. The Authority may require the trustees of a scheme to submit for approval any information, rules or procedures relating to the purchase of a residential house under these Regulations.
- Implementation.
22. All schemes shall amend their scheme rules to comply with the provisions of this Part within twelve months from the date of the commencement of these Regulations.

Dated the 14th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.