



## NOTICE TO THE RETIREMENT BENEFITS INDUSTRY

### THE RETIREMENT BENEFITS (MORTGAGE LOANS) REGULATIONS, 2009

Following the gazettelement of the **Retirement Benefits (Mortgage Loans) Regulations, 2009** by the Honourable Deputy Prime Minister and Minister for Finance, through **Legal Notice No. 85 of 2009** on 11<sup>th</sup> June 2009, the Retirement Benefits Authority would like to highlight and clarify to the public some of the important issues contained in the new regulations.

1. The regulations are made pursuant to Section 38 of the Retirement Benefits Act which specifically prohibits the use of scheme funds to make direct or indirect loans to any person or invested with a bank, non-banking financial institution, insurance company, building society or other similar institution with a view to securing loans. However, a prescribed proportion of the benefits accruing to a member in a scheme may be assigned and used by the member to secure a mortgage loan from such institutions and on such terms as may be prescribed in regulations made by the Minister. The regulations have prescribed a proportion of sixty percent (60%) of accrued benefits. (Sec 38, RBA and Reg. 8(1))
2. A member of a retirement benefit scheme can assign up to sixty percent (**60%**) of his accumulated benefits to the scheme which in turn will issue a guarantee for a similar amount to the financial institution. If the member remains in employment, the accumulated savings continue to grow through contributions and investment, and so the member can, at three-year intervals, revalue the amount assigned so as to allow re-financing or borrowing for home improvements and extensions. (Reg. 8(2))
3. No funds will be transferred from the scheme, but trustees, upon receiving instructions from a member, will issue a guarantee to the financial institution for the amount being secured. It must be noted that the house being purchased or constructed (unless it is rural housing) will remain the primary security for such lending and that the role of such a guarantee is merely credit enhancement to enable the member access the mortgage loan. Guarantees are transferable from one scheme to another. (Reg. 7(1) & Reg. 9)
4. Care must be taken to ensure that access to the member's benefits while he or she is in employment is only as a last resort in the event of default AND if the accumulated benefits will make good the balance if the realizable value of the collateral property securing the mortgage is insufficient to repay in full the borrowers' outstanding debt. The double jeopardy of a member losing both the benefits and the house should be avoided as much as possible. The scheme member should be allowed to continue building their fund for the future. This would allow for optimal investments of the funds and optimal accumulation. (Reg. 7(1)(a))
5. The regulations provide for guarantees for loans for 4 specific purposes (Reg. 4(1)):-
  - a) Acquire a property outright;
  - b) Construct a home;
  - c) Carry out repairs, alterations and improvements; and
  - d) Secure financing for deposits, stamp duty, valuation fees and other incidentals associated with home ownership (excluding arrangement fees, commitment fees etc.)
6. The Authority appreciates that a big barrier to home ownership is the initial 15-20% of the purchase price that must be available in cash before any lender will advance a mortgage loan. Many Kenyans are unable to build up the level of savings required to pay the deposit and various transaction fees, and so they normally borrow the money. With the provision of a guarantee by the scheme, lenders should be able to lend 100-115% of the purchase price thus enlarging access for lower income Kenyans. This is an important policy objective of the regulations i.e. to encourage lenders to provide credit to Kenyans who are unable to accumulate the substantial cash savings required to access mortgage loans. This will lead to expanding homeownership via lower down-payment financing, including to households of limited means while developing the mortgage and capital markets by building investor confidence.

7. It is hoped that members of schemes will be able to put up houses in rural areas if they so chose. This is especially relevant for lower income members whose emoluments may be too low to service a mortgage in an urban area or their accumulated benefits are equally too small to guarantee borrowing to buy or build in an urban area. (Reg. 7(1)(a))
8. Married couples should be able to pool their retirement savings for this purpose in order to buy a family property. Although not specifically, addressed in the regulations, lenders are expected to look at the practical modalities of effecting this pooling.
9. Trustees of retirement benefit schemes will be required to amend their trust deeds to allow for such assignment and thereafter negotiate with institutions licensed by the Central Bank of Kenya to issue mortgage loans (including approved microfinance institutions) so as to establish facilities for their members. (Reg. 3)
10. Other institutions that wish to provide home purchase financing, or tenant purchase arrangements will have to apply specifically to the Authority for approval to provide such services to retirement benefit schemes. (Reg. 6)

Stakeholders are advised to obtain full details of the regulations from **Legal Notice No.85 of June 11, 2009.**