



Retirement Benefits Authority

Safeguarding your retirement benefits

SAMPLE HOUSE PURCHASE RULES AND PROCEDURES

DATED: 9TH JUNE 2021

RBA SAMPLE

IMPORTANT TO NOTE

This template has been prepared in an attempt to standardize and guide trustees in developing the scheme rules and procedures in relation to the residential house purchase as per the requirements of the Retirement Benefits (Mortgage Loans), Regulations, 2009.

During the development of this template the Authority was cognizant of the need to ensure that the template would be sufficiently flexible to permit individual circumstances to be taken into consideration by schemes that choose to apply the template.

It should be understood that the application or implementation of the template is intended to be voluntary; the template is not meant to be prescriptive or viewed as a recommended replacement for obtaining professional advice and/or input. The template is intended to be a tool to provide the general structure within which individual Rules can be developed by schemes that choose to do so. Needless to say, the components of the template that may be most applicable to one scheme might be quite different for another scheme.

Therefore, schemes are not expected to strictly apply all of the components of the template, nor is it assumed that the template is exhaustive. By using the template as a starting point, schemes are encouraged to determine which aspects are appropriate to their specific situations, and modify, add to or subtract from the template, while retaining the overall consistency of the template.

The Authority reserves the right to review and approve the documents submitted by schemes and may direct Trustees to make such further amendments as may be required to ensure compliance with the Retirement Benefits Act, Regulations and Guidelines made there under.

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RBA SAMPLE RULES

1.0 BACKGROUND

Section 38(1A) of the Retirement Benefits Act was amended on 27th April 2020 to allow scheme members to use a prescribed portion of their benefits to purchase a residential house from such institutions and on such terms as may be prescribed in the regulations made by the Cabinet Secretary.

In exercise of the powers conferred by Section 55 of the Retirement Benefits Act, the Cabinet Secretary vide Legal Notice No. 192 of 2020 gazetted the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020 which came into effect on 14th September 2020, amending the Retirement Benefits (Mortgage Loans) Regulations 2009 (hereinafter referred to as “regulations”)

The said regulations provide that all schemes shall prescribe minimum requirements and procedures to enable scheme members utilize a portion of their accrued benefits to purchase residential houses.

The trustees of the {insert scheme name} have developed these rules and procedures to operationalize the regulations and to give a framework within which members will be able to access their accrued benefits to secure a residential house.

2.0 PURPOSE

A statement of purpose defines the intent and objectives of the rules that are being developed. The Trustees are expected to outline what the objectives are, in a brief and concise manner.

3.0 SCOPE

These rules and procedures shall only be applicable to eligible members of the scheme who wish to purchase a residential house using their accrued benefits.

4.0 RESPONSIBILITY

- 4.1 The responsibility of approving applications to utilize accrued benefits for the purchase of a residential house shall rest with the board.
- 4.2 The board may delegate performance of specific duties in relation to the said applications to any person or persons as they may deem appropriate.

5.0 DEFINITION OF TERMS

In these rules, unless the context otherwise requires—

“Act” means the Retirement Benefits Act No. of 3 of 1997;

“accrued benefits” means

- i. in a defined contribution scheme, the sum of the employer contributions, the member contribution and the investment income earned thereon;
- ii. in a defined benefits scheme, the value of the benefits that a member is entitled to, based on their past service with the employer, determined at a particular date;

“additional voluntary contributions” means the contributions made by a member over and above the prescribed contribution rates in the scheme’s trust deed and rules and includes any investment income earned thereon but excludes post-retirement medical funds.

“Authority” means the Retirement Benefits Authority as established under Section 3 of the Retirement Benefits Act, No. 3 of 1997.

“applicant” means a member who has expressed their intention in writing to purchase a residential house in accordance with these rules;

“Board” means the board of trustees of the scheme.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Finance;

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a sub charge and the instrument creating a charge.”

“Chief Executive Officer”- means the chief executive officer of the Authority.

“early retirement age” means the birthday of the Member;

“eligible member” means a member who has met the eligibility criteria set out in these rules

“financial institution” means banks licensed under the Banking Act, Sacco Societies, mortgage finance companies or other licensed financial institution;

“institution” means an entity offering a residential house for sale;

“member” means a person entitled to a benefit under the Scheme;

“normal retirement age” means the birthday of the member prescribed in the trust deed and rules;

“other scheme” means the spouse’s scheme;

“post-retirement medical fund” means a fund established within the scheme to which contributions are made and from which the costs of medical benefits can be met as shall be determined in accordance with the medical fund rules of the scheme;

“receiving scheme” means the scheme that accepts and facilitates the joint purchase by spouses.

“residential house” means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas;

“scheme” means

“scheme rules” means the trust deed and rules of the scheme;

“trustees” means the trustees of the scheme and includes a corporate trustee.

6.0 ELIGIBILITY CRITERIA

An eligible member shall be one who:

- 6.1 has not attained the normal retirement age of the scheme;
- 6.2 has not retired on early retirement grounds;
- 6.3 has not previously utilized any part of their accrued benefits in the scheme to purchase a residential house;
- 6.4 has not as at the date of application, assigned any part of their benefits to secure a mortgage loan;
- 6.5 is not utilizing the funds to offset an already existing mortgage.

7.0 PROPORTION OF BENEFITS AVAILABLE

7.1 The trustees shall determine the amount available to a member after considering the member’s accrued benefits;

7.2 The amount available to a member shall be the lower of;

- i. in the case of a defined contribution scheme forty per cent (40%) of the member’s accrued benefits: provided that the sum shall not exceed seven million shillings (7,000,000/=);

- ii. in the case of a defined benefit scheme forty per cent (40%) of the member's accrued benefits as determined by an actuary: provided that the sum shall not exceed seven million shillings (7,000,000/=);
or
- iii. the purchase price which shall not exceed the market value of the residential house.

7.3 In determining the amount available to a member, the trustees shall take into account;

- i. in the case of a defined contribution scheme, the proportion of remitted contributions; or
- ii. 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;

7.4 A member may utilise their entire additional voluntary contributions in addition to the amount provided for in rule 7.2 above;

7.5 Post -retirement medical funds shall not be considered when calculating the amount available to a member;

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

8.0 DUE DILIGENCE BY MEMBER

Possible actions a member may undertake when carrying out due diligence on the residential house to be purchased and/or the land the residential house is built on as the case maybe, may include but is not limited to the following; -

- 8.1 carry out a physical inspection;
- 8.2 carry out an official search of the registration particulars;
- 8.3 obtain a current valuation from a registered valuer;
- 8.4 investigate whether there are any encumbrances on the property;
- 8.5 investigate the history of the title and previous owners to present, including any disputes or pending litigation;
- 8.6 carry out a search at the respective County Government for any pending payments, i.e. land rates arrears;
- 8.7 check the status on the land rent payment at the respective land registry;
- 8.8 where the residential house is registered as a leasehold; that the lease is still valid and that the unexpired term of the lease is not less thanyears;
- 8.9 take all reasonable steps to establish that the residential house is not on public land and the land was not irregularly acquired;
- 8.10 confirm change of user approval if any;
- 8.11 consents of Land Control Board and Commissioner of Lands (where applicable);

9.0 MINIMUM REQUIREMENTS FOR AN APPLICATION

A member shall be required to submit the following documents when making an application for the purchase of a residential house;

A. Documents

- 9.1 a duly filled out application in the prescribed form;
- 9.2 a certified copy of the certificate of title or certificate of lease;
- 9.3 certified copy of the applicant's national identity card or passport;
- 9.4 certified copy of the KRA PIN certificate;
- 9.5 original certificate of official search conducted not more than months old;
- 9.6 certified copy of the certificate of incorporation or other incorporating document of the institution selling the residential house;
- 9.7 duly executed letter of offer issued by the institution or duly executed sale agreement;

- 9.8 certificate of occupation from the respective County Government;
- 9.9 current valuation report on the property from a registered valuer;
- 9.10 proof of clearance of rent and rates payable;
- 9.11 provide documentary evidence to pay the full purchase price of the residential house after the available portion of their benefits is applied and there is a shortfall;
- 9.12 any other additional documents that the trustees may require;

B. Additional requirements for joint purchase by spouses

Where a member and the member's spouse are both members of the same or different schemes, they may combine their accrued benefits and utilise the total amount available for the purchase of a residential house. In this regard, the member shall provide the following documents in addition to the documents required in rule 9 (A) above;

- 9.13 evidence of a subsisting marriage;
- 9.14 copy of spouse's national identity card or passport;
- 9.15 copy of spouse's KRA PIN certificate;
- 9.16 spousal consent as evidenced by a sworn affidavit;
- 9.17 if the spouse is a member of a different scheme, a confirmation from the scheme's board that;
 - a) the member is eligible and
 - b) the specific amount of benefits available to the member for this purpose.

C. Other Requirements

- 9.18 the title of the residential house must be free from any encumbrance;
- 9.19 the residential house to be purchased must be situated in Kenya;
- 9.20 where the residential house to be purchased is registered as a leasehold, the member shall ensure that the unexpired term of the lease is not less than years.

10.0 PROCEDURE FOR AN APPLICATION

- 10.1** 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 by filling the prescribed form under SCHEDULE I;
- 10.2** the trustees shall ensure that the application form can be accessed by members in both hard and soft copy;
- 10.3** the duly filled out form shall be returned to the trustees, accompanied with the required documents as set out in these rules;

11.0 PROCESSING AN APPLICATION

- 11.1** Upon receipt of the documents, the trustees shall acknowledge and record the application of the member;
- 11.2** The details of the application to be recorded may include but not limited to; - the name of applicant, the date the application is received, reference number, the contacts of the member and the documents received;
- 11.3** The trustees shall review the application and make a determination within days from the date of receipt of the complete application.
- 11.4** The trustees may seek any additional information within days but not later than the period stated rule 11.3 above;
- 11.5** Where the application is not approved, the trustees shall communicate the reasons in writing to the applicant within days;
- 11.6** Trustees shall avail the funds to a member subject to liquidity of the scheme, availability of scheme assets and with due consideration to the number of applications received;

NOTE: Trustees to ensure that they have a complete step by step procedure for processing an application. The timelines under this section should take into consideration the sale agreement period.

12.0 JOINT PURCHASE BY SPOUSES

12.1 Where a member is intending to combine their benefits with the spouse to purchase a residential house; the member of the receiving scheme shall submit the documents set out in rule 9B of these rules.

Provided that a member of the other scheme shall not be required to complete an application form, but shall provide documents set out under rule 9B and such other documents that may be prescribed under these rules.

12.2 Upon receipt of the documents, the trustees shall acknowledge and record the application of the member and follow the procedure prescribed under rule 11 above;

12.3 The trustees of the receiving scheme shall give an unequivocal undertaking to the other scheme, that the title of the document shall be registered in the manner agreed in writing by the spouses and that they shall encumber the title in accordance with these rules;

12.4 The trustees of the other scheme (spouse's scheme) shall give an unequivocal undertaking to the receiving scheme, that the funds available in relation to the member (spouse) shall be released to the institution or their agent upon receiving written instructions from the receiving scheme and a confirmation that the conditions set out herein have been fulfilled;

12.5 The trustees of the other scheme shall not be required to encumber the title;

12.6 The receiving scheme shall also avail all the necessary records and information in their possession in relation to the purchase, as may be

requested by the other scheme within days from the date of receiving the request.

13.0 DISBURSEMENT OF FUNDS

13.1 The trustees shall ensure that the funds in relation to the purchase are transferred to the institution or their agent upon confirmation of the following:

- i. the title of the residential house has been transferred to the member or the member and their spouse as the case may be;
- ii. a copy of the title document to the residential house has been submitted to the trustees;
- iii. the title to the residential house is encumbered;

NOTE: Schemes are advised to seek professional advice on the most suitable transaction model to secure member's funds.

14.0 ADDITIONAL FUNDING FROM A FINANCIAL INSTITUTION

14.1 Where an eligible member seeks to secure additional funding the financial institution shall give an unequivocal undertaking to the scheme providing that;

- i. they will meet the balance of the purchase price in full;
- ii. that they will allow the scheme to charge the property, as a second charge to secure the scheme interests;

14.2 The trustees shall in return undertake to pay the available proportion to the institution, upon transfer of title and registration on charge in the scheme's favour.

15.0 ENCUMBERING THE TITLE

15.1 The trustees shall cause the title of the residential house purchased under these rules to be encumbered by placing a charge on the title;

- 15.2** The trustees shall discharge the title at any time upon the happening of any of the following events: -
- i. the member leaving service on retirement grounds;
 - ii. the member dies;
 - iii. the member becomes incapacitated by ill-health or permanent disablement to the extent that it would occasion the member's retirement;
 - iv. 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; or
- 15.3** In the case of a joint purchase by spouses, upon occurrence of any of the listed events under (i to iv) above on either of the spouses, the trustees of the receiving scheme shall remove the encumbrance and notify the trustees of the other scheme. The trustees of the other scheme shall not be required to encumber the title;
- 15.4** In the event of default by a member who has sought additional funding, the financing institution may exercise their power as chargee. Where the chargee opts to exercise the power of sale to recover their funds, the portion from the scheme (if any) shall be returned to the scheme as unregistered portion; if the member is still in service or paid to the member if no longer in service;
- 15.5** A member shall meet the cost (if any) of discharging the title;
- 15.6** In the event of death of a member the house purchased shall form part of the estate of the deceased and shall be dealt with in accordance with the law of succession.

16.0 PANEL OF PROFESSIONALS

- 16.1.** The trustees shall pre-qualify a panel of valuers and advocates to offer valuation and legal services respectively, to a member who has applied to purchase of a residential house under these rules;
- 16.2.** A member shall select a valuer or advocate from the professionals enlisted on the scheme's panel at their own cost;
- 16.3.** Where a member has obtained additional financing; the valuer and the advocate appointed by the financial institution may suffice; subject to approval of the trustees.

17.0 DUTIES OF THE TRUSTEES

The trustees of a scheme shall –

- 17.1** consider applications of the members and determine whether or not they comply with the provisions of the Act, Regulations and these rules and procedures;
- 17.2** conduct due diligence on the institutions from which the purchase of the residential house is to be made including the registration particulars, location, management and history of similar transactions;
- 17.3** ensure the terms of sale between the member and the vendor of the residential house are documented;
- 17.4** retain copies of all title documents to the residential houses;
- 17.5** keep and maintain records of all transactions relating to the purchase of residential houses under these rules;

- 17.6 submit a report to the Authority every three months on the residential houses purchased and the benefits assigned in a manner that may be prescribed by the Authority;
- 17.7 ensure that a member has appointed qualified professionals;
- 17.8 communicate and sensitize members on the provision of these rules including tax implications;
- 17.9 ensure that tax payable is collected and remitted;
- 17.10 take such additional measures as they may deem appropriate to secure the member's funds during the transaction;

18.0 TRANSFER BY MEMBER

- 18.1 A transfer by a member from one registered scheme to another shall not affect the charge and trustees shall not be required to discharge the charge on such grounds other than those listed under rule 15.2 of these rules.
- 18.2 Notwithstanding the provisions of rule 18.1, a member may apply to the trustees of the new scheme, to substitute the existing charge subject to the following conditions;
 - i. the member undertakes to meet the cost of such substitution;
 - ii. the trustees of the new scheme undertake to charge the title and submit a copy of the title to the trustees upon registration;
 - iii. trustees of the scheme are indemnified from any liability in relation to the benefits that have been utilized to purchase the house;

19.0 SCHEME WINDING UP

19.1 In the event; -

- a) the scheme voluntarily transfers to an Umbrella Scheme or an Individual Retirements Benefits Schemes where members have accessed their benefits

to purchase a residential house under these rules, the trustees of the scheme shall before initiating the winding up of the scheme ensure that;

- i. the trustees of the new scheme undertake to charge the title of the members who have purchased a house under these rules;
- ii. the affected members undertake to meet the cost of such substitution;

b) the scheme is by voluntary resolution of the trustees or by statutory liquidation dissolved and a liquidator is appointed to wind up the scheme; the trustees of the scheme shall lift the charges placed on the titles of the affected members before the liquidator finalizes the winding up of the scheme.

20.0 TRANSACTION COSTS AND TAXES

18.1 A member who wishes to purchase a residential house under these rules shall bear the transaction costs and taxes relating to the purchase. The costs may include valuation fees, legal fees, stamp duty, insurance, registration fees among others;

18.2 The amount available to the member shall be net of the applicable tax.

21.0 RELATED LAWS

These rules may be read together with the following laws and documents; -

- a) The Retirement Benefits Act;
- b) The Retirement Benefits (Mortgage Loans) Regulations, 2009;
- c) The Scheme's trust deed and rules;
- d) The Land Act
- e) The Sectional Properties Act
- f) Respective County Government by-laws;

22.0 REVIEW/AMENDMENTS

These rules shall be reviewed every..... years or on a need basis whichever comes earlier.

23.0 CONFLICT WITH WRITTEN LAWS

Where there is any conflict between these rules and the Act or any other written law, the Act or that other written law shall prevail.

24.0 LIABILITY

Where a member has accessed a portion of their benefits to purchase a residential house, the trustees shall remain liable to the member for the portion of the member's accrued benefits that remain unutilised.

25.0 APPEALS

A member who is dissatisfied with a decision of the trustees in relation to the purchase of a residential house may appeal to the Chief Executive Officer of the Authority to review the decision.

26.0 EFFECTIVE DATE

These rules shall come into effect on the date of approval by the board

27.0 APPENDICES

Schedule I- Application form

Schedule II- Reporting format

Dated at this day of 2021

Approved for adoption and signed by Trustees (**List the names of the trustees or corporate trustee if sole trustee**)

SIGNED by)
)
the said.....)
)
Signature.....)

INSERT NAME OF SCHEME

Please attach this application form together with the supporting documents listed under Section 4 of this form for further details.

APPLICATION TO PURCHASE A RESIDENTIAL HOUSE

<p>Date submitted: dd/mm/yyyy</p>	
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SECTION 1. APPLICANT'S DETAILS

<p>1. Name of the applicant</p>	<p>Title: (Hon./Prof./Dr./Mr./Ms./Mrs.)</p> <p>Surname:</p> <p>First name.....</p> <p>Other name:.....</p>
<p>2. Land reference or title number: (e.g. LR. No or title number Kajiado/Ntashart/1234)</p>	
<p>3. Date of birth: (dd/mm/yyyy)</p>	
<p>4. Membership status:</p>	

(e.g. Active or deferred member or pensioner)	
5. Member number:	
6. National identity card or passport number:	
7. KRA PIN Number:	
8. Contact details:	<ul style="list-style-type: none"> • Mobile number: • Alternative telephone number..... • Email address: • Physical address: (estate/ street, town, county) • Postal address: (address number, postal code and town)
9. Has the applicant previously utilized accrued benefits for the purchase of a residential house (indicate Yes/No)	

SECTION 2. PROPERTY DETAILS

1. Description of the residential house: (e.g. Apartment / bungalow / maissonette / other - specify)	
2. Location of property:	

(e.g. State town and county)	
3. Particulars of title: (Specify if freehold or leasehold. If the title is leasehold, state term and commencement date)	
4. Name of institution selling the residential house:	
5. Do you have a certificate of occupation for the house? (Yes/No)	

SECTION 3. FUNDING

1. Do you intend to utilize your accrued additional voluntary contributions (if any) to purchase the residential house? (indicate yes/no)		
2. Do you intend to access additional funds to purchase the residential house? (yes/no)	1. If yes, state the source of funds. (Give details of the source, and/or where the funds shall be obtained from, specify the lending	

	<p>institution and loan approval status)</p>	
	<p>2. If additional funds are from another scheme of the same sponsor, specify the name of the scheme.</p> <p>(Give name of the scheme, membership number and membership status)</p>	
	<p>3. If you intend to combine your accrued benefits with those of your spouse to purchase the residential house.</p> <p>(Indicate full names of spouse, amount to be contributed by spouse, name of scheme and membership number of the spouse)</p>	

RBA SAMPLE RULES

SECTION 4. ATTACHMENTS (TICK ATTACHED)

Certified copy of National Identity Card or passport	
Certified copy of KRA PIN	
Letter of offer or sale agreement from institution	
Certified copy of the certificate of incorporation or other incorporating document of the institution	
Certified copy of certificate of title or certificate of lease	
Original certificate of official search or equivalent	
Current valuation report	
Documentary evidence of source of additional funds	
Proof of clearance of rent and rates payable	
Certified copy of the certificate of occupation from respective County Government	
Evidence of marriage	
Certified copy of spouse's National Identity Card or passport (joint purchase)	
Certified copy of spouse's KRA PIN (joint purchase)	
Spousal consent, (joint purchase)	
Copy of spouse's statement of available balance	
Letter from spouse's scheme confirming eligibility	

SECTION 5. FOR OFFICIAL USE ONLY

1. Funds available (Yes/No)

2. 40% of accrued benefits

3. Additional voluntary contribution.....

4. Spouses contribution (if any)

5. Application approved / denied / deferred (provide reasons)

SECTION 6. DECLARATION

1. I hereby confirm that I have read and understood the contents of this form and that all the information provided is true and accurate.
2. I undertake to notify the trustees of any changes to the information provided.
3. I hereby acknowledge that I am aware of the taxes, incidental costs, fees and charges that I may incur directly or indirectly when purchasing a house under these rules.

Signature

Date:

SCHEDULE II
PURCHASE OF RESIDENTIAL HOUSE REPORT

1.	Scheme details	
	a) Name of scheme	
	b) Type of scheme (e.g. Umbrella, IPP, Occupational)	
	c) Design of scheme (e.g. Defined Benefit or Defined Contribution)	
	d) Total Assets of scheme as at..... (period of reporting)	
	e) No. of members of the scheme as at date of reporting (specify if, active, deferred, pensioners)	
2.	Period of Reporting (e.g dd/mm/yy)	
3.	Access of Benefits for purchase of residential house;	
	a) No. of applications received	

	b) No. of applications approved	
	c) No. of applications deferred	
	d) No. of applications declined	
	e) Key reasons for declined applications	
4.	Total amount of benefit accessed for purchase of a residential house during the quarter.	

Submitted by:

Designation:

Date: