



LEGAL ALERT

AFFORDABLE HOUSING ACT, 2024: THE GOVERNMENT'S PUSH FOR REALIZATION OF ECONOMIC AND SOCIAL RIGHTS



The Constitution of Kenya in Article 43 provides for social economic rights. One such right as per article 43 (1) (b) of the constitution is the right to accessible and adequate housing that is to reasonable standards of sanitation. Typically, social economic rights are in their nature progressively realized. The recent assent of the Affordable Housing Bill, 2023 into law is the government's attempt at facilitating the progressive realization of the said right.

In light of the president's assent to the bill, the following key provisions under the act are integral to note for both individuals and businesses alike. Some of the key points to note are as follows:

i. Imposition of the Housing Levy

The act has imposed a levy termed as the “affordable housing levy” which is payable as follows:

- 1.5% of the gross salary of an employee; or
- 1.5% of the gross income of a person received which is not subject to salary; and
- In the case of an employee, the employer is required to remit an equivalent 1.5% as its contribution for its employees.

The levy shall be payable to Kenya Revenue Authority (KRA) who have been identified by the act as the collector of the levy and shall be due by the ninth day of each month. Where any amount of the levy remains unpaid on the due date aforementioned, section 7 of the act imposes a penalty on the defaulting party at the rate of 3% of any such outstanding sum.

The act has by making the levy payable by both salaried and un salaried citizens made an attempt to comply with the Judgment issued by the High court declaring the housing levy unconstitutional and discriminatory for having earlier targeted salaried citizens only.

ii. Establishment of the Affordable Housing Fund & Board

The act establishes the affordable housing fund and Board. The purpose of the fund is to provide the required monies for the design, development and maintenance of the affordable housing units. The fund shall be managed and allocated by the board to the various affordable housing projects.

Where a person misappropriates any monies or assets of the Fund, or assists or causes any person to misappropriate or apply the funds in a manner not authorized by the act, they shall upon conviction be liable to pay a fine not exceeding twenty million shillings or an imprisonment of a term not exceeding ten years or both.

Additionally, a person may be charged an additional mandatory fine where if as a result of the conduct which constituted an offence, the person received a quantifiable benefit or caused another person to suffer a quantifiable loss.



iii. Types of Affordable housing units.

The act categorizes the affordable housing units into four categories which indicate the varying types of units that are to be constructed and consequently available for ownership. The units are as follows:

- a) Social housing unit – This type of unit is a house that is targeted for a person whose monthly income is below twenty thousand Kenyan shillings;
- b) Affordable housing unit – This unit targets people whose monthly income is between twenty thousand and one hundred and forty-nine thousand Kenyan shillings;
- c) Affordable middle class housing unit – targets people whose monthly income is over one hundred and forty-nine thousand shillings; and
- d) Rural affordable housing unit – targets people who are not living within the urban areas.

In view of the foregoing, the question then becomes, how does a person become eligible to own a unit under the act and what is the application process?

The act anticipates the promulgation of subsidiary regulations to the act which shall provide the criteria which will be applied in determining a person's eligibility for the allocation of a unit under the act. (These regulations are yet to be provided and as such, the criteria to be applied is yet to be determined)

However, a person upon meeting the criteria for eligibility as shall be set out by the regulations may pursuant to the provisions of section 49 of the act lodge an application

with the board which application must be accompanied by the documents prescribed in section 49 (2) of the act. The board while making a determination on the allocation of a unit shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disability.

Where a person successfully purchases a unit under the act, it is important to note that the act requires for an owner of a unit to acquire the written consent of the board prior to the sale of such a unit to another party.

The act having been assented to on 19th March 2024 shall come into effect upon gazettelement by the relevant cabinet secretary. However, the imposition of the levy as earlier described came into effect on the date of assent of the act.

Conclusion

The Affordable Housing Act proposes to incorporate the development of housing units in realization of the provisions of article 43 (1) (b) of the constitution which provides for the right to adequate and accessible housing.

The Act is however already contending with a petition at the Court after several persons moved to court challenging its application.



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