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AIDS HELPLINE 0800-0123-22 Prevention is the cure

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GOVERNMENT NOTICE

GAUTENG PROVINCIAL ADMINISTRATION

No. R. 789

9 July 2004

DEPARTMENT OF HOUSING

GAUTENG HOUSING ACT, 1998

(ACT NO. 6 OF 1998)

REGULATIONS FOR THE TRANSFER OF STATE-OWNED RESIDENTIAL PROPERTIES IN ALEXANDRA, 2004

The Member of the Executive Council responsible for housing has under sections 24C and 25 of the Gauteng Housing Act, 1998 (Act No 6 of 1998), made the regulations in the Schedule.

SCHEDULE

CHAPTER 1 INTERPRETATION AND PURPOSE

Definitions

1. In these regulations, unless the context indicates otherwise, a word or expression that is defined in the Gauteng Housing Act, 1998 (Act No. 6 of 1998) has the same meaning in these regulations, and in addition

–
“**Act**” means the Gauteng Housing Act , 1998 (Act No 6 of 1998);

“**adjudication administrator**” means the person appointed as such in terms of regulation 3(3);

“**adjudication regulations**” means the Transfer of Residential Properties Adjudication Regulations, 2000, published under Government Notice No. 2265 of 2001;

"Alexandra" means the area described in Government Notice No. R66 dated 22 January 1988;

"Alexandra regulations" means the regulations referred to in regulation 17;

"Alexandra Renewal Project" means the Provincial project for urban renewal of Alexandra;

"beneficiary" means a South African citizen or holder of a permanent resident permit in South Africa, who receives transfer of an erf;

"bureau" means the Johannesburg housing bureau established under Premier's Directive dated 08 September 1995 in terms of section 171 of the Local Government Ordinance, 1939 (Ordinance No. 17 of 1939);

"committee" means the committee referred to in regulation 3(5);

"dangerous or hazardous conditions" means conditions that are not conducive to promoting the health, good order and welfare of a community as determined by applicable legislation;

"erf" means an erf reflected on the present layout plans and general plans of Alexandra;

"Johannesburg" means the municipality as defined in section 155 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), within whose area of jurisdiction Alexandra is situated;

"material breach" means –

- (a) the failure of a tenant to pay rental or any other payment due by the tenant to the lessor or any other party in respect of occupancy of the premises; or
- (b) a tenant causing significant material damage to the premises; or
- (c) the creation of a public nuisance by a tenant;

"occupant" means a person who, at the time of the promulgation of these regulations, occupied a portion of an erf in Alexandra;

"project manager" means the person appointed as such in terms of regulation 3(3);

"state" means the national government or a state department, the provincial government, a governmental body or a municipality;

"upgrading programme" means the upgrading of existing houses and backyard shacks through the Alexandra Renewal Project; and

"yard" means a site reflected on the previous General Plan SG No A504/1912 of Alexandra.

Purpose of Regulations

2. The purpose of these regulations is to:
 - (a) repeal the Alexandra regulations;
 - (b) make provision for the transfer of state-owned residential properties in Alexandra;
 - (c) make provision for the upgrading of residential erven in Alexandra; and
 - (d) regulate matters incidental thereto.

CHAPTER 2 OPERATION OF BUREAU IN ALEXANDRA

Extension of activities of bureau

3. (1) The administration of the transfer of residential properties to beneficiaries in Alexandra in terms of these regulations must be dealt with through the bureau.

(2) The provisions of Premier's Directive referred to in the definition of "bureau" in regulation 1 applies to the area of Alexandra: Provided that, in case of conflict between these regulations and the Directive, these regulations prevail.

(3) The Province must appoint a project manager and an adjudication administrator.

(4) The Province must finance the work of the bureau in terms of these regulations, provide the secretariat, personnel, premises, furniture and equipment for the functioning of the bureau.

(5) The Province and Johannesburg must appoint a separate committee to act on behalf of the bureau to carry out the work of the bureau in Alexandra.

(6) A quorum of the committee comprises one representative each of Johannesburg and the Province, and any decision with regard to a financial matter must have the favourable vote of the provincial representative.

Functions of bureau

4. The bureau must within Alexandra –

- (a) invite and evaluate applications lodged in the form, substantially as set out in Schedule A, for the transfer of residential property owned by the state;
- (b) investigate and define the tenure rights held by any person in respect of property for which an application for transfer has been made;
- (c) identify beneficiaries who should be allowed to acquire and obtain transfer of erven;
- (d) endeavour to resolve disputes that may arise as a result of the application process and other procedures of the bureau;
- (e) administer the sale and transfer of residential property owned by the state to beneficiaries;
- (f) support the upgrading programme;
- (g) provide information and advice to the public regarding the transfer process;
- (h) keep appropriate records, report progress periodically to Johannesburg and the Province, and make recommendations for decision to be taken by Johannesburg or the Province; and
- (i) perform any other prescribed functions.

CHAPTER 3 APPLICATION FOR TRANSFER

Procedures

5. (1) Prior to the application process contemplated in sub regulation (2) information must be gathered on-

- (a) the status of occupancy of state-owned residential properties as determined in accordance with records of Johannesburg;
- (b) the number and distribution of document holders and other possible applicants;
- (c) the occupation of structures and installations on erven; and
- (d) any other matters that are deemed relevant by the project manager.

(2) As soon as possible after the information gathering process mentioned in sub regulation (1) the bureau must give notice in

the Provincial Gazette and at least one newspaper in circulation in Alexandra and at the municipal offices in Alexandra to –

- (a) invite applications for the sale and transfer of state-owned residential properties; and
- (b) specify the time in which applications may be made at the municipal office or such other offices as may be specified.

(3) To facilitate the processing of applications, Alexandra may be divided into one or more areas and each area may be dealt with as a separate entity.

(4) The project manager must ensure a visit to each of the erven to explain the process to the occupants and to assist persons wishing to apply for transfer of the erven to complete application forms.

(5) On expiry of the notice period mentioned in sub regulation (2) the project manager must –

- (a) prepare lists of all applications received per erf;
- (b) submit to the bureau a report with regard to the applications received;
- (c) process undisputed applications as soon as possible; and
- (d) submit disputed and otherwise problematic applications to the adjudication administrator for resolution of the disputes in terms of Chapter 5.

(6) Applications received after expiry of the notice period mentioned in sub regulation (2) must only be considered upon good cause shown and no application received after date of signature of the deed of sale referred to in regulation 12 by Johannesburg may be considered.

Validity of applications

6. (1) Applications are made to the state as owner of the erven to be allowed to purchase the said erven.

(2) The bureau must –

- (i) consider all valid applications; and
- (ii) determine the identity of beneficiaries for the transfer of state-owned residential properties through these regulations.

(3) No person obtains any right to take transfer of an erf merely by submitting an application.

(4) An erf in respect of which a person has entered into an agreement of sale with Johannesburg prior to the promulgation of these regulations and of which transfer has not been effected, does not qualify for transfer in terms of these regulations.

(5) Persons applying for transfer of state-owned residential properties in Alexandra as well as occupants who fall under any of the

following categories are not entitled to transfer or tenancy of the property they presently occupy but must be offered alternative residence through the housing programmes of the Department –

- (a) holders of accommodation permits who reside in Alexandra with their dependants unless they qualify as beneficiaries or tenants for other reasons;
- (b) persons who are to be relocated from dangerous and hazardous conditions; and
- (c) persons who are living on land that is required to develop public spaces or to develop or maintain municipal services in Alexandra.

(6) Permits or lease agreements issued in regard to yards in Alexandra, which cannot be related to erven, do not entitle the holders thereof to the transfer of property and holders of such permits or lease agreements must submit additional evidence with regard to their occupancy of the erf for which they apply.

CHAPTER 4 VALIDITY OF PERMITS

Retention of rights

7. Notwithstanding the repeal of the Alexandra regulations the holder of a valid permit issued in terms of the Alexandra regulations retains any rights conferred through that permit until an agreement to purchase or a lease agreement has been concluded as envisaged in these regulations: Provided that –

- (a) the rights conferred by a permit issued with regard to a yard is only applicable to the erf on which the permit holder is residing at the date of application; and
- (b) the erf on which the permit holder is residing is situated in the area of the yard, as it existed before the cancellation of the previous General Plan of Alexandra.

Cession of rights

8. A right conferred upon the holder of a permit in terms of the Alexandra regulations must be deemed to have been cancelled or transferred to another person where it is found through the adjudication process that –

- (a) the permit holder voluntarily abandoned or deserted the erf concerned; or

- (b) the permit holder entered into a transaction or agreement with another person in terms of which his or her rights have been ceded, sold or disposed of in any other way to such other person notwithstanding that such transaction or agreement could not by virtue only of the provisions of the Alexandra regulations have been entered into or was entered into without the approval of any person whose approval would have been required under the Alexandra regulations.

Tenancy

9. (1) Tenants of Johannesburg in terms of residential permits issued under regulation 5(1)(a) of the Alexandra regulations or subtenants in terms of residential permits issued in terms of regulation 5(1)(b) of the Alexandra regulations and tenants and subtenants in terms of lease agreements with Johannesburg remain tenants or subtenants until new agreements are entered into as envisaged in these regulations.

(2) Agreements entered into by private property owners and tenants, with regard to the occupation of erven, continue in force until amended or changed by the parties thereto.

CHAPTER 5 DISPUTE MEDIATION AND ADJUDICATION

Mediation of disputes

10. (1) The MEC may appoint as many persons with experience in relation to dispute resolution as the MEC deems necessary to mediate and settle disputes mentioned in sub regulation (3).

(2) A mediator is appointed for a term of two years at a remuneration determined by the MEC in consultation with the MEC responsible for finance and the appointment may be extended for a further period in the discretion of the MEC.

(3) Disputes between parties that in the opinion of the adjudication administrator may be settled by agreement must be referred to mediation.

(4) Disputes referred to in sub regulation (3) may include disputes with regard to-

- (a) the relationship between prospective beneficiaries and tenants on the erf;
- (b) entitlement of an erf between siblings or close family members; and

(c) disputes arising out of the encroachment of buildings over erf boundaries.

(5) Parties to mediation must reach agreement within a reasonable time.

(6) If no agreement is reached after two mediation sessions the mediator must submit a written report to the adjudication administrator in which reasons for the failure to reach agreement are given.

(7) Upon receipt of the report, the adjudication administrator may allow one more mediation session, or, if he or she is of the opinion that no agreement can be reached, refer the dispute for adjudication.

(8) Where a matter has been mediated successfully a written agreement signed by the parties must be submitted to the adjudication administrator for processing.

Adjudication of disputes

11. (1) The adjudication of applications must take place where –

- (a) competing applications for the transfer of a residential property owned by the state have been lodged with the bureau; and
- (b) subject to regulation 10(3), a case was referred to mediation and the mediation process was unsuccessful.

(2) Any dispute must be adjudicated in terms of the adjudication regulations read with the changes required by the context, by the panels of adjudicators and appeal adjudicators appointed in terms of section 24B of the Act.

(3) For purposes of sub regulation (2) the reference in regulation 6(1) of the adjudication regulations to "local committee" does not apply and duties of the legal coordinator in terms of those regulations must be performed by the adjudication administrator.

(4) With regard to disputes between prospective owners and tenants referred from mediation in terms of sub regulation 1(b) adjudicators and appeal adjudicators are required to make findings with regard to the following:

- (a) the reasons behind the inability of the parties to reach agreement on the terms of any one or more of the tenancies; and
- (b) the identity of the party who is primarily responsible for the failure to reach agreement.

(5) Adjudicators and appeal adjudicators must make findings with regard to the following in respect of disputes relating to the

encroachment of buildings over erf boundaries referred from mediation in terms of sub regulation 1(b) –

- (a) whether the encroachment can be accommodated by subdivision or consolidation of erven;
- (b) whether encroachments are to be removed as a result of the provisions of regulation 6(5)(b) and (c); and
- (c) whether it is possible to move the building that is encroaching to another position on the specific erf during the upgrading programme.

CHAPTER 6 SALE AND TRANSFER OF PROPERTIES

Deed of sale

12. (1) A deed of sale substantially in the form as set out in Schedule B must be entered into by Johannesburg or another organ of state and the successful applicant in one of the following instances –

- (a) where an application is undisputed; or
- (b) where a disputed application is successfully mediated; or
- (c) where a disputed application is finally adjudicated.

(2) For purposes of sub regulation 1(c) the deed of sale may be entered into where the adjudicator or appeal adjudicators find that the tenant was primarily responsible for failure as contemplated in regulation 11(4)(b).

(3) In cases where the adjudicator or appeal adjudicators find in terms of regulation 11(4)(b) that the failure to reach agreement was primarily the responsibility of the prospective beneficiary, no deed of sale may be entered into, and the project manager must call for new applications for that erf.

Transfer of properties

13. (1) Transfers of state-owned residential property must be effected in the name of –

- (a) individual applicants;
- (b) spouses;
- (c) parties in co-ownership;
- (d) close corporations;

Provided that transfers mentioned in (c) and (d) must only be effected in terms of adjudication findings or after agreement by the parties in terms of which a legal entity must be established.

(2) Costs of transfer including any consolidation, subdivision or servitude with regard to erven, or the establishment of a close corporation, must be borne by the Province.

CHAPTER 7 UPGRADING OF ERVEN

Upgrading of erven

14. (1) All residential erven in Alexandra qualify for upgrading in accordance with the policies of the Province.

(2) Simultaneous with the application procedure described in Chapter 3 persons may be deployed by the Alexandra Renewal Project to conduct on-site investigations on the upgrading of erven.

(3) No upgrading of an erf may commence until-

- (a) an agreement contemplated in Chapter 6 is concluded; or
- (b) transfer of an erf referred to in regulation 6(4) has been effected; and
- (c) all tenants on the erf are identified and the beneficiary or owner submitted lease agreements with the tenants.

(4) For the purpose of this regulation "lease agreement" means an agreement of lease-

- (a) at a reasonable rental which may not be increased by more than 10% (ten per centum) per annum;
- (b) which *inter alia* contains provisions that the lease agreement is valid for a period of three years from the date of transfer or date of signature, whichever is the later, unless cancelled as a result of a material breach; and
- (c) approved by Johannesburg.

CHAPTER 8 GENERAL PROVISIONS

Restitution claims

15. A successful claimant for restitution in terms of the Restitution of Land Rights Act, No 22 of 1994, must not be precluded from applying for the transfer of a residential property owned by the state through the process created by these regulations: Provided that he or she personally occupies the residential property for which the application is made.

Limitation of liability

16. No person, including the state, is liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under these regulations.

Repeal of Regulations

17. The regulations for the Designated Area of Alexandra promulgated in Administrator's Notice No. 760 of 30 September 1964 and any amendments thereof are hereby repealed.

Short title

18. These regulations are called the Regulations for the Transfer of State-owned Residential Properties in Alexandra, 2004.

SCHEDULE A

*** Note: A person may apply only for one erf**

ALEXANDRA RENEWAL PROJECT

HOUSING BUREAU FOR ALEXANDRA

APPLICATION TO PURCHASE AND TAKE TRANSFER OF A RESIDENTIAL ERF

1. Property

Alexandra erf no.	
Township	
Street address	

2. Applicant/s

Surname	
Full first names	
Maiden name (where applicable)	
Identity number	
Date of birth	

3. Spouse

Surname	
Full first names	
Maiden name (where applicable)	
Identity number	
Date of birth	

4. Marital status

Not married	Married	Widowed	Divorced	Hindu	Muslim
-------------	---------	---------	----------	-------	--------

If Hindu or Muslim marriage:

Yes / No. Do you wish your spouse to be co-owner? Yes / No

5. Application

5.1 I / we declare¹

- a) that I / we are resident upon the said property, or
- b) that I / we do not reside on the above-named property but at

5.2 I / we apply to purchase and take transfer of the above-named property by virtue of the following circumstances:

Tick items applicable. Attach copy of document, if available.

	Document or circumstances	As party named therein	As legitimate successor to such party
a)	Owner's certificate under section 6 of the regulations		
b)	Agreement of sale		
c)	Permit under section 5(1)(a)		
d)	Permit under section 5(1)(b)		
e)	Other document (describe)		
f)	Other circumstances		

5.3 Details of claim to be a legitimate successor

¹ Delete whichever does not apply.

- 5.4 Details of "other circumstances", including the manner in which occupation was gained, from whom and approximately when.

6. Occupancies

- 6.1 Family and relatives staying in structures indicated on the attached plan:

Ref. No.	Surname	Full first names	ID number (if available)	Age	Relationship

- 6.2 Occupants of structures indicated on the attached plan:

Ref. No.	Surname	First names	Identity number	Lease form* (if any)	Rental if applicable **

* Leases shall be assumed to be verbal, unless the word "written" is inserted in the "lease form" column.

** Please specify the amount payable per month.

7. Documents attached:

Copies of

- a) Document referred to under 5.2, namely
- b) Applicant's ID
- c) If married, spouse's ID and marriage certificate
- d) For requests based on inheritance:
 - death certificate
 - intestate: magistrate's letter of appointment
 - testate: Master of Supreme Court's certificate of appointment
- e) For requests based on an informal purchase of a right: agreement of sale or suitable supporting affidavit
- f) Any other documents referred to in the above motivation

8. Applicant's contact particulars

Residential: Above-mentioned property

Other

Postal address Code

Telephone: Home () Work ()

9. Declaration

I / we declare

- a) that the information herein is true, complete and correct to the best of my knowledge and belief; and
- b) that I have not made an application for ownership in respect of any other property in Alexandra.

Signed at on this day of 200...

.....
Applicant/s

FOR OFFICIAL USE –

Copies of documents received, if applicable	
Owners certificate under section 6	
Sale agreement	
Permit under sec. 5(1)(a)	
Permit under sec. 5(1)(b)	
Other document (specify)	
Applicant's ID	
Spouse's ID	
Marriage Certificate	
Death certificate of holder (if applicable)	
Estate documents (if applicable)	
Agreement purporting to purchase rights	
Supporting affidavit	
Lease agreements	

SCHEDULE B**MEMORANDUM OF AGREEMENT**

Entered into by and between

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
(JOHANNESBURG)**

AND

.....
(PURCHASER)

Whereas Johannesburg is the owner of erf Alexandra Township; and

Whereas the purchaser has applied to purchase the said erf with the benefit of a state discount; and

Whereas the purchaser complies with the requirements with regard to such purchase;

Now therefore it is agreed –

1. That the purchaser shall purchase erf Alexandra Township (the property) from Johannesburg at a purchase price of R7 500,00 (seven thousand five hundred rand).
2. The purchase price shall be covered by a discount benefit to the value of R7 500,00 (seven thousand five hundred rand), which is granted to the purchaser subject to the conditions contained in this agreement.
3. The property is sold as a residential property and shall be utilized for residential purposes.

4. The property is sold *voetstoots* as it stood on the date on which purchaser's application to purchase was submitted, irrespective of any patent or latent defects therein, and Johannesburg shall have no responsibility or liability whatsoever in respect of or arising out of any defects in or to it.

The purchaser acknowledges responsibility for the electrical installation, and that should any additions or alterations be carried out to such electrical installation he or she shall in accordance with the National Electrical Regulations, be required to obtain a certificate of compliance for the whole installation.

5. From the date of signature of this agreement by Johannesburg any existing tenancy agreement that the purchaser may have had with Johannesburg shall be terminated and possession and occupation of the property shall be deemed to have been taken by the purchaser in terms of this agreement and all risks relating to the property shall pass to him/her. From such date the purchaser shall be liable as owner to continue to pay regularly all rates (if any), service charges and levies in respect of the property.

6.

- 6.1 The purchaser acknowledges that he/she has been informed that all buildings on the property must comply with the minimum standards set by Johannesburg within 3 (three) years of signature of this agreement and undertakes to comply with such minimum standards within the period of 3 (three) years.

- 6.2 In order to facilitate compliance with the minimum standards an upgrading subsidy shall be made available to the purchaser subject to the following conditions:

- a) the identification of all tenants on the property and the submission of approved lease agreements with such tenants;
- b) the approval of upgrading and development plans for the property by Johannesburg.

- 6.3 The upgrading subsidy shall be paid to the purchaser at such intervals as may be decided by Johannesburg in terms of the upgrading programme of the Alexandra Renewal Project and after all the required verification processes have been carried out.

- 6.4 Any non-compliance with the obligation set in (6.1) above shall entitle Johannesburg to take the necessary steps to enable compliance with the minimum standards which steps may include legal steps before a competent court.
- 6.5 The purchaser herewith gives permission to personnel of the upgrading programme to enter the property at all reasonable times.
7. Other conditions
-
-
8. All formalities relating to the passing of transfer to the purchaser shall be undertaken by Johannesburg and its conveyancers, at no cost to the purchaser, who undertakes promptly to provide such information and to sign such documents as may be required for that purpose.
9. Form of title
- 9.1 If the township register has been opened in the Deeds Registry, then full ownership shall be transferred.
- 9.2 If the township register has not yet been opened in the Deeds Registry, then the seller undertakes to grant and the purchaser agrees to acquire a certain right of leasehold in terms of section 52 of Act no 4 of 1984 in respect of the property, together with all structures thereon. As soon as the relevant township register has been opened the purchaser's title shall automatically become one of full ownership and may be submitted to the Deeds Registry for endorsement accordingly.
10. The parties choose *domicilium citandi et executandi* for all purposes hereunder as follows:
- Johannesburg:
-
- Purchaser: At the property.
- Any written notice in terms of this agreement shall be hand delivered at the respective addresses.

Signed at on the day of 20.....

.....
Purchaser

In the presence of the following witnesses:

1. 2.

Signed and confirmed at on the day of 20..

**On behalf of the seller by in his/her capacity as
..... duly authorised hereto by resolution of Council
dated 20**

.....
Seller

In the presence of the following witnesses:

1.

2.

IMPORTANT NOTICE

The
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as from 2nd January 2002

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Mrs H. Wolmarans Tel.: (012) 334-4591

Fax number: (012) 323-8805

E-mail address: awvanzyl@print.pwv.gov.za

Contact persons for subscribers:

Mrs S. M. Milanzi Tel.: (012) 334-4734
Mrs J. Wehmeyer Tel.: (012) 334-4753
Fax.: (012) 323-9574

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Subscribers and all other stakeholders are advised to send their advertisements directly to the **Government Printing Works**, two weeks before the 2nd January 2002.

*In future, adverts have to be paid in advance
before being published in the Gazette.*

HENNIE MALAN

Director: Financial Management
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