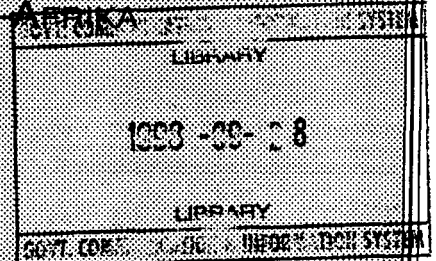


REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-~~AFRIKA~~



# Government Gazette Staatskoerant

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PRETORIA, 18 SEPTEMBER 1998

No. 19260

## GENERAL NOTICE

NOTICE 2111 OF 1998

### DEPARTMENT OF HOUSING

#### PROPOSED LEGISLATION ON HOUSING RENTAL AND RELATED MATTERS

The Department of Housing hereby publishes the **Housing Rental Bill, 1998** for public **information**, discussion and comment.

Comments should be sent to: The Director-General, Department of **Housing**, Private Bag X644, **PRETORIA**, 0001, for attention **Mr R Thatcher**, **on or before 19 October 1998**.

**REPUBLIC OF SOUTH AFRICA**

**HOUSING RENTAL BILL, 1998**

(MINISTER OF HOUSING)

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## BILL

To promote access to adequate housing through the proper functioning of the housing rental market; to promote the provision of housing rental property; to address deficiencies in the housing rental market in a manner which is fair to landlords and tenants; to make provision for regulated areas; to establish Housing Rental Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the housing rental sector; to make provision for assured tenancies in regulated areas; to provide for the facilitation of sound relations between landlords and tenants and for this purpose to lay down general requirements relating to contracts between landlords and tenants; to repeal the Rent Control Act, 1976 (Act No. 80 of 1976); and to provide for matters connected therewith.

### PREAMBLE

**WHEREAS** in terms of section 26 of the constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996),

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions;

**AND WHEREAS** the renting of housing is a key component of the housing sector;

**AND WHEREAS** there is a need to promote the provision of housing rental stock;

**AND WHEREAS** there is a need to regulate the housing rental market in buildings or areas, where it is not functioning properly;

**AND WHEREAS** there is a need to promote fair practices and certainty in the renting and leasing of housing by, *inter alia*, laying down minimum requirements for written housing lease agreements;

**AND WHEREAS** there is a need to balance the rights of landlords and tenants to protect both landlords and tenants against unfair practices and exploitation;

**AND WHEREAS** there is a need to introduce mechanisms through which conflicts between landlords and tenants can be speedily resolved at minimum cost to the parties;

**AND WHEREAS** there is a need to curb excessive rents in specific instances and to obviate unnecessary intervention in the housing rental market so that incentives remain for investors and developers to actively participate in the provision of housing for rental;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows :-

## CHAPTER I

### Introductory provisions

#### Definitions

1. In this Act, unless the context indicates otherwise -

“agreement” means an agreement of lease in respect of a dwelling between a landlord and a tenant as contemplated in section 19(1) and in respect of which rent is payable by the tenant to the landlord;

“assured tenancy” means a tenancy as contemplated in section 13;

“dwelling” includes any house, hut, shack, flat, apartment, room, outbuilding, garage or similar structure which is utilised for housing purposes, as well as any storeroom, outbuilding, garage or demarcated parking space which is leased as part of the agreement;

“*Foundation*” means the Social Housing Foundation referred to in section 3;

“*Gazette*” means the Provincial Gazette of a province, or for the purposes of section 16(1), the Government Gazette;

“housing rental property” includes one or more dwellings;

“landlord” means the owner of a dwelling which is leased for housing purposes and includes his or her duly authorised agent or a person who is in lawful possession of a dwelling and has the right to lease it;

“MEC” means the member of the Executive Council of a province responsible for housing matters in the province in question;

“Minister” means the national Minister of Housing;

“regulated area” means an area declared as such by the MEC as contemplated in section 5 and includes an area deemed to be a regulated area in terms of section 10;

“tenant” means the **lawful** occupier or lessee of a dwelling which is leased by the landlord for housing purposes;

“Tribunal” means a Housing Rental Tribunal established in terms of section 7(1),

2. Subject to the provisions of Chapter III this Act shall apply in respect of all dwellings throughout the Republic.

## CHAPTER II

### Promotion of provision of housing rental property

#### Recognition of Social Housing Foundation

**3. (1)** The Social Housing Foundation, registered as a company in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), under the name of the National Housing Finance Development Foundation, is hereby deemed to be a national institution established by the Minister in terms of section 3(4)(h) of the Housing Act, 1997 (Act No 107 of 1997).

(2) The aim of the Foundation is to promote, support and assist in the establishment of a sustainable, integrated social housing development process in the Republic of South Africa.

(3) The Foundation-

- (a) operates under a charter approved by the Minister,
- (b) must report to the Minister at such intervals as the Minister may determine, and
- (c) must annually submit to the Minister a report on its activities and the Minister must without delay submit such report to Parliament.

#### Measures to increase provision of housing rental property

**4. (1)** The Minister may introduce a rental subsidy programme, as a national housing programme, instituted in terms of section 3(4)(g) of the Housing Act, 1997 (Act No 107 of 1997), to stimulate the supply of housing rental property for low income wage earners in a manner that promotes urban integration and renewal.

(2) Parliament may appropriate annually to the South African Housing Fund an amount to finance such a programme.

(3) A separate account of income and expenditure in respect of such programme must be kept.

**(4)** The provisions of section 12(1)(b) of the Housing Act, 1997 (Act No 107 of 1997), do not apply to any amount appropriated by Parliament for purposes of such programme.

## CHAPTER III

### Regulated areas

#### Declaration of regulated areas

5. (1) If, **after** consultation with the relevant local authority, the MEC has good reason to believe that the housing rental market is not functioning properly in any area of the Province, he or she may by notice in the *Gazette* publish his or her intention to apply the provisions of this Chapter to that area.

(2) A notice referred to in subsection (1) must -

- (a) state the grounds on which the MEC bases his or her intention to apply the provisions of this Chapter, and
- (b) invite the public to submit written representations to his or her office within a period of not less than 30 days of the date of such notice.

(3) The grounds on which the MEC may base his or her intention to apply the provisions of this Chapter are that -

- (a) serious conflict exists that is harmful to sound relations between landlords and tenants;
- (b) landlords or tenants are generally not meeting their respective obligations in terms of written lease agreements or the common law;
- (c) rentals are generally so excessive as to amount to exploitation;
- (d) tenants are being harassed by unreasonable actions of landlords aimed at depriving tenants of the peaceful enjoyment of occupation of their homes; or
- (e) landlords are being harassed by unreasonable actions of tenants aimed at infringing the rights of landlords.

(4) The MEC may, **after** consideration and/or **further** investigation of representations received in response to the notice referred to in subsection (1), **withdraw** the notice referred to in subsection (1) by the publication of a withdrawal notice in the *Gazette* or declare by notice in the *Gazette* the area, or part of such area specified in the notice referred to in subsection (1), to be a regulated area for purposes of the application of the provisions of this Chapter.

(5) The MEC may, substantially in accordance with the method and procedure provided

for in subsection(1), **after** consultation with the Tribunal and after due notice and consideration of representations, withdraw or amend a notice declaring an area to be a regulated area and such area shall, as the case may be, either cease to be a regulated area or be a regulated area to the extent amended by the notice with effect from the date of publication of that notice in the *Gazette*.

(6) The **MEC** may at the request of a municipality, provided that the **MEC** is satisfied that such municipality possesses adequate resources to apply the provisions of this Chapter effectively, delegate the powers, duties and responsibilities conferred on the **MEC** by this Chapter to that municipality and for the purposes of applying this Chapter, with the exception of section 12(2), any reference to the **MEC** is deemed to be a reference to that municipality.

### **Consequence of declaration of an area as a regulated area**

6. With effect from the date on which an area is declared a regulated area in terms of section 5 -

- (a) the rent of a dwelling situated in a regulated area may not be increased, except in accordance with the provisions of section 9(2)(a) or section 16;
- (b) a tenant of a dwelling situated in a regulated area may not be given notice to vacate or in any manner whatsoever be induced to vacate the dwelling except in accordance with the provisions of section 15; and
- (c) the **MEC** must appoint a Housing Rental Tribunal in terms of section 7.

### **Establishment of Housing Rental Tribunals**

7. (1) The **MEC** must, by notice in the *Gazette* establish a Housing Rental Tribunal or Tribunals for a regulated area or area deemed to be a regulated area in terms of section 10.

(2) A Tribunal must consist of not fewer than 5 and not more than 7 members appointed by the **MEC** on such conditions and for such period as he or she may determine: Provided that such period does not exceed 3 years.

(3) The **MEC** must designate a member, who should preferably have a qualification in law, as the chairperson of such Tribunal.

(4) In appointing any person as a member of a Tribunal the **MEC** must ensure that-

- (a) at least two members are persons whom the **MEC** considers to be representative of interest groups which own, invest in or manage housing rental property, and that such representatives are nominated after consultation with the said interest groups; and

- (b) at least **two** members are persons whom the MEC considers to be representative of organisations and community-based groups in civil society who represent the interests of tenants of housing rental property, and that such representatives are nominated after consultation with the said organisations and community-based groups.
  - (c) at least one member who in the opinion of the MEC is knowledgeable in property valuations and property investments or who is experienced in the housing rental market.
- (5) (a) The MEC may at the request of any member of the Tribunal other than the Chairperson appoint an alternate member for any member of the Tribunal.
- (b) An alternate member may attend and take part in the proceedings at any meeting of the Tribunal whenever a member in whose stead he or she has been appointed as an alternate member, is absent from the meeting.
- (6) A member or alternate member of the Tribunal other than a person who is in the full-time employment of the State, must be appointed on such conditions of **service** as the MEC in concurrence with the MEC responsible for provincial expenditure may determine.
- (7) Conditions of service determined under subsection (6) may differ according to whether the person concerned serves on a Tribunal in a full-time or part-time capacity.
- (8) Members and alternate members must be reimbursed in respect of reasonable expenditure incurred in the exercise of their duties under this Act.
- (9) The MEC may terminate the **office** of a member for reasons which are just and fair and substitute such person in accordance with the provisions of subsection (4).

### **Meetings of a Tribunal**

8. (1) A Tribunal must meet at such times and places as the chairperson may determine.
- (2) The quorum for a meeting of a Tribunal shall be at least half of the number of members appointed in terms of section 7: Provided that a member or alternate member representing each of the groups referred to in section 7(4)(a) and (b) and a member or alternate member referred to in section 7(4)(c) must be present at a meeting of a Tribunal.
- (3) The chairperson must preside at all meetings of the Tribunal and if the chairperson is absent or unable to **fulfill** any **function** of the chairperson, the members present may elect a person from amongst themselves to act as chairperson during such absence or incapacity.
- (4) The decision of a majority of the members present at a meeting of the Tribunal shall constitute a decision of such Tribunal, and in the event of an equality of votes, the person



presiding at the meeting in question shall have a casting vote.

#### Powers and duties of Housing Rental Tribunals

9. (1) Subject to section 10, a Housing Rental Tribunal must investigate any representations or complaints regarding a matter relevant to the grounds referred to in section 5(3).

(2) A Housing Rental Tribunal shall have powers to -

- (a) determine, **after** receiving an application as provided for in section 16(2), and **after** a hearing as provided for in this subsection, a reasonable rent contemplated in section 17 in respect of any dwelling within a regulated area;
- (b) appoint a mediator or arbitrator, who is not a person appointed in terms of section 11(1), to mediate or arbitrate in any matter that the Tribunal must investigate and to advise the Tribunal on the outcome of such mediation or arbitration;
- (c) require any inspector or technical adviser contemplated in section 11 to investigate representations or complaints and to produce a report or other document having a bearing on the representations or complaints received by the Tribunal;
- (d) subpoena any landlord or tenant or any other person, who in the opinion of the Tribunal may be able to provide information at a public hearing of any matter which the tribunal must investigate, to appear before the Tribunal;
- (e) summon any person to attend a public hearing referred to in subsection (2)(d) and to produce any book or document under his or her control or to disclose any information regarding the housing rental property which in the opinion of the Tribunal may be of relevance to the representations or complaint before the Tribunal. Failure by any person to respond to such a summons constitutes an **offence**;
- (f) administer the oath for purposes of adducing evidence before the Tribunal.
- (g) dismiss representations or complaints;
- (h) issue orders in respect of determinations of reasonable rent made in terms of subsection (2)(a);
- (i) ratify agreements reached through mediation or determinations made by arbitration in terms of subsection (2)(b);
- (j) approve notices to tenants to vacate in terms of section 15(1)(b); and

- (k) advise the MEC on the withdrawal or amendment of a notice declaring an area to be a regulated area, in terms of section 5(5).

### **Certain dwellings deemed to be situated in a regulated area**

**10.** Any dwelling which on the date on which this Act comes into operation is occupied by a tenant who is protected under those provisions of the Rent Control Act, 1976 (Act No. 80 of 1976) that provide for the determination of reasonable rents and limit the circumstances under which a tenant may be evicted, is deemed to be situated in a regulated area and the provisions of this Chapter and Chapter IV apply *mutatis mutandis* to such a dwelling as if it was situated in an area declared to be a regulated area in terms of section 5(4).

### **Appointment of inspectors, technical advisers and other administrative staff**

**11.** (1) The MEC may for the purposes of performing his or her functions in terms of this Act, or the functions of the Tribunal established under section 7, appoint inspectors, technical advisers and administrative support staff. Provided that if officials are appointed such appointments must be done in accordance with the laws governing the public service.

(2) Any person appointed in terms of subsection (1) must be provided with a certificate of appointment signed by the MEC or an officer designated by him or her.

(3) Inspectors and technical advisers must for the purposes of investigating any complaint received by the Tribunal have the power to -

- (a) enter and inspect any premises at all reasonable times; and
- (b) request access to any book, document or other information held by any person which in the opinion of the inspector or technical adviser may be able to assist in the investigation.

### **General principles governing dispute resolution in the housing rental sector**

**12.** (1) Any landlord or tenant or group of landlords or tenants of a dwelling situated in a regulated area may make representations or lodge a complaint with the Tribunal regarding a matter relevant to the grounds referred to in section 5(3).

(2) The MEC may by notice in the *Gazette* make regulations defining unfair practices relating to the unreasonable actions of landlords or tenants referred to in section 5(3)(d) or (e), and create offences in respect thereof and provide for penalties in respect of any contravention thereof.

(3) In respect of any representations or complaint lodged with the Tribunal, the Tribunal must -

- (a) assess whether the matter can be disposed of summarily **after** having investigated the representations or complaint, and if so, dispose of such matter summarily; or
  - (b) where the situation **calls** for mediation or arbitration, attempt to resolve such complaint through mediation or arbitration; and
  - (c) with the consent of the parties to the dispute, appoint a mediator or arbitrator for the purposes of mediation or **arbitration**, subject to such terms as may be agreed by the parties to the dispute, and subject to such procedures as maybe prescribed by the mediator or arbitrator.
- (4) In assessing any representations or a complaint the Tribunal must have regard to -
- (a) any regulations made in respect of unfair practices in terms of subsection (2); and
  - (b) the need to resolve the matter in a practicable and equitable manner,

## CHAPTER IV

### Assured tenancies

#### What constitutes an assured tenancy

**13.** A tenancy under which a dwelling is let as a separate dwelling situated, or deemed to be situated, in a regulated area is for the purposes of this Act an assured tenancy if and so long as -

- (1) the tenant or, as the case may be, each of the joint tenants is an individual; and
- (2) the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling as his or her principal home; and
- (3) the tenancy is one which by virtue of section 14 is not an assured tenancy;

#### Exclusions

**14.** The following tenancies are not assured tenancies :

- (1) a tenancy which is granted to a person who is pursuing, or intends to pursue, a course of study provided by an educational institution and which is so granted by that institution;
- (2) a tenancy the purpose of which is to confer on the tenant the right to occupy the

dwelling for a holiday.

(3) a tenancy which is granted to a person under an agreement as contemplated in section 19(2), unless the period of the agreement has expired and the tenant has remained in occupation of the dwelling with the express or tacit consent of the landlord.

#### **Grounds for notices to tenants to vacate assured tenancies**

**15.** (1) The landlord of an assured tenancy may not give the tenant notice to vacate the dwelling except on the following grounds :

- (a) the tenant or any person under his or her control has or is causing material damage to the dwelling; or
- (b) the tenant or any person under his or her control has been or is causing a nuisance to occupiers of adjoining or neighboring property; or
- (c) the landlord reasonably requires the entire dwelling for his or her personal occupation or that of his or her parent or child and provided that the tenant is given 3 (three) months' notice in writing to vacate the dwelling; or
- (d) subject to the provisions of the Extension of Security of Tenure Act, 1997 (Act No, 62 of 1997) the tenant was formerly, but no longer is, in the employ of the landlord and the landlord requires the dwelling for the occupation of a person in his employ; or
- (e) the dwelling is reasonably required by the landlord for purposes of any reconstruction or rebuilding scheme, repairs, restoration or conversion and the landlord has given the tenant 6 (six) months' notice in writing to vacate the dwelling: Provided that -
  - (i) in the case of any repairs or restoration, the agreement in question shall be suspended until the date of completion of such repairs or restoration, unless the tenant notifies the landlord before such date that he waives his rights;
  - (ii) should the matter proceed to a competent court, before such court issues an order for eviction the landlord must furnish such security as the court may deem sufficient to meet any claim for compensation which the tenant may have; or
- (f) the tenant has failed to pay the rent by the 7th of the month in respect of which such rent is payable.

(2) Notice on the grounds of subsection 1(b) may not be given without the approval of the Tribunal first being obtained.

### **Increases in rent in respect of assured tenancies**

**16.** (1) The landlord of an assured tenancy may not increase the rent for the dwelling except by an amount equal to the actual increase in costs in respect of the elements of rent referred to in section 20(1)(h)(ii), (iii) and (v) plus an amount equal to the percentage prescribed by the Minister by notice in the *Gazette* of the sum of the elements of rent referred to in section 20(1)(h)(i), (iv) and (vi).

(2) Notwithstanding the provisions of subsection (1), either party of an assured tenancy may apply in writing to the Tribunal for the determination by the **Tribunal** of a reasonable rent in terms of section 9(2)(a), and must serve a copy of the written application on the other party.

### **Determination of reasonable rent by Tribunal in respect of assured tenancies**

**17.** (1) A Tribunal must on application made in terms of section 16(2) determine a reasonable rent in accordance with subsection (3).

(2) Before determining a reasonable rent the Tribunal must allow the other party at least 21 days to make written representations in response to the application made in terms of section 16(2).

(3) In determining a reasonable rent a Tribunal must -

- (a) consider the reasons on which the application is based and any representations made by the other party,
- (b) take into consideration the elements of rent referred to in section 20(1)(h), the nature of the area in which the dwelling is situated, the age and condition of the dwelling, comparative housing rents in the area, the rent which a willing tenant would, in the open market, pay a willing landlord for a dwelling in the area and any other factor which the Tribunal deems relevant for its purpose; and
- (c) make reasonable allowance for administration costs and maintenance, having regard to the condition of the dwelling and the estimated cost of repairs and renovations and allow the **full** amount of proven costs in respect of the elements specified in section 20(1)(h)(ii), (iii) and (v).

(4) The Tribunal must convey its determination of a reasonable rent by way of a written notice to both parties and such notice constitutes an order for purposes of section 9(2)(h).

## CHAPTER V

### Relations between landlords and tenants

#### General provisions

18. (1) In advertising housing for rent, or in negotiating a lease of housing with a prospective tenant, or during the term of a housing lease, a landlord may not **unfairly** discriminate against such prospective tenant or tenant, or the members of such tenant's household or the *bona fide* visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, **colour**, **sexual** orientation, age, disability, religion, conscience, **belief**, culture, language and birth.

(2) During a tenancy the landlord must at **all** times respect and protect the dignity of his or her tenants.

(3) A tenant has the right, during his or her tenancy, to privacy and the landlord may only exercise his or her right of inspection in a reasonable manner after reasonable notice to the tenant. The tenant's rights *vis-a-vis* the landlord include his or her right not to have -

- (a) his or her person or home searched;
- (b) his or her property searched;
- (c) his or her possessions seized, except in terms of law of general application and having first obtained an order of court; or
- (d) the privacy of his or her communications infringed.

(4) **The** rights set out in subsection (3) apply equally to members of the tenant's household and to *bona fide* visitors of the tenant.

#### Agreements between landlords and tenants

19. (1) An agreement between a landlord and tenant maybe verbal or in writing.

(2) If in writing, the agreement must be signed by the parties, or by their agents acting on their written authority and must contain at least the standard provisions set out in section 20 hereunder.

(3) Any agreement referred to in subsection (2) which does not contain any of the standard provisions set out in section 20 is voidable at the instance of the tenant.

(4) The standard provisions referred to in section 20 cannot be waived by either the landlord or the tenant.

(5) Either party may, within 7 days of the conclusion of a verbal agreement, insist that such agreement be reduced to writing.

(6) The landlord must provide the tenant with a signed copy of the agreement within 7 days of the date on which such written agreement is concluded;

(7) In respect of an agreement referred to in subsection (2) -

- (a) the landlord must **furnish** the tenant with a written receipt for **all** payments (rental, arrears, deposit and otherwise) received by the landlord from the tenant;
- (b) such receipt must be dated and clearly indicate the address of such dwelling, whether payment has been made for rental, arrears, deposit or otherwise and **specify** the period for which payment is made;
- (c) before moving into the dwelling the landlord may require a tenant to pay a deposit which may not exceed an amount equivalent to double the rental of one rental period for the dwelling;
- (d) the deposit must be invested by the landlord in an interest bearing account with a registered deposit taking institution and the interest from such deposit accrues to the tenant;
- (e) before moving into the dwelling the landlord and tenant must jointly inspect the dwelling to ascertain the existence of any defects or damage therein with a view to determining the landlord's responsibility for **rectifying** any defects or damage or with a view to registering such defects or damage, as provided in section 20(2).
- (f) at least one week before the expiration of the agreement the landlord must, in the presence of the tenant, inspect the dwelling with a view to ascertaining damage caused to the dwelling during the tenant's occupation **thereof**;
- (g) on the expiration of the agreement, the landlord may apply such deposit and interest toward the payment of **all** amounts for which the tenant is liable under the said agreement, including the reasonable cost of repairing damage to the dwelling during the tenancy and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be **refunded** to the tenant by the landlord not later than 14 (fourteen) days of restoration of the dwelling to the landlord. The relevant receipts which indicate the costs which the landlord incurred must be available to the tenant for inspection as proof of such costs incurred by the landlord;
- (h) should no amounts be due and owing to the landlord in terms of the agreement

the deposit, together with its accrued interest, must be **refunded** by the landlord to the tenant, without any deduction or set-off, within 7 (seven) days of restoration of the dwelling to the landlord;

- (i) **failure** by the landlord to inspect the dwelling in the presence of the tenant as contemplated in subsections (7)(e) or (7)(f) is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair, and the landlord shall have no **further** claim against the tenant who must then be **refunded**, in terms of this subsection, the **full** deposit plus interest by the landlord;
- (j) should the tenant fail to respond to the landlord's request for an inspection as contemplated in subsection 7(f) the landlord must, on expiration of the agreement, inspect the dwelling within 7 days from such expiration in order to assess any damages or loss which occurred during the tenancy. The landlord may then deduct from the tenant's deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys. The balance of the deposit and interest, if any, must then be **refunded** to the tenant by the landlord not later than 21 (twenty one) days **after** expiration of the agreement. The relevant receipts which indicate the costs which the landlord incurred must be available to the tenant for inspection as proof of such costs incurred by the landlord; and
- (k) should the tenant vacate the dwelling before expiration **of** the agreement without notice to the landlord, the agreement is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling :  
Provided that in such event the landlord retains all his or her rights arising from the tenant's breach of the agreement.

(8) If on the expiration of the agreement referred to in subsection (2) the tenant remains in the dwelling with the express or tacit consent of the landlord the parties are deemed, in the absence of a further written agreement, to have entered into a periodic tenancy agreement on the same terms and conditions as the expired agreement, except that at least one month's written notice must be given of the intention by either party to terminate the agreement.

### **Standard provisions to be incorporated in agreements between landlords and tenants**

20. (1) The following provisions must be in **all** agreements referred to in section 19(2) :

- (a) names of the landlord and the tenant and their addresses in the Republic for purposes of formal communication;
- (b) the description of the dwelling which is the subject of the agreement;
- (c) the precise amount of rent of the dwelling and escalation, if any, to be paid in



terms of the agreement;

- (d) the frequency of rent payments;
- (e) amount of deposit, including key money, if any;
- (f) duration of the agreement;
- (g) obligations of the landlord and the tenant;
- (h) the following elements of the rent must be specified and quantified:
  - (i) the nett amount of rent, excluding the elements in (ii) to (vi);
  - (ii) rates and taxes;
  - (iii) **service** charges;
  - (iv) amount set aside for maintenance;
  - (v) amount of insurance for the dwelling; and
  - (vi) administration costs.

(2) A list of defects registered in terms of section 19(7)(e) must be attached as an annexure to **all** agreements referred to in section 19(2).

(3) A landlord must ensure that the provisions of subsections (1) and (2) are complied with.

## CHAPTER VI

### Miscellaneous provisions

#### Offences and penalties

**21.** Any person who contravenes the provisions of sections 6(a) and (b), 9(2)(e), 16(1), 18, 19(6) and (7) and 20(3), shall be guilty of an **offence** and **liable** on conviction to a fine of R5 000,00 or imprisonment for a period of 2 years or to both such fine and imprisonment.

#### Repeal of laws

**22.** The laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.

**Short title**

23. This Act is called the Housing Rental Act, 1998.

**Schedule****LAWS REPEALED BY SECTION 22**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 80 of 1976	Rent Control Act, 1976	The whole.
Act No. 23 of 1989	Rent Control Amendment Act, 1989	The whole.
Act No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 26.

EXPLANATORY MEMORANDUM  
HOUSING RENTAL **DRAFT** BILL, 1998

1. Over the last few decades, South Africa experienced a decline in investment in rental housing stock which has led to an imbalance in the rental market. Signs that the market is not operating well include high rentals, disputes between tenants and landlords, lack of maintenance to **buildings** and sometimes abandonment of buildings. **Besides** the decline in new investment, substantial **disinvestment** has also occurred. Conversions of housing rental stock to more profitable or popular usage are common place.
2. As a result, there is a shortage of especially low **cost rental** stock. Current housing **subsidy** policy does not specially promote the business of providing rental housing. The institutional subsidy mechanism does provide a rental option in as much as it requires a dwelling to be held by an institution for a minimum of 4 years before ownership may be **transferred** to a third party. However, only limited use has been made of this mechanism, mostly by philanthropic developers.
3. The formal private sector rental market in South Africa is characterised by high density, urban development financed by institutional and individual investors, a high standard of suburban rental units for middle to high income tenants, low to substandard inner city rentals where subletting is common, and hostels provided by employers mostly at mines. By contrast, the informal sector is characterised by subletting and the letting of backyard shacks in townships and allotments in squatter settlements on the urban **periphery**.
4. Public sector investment in rental housing is limited mostly to municipal housing schemes established under the **previous** dispensation, in which rental stock is diminishing owing to sales to promote home ownership among tenants. Often, problems with non-payment and inadequate administration and maintenance are found within these developments. Appalling conditions in public financed hostels are being addressed through the hostels redevelopment **programme** which is currently under review.
5. A strong latent demand exists for rental housing, especially for the income group R 1 500 to R 3 500 per month. Rental in urban areas is often preferred because ownership tends to **limit** economic mobility. Ownership is also often preferred in traditional areas. Ownership satisfies higher order needs and is often not a priority. Moreover ownership is constrained by the limited **availability** of affordable home loans and because the **secondary** market for the **historically** disadvantaged is still under-developed. However, demand is not being counterbalanced by the supply of rental housing. In fact the formal market supply is **dwindling**. **Conversions** to sectional title or alternative tenure options are common place and conversions to more profitable commercial uses exacerbate the problem even further.

**Investors** are concerned about inadequate returns on their investments and escalating costs due to increasing interest rates, rates and taxes and municipal **service** charges and higher maintenance costs. There also exists a fear that the scope of rent control will be extended. In addition, development is moving away from inner city areas which in turn leads to urban decline. Crime and violence are prevalent in certain inner city areas, adding momentum to the circle of disinvestment and **decline**. Current national housing **policy** tends to promote ownership ahead of rental. Development is **inclined** towards the urban **periphery** where land is cheaper. Inadequate incentives exist to promote rental housing in areas adjacent to employment or existing commuter transport systems. It is also common knowledge that the informal rental market seldom provides adequate housing. The inferior quality of **informal** rental **housing**, coupled to insecure tenure arrangements, tends to proliferate slum conditions. Consequently, the current housing **delivery** trends exacerbate the fragmented urban structure by perpetuating past injustices and patterns of human settlement.

6. The Housing White Paper, 1994, recognises the need to promote rental housing, but the institutional subsidy has so far made little impact. A comprehensive housing rental **policy** framework is thus still lacking. The Housing Act, 1997, established housing development principles which provide for as wide a choice of housing and tenure options as is reasonably possible, the promotion of a process of racial, social economic and physical integration, **holistic** development to ensure the elimination and prevention of slums, higher densities to ensure the economic **utilisation** of land and services, the promotion of the effective functioning of housing, as well as for consumer protection. Housing development principles cannot be satisfied without measures to promote an adequate supply of rental housing.
7. Internationally, there appears to be general agreement that rent control curtails **investment**. It is the common view that the abolition of rent control will establish an environment conducive to investment and will allow the market to operate more efficiently. However, within the confines of the South **African** environment, positive intervention and judicious regulation are needed. Incentives that enhance this sector of the housing market are **indicated**, whereas measures to facilitate dispute resolution within the rental market **appear necessary**. Positive intervention would also include incentives to establish a sustainable social housing process that provides new housing **stock** for persons who do not wish to own homes as this will suit South African's migratory **patterns**, rural to urban migration and cyclical migration. A hallmark of the social housing process is tenant participation in the management of rental stock. Such a process will also allow new stock to be paid for over longer periods of time and will provide a choice of tenure arrangements. Investment in rental housing will impact positively on the economy. It will expand the construction sector to the benefit of job creation. Because the construction sector has a large multiplier effect other economic sectors will also benefit. Economic growth will be stimulated.

8. The Rent Control Act, 1976 inhibits the proper functioning of the housing rental market and provides inadequate consumer (tenant) protection. Although the Act applies to less than one percent of housing rental stock in South **Africa**, and then only to premises situated in former White urban areas and only to areas for which rent boards have been established, it's scope of application may be extended to any rental property at any time by presidential decree, without Parliamentary approval. Moreover the provisions of the Act are **considered** inappropriate and obsolete because reasonable rent is defined as 8,5 % per annum of the value of land and improvements and the **definition** of rent value as **applied** in practice leads to inadequate returns on investment. This Act was originally promulgated **as** a post- 1920 "War Measure" and later adapted for urban **Whites**. The Act **is** therefor inequitable as it applies only to selected former White areas and specified beneficiaries and it **discriminates** between categories of tenants and their landlords.
  
9. A rental policy framework must therefore be established. It must promote a stable and growing market that progressively meets the latent demand for affordable rental housing among the historically disadvantaged, by the introduction of incentives and mechanisms that improve conditions in the housing rental market and encourage private investment **in** affordable housing rental stock in targeted areas. The objects of the rental **policy** framework must be to:
  - (a) enhance private investor confidence in the housing rental market by the removal of the perceived threat of rent control and by introducing measures to improve landlord/tenant relations and to resolve **conflict**;
  - (b) provide a financial incentive that will encourage the private sector to invest in the **rehabilitation/conversion** of buildings or the construction of new higher density affordable housing for rental;
  - (c) direct new private investment in rental housing to inner city areas that are in need revitalisation and resuscitation, and areas requiring urban **infill** in order to address distorted patterns of residential settlement or urban **sprawl**. It must optimise the use of existing urban municipal and transport infrastructure, redress and inhibit further urban fragmentation or sprawl, and promote higher densities in existing areas as well as in areas of new or consolidated urban growth, such as corridor development initiatives;
  - (d) promote the establishment of a sustainable social housing movement by recognizing, and providing **policy** and financial support to, the Social Housing Foundation in it's **advocacy**, development and capacity building efforts;

- (e) mobilise private management capacity and expertise in the **administration** of rental housing for historically disadvantaged persons;
  - (f) introduce measures and mechanisms to resolve conflict between landlords and tenants and to **normalise** the housing rental market in areas of proven **instability**;
  - (g) afford tenants added protection by expanding on their constitutional and contractual rights and prescribing fair and transparent practices in the letting of housing and
  - (h) promote integrated and balanced urban planning and development.
10. The Housing Rental Draft Bill therefor aims to empower and to enable a housing rental **policy** framework by promoting access to rental housing for **historically** disadvantaged people, by regulating housing rental matters only **in** areas where a severe breakdown in **landlord/tenant** relations has occurred, by enhancing and extending consumer (tenant) protection to all and by removing the perceived threat of the extension of rent control by administrative decree. Accordingly, the Draft Bill provides for measures to enhance the provision of rental housing through the **formal** recognition and support of the Social Housing Foundation in its efforts to **create** a sustainable social housing movement in South **Africa** through advocacy and capacitation support and for the introduction of a housing rental subsidy programme to promote the production of new properly located high density housing stock. The Draft **Bill** also seeks to address the breakdown in **landlord/tenant** relations by providing for the identification and regulation of affected areas, and for the establishment of Housing Rental Tribunals to oversee and normalise affected areas. The enhancement and extension of housing consumer protection is effected by expanding on the constitutional rights of "Equality", vis a vis unfair **discrimination**, "Human Dignity" and "Privacy" in relation to housing rental, prescribing the form and minimum content of written lease agreements and **providing** appropriate penalties for the transgression of tenants rights and the non-adherence to **statutory** obligations.

Lastly in order to obviate the possible extension of rent control by decree, it is proposed that the Rent Control Act, 1976, be repealed.

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