

SPECIAL ISSUE

Elgeyo/Marakwet County Gazette Supplement No.10 (Acts No. 4)



REPUBLIC OF KENYA

***ELGEYO/MARAKWET COUNTY
GAZETTE SUPPLEMENT
ACTS, 2014***

NAIROBI, 30th June, 2014

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NO. 4 OF 2014

DATE OF ASSENT: 24TH APRIL, 2014

DATE OF COMMENCEMENT: 20TH JUNE, 2014

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THE ELGEYO/MARAKWET COUNTY ASSEMBLY REVOLVING FUND BILL, 2014

A Bill for

AN ACT of the County Assembly of Elgeyo/Marakwet to establish a Revolving Fund to provide for low-interest loans to members of the County Assembly of Elgeyo/Marakwet and for connected purposes.

ENACTED by the County Assembly of Elgeyo/Marakwet, as follows—

PART I— PRELIMINARY

Short title and Commencement.

1. This Act may be cited as the County Assembly Revolving Fund Act, 2014 and shall come into operation on the date of publication in the *Gazette*.

Interpretation.

2. In this Act, unless the context otherwise requires—

‘Applicant’ means a member of the County Assembly of Elgeyo/Marakwet;

“Assembly” means the Elgeyo/Marakwet County Assembly;

"Board" means the Elgeyo/Marakwet County Assembly Service Board;

“Borrower” means a person in receipt of a loan out of the fund;

“Committee” means the Loans Management Committee established under section 6;

“financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the Elgeyo/Marakwet County Assembly Revolving Fund

established under section 3;

'Loanee' means an applicant whose loan request has been approved and granted under this Act;

"Member of the Executive Committee" means the Member of the County Executive Committee responsible for finance;

"member of the Scheme" means a member of the County Assembly;

"officer administering the Fund" means the Clerk of the County Assembly;

"Prescribed" means prescribed by the Board;

"property" means a car or residential house purchased through a loan from the Fund and includes the land purchased under loan from the Fund on which such house is to be developed; and

"valuer" means a person registered as a valuer under the Valuers Act .

PART II -ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the Fund.

3. (1) There is hereby established a Fund to be known as the County Assembly Revolving Fund.

No. 18 of 2012

(2)The Fund shall be managed and maintained in a separate account opened and operated in accordance with the Public Finance Management Act, 2012.

Object and purposes of the Fund.

4. The object and purpose of the Fund is to establish a loan scheme to provide loans to members of the Assembly at low interest rates of 3%(three per centum) to -

(a) purchase vehicles or residential houses; or

(b) develop, renovate or repair their residential property.

Capital of the
zfund.

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the account of the Fund on the date of the coming into operation of this Act.

(2) County Assembly may appropriate additional monies to the Fund as it may deem appropriate.

(3) The Fund shall be administered as a special account in the Elgeyo/Marakwet County Assembly Revolving Fund and shall be operated by the officer administering the Fund.

(4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the administrative expenses shall be credited to the capital of the Fund.

(5) There shall be credited to the Fund -

(a) monies appropriated to the Fund by the County Assembly from time for that purpose;

(b) monies received as repayment of the capital and interest of any loan granted to a member;

(c) income from any investment made by the Committee with the approval of the Board; and

(d) any gifts, donations, grants and endowments made to the Fund.

(6) There shall be paid out of the Fund –

(a) sums of money for loans approved by the Committee under this Act;

(b) salary and allowances of the Fund Accountant if specifically appointed for the Fund;

(c) any expenditure approved by the Board and incurred in connection with the administration of the Fund.

Establishment of a Loans Management Committee.

6. There is established a committee to be known as the Loans Management Committee, which shall consist of—

- (a) the Vice-chairperson of the County Assembly Service Board who shall be the Chairperson of the Committee;
- (b) the chairperson of the Welfare Committee who shall be the Vice chairperson of the Committee;
- (c) the Chief Whip of the majority party;
- (d) the Chief Whip of the minority party;
- (e) the member of the Board appointed from the public;
- (f) two members of the County Assembly elected by the Assembly;
- (g) the officer administering the Fund, who shall be an *ex-officio* member, shall be the secretary to the Committee.

Functions of the Committee.

7. The functions of the Committee shall be to administer the Fund on behalf of the Board and as such shall—

- (a) approve applications for loans in accordance with the prescribed terms and conditions of borrowing;
- (b) liaise with a financial institution, if any, to set up a revolving fund for the disbursement of the loans;
- (c) oversee the day-to-day running of the Fund;
- (d) oversee the implementation and carrying out policies formulated by the Board for the management and administration of the Fund;
- (e) raise and solicit funds and other assistance for the Fund;
- (f) set the criteria and conditions, with the approval of the Board, for granting of loans;
- (g) receive gifts, donations, grants or endowments made to the

Fund;

- (h) establish and maintain links with other persons, bodies or organizations within or outside Kenya, as the Board may consider appropriate, in accordance with the law, for the furtherance of the purposes for which the Fund is established;
- (i) prepare quarterly and annual reports on the operations and performance of the Fund for submission to the Board and County Assembly;
- (j) perform and exercise all other functions and powers conferred on the Committee under this Act or any other law.

Meetings of the
Committee.

8. (1) The Committee shall meet at least four times in a year but the Chairperson-

- (a) may convene a special meeting of the Committee if there is need to do so; and
- (b) shall convene a special meeting upon the request, in writing, by at least four members of the Committee.

(2) The Chairperson shall preside at all the meetings of the Committee and in his or her absence the Vice-chairperson shall preside and in the absence of both, the members present shall elect one of their number to preside at that meeting.

(3) The quorum for a meeting of the Committee shall be the Chairperson and any three other members of the Committee.

(4) All questions at a meeting of the Committee shall be determined by a simple majority of the votes of the members present and voting.

(5) The Chairperson shall, in case of equality of votes, have a casting vote

in addition to the original vote.

(6) The Secretary shall cause the proceedings of the meetings of the Committee to be kept and entered into the Minute-Book kept for that purpose.

(7) Subject to the provisions of this Act, the Committee shall regulate its own proceedings.

Appointment a
financial
institution.

9.(1) Notwithstanding section 7, the Board may, if it considers it appropriate to do so, appoint a Financial Institution to administer the Fund on its behalf.

(2) A financial institution appointed under this section, if any, shall —

- (a) operate individual accounts for each member of the scheme in order to provide details of recoveries of the loan;
- (b) charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of those charges;
- (c) disburse cheques for newly approved loans to the various members of the Scheme, after the necessary documentation is completed by the Committee;
- (d) pay all outgoings and issue demand notices to members of the Scheme where necessary, through the officer administering the Fund; and
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, discharge the charge and release the security documents to the member of the scheme.

Consultation with

10. The Board shall make all its decisions under this Act after consultation

Remuneration
Commission.

with the Salaries and Remuneration Commission to ensure that decisions conform to the guidelines or directives issued by the Commission.

Officer
administering the
Fund.

11. (1) The Clerk to the Assembly shall be the officer administering the Fund and as such shall—

- (a) supervise and control the administration of the Fund and other incidental investments thereto;
- (b) keep records and all legal documents relating to the Fund;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General in respect of each financial year, within three months after the end of that year, a statement of accounts relating to the Fund, specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act;
- (e) furnish additional information that may be required for the purpose of examination and audit by the Auditor-General; and
- (f) designate and appoint staff as may be necessary to assist in the administration of the Fund;
- (g) carry out such inspections as may be necessary to verify any information submitted by a loan applicant under this Act
- (h) prepare and submit reports to the Committee.

(2) Every statement of account prepared under this section shall include

details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Application for a loan

12. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make the application to the officer administering the Fund in the prescribed form.

(2) The grant of a loan by the Committee shall be preceded with due compliance of the conditions of the loan by the applicant.

(3) A member of the Scheme applying for a loan who -

(a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing relating to any matter affecting the request for a loan;

(b) negligently furnish any information or particulars or produce any document or paper without reasonable cause; and is granted a loan based on false information commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of not less than three years and not more than five years.

(4). A loan granted based on false information shall be recalled and cancelled.

Conditions for granting a loan.

13. (1) The Committee may –

(a) accept or reject any application for a loan under this Act and give reasons for the rejection to the member of the scheme;

(b) impose conditions, demand security and require repayment in installments at intervals and within such periods as the Committee may, with the approval of the Board determine.

(2) A loan granted to a member of the scheme shall not exceed the aggregate of the salary and other emoluments due and receivable by the member for the balance of the term to be served in the Assembly.

(3) The total loan together with interests and other charges accrued on the loan shall be fully paid and recovered at least ninety days before the expiry of the term of the member of the County Assembly to whom the loan have been made.

(4) The Committee may upon the request by a member of the scheme to whom a loan has been granted, at any time vary –

- (a) the condition subject to which the loan was made; any security given in relation to the loan;
- (b) any of the terms of repayment of the loan.

(5) In the interest of the Fund, the Committee may, if it considers it prudent, request a member of the scheme granted a loan to present a person to guarantee the loan and where it does so, the person who guaranteed the loan, shall automatically and fully be liable to pay the loan in case of any default by a member of the scheme, together with any interest accrued and outstanding on the loan and the Committee shall notify the guarantor to the effect.

PART III – LOAN FOR DEVELOPMENT OF RESIDENTIAL PROPERTY

Utilization of residential property loan.

14.(1) A loan obtained under this Act shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his other immediate family.

(2) A loan for the development of residential property may be granted at the discretion of the Committee to a member of the Scheme who

is in possession of a title deed to the land on which development is intended to be carried out.

Disbursement of loans for development.

15. A loan for the development of a residential property under this Act shall be released to the applicant based on the value of the land on which the residential property is situated and the estimated cost of construction as per the bills of quantities.

Documents accompanying the application.

16.(1) An application for a loan under this Act shall be accompanied by the following documents where appropriate—

- (a) copies of the designs of the proposed residential property;
- (b) Bills of quantities in respect of the proposed development, renovation or repair;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) Where a member of the scheme fails to comply with the requirements of sub section (2) within the stipulated time, the officer administering the Fund shall, upon giving the member of the scheme fourteen days' notice, deduct the amount due from the salary of that member of the scheme in such installments as may be appropriate and remit the deductions to meet the costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Committee.

Leasehold property.

17.Where the property intended to be purchased through a loan from the

Fund is leasehold property, the loan shall be granted where the expiry date of the lease is at least forty-five years beyond the final loan repayment date.

Maximum loan disbursement.

18.The maximum loan to be granted under this Part to a member of the Scheme shall be three million Kenya shillings.

Lien on property.

19.(1) The Board shall have a charge registered on the property financed through a loan granted under this Part and shall be entitled to have its name entered in all documents of title for that property.

(2) The member of the scheme shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the board;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Board; and
- (c) provide a transfer deed duly signed by the member of the scheme and a letter authorizing the board to sell the property in case of default in payment.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Board.

(4) During the loan repayment period, every member of the scheme shall—

- (a) maintain the property in a satisfactory state of repair; and
- (b) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating

to the property or title thereto, as the case may be, without the approval of the Board.

(5) No member of the scheme shall be eligible for more than one Mortgage loan at a time.

(6) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

Mortgage Insurance.

20.(1) A member of the Scheme receiving a loan under this Part shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Board.

(2) The originals of all documents relating to the property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

PART IV – PROVISIONS RELATING TO CAR LOAN

Security for a Car Loan.

21. (1) A loan approved under this Part shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Committee.

(2) The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the Board and the member of the Scheme and shall be kept in the custody of the officer administering the Fund until the loan is repaid in full by the member of the Scheme.

Temporary release of log-book.

22. (1) A log-book kept in custody by the officer administering the Fund may be temporarily released to a member of the Scheme upon application in writing to the officer administering the Fund for purposes of renewal of the necessary licenses by that member.

(2) A log-book released under subsection (1) shall be returned to the officer administering the Fund within seven working days from the date of the release.

(3) The officer administering the Fund shall acknowledge receipt of the log-book in writing.

Loan amounts.

23. (1) The loan amount that a member of the Scheme may receive shall be the value of the vehicle that the member of the Scheme proposes to purchase, subject to the maximum amount of two million shillings or such ceiling as the Salaries and Remuneration Commission may determine from time to time .

(2) For the purpose of this Act, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from a registered valuer.

(3) No member of the Scheme shall receive a loan the repayment of which shall result in monthly deductions exceeding two thirds of the monthly salary and other emoluments of the member of the Scheme.

Vehicle and loan insurance.

24. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Scheme.

(2) Every loan granted under this Act shall be insured for the benefit of the member of the Scheme and the premium in respect thereof shall be debited to the account of the member of the Scheme.

Loan discharge.

25. (1) Upon full repayment of the loan, a signed loan discharge certificate

in such form as may be prescribed by the Committee shall be issued to the member of the Scheme and a copy shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge certificates shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the vehicle pursuant to this Act.

PART V- REPAYMENT OF A LOAN

Loan deductions. **26.**In making any deduction for a loan recovery, the officer administering the Fund shall ensure that no more than two-thirds of the member's gross monthly salary and other emoluments are deducted from the member.

Interest on loans. **27.**(1) The interest chargeable on a loan under this Act shall be three per centum per annum on a monthly reducing balance.

(2) A Financial institution appointed under section 9 may charge interest not exceeding three per centum per annum to cover management costs and that interest shall be met by the Fund.

(3) The interest charged under sub section (1) shall be utilized to defray the administrative expenses of the Fund, other charges and for re-investment.

Authority to charge Gratuity or Pension of a member of the scheme. **28.**A member of the Scheme shall be required to give prior authority in writing for gratuity dues to be utilized to clear any outstanding debt in case the member loses the County Assembly seat before fully repaying the loan.

Sell of charged **29.**Upon default to repay the loan the Board shall sell the charged car

car or property.

or property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

(2). The Board shall take out and maintain a car and property insurance policy with an insurance firm determined by it to cover any situation under sub section (1).

Recall of a loan.

30.(1) If in the opinion of the Committee, there has been or there is likely to be a breach of or failure to comply with any condition or term of repayment respecting a loan, the Committee shall forthwith recall the loan with the approval of the Board and take action to -

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- (a) recover from the relevant member or the personal representative(s), as a civil debt under the Debts (Summary Recovery) Act, the amount of the loan or the remaining unpaid amount on the loan together with interest thereon;
- (b) enforce or realize any security relating thereto.

(2) The Committee may with the approval of the Board, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

PART VI— MISCELLANEOUS PROVISIONS

Staff of the Fund.

31.The Board shall utilize the services of the existing staff from the relevant department in the administration of the Fund by the Committee or may employ a fund accountant to assist the Committee in the management and administration of the loans granted under this Act.

Waive or writing off a loan.

32.(1)A loan granted by the Committee under this Act shall not be waived or written off unless, in case of the death of the person granted a loan, it has become impossible or unduly difficult to recover the loan on the basis that expenses to be incurred in its recovery would be far in excess of the amount sought to be recovered.

(2) Where the Committee recognizes that the status of a loan is as provided under sub section (1), the liability of the loan shall be extinguished or deemed to be abandoned under the provisions of this Act, other than this section, shall no longer apply to any such loan

Annual returns.

33. At the beginning of each calendar year and in any case, not later than the 31st day of January,the officer administering the Fund shall send to each member of the scheme having a loan, an annual return form on the status of that member's loan and any member having a loanmay,at any time, request for, and obtain information from the officer administering the Fund regarding the status ofhis or her loan.

Regulations.

34. (1) The Board may, after consultation with the Salaries and Remuneration Commission, make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Board may make regulations -

- (a) prescribing the form of application for a loan under this Act;
- (b) providing the form of receipt, processing and approval of applications for loans;
- (c) setting the preparation and maintenance of personal records of loans granted;
- (d) setting the method of withdrawal, recovery and cancellation of loans;
- (e) setting the procedures for waiving or exempting a member granted a loan from repayment of the loan;

- (f) setting the procedures for dealing with loan defaulters;
- (g) providing the form and procedure for investing funds for the benefit of the Fund;
- (h) prescribing anything to be prescribed under this Act.