



THE REPUBLIC OF KENYA

LAWS OF KENYA

HOUSING ACT

CHAPTER 117

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CHAPTER 117

HOUSING ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Establishment and constitution of National Housing Corporation.
4. Meetings and procedure of Corporation.
5. Accounts and report of Corporation.
- 5A. Bank account.
6. Establishment of Housing Fund.
7. Loans and grants by Corporation and repayments of loans.
- 7A. Powers of the Corporation to guarantee loans.
- 7B. Other powers of Corporation.
8. Charge of loan on rates and revenues of local authority.
9. Powers of the Corporation where local authority is in default.
10. Charge of service of loan to particular account.
11. Powers of local authorities.
12. Loans by local authorities for construction of dwellings.
13. Repayment of loans.
14. Security for loans.
15. Loan may be made notwithstanding that land not surveyed etc.
16. Discharge of security and repayment of loan.
17. Rate of interest on loans.
18. Remedies in respect of loans.
19. Approved schemes and dwellings may be exempted from by-laws, etc.
20. Minister's powers where inadequate accommodation provided.
21. Minister's powers upon failure of local authority to comply with requirements under section 23.
22. Additional duties of Corporation.
23. Borrowing by Corporation.
24. Regulations.
25. Powers of entry and inspection of premises.
26. Vesting in Corporation of rights and benefits in scheduled loans.
27. Provisions of this Act in relation to other laws.
28. Savings.

SCHEDULE

CHAPTER 117
HOUSING ACT

[Date of assent: 9th June, 1953.]

[Date of commencement: 9th July, 1953.]

An Act of Parliament to provide for loans and grants of public moneys for the construction of dwellings; to establish a housing fund and a housing board for these purposes; and for connected purposes

[Act No. 17 of 1953, Act No. 21 of 1960, Act No. 42 of 1960, L.N. 2/1964, Act No. 21 of 1966, Act No. 9 of 1967, Act No. 18 of 1967, Act No. 8 of 1968, Act No. 12 of 1985, Act No. 22 of 1987, Act No. 21 of 1990, Act No. 7 of 2007.]

1. Short title

This Act may be cited as the Housing Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**approved**” means approved by the Corporation;

“**dwelling**” means a building the whole or part of which is intended to provide residential accommodation;

“**grant**” means a grant of money made to a local authority out of the Housing Fund under the provisions of section 7(1)(a) of this Act;

“**Housing Fund**” means the Fund established under section 6 of this Act;

“**scheme**” means a proposal for the construction of several approved dwellings including such other proposals as may be necessary or desirable or incidental thereto by way of the provision of roads, drains, open spaces, places of worship, places of recreation, facilities for social welfare and trading, and the acquisition, laying out, subdivision and development of land comprised within the area of the scheme;

“**the Corporation**” means the National Housing Corporation established by section 3 of this Act.

[Act No. 42 of 1960, s. 3, Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 3.]

3. Establishment and constitution of National Housing Corporation

(1) There is hereby established a National Housing Corporation which shall be a body corporate by that name with perpetual succession and a common seal, and which shall perform the duties and have the powers conferred on it by this Act.

(2) The Corporation shall consist of the Permanent Secretary of the Ministry, a person appointed by the Minister for the time being responsible for Finance and not less than six nor more than eight other members appointed by the Minister, being persons who in his opinion possess special knowledge of housing development or housing finance and of whom at least three shall be public officers, and the Minister shall designate one of the members to be chairman.

(3) Appointed members of the Corporation shall each hold office for a period of three years or such longer period as the appointing Minister may think fit, but an appointment may be cancelled at any time by the Minister who made it.

(4) The Corporation shall have power to enter into contracts, to hold and dispose of property both movable and immovable, and may sue and be sued in its corporate name.

[Act No. 21 of 1966, Second Sch., Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 4, Act No. 8 of 1968, Sch.]

4. Meetings and procedure of Corporation

(1) In the absence of the chairman from any meeting of the Corporation, a person shall be chosen by the members present at the meeting, from their number, to preside at such meeting.

(2) The quorum of the Corporation shall be four members, of whom at least two shall be public officers and at least two shall be persons who are not public officers.

(3) The person acting as chairman of any meeting of the Corporation shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote. A decision of the majority of the members present and voting at a meeting of the Corporation shall be deemed to be the decision of the Corporation.

(4) The Corporation shall have power to act notwithstanding a vacancy among the members thereof, and all acts done at any meeting of the Corporation shall, notwithstanding that it was afterwards discovered that there was some defect in the appointment of a person purporting to be a member of the Corporation, be as valid as if that defect had not existed.

(5) Subject to this section, the Corporation shall have power to regulate its own procedure.

(6) The seal of the Corporation shall be authenticated by the signature of the chairman of the Corporation, or any other member of the Corporation, authorized in that behalf, and the officer for the time being the managing director of the Corporation, and such seal shall be officially and judicially noticed.

(7) All documents, other than those required by law to be under seal, made by, and all decisions of the Corporation may be signified under the hand of the chairman, or any other member of the Corporation authorized in that behalf.

[Act No. 18 of 1967, ss. 5, 10, Act No. 22 of 1987, Sch.]

5. Accounts and report of Corporation

(1) The Corporation shall cause to be kept proper books of accounts, records and vouchers in relation to its funds and activities, and shall, within four months (or such longer period as the Minister may approve) after the end of each financial year, cause to be prepared, signed and transmitted to the auditor—

- (a) a capital account;
- (b) a balance sheet;
- (c) a statement of income and expenditure; and
- (d) such other accounts as the Minister may require.

(2) The accounts of the Corporation shall be examined, audited and reported upon annually by the auditor.

(3) The Corporation shall, when required by the auditor so to do, produce and lay before the auditor all accounts of the Corporation, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require from all members, officers and servants of the Corporation such information and explanations as he may deem necessary for the purposes of his duties as auditor.

(4) The Corporation shall, within a period of six months (or such longer period as the Minister may approve) after the end of each financial year, furnish to the Minister a report on its operations during that year, the accounts, balance sheet and statement referred to in subsection (1) of this section, and the auditor's report for that year.

(5) The reports furnished under subsection (4) of this section, and the capital account and such accounts and statements as the Minister deems sufficient, shall be laid by the Minister before the National Assembly within the next fourteen days on which the Assembly is sitting after they have been so furnished, and shall be published in the *Gazette* by the Corporation.

(6) For the purposes of this section—

“**auditor**” means the Auditor-General (Corporations);

“**financial year**” means any period of twelve months which the Corporation may adopt as its financial year for accounting purposes:

Provided that, where at any time the financial year of the Corporation is changed, the period between the end of the old financial year and the beginning of the new shall, for the purposes of this section, be deemed to constitute a financial year and the word “**annually**” in subsection (2) shall be construed accordingly.

[Act No. 42 of 1960, s. 4, Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 10,
Act No. 12 of 1985, Sch.]

5A. Bank account

The Corporation shall keep all moneys belonging to it in a bank approved by the Minister.

[Act No. 18 of 1967, s. 6.]

6. Establishment of Housing Fund

(1) There is hereby established a Housing Fund under the control of the Corporation, consisting of such securities and money and applicable to such purposes as are provided for by this Act.

(2) There shall, by virtue of this Act and without further assurance, become vested in the Corporation the right of the Government to demand, sue for and recover, and give receipts for, and the benefit of all securities for every loan made to a local authority by the Government out of the Housing Fund established under the Housing Ordinance (Cap. 142 of 1948 now repealed) to the extent to which such loans, at the commencement of this Act, remain outstanding, and all moneys received by the Corporation on account of every such loan shall be carried to the Housing Fund.

(3) There shall also be paid to the Corporation and carried to the Housing Fund

- (a) all such moneys as may from time to time be voted or appropriated by Parliament for payment into the Housing Fund;
- (b) the repayments of principal or interest made by any local authority on account of any loan referred to in subsection (2);
- (c) all repayments of principal or interest made by any local authority, company, society or individual person, on account of any loan made by the Corporation under this Act;
- (d) all such sums as may from time to time be borrowed by the Corporation in exercise of the powers conferred by this Act; and
- (e) all such sums as may from time to time become due upon any investment made by the Corporation in exercise of the powers conferred by this Act.

[Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 10.]

7. Loans and grants by Corporation and repayments of loans

(1) The Corporation may, from the Housing Fund and from time to time, in the manner provided by this Act—

- (a) lend or grant money to any local authority, for the purpose of enabling the authority to exercise any of the powers conferred upon it by this Act;
- (b) make loans to any company, society or individual person for the purpose of enabling such company, society or individual person to acquire land and construct thereon approved dwellings or to carry out approved schemes;
- (bb) make loans to organizations established for promoting the development of housing;
- (c) construct dwellings, carry out approved schemes and lay out and provide services for approved schemes;
- (d) acquire any land or building, or estate or interest therein, for any of the purposes of this Act;
- (e) maintain any land or building, or estate or interest therein, for any of the purposes of this Act;
- (f) appoint and employ on such terms and condition as the Corporation may determine such officers and servants as it may deem necessary;
- (g) pay such allowance to members of the Corporation as the Minister may, in writing, approve.

(2) Every loan made by the Corporation under this Act shall bear interest at such rate as the Corporation may from time to time prescribe.

(3) The Corporation, in considering the propriety of making a loan to any company, society or individual person, shall have regard to the financial position of the company, society or individual person and the sufficiency of the security for the repayment thereof.

[Act No. 18 of 1967, ss. 7, 10.]

7A. Power of the Corporation to guarantee loans

(1) The Corporation may guarantee the repayment of the principal money and interest and other charges in respect of any loan which has been made to a person for the purpose of enabling him to buy or construct an approved dwelling or to carry out an approved scheme, upon—

- (a) that person entering into an agreement with the Corporation to reimburse to it any money which it is called upon to pay under the guarantee; and
- (b) security being provided for the due performance of such agreement.

(2) Security to be provided under subsection (1)(b) shall be—

- (i) a right of pre-emption of the property given to the Corporation by the first mortgagee; and
- (ii) such other security (if any) as the Minister may in any particular case authorize.

(3) Any moneys which the Corporation is called upon to pay under guarantee given under subsection (1) of this section shall be provided from the Housing Fund.

[Act No. 18 of 1967, s. 8.]

7B. Other powers of Corporation

The Corporation may—

- (a) undertake and encourage research and experiment in housing related matters, and undertake and encourage the collection and dissemination of information concerning housing and related matters;
- (b) take part in housing exhibitions and other forms of publicity;
- (c) undertake and encourage the provisions of training in furtherance of the purposes of this Act and provide training for members of its staff;
- (d) perform such other duties connected with housing as the Minister may direct;
- (e) to operate a housing finance institution with powers to borrow funds from the Government, overseas agencies, pension and trust funds and any other institution or persons, as well as to collect deposits and savings from the public to be applied to the financing of residential housing development and related matters; and
- (f) to establish, promote or aid in establishing or promoting, constitute, form or organise companies syndicates or partnerships alone or in conjunction with any other person or institutions for the carrying on of any such functions as the Corporation is empowered to carry on under this Act.

[Act No. 18 of 1967, s. 8, Act No. 21 of 1990, Sch.]

8. Charge of loan on rates and revenues of local authority

(1) All loans made to a local authority by the Corporation shall be secured against the development financed by the loan advanced or against or in addition to any other specific immovable property owned by the local authority.

(2) The Corporation shall be a party to any contract or agreement between any person and the local authority advanced such loans with power to assume all the rights and remedies of such local authority in respect of developments financed by funds advanced by the corporation.

[Act No. 21 of 1990, Sch.]

9. Powers of the Corporation where local authority is in default

(1) Where a local authority defaults in the repayment of debt charges due to the Corporation, the Corporation shall take over the management of the property developed by the local authority using funds borrowed from the Corporation and assume collection of any monies payable to the local authority by the beneficiary or any other person as provided in section 8(2) until the outstanding debt is recovered substantially or in full.

(2) Upon taking over the management of the property under subsection (1), the Corporation shall have the same rights and obligations as the local authority has in respect of the developments financed with funds provided by the Corporation.

(3) Any shortfall experienced as a result of the Corporation exercising its powers under this section shall be recovered from any other securities provided by the local authority or as civil debt recoverable summarily.

(4) Notwithstanding any other provisions of this Act or of any other written law, the Corporation may take over the management, control and title to any property developed by a local authority which is in default using funds provided, secured or guaranteed by the Corporation upon the expiry of a ninety days' notice given by the Corporation to the local authority:

Provided that the Corporation shall compensate for the undeveloped site value of such property upon the vesting of title in the Corporation under this subsection.

[Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 10, Act No. 21 of 1990, Sch.,
Act No. 7 of 2007, Sch.]

10. Charge of service of loan to particular account

Where a loan is made by the Corporation to meet any expenditure of a local authority which is chargeable to a particular account, there shall be debited to that account all sums required for repayment of the principal of the loan, or for payment of interest thereon.

11. Powers of local authorities

Any local authority may—

- (a) out of loans or grants made to it from the Housing Fund—
 - (i) acquire land, construct approved dwellings and carry out approved schemes within the area of its jurisdiction;
 - (ii) with the approval of the Corporation, acquire land and construct approved dwellings or carry out approved schemes outside its area of jurisdiction; and

- (b) sell or let on such conditions as may be specified by the Corporation any dwelling constructed by it:

Provided that all moneys received by the local authority from the sale of any dwelling shall be appropriated to the reduction or extinction of any existing debt incurred for the construction of such dwelling.

12. Loans by local authorities for construction of dwellings

Any local authority may, out of any loan or grant made to it from the Housing Fund, make a loan to any company, society or individual person for the purpose of enabling such company, society or individual person—

- (a) to acquire land within the area of jurisdiction of such local authority and construct thereon approved dwellings; or
(b) to carry out therein an approved scheme:

Provided that no such loan shall exceed such proportion of the estimated cost of the land and dwelling or scheme as the Corporation may determine either generally or specially.

13. Repayment of loans

(1) Every loan made under this Act shall be repayable by such instalments as the Corporation or the local authority, as the case may be, shall specify and within a period not exceeding forty years or such other period as may be prescribed by the Minister.

(2) Where a loan has been made repayable within a period less than the full period allowed by subsection (1) of this section, the Corporation or the local authority, as the case may be, if the repayment of the loan with interest is in its opinion sufficiently secured, may extend the period for the repayment thereof to a period not exceeding the full period from the date of the loan.

14. Security for loans

(1) Subject to the provisions of this section, every loan made to a company, society or individual person shall be secured by a first mortgage or charge over the land on which the dwelling is to be constructed or is situate or, as the case may be, over the land acquired for the approved scheme, together with all the buildings and improvements on such land, and on such further security or on any other security, as the Corporation or the local authority, as the case may be, may require.

(2) The Corporation may prescribe the form of such first mortgage or charge, and the affixation of the seal of the Corporation or the local authority, as the case may be, to any mortgage or charge purporting to be made under the provisions of this Act shall be conclusive evidence that the same is in the prescribed form.

15. Loan may be made notwithstanding that land not surveyed etc.

(1) Any loan may be made notwithstanding that the land in respect of which the loan is made has not been surveyed or that such a map or plan of the land as

any officer concerned with the registration of the title to or the title deeds of such land is bound to accept for the purpose of registering any dealing with the land is not, for the time being, registered or available for registration.

(2) Upon making such a loan the Corporation, or the local authority, as the case may be, may require the execution of such documents as will ensure—

- (a) that the loan will, immediately upon the issue or completion of such grant, lease, purchase or other acquisition as aforesaid, become secured as a first mortgage or charge upon the land in favour of the Corporation or local authority;
- (b) that, pending the creation of such first mortgage or charge, no mortgage or charge of the land which would or might rank in priority thereto shall be created.

16. Discharge of security and repayment of loan

Upon all money due upon any loan being fully paid, the Corporation or the local authority, as the case may be, shall, when required, give to the local authority, company, society or individual person as aforesaid a receipt in writing for the same, and such further sufficient discharge (if any) as may be necessary, and upon such receipt being given the rates and revenues of the local authority or the land mortgaged or charged, as the case may be, shall be released from the charge created by section 8 of this Act, or the first mortgage or charge, as the case may be.

17. Rate of interest on loans

The rate of interest payable on a loan made by a local authority shall not exceed the rate of interest which the local authority is liable to pay in respect of the money from which the loan has been made by more than one-half percentum, and such loans or instalments thereof shall bear interest from the date of issue.

18. Remedies in respect of loans

(1) If an individual person to whom, or a company or society to which, a loan has been made—

- (a) fails to pay any amount due in respect of the principal or interest of the loan; or
- (b) has not applied the whole or any part of the loan to the specific purpose for which it was made; or
- (c) fails to make such progress as the Corporation or the local authority, as the case may be, considers reasonable with an approved dwelling or approved scheme; or
- (d) fails to comply with any condition on which the loan or any part thereof was made; or
- (e) becomes bankrupt, or is placed in liquidation,

the Corporation or the local authority, as the case may be, may either proceed to recover the amount outstanding on account of the loan together with all interest due thereon, by action in a competent court, or may, by an officer authorized in

writing by it and without obtaining any judgment or order of any court, enter upon and take possession of the land and premises on which the loan is secured, using force, if necessary, for that purpose; and may thereupon sell, by public auction or after public tender, the said land and premises and transfer it to the purchaser and give a good and valid title thereto notwithstanding that such land and premises may have been mortgaged or charged in favour of some other person:

Provided that—

- (i) if the land and premises are so mortgaged or charged, the Corporation or the local authority, as the case may be, shall transmit to the second or subsequent mortgagee or chargee at his last known abode or office or place of business, three weeks before the date fixed for the sale, notice by prepaid registered post of such intention in order that such mortgagee or chargee may redeem the loan, if he so desires;
- (ii) except in the event of the bankruptcy of the person, or the liquidation of the company or society as aforesaid, the Corporation or the local authority, as the case may be, shall before exercising its power of entry and sale hereunder, give three months' notice by prepaid registered letter addressed to such individual person at his last known place of abode or office or business, or to such company or society at its office or place of business, of its intention as aforesaid.

(2) If any such dwelling is not completed, the Corporation or the local authority, as the case may be, may in its discretion complete the same before such sale. The proceeds of such sale shall be applied in payment of all sums due to the Corporation or the local authority, including the cost of completing any such dwelling and of the sale; and the balance (if any) shall be paid to the individual person to whom, or the company or society to which, the loan was made or to any other person who is the legal representative thereof or is otherwise entitled to receive such balance.

(3) The Corporation or a local authority may itself purchase any land and premises sold by public auction as aforesaid and take transfer of any dwelling sold as aforesaid and treat the same as if it had been constructed by the Corporation or by the local authority under this Act, and no stamp duty or registration charges shall be payable on transfer to the Corporation or to the local authority.

(4) Any officer having any duties in connexion with the registration of the title to or the title deeds of any such land and premises as aforesaid shall make all the necessary entries in his registers and sign all documents necessary to give effect to this section.

19. Approved schemes and dwellings may be exempted from by-laws, etc.

The Minister for the time being responsible for Local Government may, on the application of the Corporation, declare that any by-law or resolution made by a local authority which is inconsistent with the conditions of approval specified by the Corporation in respect of any dwelling or scheme, shall, in so far as it is inconsistent, not apply to the approved dwelling or scheme.

[Act No. 42 of 1960, s. 5.]

20. Minister's powers where inadequate accommodation provided

Whenever it appears to the Minister, and after a local inquiry in public by an officer appointed by the Minister for that purpose at which the local authority and other parties interested shall be entitled to be heard, that the provision made in the area of any local authority for the needs of persons ordinarily employed within that area for normal requirements is inadequate or unsuitable, the Minister may, by written notice, require that local authority, within such time as may be stated in the notice, to make such provision for the housing of such persons as the Minister may specify.

[Act No. 42 of 1960, s. 6, Act No. 9 of 1967, Sch.]

21. Minister's powers upon failure of local authority to comply with requirements under section 23

(1) Upon the failure of a local authority within the time fixed in any notice given under section 20 of this Act or within any extension of that time granted by the Minister to comply with any requirement notified under that section, the Minister may, after written notice to the local authority, carry out such works and do all such things as may be necessary to give effect to that requirement; and for that purpose the Minister is hereby authorized to exercise all such rights, powers and authorities as might have been exercised by the local authority in that behalf.

(2) Any expenditure reasonably incurred by the Minister under this section in excess of revenue derived from the exercise of the powers vested in him may be recovered in the manner provided by section 9 of this Act.

[Act No. 9 of 1967, Sch.]

22. Additional duties of Corporation

(1) The Corporation may, and shall when required by the Minister or the local authority, inquire into and report to the Minister or the local authority on the necessity or otherwise of the provision of dwellings in the area of any local authority.

(2) The Corporation shall advise and assist in the preparation of proposals for dwellings and schemes.

23. Borrowing by Corporation

The Corporation may, with the consent of the Minister, borrow any moneys which it requires for the purpose of exercising its functions under this Act in such amount and upon such conditions as the Minister may sanction.

[Act No. 18 of 1967, s. 10.]

24. Regulations

(1) The Minister may from time to time make regulations for prescribing anything which may require to be prescribed under this Act, and for the better carrying out of the objects and purposes of this Act, and such regulations may be expressed to apply throughout Kenya or in any specified or defined portion thereof.

Such regulations may provide penalties for any contravention thereof or failure to comply therewith not exceeding a fine of ten thousand shillings or to imprisonment for two years or to both.

25. Powers of entry and inspection of premises

(1) Any member of the Corporation and any officer or servant of a local authority generally or specially authorized by such local authority, and any person likewise authorized by the Minister, may, at any hour reasonable for the proper performance of the duty, enter upon any land or building in respect of which a grant or loan has been made or undertaken to be made under this Act to make any inspection or to perform any work or to do anything which he is required or authorized to do under regulations made under this Act.

(2) Any person who fails to give or refuses access to any person mentioned in or authorized under subsection (1) of this section or obstructs or hinders him in the execution of his duties under the regulations made under this Act, or who prevents any servant or workman of a local authority from entering any such land or dwelling for the purpose of complying with any requirements under the regulations made under this Act, shall be guilty of an offence and be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

26. Vesting in Corporation of rights and benefits in scheduled loans

(1) There shall, by virtue of this section and without further assurance, become vested in the Corporation the right, formerly vested in the Local Government Loans Authority under and by virtue of the Local Government Loans Act (Cap. 270), to demand, sue for and recover, and give receipts for, and the benefit of all securities for, the scheduled loans, to the extent to which those loans were outstanding at the commencement of this section.

(2) For the avoidance of doubt, it is hereby declared that the reference in subsection (1) of this section to rights formerly vested in the Local Government Loans Authority under and by virtue of the Local Government Loans Act (Cap. 270) shall include the right which was purported to be vested in that Authority by a resolution of the Legislative Council dated the 18th February, 1953.

(3) For the purposes of this Act, the scheduled loans shall be deemed to be loans made or granted by the Corporation under that Act.

(4) All moneys received by the Corporation on account of the scheduled loans shall be carried to the Housing Fund established under section 6 of the Housing Act (Cap. 270).

(5) “**The scheduled loans**” means the several loans particulars of which are set out in the Schedule to this Act being loans made from moneys supplied out of funds of the Development and Reconstruction Authority, and issued to the local authorities respectively specified in the said Schedule, for the construction of houses for Africans.

[Act No. 21 of 1960, ss. 2 to 5, Act No. 18 of 1967, s. 10.]

27. Provisions of this Act in relation to other laws

The provisions of this Act shall be deemed to be in addition to and not in substitution for any provisions of any other law which are not in conflict or inconsistent with this Act; and if the provisions of any law are in conflict with or inconsistent with this Act the provisions of this Act shall prevail.

28. Savings

Nothing in this Act shall—

- (a) *deleted by Act No. 18 of 1967, s. 9;*
- (b) prejudice or affect the priority of any security for a loan created by any local authority before the date of the commencement of this Act.

[Act No. 9 of 1967, Sch., Act No. 18 of 1967, s. 9.]

29. Transitional provisions

Notwithstanding the amendments introduced by section 4 of this Act, the persons who immediately before the commencement of this Act were members of the Central Housing Board shall upon such commencement become members of the National Housing Corporation, and shall remain such members until new members of the National Housing Corporation, are appointed in accordance with such amendments or until the expiration of one month from such commencement, whichever is earlier.

[Act No. 18 of 1967, s.11.]

SCHEDULE

[Section 26.]

<i>Local authority to which loan made</i>	<i>Purpose of loan</i>	<i>Year loan authorized</i>	<i>Amount of loan sanctioned</i>
Eldoret Municipal Board	Houses for letting	1951	4,100
" " "	Staff houses	1951	1,150
" " "	Houses for letting	1951	3,000
" " "	" " "	1951	11,150
" " "	" " "	1952	38,743
Thika Township Authority	Houses for letting ("Vasey" scheme)	1951	5,000
" " "	" " "	1951	10,000
" " "	" " "	1952	25,000
Kitale Municipal Board	Staff housing	1949	176
" " "	Houses for letting	1952	10,000
Mombasa Municipal Board	Swahili-type housing, Port Tudor	1952	8,400
Thomson's Falls Township Authority	Houses for letting	1952	16,000
Nakuru Municipal Council	" " "	1953	55,120
" " "	Staff houses	1952	2,070
" " "	Tenant-purchase houses	1953	4,800
Kisumu Municipal Board	Staff houses	1953	50,00
			<u>£244,709</u>

