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## GOVERNMENT NOTICE

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### DEPARTMENT OF HOUSING

**No. 1734****24 November 2006**

#### HOME LOAN AND MORTGAGE DISCLOSURE ACT NO. 63 OF 2000

The Department of Housing hereby publishes the draft Regulations in **terms** of Section 12 of the Home Loan and Mortgage Disclosure Act, 2000 for public comment.

Interested persons and institutions are invited to submit written comments on the draft Regulations to the Director-General] Department of Housing, on or before 29 December 2006.

Comments should be submitted for the attention of –

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**GENERAL NOTICE**

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**NOTICE [-] OF [-]****HOME LOAN AND MORTGAGE DISCLOSURE ACT, 2000****(ACT NO. 63 OF 2000)**

Under the powers vested in me by Section 12 of the Home Loan and Mortgage Disclosure Act, 2000 (Act No.63 of 2000), I, Dr L N Sisulu, Minister of Housing, in consultation with the Minister of Finance and the Governor of the Reserve Bank, hereby make the regulations set out in the Schedule.

**SCHEDULE****TABLE OF CONTENTS**

1. Definitions .....	5
2. Disclosure and reporting .....	5
3. Insertion in applications .....	6
4. Duration of record keeping .....	6
5. Notification .....	6
6. Short Title .....	6

**Appendices**

Annexure "A" : Information to be submitted in respect of each application to be captured, retained and submitted to the office .....	7
Annexure "B" : information to be included in the institution's financial statements .....	11

## 1. Definitions

In these Regulations, any word which a meaning has been ascribed to in the Act shall have the meaning so ascribed to it. and unless the context indicates otherwise —

“accepted security” means the security required by a financial institution in order to qualify for a home loan;

“applicant” means a person that has submitted an application to a financial institution:

“application” means a duly completed and signed home loan application form that is accompanied by all the supporting documents that are required by a financial institution:

“exposure” means a financial institution’s level of investment in home loans in an area relative to other areas and relative to the investments of other financial institutions in that area;

“financial institution”, for purposes of these regulations, excludes an entity which is not registered as a bank under the Banks Act, 1990 (Act No. 94 of 1990) or the Mutual Banks Act, 1993 (Act No. 124 of 1993);

“income” means the gross monthly household income of the applicant or applicants;

“loan amount” means the principal debt under a home loan as defined or contemplated in applicable consumer credit legislation;

“loan to value ratio”, in respect of a mortgage loan, means the home loan amount as a percentage of the value of the property which secures the home loan, as determined by the financial institution or its valuers at the time of assessment of the application;

“property in possession” means a property that a financial institution has acquired at a sale in execution; and

“repayment to income ratio” means the amount of the instalment that would be payable under a home loan expressed as a percentage of income and measured at the time of the assessment of the application.

## 2. Disclosure and reporting

(1) With effect from a date to be proclaimed by the Minister in the Gazette —

- (a) a financial institution must collect and capture the information set out in Annexure “A” to these regulations in respect of each application:
- (b) a financial institution must, within 60 days of each financial year end, submit to the Office the information required under sub-regulation (a) in electronic form, subject to sub-regulation (3);
- (c) a financial institution must, in its annual financial statements, and under a separate heading entitled “Disclosure Requirements in terms of the Home Loan and Mortgage Disclosure Act, 2000” make known the information required in Annexure “B”; and
- (d) a financial institution’s auditors must, in their report on its financial statements, comment on the accuracy and comprehensiveness of the information required under sub-regulation (c).

(2) In capturing, or reporting on any amount in rands as required by these regulations, the amount must be rounded off to the nearest thousand Rand.

(3) The Office may request a copy of the information referred to in regulation 2(1)(b) in hard copy,

### 3. Insertion in applications

In respect of information required in Annexure "A", a financial institution must include in its standard application form, where it requires information on the race of the applicant, the following wording: "The financial institution is required to request this information to assist the Government in monitoring lending practices in terms of the Home Loan and Mortgage Disclosure Act, 2000."

### 4. Duration of record keeping

A financial institution must keep a record of the information supporting a report contemplated in regulation 2(1)(b) for a period of at least five years from the time such information is first reported to the Office.

### 5. Notification

Without derogation from the provisions of any other law, a financial institution must, within a reasonable period of having approved or declined an application —

- (a) notify the applicant of the outcome in writing;
- (b) take reasonable measures to ensure that the notification is in a language that can be understood by the applicant; and
- (c) provide reasons for declining an application.

### 6. Short title

These regulations shall be known as the Home loan and Mortgage Disclosure Regulations, 2006.

**ANNEXURE "A"****INFORMATION IN RESPECT OF EACH APPLICATION TO BE CAPTURED, RETAINED AND SUBMITTED TO THE OFFICE**

1. Name of Financial Institution
2. Name of Branch
3. Property Description
  - (a) Erf No. /Unit No.
  - (b) Street
  - (c) Township
  - (d) Municipality
  - (e) Province
4. Type of home loan
  - (a) Mortgage loan
  - (b) Pension or providentfund secured loan
  - (c) Housing micro loan
  - (d) Instalment sale under Chapter II of the Alienation of Land Act, 1981
  - (e) Other
5. Accepted security available in respect of the home loan
  - (a) Mortgage bond
  - (b) Covering mortgage bond
  - (c) Pension or providentfund guarantee
  - (d) Loan guarantee policy
  - (e) Life policy
  - (9)** Other
6. Use for which home loan is required
  - (a) Purchase of existing home
  - (b) Building of new home
  - (c) Improvement ~~of~~ existing home
  - (d)** Other

7. Home loan amount applied for (to the nearest R1 000, 00)
8. Nature of application
  - (a) individual
  - (b) Joint
  - (c) Legal entity (close corporation, company or trust)
9. Proposed repayment to income ratio
10. Proposed loan to value ratio (in the case of a mortgage loan)
11. Status of applicant (if individual application)
  - (a) Never married
  - (b) Married
  - (c) Divorced or separated
  - (d) Widowed
12. Status of applicant (if joint application)
  - (a) Married - under civil law
  - (b) Married - under customary law
  - (c) Co-habiting
  - (d) Co-resident (e.g. application by mother and daughter or two brothers and sister)
13. Gender of applicant (*If a joint application, specify the gender of both or all of the applicants. If the applicant is a juristic person, specify the gender of the majority of the members.*)
  - (a) Male
  - (b) Female
14. Race of applicant (*If a joint application, specify the race of both or **all** of the applicants. If the applicant is a juristic person, specify the race of the predominant group of members of the entity.*)
  - (a) African
  - (b) Coloured
  - (c) White
  - (d) Indian
  - (e) Other

15. Income category

R0 – R3500	
R3501 – R5500	
R5501 – R7500	
R7501 – R10000	
R10001 – R15000	
R15001 and above	

16. Status of Application

(a) Approved

- (i) Taken up
- (ii) Not taken up

(b) Declined

(c) Pending

17. Reason/s (if declined)

(a) Applicant specific

- (i) Low repayment capacity
- (ii) Unacceptable credit record
- (iii) Irregular income
- (iv) Accepted security requirements not met
- (v) Required repayment period exceeds the period to retirement age
- (vi) Nature of relationship between joint applicants not conducive to meeting repayment obligations
- (vii) Other (specify)

(b) Property specific

- (i) Unacceptable loan to value ratio, where applicable
- (ii) Building does not comply with the requirements of the National Home Builders Registration Council under the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998) or applicable municipal by-laws
- (iii) Sectional title building with inadequate body corporate governance
- (iv) Arrears on municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties

(c) Area specific

- (i) Boycott of rent, mortgage loans or service payments
- (ii) The sheriff of the court is likely to be obstructed in carrying out statutory functions
- (iii) Financial institutions are prevented from obtaining vacant occupation of properties in possession
- (iv) The municipality is unable to enforce the collection of municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties
- (v) The municipality is unable to enforce laws and by-laws against overcrowding or illegal land use
- (vi) The market value of properties is either declining or appears likely to decline

- (vii) Properties in possession cannot, or are unlikely to be sold for sufficient value **to** cover outstanding home loan balances or are unlikely to be let **at a** rate of return that **is** feasible
- (viii) Other (specify)

(d) Institution specific

- (i) Unacceptable exposure
- (ii) Unacceptable collection method



**ANNEXURE "B"****INFORMATION TO BE INCLUDED IN THE INSTITUTION'S FINANCIAL STATEMENTS**

- (1) The total number and Rand amount of applications -
    - (a) Received
    - (b) Approved
    - (c) Declined
    - (d) Disbursed
  
  - (2) The **total** number of applications received, approved, declined, and disbursed, respectively, in respect of:
    - (a) Race groups (African, White, Indian, Coloured)
    - (b) Province
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