

REPUBLIC OF SOUTH AFRICA

HOME LOAN AND MORTGAGE DISCLOSURE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); Explanatory
Summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF HUMAN SETTLEMENTS)

[B — 2015]

ce020213

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertion in existing enactments.

BILL

To amend the Home Loan and Mortgage Disclosure Act, 2000, so as to substitute and insert certain definitions; to extend the powers of the Office of Disclosure to investigate public complaints on financial institutions relating to home loans; to provide for instances that constitutes conflict of interest; to provide for the information required to be disclosed by financial institutions under the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 63 of 2000

1. Section 1 of the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "auditors" of the following definition:

" **'auditors'** means **[the auditors]** persons registered as auditors in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005), including joint auditors of the financial institutions appointed in terms of the requirements of the Companies Act, or any other applicable law;"

- (b) by the substitution for the definition of "Companies Act" of the following definition:

" **'Companies Act'** means the Companies Act, **[1973 (Act No. 61 of 1973) 2008 (Act No. 71 of 2008)]**;"

- (c) by the substitution for the definition of "Department" of the following definition:

" **'Department'** means the Department of **[Housing] Human Settlements**;"

- (d) by the substitution for the definition of "financial institution" of the following definition:

" **'financial institution'** means—

- (a) **[any bank or mutual bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), or Mutual Banks Act, 1993 (Act No. 124 of 1993), or any other registered] any** financial institution whose business is, in full or in part, **[either the acceptance of deposits from the general public,] the** advance of credit to persons **[or both such acceptance and advance]** with the security of a registered mortgage bond or any other form of accepted security for the purpose of providing home loans; or

- (b) any financial institution whose business is, in full or in part the advance of credit to persons for the purpose of providing home loans;
- (e) by the substitution of the definition of "home loan" of the following definition:
" **'home loan'** means a loan or advance by a financial institution to a person for purposes of constructing, purchasing, renovating or improving in any way such person's home, with the security of a registered mortgage bond or any other form of accepted security, or without such security;"; and
- (f) by the substitution for the definition of "Minister" of the following definition:
" **'Minister'** means the Minister of **[housing] Human Settlements;**".

Amendment of section 2 of Act 63 of 2000

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) **[From the date of the commencement of this Act, every] Every** financial institution must disclose the required information **[in its annual financial statements] to the Office, as prescribed.**

(2) The disclosure by a financial institution of the required information in terms of subsection (1) is in addition to any other information which the financial institution is obliged to disclose in

its [financial statements in terms of the Companies Act or any other law] annual report."; and

(b) by the deletion of subsection (4).

Amendment of section 3 of Act 63 of 2000

3. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A financial institution must, in respect of home loans and in the prescribed manner and form, disclose the following information:

(a) Name of the financial institution;

(b) loan amount, rand value and number of all home loan applications received, scored, approved or declined during the reporting period;

(c) rand value and number of all home loan applications received, scored, approved or declined per province;

(d) rand value and number of all home loan applications received, scored, approved or declined per income bracket;

(e) loan amount, rand value and number of all pension backed loan applications received, scored, approved or declined during the reporting period;

(f) reason for the decline, in the case of declined applications;

- (g) loan amount, rand value and number of all unsecured loan applications received scored, approved or declined during the reporting period;
- (h) rand value and number of all pension backed home loans applications received per province; and
- (i) such other information as may be prescribed."

Amendment of section 5 of Act 63 of 2000

4. Section 5 of the principal Act is hereby amended:

(a) by the substitution in subsection (1) for paragraphs (a), (c), (d) and (e) of the following paragraphs, respectively:

- "(a) receiving and verifying the required information;
- (c) receiving and investigating public **[comments]** complaints on financial institutions relating to home loans, in accordance with the prescribed procedure";
- (d) making available to the public, information that indicates whether or not financial institutions are serving the housing credit needs of **[their communities]** citizens, and performance rating as per prescribed criteria [rating] of such financial institutions in accordance with such information";
- (e) **[assisting in]** identifying possible discriminatory lending patterns and **[assisting]** refer such information to any statutory regulatory body in enforcing compliance with anti-discriminatory legislation"; and

(b) by the deletion in subsection (2) of the word "and" at the end of paragraph (c) and addition of the following paragraphs:

"(e) may interview any duly authorised official of the financial institution;

(f) must impose penalties provided for in this Act; and

(g) must mediate on complaints received from the public."

Amendment of section 11 of Act 63 of 2000

5. Section 11 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Director-General of **[Housing]** the Department is the accounting officer for the Office and must cause the installation of the necessary financial controls and management measures by the Office to ensure full accountability for expenses incurred by the Office."

Insertion of section 9A in Act 63 of 2000

6. The following section is hereby inserted in the principal Act after section 9:

"Conflict of Interests

- 9A. (1) A member in assuming office shall declare potential conflict and must not—
- (a) engage in any activity that may undermine the integrity of the Office;
 - (b) attend, participate in or influence the proceedings during a meeting of the Office, if, in relation to the matter before the Office, the member has an interest whether personal or through a spouse, partner or associate and which has a direct or indirect financial implication and that may preclude the member from performing his or her functions in a fair, unbiased and proper manner;
 - (c) vote at any meeting of the Office in connection with a matter where a member has an interest contemplated in paragraph (b);
 - (d) make private use of, or profit from, any confidential information obtained as a result of performing his or her functions as a member of the Office;
 - (e) divulge any information which the member has acquired as a member of the Office to any third party, except as required as part of the member's functions as a member of the Office; or
 - (f) in the event that, and at any time, it appears to a member that a matter being considered by the Office at a meeting concerns an interest contemplated in paragraph (b), a member must promptly inform the Minister by disclosing the nature of interest in writing and withdraw from the meeting.

(2) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), the Minister may remove a member from Office if the member —

(a) refuses or fails to make a declaration contemplated in subsection (1);

or

(b) after having been appointed, acquires any direct or indirect interest contemplated in subsection (1) and fails to disclose such interest."

Amendment of section 15 of Act 63 of 2000

7. Section 15 of the principal Act is hereby amended by substitution of subsection (2) of the following subsection:

"[A person] Any financial institution convicted of an offence in terms of subsection (1) is liable to a fine not exceeding **[R100 000,00] R10 million."**

Short title and commencement

8. This Act is the Home Loan and Mortgage Disclosure Amendment Act, 2015 and comes into operation on a date determined by the President by Proclamation in the *Gazette*.