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THE MINISTRY OF LANDS AND PHYSICAL PLANNING

GUIDELINES FOR EXTENSION AND RENEWAL OF LEASES

IT IS notified for the information of the general public that the Cabinet Secretary for Ministry of Lands and Physical Planning in consultation with the National Land Commission, has issued Guidelines for Extension and Renewal of Leases to guide officers of the Ministry of Lands and Physical Planning, County Governments and National Land Commission and lessees, professionals and any other persons dealing with matters relating to the for extension and renewal of leases as follows:

1. Notice

(1) Within five (5) years before the expiry of the leasehold, the Commission shall notify the lessee by registered mail that the lease is about to expire in accordance with section 13 of the Land Act, 2012. A copy of the notice shall be forwarded to the Cabinet Secretary or the relevant County Government as the case may be.

(2) The notice shall indicate the date of expiry and inform the lessee of the lessee's pre-emptive rights to apply for extension of the lease under section 13 of the Land Act, 2012 and to whom to make the application.

(3) If the lessee does not respond to the notification within one year, the Commission shall publish the notification on two newspapers of countrywide circulation and where to make the application.

(4) If the lessee does not respond to the notifications in (1) and (2) above, the Commission may undertake a physical verification of the land with a view to establish the status of the land.

(5) If the Commission establishes that the lessee or his family is still in occupation, the Commission shall advise them on the need to apply for extension before the expiration of the term and the consequences of not doing so which may include forfeiture of the pre-emptive right over the land and the automatic reversion to the National or County Government as the case may be.

2. Process of Lease Extension

(1) An Application for renewal of lease shall be done by the registered owner or appointed administrator and shall be received at the office of the Commission situated within the respective land registration unit. Upon receipt of the application, the Commission shall within seven days forward it to either the representative of the Cabinet Secretary or the County Executive Committee Member for lands, if the land is vested in the National Government or County Government respectively, for approval.

(2) The Commission Officer will enter the application into a serialized register and require the application to have the following attachments:

- (a) Copy of the ID/Passport;
- (b) Letters of administration and confirmation of grant where applicable;
- (c) Current official search (one month),
- (d) Passport size photograph,
- (e) Certificate of incorporation (in case of a company).

3. Factors to be considered by National or County Government in processing of application for extension of leases:

(1) If the lessee is a citizen, the National or County Government may require:

- (a) In the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director; and
- (b) Clearance certificate from the relevant authority in relation to all land rates and rents;
- (c) Information whether the title to be extended will be subject to any existing encumbrance(s);

(4) Proof that the lessee has complied with the terms and conditions of the existing lease.

(2) The above factors may apply if the lessee is a non-citizen.

4. Large-Scale Investments

In instances of large scale investments, the National or County Government shall ensure that—

- (a) the extension is beneficial to the economy and the country as a whole;
- (b) that the investment is in accordance with the national development goals and objectives.

5. Notification of rejection of application to extend a lease

The National or County Government shall give the leaseholder a notification of at least three (3) years before the expiry of the lease of the intention not to extend lease and copied to the Commission, where the National or County Government needs the land for public purpose in accordance to section 13 of the Land Act, 2012 and upon satisfying

themselves that the land is included in the County Spatial Plan and Cities and Urban Area Plans as provided for under County Governments Act, 2012 and the Urban Areas and Cities Act, 2011, respectively.

Upon notification—

- (a) the National or County Government shall carry out an inventory of the developments on the land;
 - (b) the lessee shall be required not to put up new developments or improvements thereon;
 - (c) the lessee shall be required to approach the respective government for compensation of the developments on the land.
6. The National or County Government shall before the approval of extension of the lease, seek representations from the following—
- (a) the County Executive Committee Member responsible for land;
 - (b) the County Government Surveyor;
 - (c) the County Government Physical Planner;
 - (d) the Land Administration Officer of the Commission; and
 - (e) any other relevant authority.
7. Upon receipt of the representations, the National or County Government may—
- (a) approve the extension of lease for a specified term; or
 - (b) decline to extend the lease and give the lessee the reasons thereof within ninety days (90) from the date of the application for extension. Such reasons shall be limited to;
 - (i) where the National or County Government needs the land for public purpose in accordance to section 13 and upon satisfying themselves that the land is included in the County Spatial Plan and Cities and Urban Area Plans under the County Governments Act, 2012 and Urban Areas and Cities Act, 2011 respectively.
 - (ii) where there is proof that the lessee has not complied with the terms and conditions of the existing lease.
8. The decision in (7) above shall be forwarded to the Commission for implementation.
9. Where approval of extension of the lease is granted, the Commission shall—
- (a) have the land revalued to determine the payable land rent and other requisite fees;
 - (b) have the land re-surveyed and geo-referenced;
 - (c) have the lessee surrender the existing title or lease certificate in consideration for a new lease.
10. Where the extension of a lease is declined by the National or County Government, the aggrieved applicant may refer the matter to an independent appeals committee established by the Commission. Appeals Committee members shall consist of—
- (a) the Chairman National Land Commission;
 - (b) the County Executive Member in charge of Lands;
 - (c) the County Commissioner;
 - (d) a representative of Kenya Institution of planners (KIP);
 - (e) a representative of Kenya Institution of Surveyors of Kenya (ISK);
 - (f) a representative of the Law Society of Kenya (LSK);
 - (g) a representative of the Kenya Bankers Association;
 - (h) a representative of the Kenya Private Sector Alliance (KEPSA); and
 - (i) a member of the Land Control Board within the registration unit.

The Appeals shall be held at the respective counties in the office of the Executive Committee Member in charge of Land at the County.

11. Renewal of Expired Leases Where Prior Notice by Commission has not been given

(1) Where the term of the lease had expired without prior notice to the lessee as required by section 13 of the Land Act, 2012, the Commission will require the lessee to apply for renewal of the lease.

(2) An Application for renewal of lease shall be received at the office of the Commission and shall be done by the registered owner of the expired lease or appointed administrator and shall be addressed to:

Chairman National Land Commission,
Ardhi House,
1st Ngong Avenue,
P.O. Box 44417-00100,
Nairobi.

Applications may also be submitted on line through the Commission's email: info@landcommission.go.ke

Applications shall be accompanied by the following documents:

- (a) Copy of the ID/passport.
- (b) Letters of administration and confirmation of grant where applicable.
- (c) Certificate of incorporation (in case of a company).
- (d) Passport size photograph.
- (e) Original lease to confirm the status.

(3) The following factors shall be considered by the Commission in determining whether to renew a lease—

- (a) If the lessee is a citizen, the Commission shall require —
 - (i) in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director; and
 - (ii) clearance certificate from the relevant authority in relation to all land rates and rents;
 - (iii) information whether the title to be renewed will be subject to any existing encumbrance(s);
 - (iv) proof that the lessee has complied with the terms and conditions of the lease.
- (b) If the lessee is a non-citizen the above factors may apply;
- (c) Where the applicant is a large scale investor, the Commission in consultation with the National and County Governments shall ensure that—
 - (i) the renewal is beneficial to the economy and the country as a whole;
 - (ii) that the investment purpose is in accordance with the national development goals and objectives;

(4) The Commission shall carry out a site inspection to verify the status of developments.

12. The Commission to Seek Recommendations—

(1) The Commission shall before the renewal of a lease, seek representations from the following—

- (a) the County Executive Committee Member responsible for land;
- (b) the Director of Surveys;
- (c) the Director of Physical Planning;
- (d) the Land Administration Officer of the Commission; and
- (e) any other relevant authority.

(2) Where favorable comments/recommendations for renewal of the lease are received, the Commission shall—

- (a) have the land revalued to determine the payable land rent and other requisite fees;
- (b) have the land re-surveyed and geo-referenced;
- (c) issue a new letter of allotment in a prescribed Form for the parcel and a new lease shall be issued in accordance with the provisions of the Land Act, 2012 and these Guidelines.

(3) Where the Commission receives objection against the renewal of lease from the recommending authorities, the Commission shall require the said authorities to give reasons for the grounds of the objections within a period of thirty (30) days.

(4) Where either National or County Government needs land for public purpose in accordance with section 13 of the Land Act, 2012 and upon satisfying itself that the land is included in the County Spatial Plan and Cities and Urban Area Plans under County Governments Act, 2012 and Urban Areas and Cities Act, 2011

respectively, the same shall be adequate justification to the Commission why the lease shall not be renewed.

(5) Where the renewal of a lease is declined by the National or County Government, the aggrieved applicant may refer the matter to an independent appeals committee established by the Commission. Appeals Committee members shall be made up of—

- (a) the Chairman National Land Commission;
- (b) the County Executive Member in charge of Lands;
- (c) the County Commissioner;
- (d) a representative of Kenya Institution of planners (KIP);
- (e) a representative of Kenya Institution of Surveyors of Kenya (ISK);
- (f) a representative of the Law Society of Kenya (LSK);
- (g) a representative of the Kenya Bankers Association;

(h) a representative of the Kenya Private Sector Alliance (KEPSA);

(i) a member of the Land Control Board within the registration unit.

The Appeals shall be held at the respective counties in the office of the Executive Committee Member in charge of Land at the County.

(6) The Commission may not be bound by the recommendation in the report in (3) above or accept appeals where—

- (a) the National or County Government needs the land for public purpose;
- (b) there is proof that the lessee has not complied with the terms and conditions of the expired lease.

Dated the 29th May, 2017.

JACOB KAIMENYI,
Cabinet Secretary for Lands and Physical Planning.