

Rustenburg Local Municipality
HOME OWNERS ALLOWANCE SCHEME

1. SCOPE OF THE SCHEME

1.1 In order to participate in the benefits of the scheme, an employee must on the date of application and at any stage during the allowance payment period –

- (a) Be in the employ of the local authority;
- (b) Be a contributing member of a statutory pension- or provident fund or be under obligation to join such a fund after a qualifying term of service;
- (c) submit a sworn statement detailing the extent to which the employee's spouse receives or qualifies for a similar or comparable allowance or subsidy with the same or another employer (but of his/her own free will elects not to participate in the scheme, for example, by selecting a remuneration package by means of the "cafeteria approach" in such a manner that a housing allowance or subsidy is discontinued in favour of another benefit), also indicating the value of such a benefit, in which case the provisions of section 3.1.3 hereof must be applied.

1.2 If an employee and/or his/her spouse owns another/other property registered in the name/names of the employee and/or his/her spouse in addition to the property which the employee occupies and in respect of which the employee and/or his/her spouse in the past received an allowance or subsidy for any period of time on the basis as detailed in this determination (or similar basis, for example, a previous determination) in consideration for the employee's service with the relevant local authority or any other employer (immaterial where the property is situated or whether the registered mortgage

loan in the other property has not yet been repaid or is smaller or larger than the registered mortgage loan over the property which the employee occupies), the employee qualifies for a reduced monthly allowance on the basis as detailed in paragraph 2 of Annexure IV.

- 1.3 If a reduced monthly allowance as detailed in paragraph 1.2 above is paid to an employee and the other fully paid or not fully paid up property as contemplated in the relevant paragraph is sold, the provisions of paragraph 3.3 regarding the proceeds of the sale will apply mutatis mutandis. The implied other property shall however still be regarded to be in the ownership of the employee and/or his/her spouse if the property is sold on the basis of a hire-purchase.

2. CRITERIA FOR PARTICIPATION IN THE SCHEME

Ownership Requirement

An employee must own a property which –

- (a) is registered in the employee's name or jointly in the names of the employee and his/her spouse; or
- (b) is constructed on a site in respect of which the employee in his/her own stead or jointly with his/her spouse acquired a leasehold in terms of a statutory provision; or
- (c) is acquired by the employee in his/her own stead or jointly with his/her spouse through a purchase contract which will lead to ownership of the property and in respect of which a registered mortgage loan has been granted to the employee by an approved financial institution, but which can not yet be transported in the name(s) of the employee and/or his/her spouse because –
 - (i) surveying and/or establishment of the township have not yet been completed; or

- (ii) If surveying and/or township establishment have been completed, the relevant employee has not yet fully paid the required deposit on the purchase price of the property.

Situational Requirement

The property must be situated within the borders of the Republic of South Africa, a self governing state or in an independent state (previously self governing area) which previously formed part of the Republic and must be within reasonable distance of the local authority where the employee is employed.

Requirement to Occupy Property

The property must be continuously occupied by the employee, except where it is required of the employee by the employing local authority to occupy official quarters, or where circumstances as approved by the Council prevents the employee from occupying the property, in which instance the provisions of Section 3.11 hereof must be applied.

Loan Requirement

- (a) A registered mortgage loan (not a hire purchase contract) must be registered in respect of the property, acquired from –
 - (i) the Development and Housing Council, the Housing Council or the Development Board, the Housing Development Board or the National Housing Commission of the relevant Own Affairs Departments and the Department of Development Aid;
 - (ii) a local authority;
 - (iii) a financial institution registered with the Registrar of Financial Institutions;
 - (iv) a financial institution registered with the Registrar of Financial Institutions of an independent (previously self

- governing area) state which previously formed part of the Republic; or
- (v) Any other institution established by an act of Parliament and which grants mortgage loans.
 - (vi) Any other institutions approved by the Industrial Council for the purposes of this scheme.
- (b) Where uncertainty exists whether or not an institution is registered, the Registrar of Financial Institutions must be consulted.

3. RULES AND PROCEDURES

Calculation of the Allowance

The allowance is calculated according to the basis and restrictions as detailed in Annexure IV.

Subject to the provisions of Section 3.1.1 above, a couple who are both employees of the same or another local authority may not individually or jointly be paid an allowance in excess of calculated in terms of paragraph 3.1.1

Subject to the provisions of paragraph 1.1 (c) above, an employee other than a local authority and who is in receipt of or qualifies for a housing allowance or subsidy from that employer, may still be paid an allowance in terms of the provisions of this scheme, provided that the amount of the allowance thus paid to the employee shall be reduced with the amount of the allowance or subsidy which the other member of the married couple receives or is entitled to receive from the other employer; provided further that where the other member of the couple, who is not employed by the local authority, do not receive or qualify for such an allowance or subsidy, the normal allowance can be paid to the employee.

Acknowledged Loan Amount

- (a) When determining the acknowledged loan amount (as defined) the purpose of calculating the allowance –
 - (i) a specific registered mortgage loan, or the sum of registered mortgage loans if the employee has more than one such a loan over his/her property, shall be regarded as the actual loan amount if it has been utilized for approved purposes, subject to the restrictions of the acknowledged loan amount as may be determined by the Industrial Council from time to time;
 - (ii) the amount of the registered mortgage loan or parts thereof which have not been utilized for approved purposes as contemplated in sub paragraph (i), shall be deducted from the acknowledged loan amount; and
 - (iii) The acknowledged loan amount, if applicable, shall be further reduced by the amount by which an employee is penalized in terms of paragraph 3.3 (b).

- (b) The amount of the actual loan or parts thereof which have not been utilized for approved purposes and with which an employee is penalized regarding the acknowledged loan amount used for the calculation of the allowance in respect of the property, is not transferable in respect of properties which the employee may purchase or construct at a later stage.

Appropriation of Proceeds from the sale of a previously Subsidized Property

- (a) If an employee and/or his/her spouse previously owned and sold (for this purpose the property is deemed to be sold on the date of the registration of the property in the name of the new owner) a property (whether it was fully paid or not) registered in the name(s) of the employee or his/her spouse individually or jointly and in respect of which the employee and/or his/her

spouse received an allowance (or subsidy) on the basis of this determination (or any other similar or comparable basis) in consideration of his/her service with a local authority or any other employer for any period of time, it is expected of the employee, (but not required) to appropriate the sum of the proceeds of the sale (as defined) of the property towards the purchase of the property which the employee occupies (including the construction of the dwelling).

NB:

- (i) The "other property" referred to in sub paragraph (a), is relevant to any property in respect of which an allowance or subsidy was previously paid to the employee and which was occupied by the employee during a period of 5 years before the property which is currently being occupied was acquired, subject to the provisions of sub paragraph 3.3 (d)(i) of the agreement.
 - (ii) A Property sold on the basis of a hire purchase agreement is not regarded as being sold because it is still registered in the name of the "seller".
- (b) If the employee does not appropriate the amount as contemplated in (a) above, the acknowledged loan amount must be reduced by the amount which was not so appropriated towards the purchase of the property used for the purposes of the calculation of the allowance, provided that the penalization shall be effective for a period of 5 years after which it shall lapse subject to the provisions of Section 3.3 (d)(i) of this agreement.
- (c) Sub paragraph (b) shall also be applicable when –

- (i) an employee grants to the purchaser of his/her previous property an extension of time to pay the purchase price until such time when the employee submits proof that the deficit on the actual loan amount has been fully paid;
or
- (ii) an employee withholds a portion of the proceeds of the sale of his/her previous property to affect fixed improvements or extensions to the new property and then until such time when the employee submits proof that the improvements or extensions for which the relevant amount was withheld have been approved by the relevant local authority as essential prior to commencement and are completed.
- (d) The amount with which an employee is penalized in terms of the sum of the acknowledged loan amount relevant to a specific property as indicated in sub paragraph (b) and (c) and which is used to calculate the employee's allowance on the property, is not transferable to properties which the employee may purchase or construct at a later stage, PROVIDED THAT when an employee sells his/her property in respect of which an allowance or subsidy was previously paid in purchased, or constructed another property within a period of five (5) years thereafter without appropriating an amount equal to the proceeds of the sale towards the purchase or construction costs of the new property, the amount of the allowance in respect of the new property shall be determined as follows:
- (i) The new acknowledged loan amount used for the calculation of the allowance loan amount used for the calculation of the allowance must be reduced by an

amount equal to the deficit on the appropriation of the proceeds of the sale, calculated as follows:

- (a) If the applicant purchases another property within 12 months after redemption of the mortgage over the first/previous property, the full proceeds of the sale (as defined and subject thereto that documentary proof regarding permissible deductions is submitted) must be appropriated towards reducing the purchase price of the property purchased by the employee.
 - (b) After expiry of 12 months the proceeds of the sale are reduced by 20 percent for each full year elapsed so that, if a property is purchased within two years after the selling of the previous property, the employee must appropriate 80 percent of the proceeds of the sale of the previous property; within three years 60 percent, and so forth, until after the expiry of five years the employee need not appropriate any amount.
- (ii) The mortgage holder shall be requested to indicate what the amount of the compulsory monthly capital and interest redemption payment, at the appropriate interest rate and redemption period, would be if it is calculated by subtracting the amount of the proceeds of the sale not appropriated (as calculated in (ii) above) from the actual loan amount.
 - (iii) The amount of the actual allowance paid to the employee, shall then be determined in terms of the

provisions of Annexure IV, namely on the basis of the thus reduced acknowledged loan amount and subject to the calculation principle as detailed in Paragraph 3.3 (d)(i).

- (iv) When an employee who has been paid a housing allowance or subsidy by a local authority or any other employer for any period during the preceding five (5) years and who owned and sold another property (irrespective of whether the property was registered in the employee's name or that of his/her spouse or jointly in the employee's and his/her spouse's name) five (5) years directly prior to the date of the new application, applies for a housing allowance in terms of the provisions of this agreement for the first time, the provisions and basis of calculation as detailed in sub paragraph 3.3 (d)(i), (ii) and (iii) above, will apply mutatis mutandis.
- (e) An employee who sold a previous property under the circumstances as detailed in sub paragraph (a) but who declines or refuses to declare the manner in which the proceeds of the sale were appropriated, is completely excluded from participation in the allowance scheme with effect from the date on which the previous property was sold. The employee can however, again qualify for participation in the allowance scheme by means of a council resolution with effect from the salary payment date of the month during which the employee declared the manner in which the proceeds were appropriated, subject to the provisions of sub paragraph 3.3 (a) and (b).

Date of payment of the Allowance

(a) Current employees

(i) An employee who was already in the employ of a participating local authority on 31 December 1990 and who elected in terms of the provisions of implementing of the scheme to participate in the housing allowance scheme, can be paid an allowance in terms of the provisions of this scheme on every salary payment date following the date on which the employee thus exercised a choice, provided that and subject thereto that all the qualifying provisions of the scheme be complied with.

(iii) In practice it may occur and it is correct that an allowance can be paid twice during the same month to an employee where, for example, circumstances compelled the employee to pay two payments on his/her mortgage loan during the same month, provided that he./she submits sufficient evidence in this regard. This provision is also applicable in respect of an employee who has to pay two payments on his/her mortgage loan during the first month of employment.

(b) At First Appointment

An allowance in terms of this scheme must be paid to all employees who entered into the service of a local authority on or after 1 January 1991 on every salary payment date following the date of his/her employment, provided that the employee complies with (and continues to comply) all the qualifying requirements of this scheme.

(c) At Reinstatement of Allowance

At the reinstatement of the allowance after the payment thereof has been suspended for any reason whatsoever, the

allowance shall again be payable on the salary payment date following the date on which the employee again qualifies for the allowance.

Suspension of the Allowance

- (a) Except where otherwise provided in this determination, payment of the allowance to an employee shall be suspended with effect from the date on which a disqualifying change comes into effect.
- (b) If an employee's services are to be terminated for any reason whatsoever and he/she continues to comply with the qualifying requirements of this scheme, the allowance may be paid on his/her last salary payment date.

Allowance Payment Period

- (a) The allowance shall be paid for the duration of the redemption period applicable to the registered mortgage loan. This implies that every employee has a predetermined allowance payment period which will, on a predetermined date –
 - (i) Commence, namely the date on which the first compulsory monthly payment on the mortgage loan is due; and
 - (ii) Expire, namely the date on which the redemption period applicable to the relevant mortgage loan expires.
- (b) If an employee –

- (i) On appointment applies for an allowance in respect of a property which he/she purchased or constructed before the date of appointment; or
- (ii) whose allowance in respect of any property was suspended for whatever reason and whose circumstances changes at a later stage in such a way that he/she again qualifies for the payment of an allowance in respect of the property,

Then his/her date of appointment or the date on which he/she again qualifies for an allowance will be the date on which his/her allowance payment period commences. The expiry date of the allowance payment period however, remains as contemplated in sub paragraph (a)(ii).

- (c) If an employee has more than one registered mortgage loan in respect of the property which he/she occupies, the allowance payment period in respect of every mortgage loan will be as contemplated in sub paragraph (a) and (b) above.
- (d) Any adjustment of the mortgage repayment period made by the mortgage holder in respect of a registered mortgage loan has a corresponding adjustment of the allowance payment period. The last mentioned is also applicable when, inter alia, two or more mortgage loans are consolidated in one mortgage loan (viz without the person concerned acquiring additional funds) and the mortgage holder indicates a new repayment period. In this regard however, refer to the provisions of paragraph 3.8(b).

3.7 Acknowledgement of further or increased registered mortgage loans

- (a) Subject to the provisions of paragraph 3.2(a) and (b), and employee can be considered for an increased monthly allowance whenever he/she obtains a further or increased registered mortgage loan with the prior approval of the council and provided that the funds thus acquired have been applied for approved purposes and subject to the provisions of the scheme relevant to the calculation of the allowance.
- (b) A further registered mortgage loan or an increased registered loan which was utilized for approved purposes will be acknowledged for allowance purposes at the earliest from the date on which the relevant extensions or improvements have been completed.

NB: The fact that the registered mortgage loan in respect of an employee's property is to be redeemed within months or that the registered mortgage which he/she had over the property has been fully paid (in other words the mortgage is cancelled) does not imply that sub paragraph (a) is not applicable on the employee. Such an employee can still acquire a further registered mortgage loan over his/her property and may be paid an allowance in respect thereof, provided that all requirements of the scheme are complied with.

3.8 Acknowledgement of re-advances or re-instatements of existing Registered Mortgage Loans

- (a) Allowances are calculated in terms of paragraph 3.2(a) and
- (b) Based on approved registered mortgage loans. Consequently, an employee who obtains a re-advance or re-instatement (viz. an action which does not affect the proportional size of the existing registered mortgage loans) does not qualify for an increased monthly allowance

despite the fact that the funds thus acquired have been utilized for approved purposes.

- (c) If an employee obtains a re-advance/re-instatement of his/her existing registered mortgage loan (whether it is utilized for approved purposes or not) and the mortgage holder adjusts (extends) the redemption period applicable to the mortgage loan, the employee's allowance payment period will remain unchanged.

3.9 Payment of allowance during service away from the Local Authority

If circumstances forthcoming from an employee's official service contract compels an employee and all his/her dependants to temporarily vacate the property (for example, due to studies or official duty away from his/her local authority or overseas) and despite the fact that the property may be rented out or not, payment of the allowance continues from the date when the property was vacated –

- (a) Until he/she or his/her dependants again occupies the property; or
- (b) until a period of six months have expired; whichever is the shortest period, provided that the allowance will be reduced by an amount equal to the nett income received from any rental which the employee may receive from the property.

3.10 Effect of Leave of Absence/Suspension on the allowance

Payment of the allowance to an employee is continued during periods of leave of absence of any nature or during periods of suspension, with or without emoluments in terms of the conditions of service applicable to his/her employment, provided that –

- (a) If the employee is on leave of absence without pay or has been suspended without emoluments, the allowance for any specific month is payable only if he/she submits adequate proof that the monthly installment in respect of his/her mortgage loans for that month has been paid in full; and
- (b) If he/she and his/her dependants vacate the property during the period of the leave of absence or suspension, the property is not rented out. Should the property actually be rented out, payment of the allowance must be suspended with effect from the date contemplated in paragraph 3.5.

3.11 Compulsory occupation of Official Quarters

- (a) If it is required of an employee by his/her employing local authority to occupy official quarters or the employee is prevented by circumstances as contemplated in paragraph 2.3 to comply with the occupation requirements, an allowance in terms of this Agreement can be paid to the employee as if he/she complies with the occupation requirements, provided that if the employee rents out the property in respect of which an allowance is received, the nett proceeds of the monthly rental shall be set off against the calculation of the allowance.

3.12 Onus on the Participants in the Scheme

An employee applying for or already receiving an allowance, must –

- (a) verify his/her application with the necessary official or certified documentary proof;

- (b) Report any change during the allowance payment period which may affect the registered loan amount or repayment period, and where applicable, verify same with official or certified documentary proof;
- (c) arrange that his/her monthly payments in respect of his/her mortgage loan(s) are deducted from his/her salary by means of debit order and paid to the mortgage holder(s); and
- (d) Annually submit on demand to his/her employing local authority a statement of account of the mortgage holder(s) reflecting the yearly transactions on the account. A local authority may discretionally suspend the allowance of an employee participating in the scheme if he/she fails to submit on demand such a statement of account within reasonable time (three months).

3.13 Bona fide over- and under payments

If the amount of the allowance paid to an employee proves to be incorrect due to the incorrect application of the provisions of the scheme or the supply of incorrect information by the mortgage holder, the error must be corrected immediately and any amount caused by the error to be –

- (a) Overpaid, must be recovered from the employee by means of installments as agreed upon. If the amount can not be repaid in one installment, interest is not charged on the outstanding monthly balance; or
- (b) Underpaid, must be paid to the employee.

3.14 Penalty Provisions and recovery/correction of the Allowance

- (a) If, after a formal disciplinary hearing, it is established that an allowance is paid to an employee who does not qualify therefore, or that an allowance exceeding that for which he/she qualifies is aid, due

to the fact that he/she purposely submitted incorrect information or purposely withheld applicable information, then –

- (i) payment of the allowance to the employee must be terminated with effect from the first salary payment date after it was discovered;
 - (ii) The total amount which was paid/overpaid, must be recovered from the employee. If any such amount cannot be repaid in one installment but by means of monthly installments, interest at the official rate as applicable on the Housing Scheme of Town Clerks in terms of a determination by the Remuneration Board and as determined by the Minister of Finance from time to time must be charged on the outstanding amount with effect from the date on which he/she was instructed in writing to repay the amount; and
 - (iii) The employee shall not again qualify for an allowance at the relevant local authority.
- (b) Action in terms of sub paragraph (a) does not substitute nor prevent any action in terms of the regulations regarding misconduct as applicable to the employee's service.

3.15 Forms

Full documentation in respect of applications for, suspensions of and changes to housing allowances must be kept by every relevant local authority.

4. POWERS OF DISPOSAL

On the basis of the provisions of the maximum determination the council of the relevant local authority is authorized –

- 4.1 to approve, decline or suspend the payment of an allowance in respect of every individual case;
- 4.2 to determine and amend in individual cases acknowledged loan amounts, allowance amounts, allowance payment periods, allowance commencement dates and allowance termination dates;
- 4.3 to enforce any penalty ad penalty clause in accordance with the provisions of this scheme; and
- 4.4 To carry out any other action prescribed or in accordance with the scheme.

5. CONTROL

Control measures are the responsibility of the relevant individual local authority.

6. OTHER ARRANGEMENTS

Property owned by a company, trust or legal body

- (a) No allowances is payable when an employee occupies a property registered in the name of a company, partnership, trust or legal body.
- (b) When a property which was previously registered in the name of a deceased spouse is held in trust in the estate of the deceased person and the provisions of the will clearly indicates that the surviving spouse, who is an employee, will eventually acquire ownership to the property (e.g. As soon as the will of the deceased has been wound up) and the employee maintains

the monthly installments in respect of the mortgage loan over the property –

- (i) it is regarded that the employee complies with the ownership requirement and an allowance can be paid to the employee if all other requirements are met; and
- (ii) The allowance payment period of the employee will terminate on the date on which the registered redemption period of the loan applicable to the property expires.

Mortgage Loan Phenomenon's

Loans which do not comply with the requirements of paragraph 2.4 are not acknowledged for allowance purposes.

Subdivision and Sale of Property

Paragraph 3.3 applies mutatis mutandis on an employee who subdivides and deals part of the property in respect of which an allowance is paid to him/her. It is expected of such an employee to appropriate an amount equal to the difference between the full sale price of the sold part of the one hand and the sum of the dividing and selling expenses as well as any amount from the proceeds utilized for approved purposes at or on the property which he/she still occupies of the other hand, towards the mortgage loan in respect of the property which he/she occupies. If the implied proceeds are not thus appropriated, the provisions of paragraph 3.3 (b) must be applied.

Allowance payable in respect of interim interest

- (a) As a general rule mortgage holders charge interim interest on registered mortgage loans for the period from the date of registration of the mortgage loan until the day preceding the date on which the first compulsory capital and interest redemption payment (installment) falls due. Provided that the employee complies with the occupying requirement during the period in respect of which interest is charged, an allowance can be paid in respect of the interim interest thus paid by the employee to the mortgage holder in respect of the actual period for which interest was charged or 30 days, whichever period is the shortest.
- (b) The allowance payable in terms of sub paragraph (a), is calculated as follows:
- $A \times B/30 = \text{allowance}$, where
- A = the allowance payable in terms of paragraph 3.1 in respect of the acknowledged loan amount of the person involved; and
- B = the actual number of days (maximum 30) in respect of which interest was charged.
- (c) The provision in sub paragraph (a) only applies on the first or main mortgage loan over a property. An allowance is therefore not payable in respect of interim interest on a second or further mortgage loan over the property occupied by the employee.

Divorce

If an employee divorces his/her spouse and his/her property, in respect of which an allowance was paid to the employee and/or his/her spouse on the basis of this determination (or similar basis, e.g.

A previous determination) for any period in consideration of his/her service at the relevant local authority –

- (a) is sold in order to hand over the proceeds to his/her spouse or to divide the proceeds in a certain manner between the employee and his/her spouse, the case must be handled in terms of the rules detailed in paragraph 3.3. For this purpose only that percentage of the nett proceeds from the sale of the property as ordered in the divorce order and as contemplated in the mentioned paragraph must be taken into consideration when the employee again acquires a further property and applies for the payment of an allowance; or

- (b) is allocated to his/her spouse (e.g. By transporting it in his/her spouse's name or by allocating usufruct to him/her), the case must be handled in terms of rules in paragraph 3.3 as if he/she has sold the property. For this purpose a realistic market value of the property at the time of the allocation thereof to the spouse, must be determined so as to be able to determine the nett proceeds.

7. EXTRA ORDINARY CASES

Should circumstances arise which may justify a deviation from the provisions of this determination, the Industrial Council must be approached accordingly.