RENTAL HOUSING AMENDMENT ACT, 2014

TRAINING COURSE MANUAL
FOR MUNICIPAL OFFICIALS
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FOREWORD

The Rental Housing Amendment Act, 2014 (Act No. 35 of 2014) was asserted to by the President on 5 November 2014 as an amendment to the Rental Housing Act, 1999 (Act No. 50 of 1999).

The purpose of the RHAA is to amend the Rental Housing Act, 1999 (act No 50 of 1999), so as to substitute and insert certain definitions; to set out the rights and obligations of tenants and landlords in a coherent manner; to require leases to be in writing; to extend the application of Chapter 4 to all provinces; to require MEC’s to establish Rental Housing Tribunals; to extend the powers of the Rental Housing Tribunals; to provide for an appeal process; to require all local municipalities to have Rental Housing Information Offices; to provide for norms and standards related to rental housing; to extend offences; and to provide for matters connected therewith.

The main objectives of the amended Act are to:

- Create mechanisms to promote the provision of rental housing property,
- Promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market,
- Lay down general principles governing conflict resolution in the rental housing sector,
- Provide for the facilitation of sound relations between tenants and landlords; and
- Provide for legal mechanisms to protect the rights of tenants and landlords against illegal actions by the other party by affording speedy means of redress at minimum cost to the parties.

In order to meet the objectives of the amended Act, the Department of Human Settlements has produced a manual as a mechanism to explain general principles governing conflict resolution in the rental housing sector as set out by the amended Act. It is hoped that this manual will serve as an effective tool for providing municipal officials with relevant information to enable them to attend to dispute matters between tenants and landlords that may arise in their localities.

M TSHANGANA
DIRECTOR - GENERAL; DEPARTMENT OF HUMAN SETTLEMENTS
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A. INTRODUCTION

Welcome to the “Rental Housing Amendment Act, 2014 Training Course for Municipal Officials”.

Rental housing law can be defined as a set of legal rules that regulate the relationship between tenants and landlords. The purpose of this one-day course is to provide municipal officials with the necessary knowledge about South African rental housing law, particularly the Rental Housing Act, 1999 as amended by the Rental Housing Amendment Acts of 2007 and 2014. The course aims to assist municipal officials in municipalities where rental housing information offices have not been established to take the first steps towards establishing rental housing information offices. The course also aims to assist municipal officials that work in the information offices to confidently advise tenants and landlords of their rights and obligations under South African rental housing law.

In addition to the South African rental housing law framework, the course will cover the following primary aspects of the Rental Housing Act, 1999 as amended by the Amendment Acts of 2007 and 2014:

- Definitions and objectives
- Clarification of the responsibility of government
- Rights and obligations of tenants and landlords
- Leases
- Rental Housing Tribunals
- Dispute resolution by the Tribunals
- Appeals and reviews
- Rental Housing Information Offices
- Procedural and unfair practices regulations
- Offences and penalties
- Substitution of expressions
- Transitional provisions
Worksheet: Expectations

What are your expectations of the course, and what would you like to get out of it?
B. LIST OF TERMS, ENTITIES AND REPRESENTATIVE INDIVIDUALS

Terms, entities, and individuals that are either used or referred to in this manual, other than the following, are defined in the body of the manual:

TERMS

- “Jurisdiction” refers to the authority given by the RHA to resolve disputes between landlords and tenants within the province in which a Tribunal is established.
- “Landlord” refers to the owner of a dwelling that is leased, and includes his or her duly authorised agent or a person who lawfully possesses the dwelling and has the right to lease or sub-lease it.
- “Procedural regulations” refers to the procedures to be made by the Minister that regulate the functions of the Tribunal.
- “RHA” refers to the Rental Housing Act, 1999.
- “Tenant” refers to the lessee of a dwelling that is leased by a landlord.
- “Unfair practices regulations” refers to the rules to be made by the Minister to govern the conduct of tenants and landlords.
- “2014 Amendment Act” refers to the Rental Housing Amendment Act, 2014.

ENTITIES

- “Information office” refers to a Rental Housing Information Office established by a local municipality, and “information offices” has a corresponding meaning.
- “Local municipality” refers to a municipality as defined in the Local Government: Municipal Systems Act, 2000.
- “National department” refers to the National Department of Human Settlements
- “Provincial department” refers to the department responsible for human settlements in the province, and “provincial government” has a corresponding meaning.
- “Tribunal” refers to a Rental Housing Tribunal established in each province by the MEC, and “Tribunals” has a corresponding meaning.

REPRESENTATIVE INDIVIDUALS

- “MEC” refers to a member of the Executive Council in each province that is responsible for housing matters.
- “Minister” refers to the Minister of Human Settlements.
C. THE SOUTH AFRICAN RENTAL HOUSING LAW FRAMEWORK

The purpose of Part C of this manual is to provide a background to South African law and an overview of the laws governing rental housing in South Africa.

1. DIVISIONS OF THE LAW

The national law of South Africa is like that of all other states in that it is divided into two branches, the civil law and the criminal law.

- **Criminal law**
  The criminal law is the collection of rules that regulate the punishment of persons for offences or crimes committed by them. For example, if a person commits a crime, that person is prosecuted by a State official in a court that decides whether the accused person is guilty and if so, determines the punishment to be imposed on that person according to the rules of the criminal law.

- **Civil law**
  The civil law is the collection of rules which regulates and enforces the legal rights of persons in areas such as contracts, property and family law. For example, if one person infringes the legal rights of another, the aggrieved person is entitled to institute legal proceedings against the other, claiming redress in a court of law that determines what redress should be made by the offender to the other person according to the rules of the civil law.

2. SOUTH AFRICA’S MIXED CIVIL LAW SYSTEM

South African civil law is a mixed legal system made up of a civil law system inherited from the Dutch, a common law system inherited from the British, and a customary law system inherited from indigenous Africans.

In civil law systems, statutes are designed to cover all eventualities, and judges have a more limited role in they apply the law to the case in hand.

By contrast, common law (also known as judicial precedent, judge-made law or case law) is the body of law developed by judges, courts and similar tribunals. The defining characteristic of common law is that it arises as precedent. Precedent is a principal or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts.

Customary law in South Africa is essentially the practices, traditions and customs of indigenous Africans.

3. APPLICATION OF SOUTH AFRICA’S CIVIL LAW SYSTEM TO RENTAL HOUSING

- In South Africa, the relationship between a landlord and tenant is regulated by a lease agreement, which is governed by legislation, the common law, modern customs and trade practices.
- The common law gives the tenant and the landlord the freedom to determine the context of their relationship. Legislation, however, places limits on their power to do this by imposing laws and regulations that require minimum standards to be maintained. A term in a lease agreement that conflicts with legislation is, therefore, invalid.
- The RHA is legislation (or law) that sets out directives that, unless otherwise stated in the legislation, must be complied with. A regulation is a special requirement within the legislation that is usually made by a designated person or authority who is duly authorised to do so by the legislation in question. The regulation must be complied with, unless otherwise stated in the regulation.
4. STATUTES

The tenant’s and landlord’s rights are derived from the following primary statutes (legislation).

4.1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Constitution provides a new interpretive context for understanding South African rental housing law.

Section 26 (1) of the Constitution provides that everyone has the right to have access to adequate housing.

Section 26 (2) requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Section 26 (3) provides that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Section 34 gives everyone the right to have any dispute decided in a fair, public hearing before a court or independent tribunal or forum.

In terms of the preamble, the Constitution is the driving force that is to create a society based on democratic values, social justice and fundamental human rights. The Constitution also aims to improve the quality of life of all citizens and free the potential of each person.

This means that the Constitution is an instrument of reconstruction and transformation. For the poor and illiterate sectors of society, the legitimacy of the new constitutional order is inextricably linked to socio-economic rights.

4.2. HOUSING ACT, 107 OF 1997

The Housing Act recognises the Constitutional right to access to adequate housing and clarifies the State’s response to this right by setting out the legal plan for the sustainable development of housing. It defines the national, provincial and local government functions concerning housing development and the financing of housing programmes.

It is important to note that if a dwelling in any housing development is leased, then the lease of the dwelling would be subject to the RHA.

4.3. PIE ACT, 19 OF 1998

As stated previously, section 26 (3) of the Constitution provides that no one may be evicted from their home without an order of court made after consideration of the relevant circumstances. Most lease agreements contain a clause that the lease may be cancelled, should the tenant fail to comply with the terms of the lease. This means that, upon cancellation, the tenant may be evicted after a court has considered all the relevant circumstances. The PIE Act imposes certain requirements that must be followed to evict a defaulting tenant or unlawful occupier.

As shown further on in this manual, the Tribunal established under the RHA does not have the power to grant eviction orders.

4.4. RENTAL HOUSING ACT, 50 OF 1999

The RHA came into operation on 1 August 2000. It is one of the legislative measures that the state has taken to achieve the progressive realisation of the right to have access to adequate housing.
The RHA was enacted as a response to changes in the character of urban centres in South Africa, which were characterised by the following: a high number of disputes between tenants and landlords; a lack of maintenance of rental housing property, particularly multi-tenanted buildings; the invasion of buildings by unscrupulous tenants’ committees, civic organisations, so-called estate agents and security firms; the failure of local authorities to enforce their own by-laws; and a general decay in living environments.

The RHA aims to stabilise and regulate the residential rental housing sector through the establishment of a Tribunal in each of South Africa’s provinces. The Tribunal is required to regulate tenant and landlord relations and resolve disputes between them.

The RHA specifically provides for the establishment of an information office by a local municipality. The information office is required to do the following: refer disputing tenants and landlords to the Tribunal; keep records of enquiries received by the information office and submit reports in relation to those enquiries to the Tribunal; as well as educate, provide information and advise tenants and landlords concerning their rights and obligations in relation to rental housing property that falls within a local municipality’s geographical borders.

4.5. SOCIAL HOUSING ACT, 16 OF 2008

Social Housing is a form of housing delivery in the overall South African housing market. The Social Housing Act aims to establish and promote a sustainable social housing environment. This Act’s major purpose is to provide for the establishment of the Social Housing Regulatory Authority, which must regulate all social housing institutions that are obtaining or have obtained public funds, and which allows for the undertaking of approved projects by other delivery agents with the benefit of public money. Provincial government is given responsibility to approve, allocate and administer capital grants, and to administer the Social Housing Programme. Local governments are required to ensure access to land, municipal infrastructure and services for approved projects in designated restructuring zones. A restructuring zone is a geographic area that has been identified by a local municipality for social housing, with the concurrence of the provincial government, and designated as such by the Minister for approved projects. Local governments are also responsible for initiating and identifying the restructuring zones.

It is important to note that social housing institutions and their tenants are subject to the RHA.

4.6. CONSUMER PROTECTION ACT, 68 OF 2008

The Consumer Protection Act requires the National Consumer Tribunal or a court to interpret any standard form, contract or document to the benefit of the consumer. It also gives the consumer the right to receive information in plain and understandable language. The proposed pro forma lease agreement, which will be dealt with further on this manual, and any other residential lease agreement must, therefore, be written in plain and understandable language. An apparent conflict between the provisions of the RHA and the Consumer Protection Act, a conflict concerning the time periods to terminate a lease, for example, should be referred to the Tribunal.

4.7. COMMUNITY SCHEME LEGISLATION

- Sectional Titles Act, 95 of 1986
  Sectional title is a form of ownership in which several people can simultaneously own the piece of land on which a building or buildings are built while each one of them individually owns a house on the land or flat in the building. The Sectional Titles Act provides for the division of buildings or land (such as townhouse complexes) into sections and common property, and for the acquisition of separate ownership in sections coupled with joint ownership in common property. This is known as a sectional scheme. A section is that part of the building, such as a flat or a townhouse in a townhouse complex, which is owned by an owner. The owner is said to have “title”, which is a legal term used to describe the ownership of fixed property. The common property is the whole area that does not form part of any section. All owners own the common
property in undivided shares because it is physically impossible to separate the different parts of the common property, such as passageways and the swimming pool. The owners are said to be owners of the units in the building or complex. A unit is made up of the owner’s section and undivided share in the common property.

The Sectional Titles Act also provides for the establishment of a bodies corporate to control common property and to apply rules for that purpose. The body corporate is made up of all the owners of units in the building or complex. Every building or complex has rules regarding both management and conduct that apply to it. The management rules deal with the control, management and administration of a sectional scheme. The rules of conduct are more general, and deal with the use and enjoyment of both the common property and the sections by owners and occupiers of a building.

The trustees of a body corporate are those individuals who are elected at an annual general meeting of a body corporate as the body corporate’s representatives. They take care of the day-to-day administration and management of a body corporate. Trustees can be likened to the directors of a company because they perform the executive function of the body corporate.

- **Sectional Titles Schemes Management Act, 8 of 2011**
  The Sectional Titles Schemes Management Act, amongst other things, amends the Sectional Titles Act and refines the body corporate’s powers to enforce the rules, and to administer and manage the body corporate and common property for the benefit of all owners.

- **Community Schemes Ombud Service Act, 9 of 2011**
  Many people in South Africa live in housing schemes where the use of land and the responsibility for land and buildings is shared. Examples include sectional title development schemes, housing co-operatives, housing schemes for retired persons (retirement villages), and home or property owners’ associations, which are usually found in gated or golf estates.

  The purpose of the Community Schemes Ombud Service Act is to provide for a dispute resolution mechanism for the types of community schemes referred to in the preceding paragraph, which is cost-effective and does not require legal representation. The dispute resolution service includes conciliation (in which an independent conciliator assists the parties to arrive at a mutually agreeable solution) and adjudication (in which an independent adjudicator determines how the dispute is to be resolved, and makes a binding decision or order). Both the occupiers and body corporate may apply to the Community Schemes Ombud Service (the Ombud) for relief arising out of the administration of a community scheme. This may include, amongst other things, financial issues, behavioural issues, governance issues, meetings, management services, as well as building work relating to private and common areas in community schemes.

  It is important to note that an occupier means a person who legally occupies a private area (section) and, therefore, includes the owner and a tenant. This means that a tenant who resides in a community scheme may approach the Ombud for relief concerning any matter or dispute that falls within the Ombud’s authority to resolve. Therefore, where a dispute concerns, for example, a violation of the tenant’s right to the use of the common property, such as the swimming pool or washing area, then the tenant should make an application to the Ombud to resolve the dispute. However, a dispute between the tenant and the owner of a section (which is also known as a private area) that concerns the amount of rental payable would fall outside of the administration of the community scheme, and the tenant should lodge a complaint with the Tribunal to resolve the dispute.
4.8. POINTS TO REMEMBER

The RHA must be interpreted in light of the Constitution and relevant legislation. A term in a lease agreement that conflicts with legislation, whether it be the Constitution, RHA, 2014 Amendment Act or any other law, is invalid. An apparent conflict between the provisions of the RHA and the Consumer Protection Act, such as a conflict related to the time periods in which to terminate a lease, should be referred to the Tribunal. It is important to note that a tenant who legally resides in a private area (section) in a community scheme is an occupier and may approach the Community Schemes Ombud Service to resolve a dispute that falls within the of the body corporate. However, a dispute between the tenant and the owner of the private area that concerns the payment of the rental must be referred to the Tribunal because the dispute is a private matter between them and falls outside of the administration of the community scheme.
D. AN OVERVIEW OF THE RHA

The purpose of Part D of this manual is to provide a brief overview of the RHA, its purpose and the reasons for the 2014 Amendment Act.

1. PRIMARY PURPOSE

The primary purpose of the RHA is to stabilise and regulate the residential rental housing sector through the establishment of a Tribunal in each province, which must act in terms of the procedural and unfair practices regulations that are aimed at, amongst other things, settling disputes between tenants and landlords. The establishment of the Tribunal means that tenants and landlords can have their disputes settled without having to go through the complicated and expensive court process.

2. APPLIES TO ALL RESIDENTIAL TENANTS AND LANDLORDS IN SOUTH AFRICA

The RHA applies to all tenants and landlords in South Africa. The RHA requires a Tribunal to accept complaints from tenants and landlords related to disputes that fall within the geographical provincial boundaries in which the Tribunal operates. Parastatals, municipalities, and social housing institutions, including national, provincial and local government department entities that provide rental housing, are subject to the RHA.

3. THE TRIBUNAL CONSIDERS BOTH LAWFULNESS AND FAIRNESS

The Tribunal is required to determine whether an unfair practice has been committed. The unfair practices may be described as rules that relate to the “Do’s and Don’ts” for tenants and landlords. An unfair practice regulation may not conflict with the RHA. If there is a conflict, then the unfair practice regulation will automatically be invalid. The RHA overrides or superimposes its unfair practice regime on the contractual arrangement that the tenant and landlord have negotiated. This means that the Tribunal must take the RHA, as amended by the 2007 and 2014 Amendment Acts, and the unfair practices regulations into account when making its rulings.

4. 2007 AMENDMENT ACT

The RHA was initially amended by the 2007 Amendment Act, which came into operation on 13 May 2008, and clarified that:

- The tenant could not have his or her possessions seized, except in terms of law (by consent or court order) or a ruling by the Tribunal.
- The tenant need only pay the costs of a lease if the landlord provides proof that the landlord factually incurred expenses in relation to the lease.
- The Tribunal does not have jurisdiction to hear applications for eviction orders.
- It is an offence to unlawfully lock out a tenant or shut off the utilities to the rental housing property without having first obtained a court order.
- A ruling by the Tribunal is deemed to be an order of a magistrate’s court and is enforced in terms of the Magistrates’ Court Act, 1944.
- The Tribunal is empowered to
  - Issue spoliation orders. (A spoliation is any wrongful deprivation of another’s right of possession. For example, the landlord who is owed arrear rentals switches off the water supply to the tenant’s premises without having obtained a court order. The Tribunal order, known as the “mandament van spolie”, undoes a spoliation by ordering the landlord, as the guilty party, to return that which was spoliated, which is the restoration of the water supply to the tenant’s premises.)
  - Issue attachment orders. (Orders that authorise the seizure of property to ensure satisfaction of a Tribunal ruling. The document by which the Tribunal orders such a seizure is called a “writ of attachment” or an “order of attachment”.)
Grant interdicts. (Orders prohibiting the tenant or landlord from doing something. For example, ordering a tenant to stop being a nuisance by regularly playing loud music late at night.)

5. **REASONS FOR THE 2014 AMENDMENT ACT**

The National Department subsequently undertook a monitoring and implementation process in relation to the RHA. It concluded that it was necessary to again amend the RHA to not only align the RHA with developments in the rental housing sector but to also clarify and enhance the Tribunal’s powers to bring about greater justice to tenants and landlords throughout South Africa. Broadly, the amendments:

- Introduce new definitions, in accordance with developments in the rental housing sector, more specifically aimed at ensuring improved habitability (living conditions) in rental housing property.
- Place further duties on the national department to
  - Promote rental housing and introduce rental housing subsidy programmes to meet the growing demand for housing from low-income persons; and
  - Train members of the Tribunal and information office officials to ensure uniformity of outcomes.
- Require provincial government to assist a local municipality not yet on level-three accreditation to establish an information office. In 2012, the National Accreditation Assignment Framework was revised and level-three accreditation was replaced with assignment. As at 1 August 2017, no municipality in South Africa has been assigned the housing function, which means that a provincial government is obliged to assist all local municipalities in its province to establish an information office.
- Require all local municipalities to establish an information office to enable tenants and landlords in all local municipalities to have access to an information office.
- Set out the rights and obligations of tenants and landlords in a coherent manner so that tenants and landlords will be deemed knowledgeable regarding their respective rights and obligations, and, thereby, reduce disputes referred to the Tribunal.
- Require the landlord to reduce a lease to writing to ensure greater certainty in the tenant and landlord relationship.
- Require every MEC to establish a Tribunal to ensure that tenants and landlords in all provinces in South Africa may have their disputes resolved through the Tribunal.
- Change the composition and quorum of the Tribunal to enable the Tribunal to resolve disputes more quickly and cheaply.
- Give the Tribunal additional powers to
  - Make rulings for payment of rentals; and
  - Make orders that are necessary to give effect to the RHA; and
  - Rescind or vary (alter) Tribunal rulings that may have been erroneously granted.
- Cure certain technical defects in the 2007 Amendment Act to enable the Minister, and not the MEC, to set forth the procedural and unfair practices regulations, and, thereby, ensure uniform regulations throughout the country.
- Introduce new offences in accordance with the amendments in the 2014 Amendment Act. For example, it becomes an offence not to reduce a lease to writing.
- Introduce an appeal process to enhance the Tribunal rulings and thereby ensure greater justice to tenants and landlords.

These wide-ranging amendments in the 2014 Amendment Act will be discussed in greater detail later in this manual.
6. **ARRANGEMENT OF CHAPTERS AND SECTIONS IN THE RHA**

The RHA is divided into the following chapters and sections:

RHA

**CHAPTER 1: INTRODUCTORY PROVISIONS**
1. Definitions

**CHAPTER 2: PROMOTION OF RENTAL HOUSING PROPERTY**
2. Responsibility of Government to promote rental housing
3. Measures to increase provision of rental housing property

**CHAPTER 3: RELATIONS BETWEEN TENANTS AND LANDLORDS**
4. General provisions
5. Provisions pertaining to leases

**CHAPTER 4: RENTAL HOUSING TRIBUNAL**
6. Application of Chapter
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**CHAPTER 5: GENERAL PROVISIONS**
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7. **POINTS TO REMEMBER**

*The RHA has always applied to all residential tenants and landlords in South Africa. This includes parastatals, municipalities, social housing institutions, and national, provincial and local government department entities that provide rental housing. The 2014 Amendment Act does not change this.*
E. THE RHA AND 2014 AMENDMENT ACT

The purpose of Part E of this manual is to develop a detailed knowledge of all aspects of the 2014 Amendment Act. To do so, it is necessary to first consider the sections of the RHA, and, thereafter, to consider those sections that are amended by the 2014 Amendment Act. This will help you to understand the RHA as amended by the 2014 Amendment Act better. The sections in italics as set out in this Part E under either the RHA or the 2014 Amendment Act refer only to the RHA or the 2014 Amendment Act, as the case may be. The officials in the information office must be familiar with the contents of the RHA as amended by the 2014 Amendment Act in order for the information office to fulfil its functions under the RHA as amended by the 2014 Amendment Act.

1. CHAPTER 1: INTRODUCTORY PROVISIONS

The purpose of this section is to develop knowledge concerning the important definitions or terms used in the RHA and 2014 Amendment Act, and the objectives of the 2014 Amendment Act.

1.1. DEFINITIONS

1.1.1. RHA

SECTION 1

The structure of an Act of Parliament begins with the definitions of words and phrases that are used in the Act. Some of the important definitions found in the RHA include the following:

- “Dwelling”, which refers to a house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure that is leased, and a storeroom, outbuilding, garage or demarcated parking space which is leased as part of the lease.
- “Lease”, which refers to an agreement of a lease concluded between a tenant and the landlord concerning a dwelling for housing purposes.
- “Unfair practice”, which refers to
  - Any act or omission by a landlord or tenant that contravenes the RHA; and/or
  - A practice prescribed as a practice that unreasonably prejudices the rights or interests of a tenant or a landlord.

1.1.2. 2014 AMENDMENT ACT

SECTION 1

The 2014 Amendment Act aims to align the definitions in the RHA with the Constitution and recent developments within national, provincial and local government and the rental housing sector. It, therefore, introduces several new definitions, such as:

- “Habitability”, which refers to a dwelling that is safe and suitable for living in and includes:
  - adequate space
  - protection from the elements and other threats to health
  - physical safety of the tenant, the tenant’s household and visitors
  - a structurally sound building.
- “Habitable” has a corresponding meaning.
- “Maintenance”, which includes such repairs and upkeep as may be required to ensure that a dwelling is in a habitable condition, and “maintain” has a corresponding meaning.

The introduction of the term “habitability” aims to improve living standards by ensuring that a dwelling is safe and suitable for living. The introduction of the term “maintenance” envisages that the landlord will continue to maintain the dwelling during the lease and ensure that it remains in a habitable condition.
1.2. OBJECTIVES OF THE 2014 AMENDMENT ACT

SECTION 2

The objectives of the 2014 Amendment Act are to ensure that RHA meets the growing demands of the Tribunal, cure defects in the RHA, and ensure uniformity of outcomes across the provinces. The 2014 Amendment Act, therefore, inserts a new section to describe the objectives of the RHA, namely to:

- Create mechanisms to promote the provision of rental housing property.
- Promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market.
- Lay down general principles governing conflict resolution in the rental housing sector.
- Provide for the facilitation of sound relations between tenants and landlords.
- Provide for legal mechanisms to protect the rights of tenants and landlords.

1.3. POINTS TO REMEMBER

A dwelling includes any structure that is leased for rental housing purposes. The unfair practice definition is important because, as will be seen later in this manual, the Tribunal is set up to deal with unfair practices. An “unfair practice” is any breach of the RHA or any breach of the unfair practices regulations. The unfair practices regulations prescribe unfair practices that are not provided for in the RHA. The introduction of the term “habitability” aims to improve living standards by ensuring that a dwelling is safe and suitable for living. The introduction of the term “maintenance” envisages that the landlord will continue to maintain the dwelling during the lease. The objectives of the 2014 Amendment Act are to ensure that RHA meets the growing demands of the Tribunal, cure defects in the RHA and ensure uniformity of outcomes across the provinces.

2. CHAPTER 2: PROMOTION OF RENTAL HOUSING PROPERTY

The purpose of this section is to develop knowledge concerning the roles of the three spheres of government to promote and increase the provision of rental housing and the duty of every local municipality to establish an information office.

2.1. RESPONSIBILITY OF NATIONAL GOVERNMENT TO PROMOTE RENTAL HOUSING

2.1.1. RHA

SECTION 2

The RHA requires the national government to promote a stable and growing market that progressively meets the demand for affordable housing amongst historically disadvantaged persons and to facilitate the provision of rental housing in partnership with the private sector. National government must also introduce a policy framework, including norms and standards, on rental housing. Norms and standards will be dealt with later in this manual.

The RHA empowers the Minister to introduce a rental housing subsidy programme or other assistance measures to stimulate the supply of rental housing property to low-income persons.
2.1.2. 2014 AMENDMENT ACT

SECTION 3

The 2014 Amendment Act places additional duties on the national government to promote rental housing by requiring the Minister to:

- Monitor the impact of the RHA’s application on tenants and landlords, and more specifically the impact on poor and vulnerable tenants.
- Monitor the performance of the Tribunal and information offices.
- Develop relief measures and other social programmes as a part of the policy framework on rental housing to alleviate hardships that may be suffered by tenants.
- Develop programmes and guidelines or amend the policy framework on rental housing to facilitate the effective performance by the Tribunal and the information office in the local municipality.
- Annually report to the National Assembly on the promotion of rental housing property.

2.2. MEASURES TO INCREASE RENTAL HOUSING

2.2.1. RHA

SECTION 3

The RHA empowers the Minister to introduce a rental housing subsidy programme or other assistance measures to stimulate the supply of rental housing property low-income persons.

2.2.2. 2014 AMENDMENT ACT

SECTION 4

- National government
  The 2014 Amendment Act requires national government to develop and fund programmes to train members of the Tribunal and information office officials. The programmes will result in increased knowledge and skills, which will lead to quicker resolution of disputes and greater uniformity of outcomes across the provinces.

- Provincial government
  The 2014 Amendment Act requires provincial government to assist local municipalities not yet on level three accreditation to establish information offices. This will require provincial government and those municipalities to work together to establish information offices.

- Local government
  The 2014 Amendment Act requires all local municipalities to establish an information office. The establishment of the information office will enable landlords and tenants to obtain education and advice at their local municipality concerning their rights and obligations as landlords and tenants, and, where appropriate, to be referred to the Tribunal. This manual will deal in greater detail with information offices in section 8 of Part E of this manual.

2.3. POINTS TO REMEMBER

National government has a responsibility to promote rental housing, take measures to increase rental housing, monitor the performance of the Tribunal and information offices, and develop and fund programmes to train members of the Tribunal and information office officials.
**Provincial government must assist local municipalities not yet on level three accreditation to establish information offices.**

**All local municipalities must establish an information office.**

### 3. **CHAPTER 3: RELATIONS BETWEEN TENANTS AND LANDLORDS**

The purpose of this section is to develop knowledge concerning the rights and obligations of tenants and landlords.

#### 3.1. **AMENDMENT OF HEADING**

Chapter 3 of the RHA has as its heading “RELATIONS BETWEEN TENANTS AND LANDLORDS”. The 2014 Amendment Act creates a new heading: “RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS”.

#### 3.2. **RHA - RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS**

**SECTIONS 4 AND 5**

The RHA provides for the following rights and obligations in the tenant-landlord relationship:

- **Discrimination**
  The landlord may not unfairly discriminate against the tenant on the grounds set out in the Constitution. This means that the landlord has a duty to act fairly when considering whether to lease a dwelling to the tenant. For example, the landlord may not refuse to rent a dwelling to the tenant because the tenant is black, a woman, pregnant, disabled or has a particular sexual preference.

- **Privacy**
  The tenant has the right to privacy; to not have the tenant’s home, person or property searched or seized, or communications infringed upon. This extends to the tenant’s family and visitors.

- **Payment of rental**
  The tenant must promptly and regularly pay the rental or any charges that may be payable in terms of the lease.

  The landlord may recover unpaid rental or any other amount that is due in terms of the lease after obtaining a ruling by the Tribunal or a court order.

- **Termination of the lease**
  The landlord may terminate the lease on grounds that do not constitute an unfair practice and are specified in the lease. The Constitutional Court has ruled that a landlord must act fairly in doing so.

- **Fair wear and tear**
  On termination of a lease, the tenant must return the dwelling in a good state of repair, except for fair wear and tear. This means that the wear and tear must be reasonable. The general rule is that, if the tenant damages something that would not normally wear out or shortens the lifespan of something that may wear out, the landlord may charge the tenant a pro-rated cost of the damaged or worn-out item.

- **Compensation for damages**
  The landlord may claim compensation from the tenant for damages caused to the dwelling during the tenancy. The damage could have been caused by the tenant, a member of the tenant’s household or the tenant’s visitor.
■ Eviction
The tenant cannot, where the tenant fails or refuses to vacate the dwelling, be evicted without a court order.

■ Written receipts
- The landlord must furnish the tenant with written receipts for all payments made to the landlord.
- The receipts must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling for which payment is made. The receipts must also state whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made.

■ Deposits
- The landlord may require the tenant, before moving into the dwelling, to pay a deposit as agreed between them.
- At the end of the lease, the landlord may apply the deposit and interest towards the payment of all amounts for which the tenant is liable in terms of the lease. This includes the reasonable cost of repairing damage to the dwelling during the tenancy and the cost of replacing lost keys. The balance, if any, of the deposit must then be refunded to the tenant not later than 14 days after the tenant has restored the dwelling to the landlord.
- Should no amounts be owing to the landlord, the landlord must refund the tenant the deposit, together with the accrued interest, without deducting or setting off any amounts, within seven days of the end of the lease.

■ Interest on deposits
- The landlord must invest the deposit with a financial institution in an interest-bearing account, the rate of which may not be less than the rate that applies to a savings account with that same financial institution.
- The tenant may request written proof of the interest accrued, and the landlord must provide such proof.

■ Joint inspections and refund of deposits
- Before the tenant moves into the dwelling, the tenant and the landlord must jointly inspect the dwelling to determine any defects or damage to the dwelling. If they find any, it is the landlord’s duty to repair them or they may decide to record them on a defects list, which must be annexed to the lease.
- Similarly, within a period of three days before the lease ends, the tenant and the landlord must inspect the dwelling to determine any damage caused to the dwelling during the tenancy.
- If the landlord fails to inspect the dwelling at either the beginning or end of the lease in the presence of the tenant, such failure is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair. The landlord will then not have a further claim against the tenant, and the landlord must then refund the full deposit and accrued interest to the tenant.
- If the tenant fails to respond to a request for an inspection at the end of the lease, the landlord must inspect the dwelling within seven days of the end of the lease to assess any damage or loss during the tenancy. The landlord will be entitled to deduct from the deposit the cost of repairing any damage or replacing lost keys. The balance of the deposit and accrued interest must then be refunded to the tenant within 21 days of the end of the lease.
- The relevant receipts, which indicate the costs that the landlord incurred to repair the damage or replace lost keys, must be made available to the tenant for inspection as proof that the costs were incurred by the landlord.
3.3. 2014 AMENDMENT ACT - ADDITIONAL RIGHTS AND OBLIGATIONS

SECTION 7

The 2014 Amendment Act amends the RHA by restating the existing rights and obligations, and by providing for additional rights and obligations in the tenant-landlord relationship.

The additional rights and obligations are as follows:

- **Habitability and maintenance**
  The landlord must provide the tenant with a dwelling that is in a habitable condition and must maintain the existing structure of the dwelling during the tenancy.

- **Basic services**
  The landlord must where possible, facilitate the provision of basic services to the dwelling.

- **Privacy**
  Should the landlord wish to exercise the landlord’s right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant.

- **Subletting**
  The tenant may not sublet the dwelling without the consent of the landlord who may not unreasonably withhold consent.

- **Joint inspections**
  The tenant must, upon request by the landlord, make him or herself available to jointly inspect the dwelling at a mutually convenient time to determine any damage caused to the dwelling during the tenancy.

- **Joint inspections and refund of deposits**
  The landlord must ensure that the provisions concerning joint inspections and refund of deposits and accrued interest are complied with.

3.4. POINTS TO REMEMBER

Chapter 3 has a new heading “RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS”.

*In a nutshell, the tenant has the right to privacy, to receive written receipts for all payments made to the landlord, to earn interest on the deposit, and to be refunded the deposit and accrued interest less any amounts for which the tenant is liable under the lease, and cannot be evicted without a court order. The tenant must timeously pay the rental and all amounts due in terms of the lease, and return the dwelling in a good state of repair except for fair wear and tear.*

*The landlord may not discriminate against the tenant on any of the grounds set out in the Constitution. The landlord may claim compensation from the tenant for damages caused to the dwelling during the tenant’s occupation of the dwelling.*

*The tenant and the landlord must jointly inspect the dwelling at the beginning and end of the lease. If the tenant fails to respond to the landlord’s request for an inspection at the end of the lease, the landlord must inspect the dwelling and will be entitled to deduct from the deposit and accrued interest any amounts for which the tenant may be liable in terms of the lease, which includes the cost of repairing any damage or replacing lost keys. The landlord must ensure that the provisions concerning joint inspections and the refund of deposits and accrued interest are complied with.*
4. **CHAPTER 3: LEASES**

The purpose of this section is to develop knowledge concerning the provisions of written leases, which are compulsory under the 2014 Amendment Act.

4.1. **RHA: NEED NOT BE WRITTEN**

**SECTION 5**

The RHA does not require a lease between a tenant and a landlord to be in writing. However, a landlord must reduce the lease to writing if the tenant requests the landlord to do so.

4.2. **2014 AMENDMENT ACT**

4.2.1. **WRITTEN LEASE AGREEMENTS**

**SECTION 8**

The 2014 Amendment Act requires all leases be reduced to writing. The onus will be on the landlord to do so. This means that all lease agreements, whether governing upmarket, backyard, informal or any other residential rental dwelling, must be in writing. The lease must include the following information:

- The names of the tenant and the landlord, and their addresses for purposes of formal communication.
- The description of the dwelling, which is the subject of the lease. The street address of the dwelling will be sufficient.
- The amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease.
- The frequency of rental payments, if rentals are not paid on a monthly basis.
- The amount of the deposit, if any.
- The lease period, or, if there is no determined lease period, the notice period required to terminate the lease.
- The obligations of the tenant and the landlord.
- The amount of the rental, and any other charges payable in addition to the rental in respect of the property.

The requirement that a lease must set out the rights and obligations of tenants and landlords will result in greater certainty in the tenant and landlord relationship.

4.2.2. **PRO-FORMA LEASE AGREEMENT**

**SECTION 8**

The Minister must develop a pro forma lease agreement in all 11 official languages that contain the minimum information set out above and which may be used as a guideline by tenants and landlords.

This means that all landlords and tenants not conversant in English or Afrikaans will have access to a written lease agreement in any of the official languages. They will also be empowered to comply with their obligations and enforce their rights.

4.2.3. **DEFECTS LIST**

**SECTION 8**

The 2014 Amendment Act restates the provision in the RHA that a list of defects that exist in the dwelling at the commencement of the lease must be drawn up and attached as an annexure to the lease. By doing so, the tenant and landlord will reduce a potential dispute concerning damage to the dwelling during the tenancy and streamline the refund of the deposit.
4.2.4. ENFORCEABILITY OF LEASE AGREEMENTS

SECTION 8

A landlord or tenant may enforce a lease in a Tribunal or competent court. This means that a landlord or tenant may approach a Tribunal to enforce a term of a lease.

4.3. POINTS TO REMEMBER

All lease agreements must be in writing. The Minister must develop a pro forma lease agreement in all 11 official languages. A list of defects that exist in the dwelling at the commencement of the lease must be attached as an annexure to the lease agreement. The tenant or landlord may approach the Tribunal or a competent court to enforce a term of the lease agreement.

5. CHAPTER 4: RENTAL HOUSING TRIBUNAL

The purpose of this section is to develop knowledge concerning the establishment, composition, quorum and decision-making of the Tribunal.

5.1. RHA

5.1.1. THE MEC’S DISCRETIONARY POWER TO ESTABLISH A TRIBUNAL

SECTION 7

The RHA gives to the MEC in each province the discretion to establish a Tribunal. The Tribunal must fulfil the duties that the RHA imposes on the Tribunal.

5.1.2. COMPOSITION AND QUORUM

SECTION 9

- Composition
  The Tribunal consists of a minimum of three and not more than five members, which includes a chairperson and a deputy chairperson. The chairperson must be suitably qualified and have the necessary expertise and exposure to rental housing matters. At least two of the members of the Tribunal must be experts in property management or housing development matters, and two members must be experts in consumer matters pertaining to rental housing or housing development matters. The MEC may also appoint two persons to serve as alternate members, who may step in and fulfil the roles of members who may be unavailable.

- Quorum
  The quorum of any meeting of the Tribunal is three members of which one member must have expertise in property management or housing development matters, and the other member must have expertise in consumer matters pertaining to rental housing or housing development matters.
5.1.3. **INDEPENDENCE AND IMPARTIALITY**

*SECTION 10*

The members of the Tribunal must be independent and impartial. This means that they may not have any personal interest whatsoever when determining complaints before the Tribunal.

5.1.4. **DECISIONS TO BE TAKEN BY CONSENSUS**

*SECTION 10*

All decisions of the Tribunal must be taken by consensus. Where consensus cannot be reached, the decision of the majority of the members sitting at the Tribunal hearing becomes the decision of the Tribunal. Where there is an equal number of votes on any matter, the person presiding at the Tribunal hearing will have a casting vote in addition to a deliberative vote.

5.1.5. **SUPPORT STAFF**

*SECTION 11*

To assist the Tribunal in performing its functions, the Tribunal has a support staff who are appointed subject to the laws governing the public service.

5.2. **2014 AMENDMENT ACT**

5.2.1. **MECS ARE NOW OBLIGED TO ESTABLISH A TRIBUNAL**

*SECTION 7*

The 2014 Amendment Act aims to ensure uniformity throughout the provinces in the establishment of a Tribunal. Consequently, every MEC must establish a Tribunal in the MEC’s province within the first financial year following the commencement of the 2014 Amendment Act. This is so, whether or not a province has established a Tribunal before or after the commencement of the 2014 Amendment Act.

The establishment of a Tribunal in every province will result in uniformity throughout the provinces, and the right to equality in the in the Constitution will be enhanced.

5.2.2. **COMPOSITION AND QUORUM**

*SECTIONS 11 AND 12*

The 2014 Amendment Act provides that a member may not serve for more than two consecutive terms. Succession plans must be adopted so that all members are not replaced at the same time.

The increased caseload of the Tribunal in some provinces has resulted in the Tribunal not resolving complaints within a period of 90 days of complaints having been lodged with the Tribunal. To strengthen the authority and functions of the Tribunal, and to ensure that disputes between tenants and landlords are attended to speedily and efficiently, the following changes have been effected:

- The composition of the Tribunal is increased from four to seven members.
- Two separate Tribunal meetings (hearings) may take place simultaneously.
The quorum of Tribunal hearings remains three members, of which one member must have expertise in property management or housing development matters and the other member in consumer matters pertaining to rental housing or housing development matters. The 2014 Amendment Act does not change the requirement that the chairperson must be suitably qualified and have the necessary expertise and exposure to rental housing matters.

These amendments will result in the Tribunal being able to expedite the resolution of disputes referred for hearings at substantially the same costs currently incurred by the Tribunal.

5.2.3. DECSIONS CONTINUE TO BE TAKEN BY CONSENSUS

The Tribunal will continue to take decisions by consensus, failing which, the decision of the majority of the members sitting at the Tribunal hearing becomes the decision of the Tribunal. The person presiding has both a deliberative and a casting vote in the event of an equal number of votes.

5.3. POINTS TO REMEMBER

Every MEC must establish a Tribunal. The Tribunal must be independent and impartial. The composition of the Tribunal has been changed to enable a Tribunal to hold two separate hearings at the same time. This will expedite the resolution of disputes. The Tribunal must take decisions by consensus, failing which, the decision of the majority of the members sitting at the Tribunal hearing becomes the decision of the Tribunal. The person presiding has both a deliberative and a casting vote in the event of an equal number of votes.

6. CHAPTER 4: DISPUTE RESOLUTION BY THE TRIBUNAL

The purpose of this section is to develop knowledge concerning the Tribunal’s powers to resolve complaints informally, through mediation or rulings.

6.1. RHA

6.1.1. COMPLAINTS

SECTION 13 (1)

The Tribunal is available free of charge to any tenant or landlord, or group of tenants or landlords, or interest group to lay a complaint about an unfair practice.

The complaint, which must be in the prescribed form, may be posted, faxed, emailed or hand-delivered to the Tribunal offices. The Tribunal support staff will determine whether the complaint falls within the Tribunal’s jurisdiction, and, if so, proceed to open a case file. The manager will also enter the case number together with the names of the complainant and respondent into the case register.

The Tribunal support staff will also send a letter to the following parties:

- The complainant, acknowledging the complaint.
- The respondent, stating the nature of the complaint and requesting the Respondent to respond to the complaint within a stipulated time period.

This procedure may be dispensed with if the Tribunal is urgently required to determine the nature of the complaint.
6.1.2. METHODS USED TO RESOLVE COMPLAINTS

SECTION 13 (2)

6.1.2.1. INFORMALLY BY AGREEMENT

The Tribunal support staff must first investigate the complaint to determine whether the complaint concerns a dispute in respect of an unfair practice, and, if so, try to resolve it informally by agreement between the parties to the complaint.

6.1.2.2. MEDIATION

If the complaint cannot be resolved by agreement, the complaint should be referred for mediation in almost all instances.

Mediation is a process in which an independent third party (who may be a member of the Tribunal, a member of the support staff, or any person deemed fit and proper by the Tribunal) helps the parties to a complaint to try to reach a settlement. The mediator does not have the power to impose a settlement on the parties. Mediation enables the parties to resume or sometimes to begin negotiations. The very presence of the mediator changes the dynamics of the negotiating process. The mediator brings negotiating, problem-solving and communication skills, and deploys them from a position of independence and neutrality to make progress possible where direct negotiations have stalled.

The mediator, having no personal stake in the complaint, therefore adds a valuable dimension to a negotiation by bringing neutrality to negotiation discussions and adding a fresh and independent mind to the complaint.

In some instances, it may be appropriate to refer the complaint directly to the Tribunal to make a ruling. For example, the complaint must be resolved urgently through a ruling of the Tribunal.

6.1.2.3. ADJUDICATION BY THE TRIBUNAL

Where mediation fails, the complaint must be referred to the Tribunal for a hearing. At the conclusion of a hearing, the Tribunal must decide whether an unfair practice exists and make a ruling. The Tribunal has very broad powers to make whatever ruling it sees fit if the rulings are just and fair.

The Tribunal is specifically empowered to make rulings that:

- Compel any person to stop an unfair practice.
- Order that a tenant be allowed back into the dwelling, if the tenant has been locked out. This is known as a spoliation order.
- Attach property to cover rental or services.
- Grant interdicts. An interdict is an order prohibiting a tenant or a landlord from certain behaviour or actions.
- Make settlement agreements concluded at mediation rulings of the Tribunal.

The Tribunal also has the power to:

- Refer the complainant to an appropriate forum when the complaint falls outside the Tribunal's jurisdiction.
- Summon a landlord, tenant, managing agent, municipality, expert or relevant person to appear before the Tribunal and answer questions or produce any documents concerning a complaint before the Tribunal.
- Where appropriate, require the Tribunal's inspectors to conduct building inspections and provide written inspection reports.
The Tribunal hearings are open to the public. The Tribunal aims to ensure that justice is done and seen to be done. It aims to do justice to both the tenant and the landlord. The Tribunal intends to be corrective and to strongly communicate the unacceptable nature of practices in the rental housing sector that are unfair. In this way, the Tribunal sets out to enhance the outcome of its rulings as being legitimate and acceptable.

6.1.3. COSTS ORDERS

SECTION 13 (12)

The Tribunal may make a ruling for costs that is just and equitable.

6.1.4. ENFORCEABILITY OF TRIBUNAL RULINGS THROUGH THE MAGISTRATES’ COURTS

SECTION 13 (13)

Tribunal rulings are regarded as being orders of a magistrate’s court and can be enforced through the magistrates’ courts. This is done by following the prescribed procedures in the magistrates’ courts.

6.1.5. MEDIATION AGREEMENTS

SECTION 13 (12)

The Tribunal may with the consent of the parties make an agreement concluded at mediation a ruling of the Tribunal. The ruling can also be enforced through the magistrates’ courts.

6.1.6. EVICTION ORDERS PRECLUDED

SECTION 13 (14) AS AMENDED BY SECTION 6 OF THE 2007 AMENDMENT ACT

The RHA, as amended by section 6 of the 2007 Amendment Act, specifically precludes the Tribunal from hearing applications for eviction orders. This is because, in terms of the Constitution, one may not be evicted from one’s home without a court order.

6.2. 2014 AMENDMENT ACT

6.2.1. WIDENING OF THE TRIBUNAL’S POWERS TO MAKE RULINGS

SECTION 13 (D)

- Payment of rentals
  The 2014 Amendment Act removes uncertainties concerning the Tribunal’s power to make a ruling to compel payment of rentals by specifically empowering the Tribunal to make such a ruling.

  This means that landlords may use the Tribunal to obtain rulings for arrear rentals, and tenants need not have costs orders made against them for failure to pay rentals, as is the case in the magistrates’ courts.

- Orders that are necessary to give effect to the RHA
  The 2014 Amendment Act also widens the Tribunal’s powers to make any order that is necessary to give effect to the RHA.

  This means that a wide discretion is given to the Tribunal to make orders that are just, fair, give practical meaning to the objectives of the RHA, and, thereby, enhance access to justice.
6.2.2. **CLARIFICATION OF THE TRIBUNAL’S POWERS CONCERNING EVICTIONS**

**SECTION 13 (C)**

The 2014 Amendment Act clarifies the uncertainties the Tribunal and members of the public have experienced concerning the Tribunal’s powers regarding evictions. The Act requires the Tribunal to refer a complaint that relates to evictions to a competent court within 30 days of receiving the complaint.

This amendment does not preclude the Tribunal from ordering a landlord to allow a tenant back into a dwelling, if the tenant has been locked out of the dwelling without a court order.

6.2.3. **RESCISSION AND VARIATION OF TRIBUNAL RULINGS**

**SECTION 13 (E)**

There was no provision in the RHA for the Tribunal to rescind or vary (alter) its rulings. There were instances where parties erroneously sought rulings or rulings were granted in the absence of a party. The 2014 Amendment Act seeks to remedy this gap in the RHA by empowering the Tribunal to vary or rescind any of its rulings either on its own accord, at the request of a Tribunal member or on application by an affected person, if such rulings:

- Were erroneously sought, or granted in the absence of the person affected by it.
- Contain an ambiguity or patent error or omission.
- Were granted as a result of a mistake common to all parties to the proceedings.

The Tribunal may also, of its own accord:

- Change costs orders and interest on ruling debts.
- Clarify rulings to give effect to the Tribunal’s true intention.
- Correct clerical, arithmetical or other errors in their rulings.

Applications to rescind or vary a Tribunal ruling must be brought within 14 days of the affected person having received the ruling.

6.3. **POINTS TO REMEMBER**

The Tribunal must, upon receipt of a complaint, investigate and resolve it either informally, through mediation or a Tribunal ruling.

The Tribunal may make a wide range of rulings, which must be fair and just, concerning an unfair practice. The Tribunal rulings include costs orders and making an agreement concluded at mediation a ruling of the Tribunal. The Tribunal is specifically precluded from hearing applications for eviction orders. The Tribunal may also rescind or vary its rulings. Tribunal rulings are enforced through the magistrates’ courts.

7. **CHAPTER 4: RENTAL DETERMINATIONS**

The purpose of this section is to develop knowledge concerning the Tribunal’s power to make rental determinations, and the considerations the Tribunal must take into account when making a rental determination.
7.1. RHA

SECTION 13

The RHA provides that a ruling may include a determination regarding the amount of rent to be paid. When the Tribunal makes a rental determination, which must be just and equitable, it is required to consider the following:

- The prevailing economic conditions of supply and demand.
- The need for a realistic return on investment for investors in rental housing.
- Incentives, mechanisms, norms and standards, and other measures introduced by the Minister in terms of the policy framework on rental housing.

7.2. 2014 AMENDMENT ACT

7.2.1. SUPPLY AND DEMAND IS NO LONGER A CONSIDERATION

SECTION 13

It is internationally accepted that rental housing stock and the habitability of such stock can be manipulated to the detriment of the poorer sections of the community. The 2014 Amendment Act no longer requires the Tribunal, when making rental determinations, to consider the narrower question of the “prevailing economic conditions of supply and demand” of rental housing stock. Instead, it must consider the wider question of the “prevailing economic conditions” in the rental housing sector. It must also continue to consider a realistic return on investment and norms and standards, which are discussed in the following section of this manual.

7.2.2. NORMS AND STANDARDS

SECTION 15

The national government has not developed rental housing norms and standards, which means that the Tribunal is unable to consider norms and standards when making rental determinations. The 2014 Amendment Act rectifies this gap, and provides that the Minister may set forth regulations relating to norms and standards that align with the Policy Framework concerning:

- Terms and conditions of the lease
- Safety, health and hygiene
- Basic living conditions, including access to basic services
- Size of dwellings
- Overcrowding
- Affordability
- The calculation method for escalation of rentals and the maximum rate of deposits that may be payable for a dwelling. These may be set per geographical area to avoid unfair practices particular to that area.

The amendments concerning rental determinations in the 2014 Amendment Act will enable the Tribunal to adopt a more holistic approach when making a rental determination.

7.3. POINTS TO REMEMBER

The Tribunal has the power to make a rental determination ruling on an unfair practice. When making a rental determination, the Tribunal will no longer be required to consider the narrower question of the “prevailing economic conditions of supply and demand” of rental housing stock, but must instead consider the following: the wider question of the “prevailing economic conditions” in the rental housing sector; a realistic return on investment; and incentives, mechanisms, norms and standards, and other measures introduced by the Minister.
8. **CHAPTER 4: RENTAL HOUSING INFORMATION OFFICES**

*The purpose of this section is to develop knowledge concerning information offices. The 2014 Amendment Act makes it mandatory for a local municipality to establish an information office. This section is very important for local government officials.*

8.1. **RHA**

8.1.1. **ESTABLISHMENT IS DISCREETIONARY**

**SECTION 14**

The RHA provides that a local authority may establish an information office. The purpose of the information office is to advise tenants and landlords of their rights and obligations concerning dwellings within a local authority’s geographical borders.

8.1.2. **APPOINTMENT OF OFFICIALS**

**SECTION 14**

A local authority may appoint officials to carry out any duties pertaining to the information office. The appointments must be subject to the laws governing the appointment of local government officials.

8.1.3. **THE TRIBUNAL’S POWERS**

**SECTION 13**

The Tribunal has the power to require the information office to:

- Submit reports to the Tribunal concerning enquiries and complaints that the information office has received.
- Advise the Tribunal on any matter concerning a dwelling or complaint that the information office has received.
- Submit reports to the Tribunal on any matter concerning the administration of the RHA.

It follows that the Tribunal has wide powers to require information from the information office.

8.1.4. **FUNCTIONS OF THE INFORMATION OFFICE**

**SECTION 14**

The functions of the information office are to:

- Educate, provide information and advise tenants and landlords concerning their rights and obligations.
- Advise disputing parties in resolving their dispute.
- Refer parties to the Tribunal.
- Comply with a Tribunal request.
- Keep records of enquiries received by the information office and submit quarterly reports to the Tribunal.

The functions of the information office are generally aligned with the Tribunal’s power to obtain information from the information office. The information office can provide tenants and landlords with information concerning rental housing matters, and how rental housing must be provided and used.
8.2. 2014 AMENDMENT ACT

8.2.1. ESTABLISHMENT IS MANDATORY

SECTION 14

The 2014 Amendment Act makes it mandatory for every local municipality to establish an information office. It specifically provides that the functions of the information office may be combined with an existing municipal office. This means that the local municipality need not necessarily incur the costs associated with setting up a separate information office.

8.2.2. APPOINTMENT OR DESIGNATION OF OFFICIALS

SECTION 14

The 2014 Amendment Act provides that every local municipality may either appoint or designate officials to carry out the duties of the information office. This means that in the absence of appointed officials, the local municipality may designate existing officials to carry out the duties of the information office.

8.3. ESTABLISHMENT OF INFORMATION OFFICES IN THE PROVINCES

Several local municipalities in Gauteng, Western Cape, KwaZulu-Natal and North West have established information offices. A detailed list of the local municipalities and the location of the information offices may be found as Annexure 4 in Part G of this manual. This manual will consider the Gauteng experience as an example of the meaningful contribution that information offices can make in enhancing access to justice for tenants and landlords. The experience of the other provinces may be different.

8.4. THE GAUTENG EXPERIENCE

The purpose of this section is to share the Gauteng experience of establishing information offices and the resultant benefits to tenants and landlords in Gauteng.

8.4.1. ESTABLISHMENT OF INFORMATION OFFICES

Several local municipalities in Gauteng have established information offices in terms of separate Memorandums of Understanding with the Gauteng Department of Human Settlements.

These municipalities are:

- **City of Tshwane**
  The City of Tshwane has established five information offices in Pretoria Central, Laudium, Akasia, Centurion, Mamelodi and Sinoville. Mediations take place at each information office. The Tribunal hearings take place in one of the City’s regional offices in Arcadia. This means that Tshwane residents no longer travel to the Tribunal in Johannesburg to attend a mediation or a Tribunal meeting.

- **City of Johannesburg**
  The City of Johannesburg has established information offices in Claremont and Riverlea in Region B, Alexandra in Region E, and Rosetenville in Region F. The mediations and Tribunal meetings take place at the Tribunal’s offices in Johannesburg.
Ekurhuleni Local Municipality
The Ekurhuleni Local Municipality has established information offices at its customer contact points in Alberton and Boksburg. The mediations take place in both Alberton and Boksburg. The Tribunal sittings take place at the Tribunal’s offices in Johannesburg.

Emfuleni Local Municipality
The Emfuleni Local Municipality has established an information office in Vanderbijlpark. The mediations take place in Vanderbijlpark, and the Tribunal hearings take place in both Vanderbijlpark and at the Tribunal’s offices in Johannesburg.

8.4.2. PROCESS TO ESTABLISH INFORMATION OFFICES

The information offices were established after the following:
- Exploratory discussions and meetings between the Tribunal support staff and municipal officials.
- A presentation to the local municipality’s section 21 Human Settlements Committee.
- Concluding a Memorandum of Understanding between the local municipality and the Gauteng Department of Human Settlements.

8.4.3. VISITS, AUDITS AND TRAINING

The Tribunal support staff frequently visit the information offices to provide support and conduct case file audits to assess whether complaints that have been lodged with the information offices comply with the RHA and Gauteng procedural regulations. The cases form part of the Tribunal’s performance statistics. The Tribunal support staff also provide training for the information office officials with regard to the RHA and the Gauteng procedural and unfair practices regulations.

8.4.4. ACCESS TO JUSTICE

These information offices have greatly enhanced the ability of tenants and landlords in Gauteng to obtain access to justice because they save time and money by not having to travel from Tshwane, Ekurhuleni or Emfuleni to Johannesburg to lodge a complaint, or attend mediation or a Tribunal hearing.

8.5. EXPECTATIONS OF THE TRIBUNAL AND INFORMATION OFFICES

The Tribunal and information offices must be clear with regard to their expectations of each other’s roles. This means that they must:
- Comply with the RHA, and the procedural and unfair practices regulations.
- Have a clear strategy to optimise the establishment and functioning of information offices.
- Ensure clear reporting lines between the duly designated Tribunal support staff and the appointed or designated information office officials.
- Use standard templates for the quarterly reports.
- Ensure that regular audits are performed so that the information offices fulfil their functions, and meaningfully contribute to stabilising and regulating the residential rental housing sector within their geographical borders.
8.6. QUIZ

THE SIGNIFICANCE OF INFORMATION OFFICES UNDER THE 2014 AMENDMENT ACT

**QUIZ**

Individually and then in pairs, refer to the section on information offices in this manual and record your responses to the following propositions:

<table>
<thead>
<tr>
<th>PROPOSITION</th>
<th>TRUE</th>
<th>FALSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The establishment of information offices under the RHA is discretionary.</td>
<td></td>
<td></td>
</tr>
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<td>2. The establishment of information offices under the 2014 Amendment Act is mandatory.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>7. The information office must keep records of enquiries it has received.</td>
<td></td>
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</tr>
<tr>
<td>8. The establishment of the information office takes on some urgency under the 2014 Amendment Act, and it is necessary for a local municipality to initiate steps to establish the information office without delay.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. The establishment of the information office is likely to require at least:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.1. Exploratory discussions and meetings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.2. A presentation to the local municipality’s section 21 Human Settlements Committee or a similar committee.</td>
<td></td>
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</tr>
<tr>
<td>9.3. Concluding a Memorandum of Understanding or a similar binding document.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. The information office cannot contribute meaningfully to advancing access to justice for tenants and landlords.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
THE SIGNIFICANCE OF INFORMATION OFFICES UNDER THE 2014 AMENDMENT ACT

ANSWER TO THE QUIZ

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<td></td>
<td>x</td>
</tr>
</tbody>
</table>

8.7. POINTS TO REMEMBER

A local municipality no longer has the discretion as to whether or not establish an information office; it must do so. The local municipality may either appoint or designate officials to carry out the duties of the information office. This means that in the absence of appointed officials, the local municipality may designate existing officials to perform the functions of the information office. The functions include educating, providing information, and advising tenants and landlords with regard to their rights and obligations in terms of the RHA. The information office must also refer parties to the Tribunal, keep records of enquiries, and submit quarterly reports to the Tribunal. The municipal officials must communicate with the Tribunal support staff in their province with the aim of establishing an information office.
9. CHAPTER 4: REGULATIONS

The purpose of this section is to develop knowledge concerning the Minister’s power to make procedural and unfair practices regulations and the contents of those regulations.

9.1. RHA

9.1.1. THE MEC’S POWER TO MAKE REGULATIONS

SECTION 15

The RHA initially empowered the MEC to make procedural and unfair practices regulations. The 2007 Amendment Act sought to give the Minister the power to make those regulations, but only partially amended the relevant provisions of the RHA. Consequently, the Minister was not able to make those regulations. The procedural and unfair practices regulations are considered in turn.

9.1.2. PROCEDURAL REGULATIONS

SECTION 15

The RHA provides for regulations to be made concerning the following:

- Procedures and manner in which the proceedings of the Tribunal must be conducted.
- Notices to be given by the Tribunal in the performance of its functions, powers and duties.
- Functions, powers and duties of inspectors.

9.1.3. UNFAIR PRACTICES REGULATIONS

SECTION 15

The RHA provides that the rental housing sector is to be regulated through the establishment of unfair practices regulations. The Tribunal has been set up to deal with unfair practices. We have seen that an “unfair practice” is any breach of the Act or unfair practices regulations. The unfair practices regulations prescribe unfair practices for which are not provided in the RHA concerning, amongst others:

- Lease agreements
- Changing of locks
- Deposits
- Maintenance
- Damage to property
- Unlawful evictions
- Utility (municipal) services
- Non-payment of rental
- Nuisances
- House rules
- Receipts
- Demolitions and conversions
- Evictions
- Municipal services
- Intimidation
- Nuisances
- Tenants committees
- Forced entry and obstruction of entry
9.2. 2014 AMENDMENT ACT

SECTION 15

The 2014 Amendment Act places the regulations section in the GENERAL PROVISIONS CHAPTER of the RHA. To bring about uniform national regulations that apply throughout the country, the Minister, as opposed to the MEC, is empowered to make national procedural and unfair practices regulations after consulting with the relevant parliamentary committees and every MEC. The national regulations will enhance uniformity of outcomes.

The Minister must issue the regulations within 12 months of the commencement of the 2014 Amendment Act.

9.3. POINTS TO REMEMBER

The Minister is required to make both national procedural and unfair practices regulations within 12 months of the commencement of the 2014 Amendment Act.

The procedural regulations concern the procedures and manner in which the proceedings of the Tribunal must be conducted, notices to be given by the Tribunal, and the functions, powers and duties of inspectors.

The unfair practices regulations concern practices relating to a wide range of practices from lease agreements to changing of locks, maintenance and receipts, amongst others.

10. CHAPTER 5: OFFENCES AND PENALTIES

The purpose of this section is to develop knowledge concerning the offences and penalties to be imposed by a criminal court for violating the provisions of the RHA as amended by the 2014 Amendment Act.

10.1. RHA

SECTION 16

The RHA provides that it is an offence to:
- Not appear before the Tribunal when summoned.
- Not provide materials requested by the Tribunal.
- Provide false documents to the Tribunal.
- Make false or misleading statements to the Tribunal.
- Not comply with a ruling of the Tribunal.
- Cut off services or lock out a tenant without a court order.
- Contravene any regulation.

Additionally, upon being found guilty of such an offence, a person will be liable on conviction to a fine or imprisonment, or to both a fine and imprisonment. The person must be prosecuted under the Criminal Procedure Act, 51 of 1977 and convicted by a criminal court.

10.2. 2014 AMENDMENT ACT

SECTION 17

In addition to the offences set out in the RHA, the 2014 Amendment Act makes it an offence:
- Not to reduce a lease to writing.
- To interfere with the rights of the tenant and landlord.
- Not to refund a deposit and the accrued interest that may be due to the tenant at the end of the lease.
10.3. POINTS TO REMEMBER

The RHA lists several offences. The 2014 Amendment Act introduces additional offences by making it an offence not to reduce a lease agreement to writing, and to interfere with the rights of the tenant and landlord. A person found guilty in the criminal courts may face a fine or imprisonment, or both a fine and imprisonment.

11. CHAPTER 5: APPEALS AND REVIEWS

The purpose of this section is to explore the difference between an ‘appeal’ and a ‘review’, and how they apply under the RHA as amended by the 2014 Amendment Act.

11.1. THE DIFFERENCE BETWEEN ‘APPEAL’ AND ‘REVIEW’

■ Appeal
An appeal, in the wide sense, is a complete rehearing of the case with or without additional evidence or information.

An appeal, in the ordinary strict sense, is a hearing on the merits of the case, but limited to the evidence or information on which the decision under appeal was given, and in which the only determination is whether that decision was right or wrong.

■ Review
A review is a limited rehearing with or without additional evidence or information to determine whether the person who decided the case exercised his/her powers and discretion honestly and properly.

11.2. RHA

SECTION 17

The RHA provides that the proceedings of the Tribunal may be reviewed before the High Court. However, as seen from the definition of a review, the High Court’s powers to correct a ruling are limited. Generally, a High Court will only interfere with the Tribunal’s ruling if it was unfair, irrational, based on a legal error or if the Tribunal acted beyond the powers given to it by the RHA. If it sets aside a ruling, the High Court will normally send the case back to the Tribunal for the Tribunal to hear the case afresh and make a new ruling by taking into account the reasons the High Court gave for setting the old ruling aside.

11.3. 2014 AMENDMENT ACT

11.3.1. INTRODUCTION OF AN APPEAL PROCESS

SECTION 19

The 2014 Amendment Act introduces an appeal process. Any person who feels aggrieved by a ruling of the Tribunal must in writing and within 14 days of receiving the ruling, file an appeal against the ruling with the MEC. The MEC must, within one day of receiving the appeal, appoint one or two adjudicators from the panel of adjudicators to consider the appeal. The appeal must be finalised within 30 days of the MEC’s referral. The operation and execution of the ruling is suspended (held in abeyance) pending the decision of the appeal.

The adjudicators may refer the case back to the Tribunal or confirm, set aside or amend the ruling of the Tribunal.
11.3.2. THE RIGHT TO REVIEW THE APPEAL PROCEEDINGS IN THE HIGH COURT

SECTION 18

The 2014 Amendment Act widens the right of an aggrieved person to review the proceedings of an appeal in the High Court.

11.4. POINTS TO REMEMBER

The RHA provided that a ruling of the Tribunal may be reviewed in the High Court. The 2014 Amendment Act introduces an appeal process within the Tribunal and provides that the proceedings the Tribunal, including the appeal, and the appeal may be reviewed in the High Court.

12. CHAPTER 5: SUBSTITUTION

SECTION 20

The 2014 Amendment Act substitutes the expressions “local authority” and “landlord” with the expressions “local municipality” and “landowner” respectively, wherever they occur.

13. CHAPTER 5: TRANSITIONAL PROVISIONS: THE SIX-MONTH RULE

SECTION 21

The 2014 Amendment Act provides that any additional or amended obligations it imposes upon the tenant or the landlord will come into operation six months from the date of commencement of the 2014 Amendment Act.

14. CHAPTER 5: COMMENCEMENT OF THE 2014 AMENDMENT ACT

SECTION 22

The 2014 Amendment Act comes into operation on a date determined by the President, by proclamation in the Gazette.

F. CONCLUSION

The Tribunals across South Africa are bridging South Africa’s past and present. While they have achieved much since their inception, their exponential growth shows that their work in giving meaning and content to the right to access to housing, as set out in section 26 of the Constitution, is just beginning. The information offices have an enormous role to play in assisting the Tribunals with meeting their objectives.

The amendments in the 2014 Amendment Act are far reaching. They have the potential to materially affect the provision of rental housing, the management of multi-tenanted buildings, reduce tensions between tenants and landlords, and contribute towards the establishment of stable conditions within which healthy communities can be established across South Africa. The Tribunals and information offices in the provinces must work together and release the seeds of creative energy within them to ensure that the amendments in the 2014 Amendment Act are given meaning in the everyday lives of tenants and landlords in South Africa.

G. ANNEXURES

- Rental Housing Act, 1999
- Rental Housing Amendment Act, 2007
- Rental Housing Amendment Act, 2014
- List of information offices established by local municipalities
1. **RENTAL HOUSING ACT, 1999**

**REPUBLIC OF SOUTH AFRICA**

**GOVERNMENT GAZETTE**

**STAATSKOERANT**

**VAN DIE REPUBLIEK VAN SUID-AFRIKA**

Registered at the Post Office as a Newspaper As 'n Nuusblad by die Postkantoor Geregistreer

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**Vol. 414**

CAPE TOWN, 15 DECEMBER 1999

KAAPSTAD, 15 DESEMBER 1999

No. 20726

OFFICE OF THE PRESIDENCY

No. 1506. 15 December 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:


KANTOOR VAN DIE PRESIDENSIE

No. 1506. 15 December 1999

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:

No. 50 van 1999: Wet op Huurbehuising. 1999
ACT

To define the responsibility of Government in respect of rental housing property; to create mechanisms to promote the provision of rental housing property; to promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market; to make provision for the establishment of Rental Housing Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the rental housing sector; to provide for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases; to repeal the Rent Control Act, 1976; and to provide for matters connected therewith.

PREAMBLE

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996 everyone has the right to have access to adequate housing;

AND WHEREAS the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS no one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances.

AND WHEREAS no legislation may permit arbitrary evictions;

AND WHEREAS rental housing is a key component of the housing sector;

AND WHEREAS there is a need to promote the provision of rental housing;

AND WHEREAS there is a need to balance the rights of tenants and landlords and to create mechanisms to protect both tenants and landlords against unfair practices and exploitation;

AND WHEREAS there is a need to introduce mechanisms through which conflicts between tenants and landlords can be resolved speedily at minimum cost to the parties;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows:—
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3. Measures to increase provision of rental housing property.

CHAPTER 3

RELATIONS BETWEEN TENANTS AND LANDLORDS
4. General provisions
5. Provisions pertaining to leases

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RENTAL HOUSING TRIBUNAL
6. Application of Chapter
7. Establishment of Rental Housing Tribunals
8. Functions of Tribunal
9. Composition of Tribunal
10. Meetings of Tribunal
11. Staff
12. Funding of and reporting on activities of Tribunal
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GENERAL PROVISIONS
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18. Repeal and amendment of laws
19. Savings
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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates—
   “dwelling”, includes any house, hostel room, hut, shack, flat, apartment, room,
   outbuilding, garage or similar structure which is leased, as well as any storeroom,
   outbuilding, garage or demarcated parking space which is leased as part of the
   lease;
   “financial institution.” means a bank as defined in the Banks Act, 1990 (Act No. 94 40
   of 1990);
   “head of department” means the officer in charge of a department of the provincial
   government responsible for housing in the province;
   “House Rules” means the rules in relation to the control, management,
   administration, use and enjoyment of the rental housing property;
   “landlord” means the owner of a dwelling which is leased and includes his or her
   duly authorised agent or a person who is in lawful possession of a dwelling and has
   the right to lease or sub-lease it;
   “lease” means an agreement of lease concluded between a tenant and a landlord in
   respect of a dwelling for housing purposes;
Clarification of terms:

"MEC" means the member of the Executive Council of a province responsible for housing matters;

"Minister." means the Minister of Housing;

"periodic lease" means a lease for an undetermined period, subject to notice of termination by either party;

"prescribed" means prescribed by regulation by the MEC, by notice in the Gazette;

"regulation" means a regulation made in terms of section 15;

"rental housing property" includes one or more dwellings;

"Rental Housing Information Office" means an office established by a local authority in terms of section 14 (1);

"tenant" means the lessee of a dwelling which is leased by a landlord;

"this Act" includes any regulation;

"Tribunal" means a Rental Housing Tribunal established under section 7;

"unfair practice." means a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord.

CHAPTER 2

PROMOTION OF RENTAL HOUSING PROPERTY

Responsibility of Government to promote rental housing

2. (1) Government must—

(a) promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that—

(i) improve conditions in the rental housing market;

(ii) encourage investment in urban and rural areas that are in need of revitalisation and resuscitation; and

(iii) correct distorted patterns of residential settlement by initiating, promoting and facilitating new development in or the redevelopment of affected areas;

(b) facilitate the provision of rental housing in partnership with the private sector.

(2) Measures introduced in terms of subsection (1) must—

(a) optimise the use of existing urban and rural municipal and transport infrastructure;

(b) redress and inhibit urban fragmentation or sprawl;

(c) promote higher residential densities in existing urban areas as well as in areas of new or consolidated urban growth; and

(d) mobilise and enhance existing public and private capacity and expertise in the administration or management of rental housing.

(3) National Government must introduce a policy framework, including norms and standards, on rental housing to give effect to subsection (1).

(4) Provincial and local governments must pursue the objects of subsection (1) within the national policy framework on rental housing referred to in subsection (3), and within the context of broader national housing policy in a balanced and equitable manner and must accord rental housing particular attention in the execution of functions, the exercise of powers and the performance of duties and responsibilities in relation to housing development.

Measures to increase provision of rental housing property

3. (1) The Minister may introduce a rental subsidy housing programme, as a national housing programme, as contemplated in section 3(4)(g) of the Housing Act, 1997 (Act No. 107 of 1997), or other assistance measures, to stimulate the supply of rental housing property for low income persons.
(2) Parliament may annually appropriate to the South African Housing Fund an amount to finance such a programme.
(3) A separate account of income and expenditure in respect of such programme must be kept.
(4) Section 12(1)(b) of the Housing Act, 1997 (Act No.107 of 1997), does not apply to any amount appropriated by Parliament for purposes of such programme.

CHAPTER 3

RELATIONS BETWEEN TENANTS AND LANDLORDS

General provisions

4. (1) In advertising a dwelling for purposes of leasing it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant’s household or the bona fide visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.
(2) A tenant has the right, during the lease period, to privacy, and the landlord may only exercise his or her right of inspection in a reasonable manner after reasonable notice to the tenant.
(3) The tenant’s rights as against the landlord include his or her right not to have—
(a) his or her person or home searched;
(b) his or her property searched;
(c) his or her possessions seized, except in terms of law of general application and having first obtained an order of court; or
(d) the privacy of his or her communications infringed.
(4) The rights set out in subsection (3) apply equally to members of the tenant’s household and to bona fide visitors of the tenant.
(5) The landlord’s rights against the tenant include his or her right to—
(a) prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
(b) recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law;
(c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;
(d) on termination of a lease to—
(i) receive the rental housing property in a good state of repair, save for fair wear and tear; and
(ii) repossess rental housing property having first obtained an order of court;
and
(e) claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any, caused by the tenant. A member of the tenant’s household or a visitor of the tenant.

Provisions pertaining to leases

5. (1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No.18 of 1969).
(2) A landlord must, if requested thereto by tenant, reduce the lease to writing.
(3) A lease will be deemed to include terms. enforceable in a competent court. to the effect that—
(a) the landlord must furnish the tenant with a written receipt for all payments received by the landlord from the tenant;
(h) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made:

(c) the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed to between the parties:

(d) the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must 10 subject to paragraph (g) pay the tenant interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with a financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on 15 request. Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act;

(e) the tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein with a view to determining the landlord’s responsibility for rectifying any defects or damage or with a view to registering such defects or damage, as provided for in subsection (7):

(f) at the expiration of the lease the landlord and tenant must arrange a joint 25 inspection of the dwelling at a mutually convenient time to take place within a period of three days prior to such expiration with a view to ascertaining if there was any damage caused to the dwelling during the tenant’s occupation thereof;

(g) on the expiration of the lease, the landlord may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be refunded to the tenant by the landlord not later than 14 days of restoration of the dwelling to the landlord;

(h) the relevant receipts which indicate the costs which the landlord incurred, as contemplated in paragraph (g), must be available to the tenant for inspection as proof of such costs incurred by the landlord;

(i) should no amounts be due and owing to the landlord in terms of the lease, the deposit, together with the accrued interest in respect thereof, must be refunded 40 by the landlord to the tenant, without any deduction or set-off, within seven days of expiration of the lease;

(j) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in paragraphs (e) or (f) is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair, and the 45 landlord will have no further claim against the tenant who must then be refunded. in terms of this subsection, the full deposit plus interest by the landlord;

(k) should the tenant fail to respond to the landlords request for an inspection as contemplated in paragraph (f), the landlord must, on expiration of the lease, 50 inspect the dwelling within seven days from such expiration in order to assess any damages or loss which occurred during the tenancy;

(l) the landlord may in the circumstances contemplated in paragraph (k), without detracting from any other right or remedy of the landlord, deduct from the tenant’s deposit and interest the reasonable cost of repairing damage to the 55 dwelling and the cost of replacing lost keys.
(m) the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (f), must be refunded to the tenant by the landlord not later than 21 days after expiration of the lease;

(n) the relevant receipts which indicate the costs which the landlord incurred as contemplated in paragraph (f), must be available to the tenant for inspection as proof of such costs incurred by the landlord; and

(o) should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling but in such event the landlord retains all his or her rights arising from the tenant’s breach of the lease.

(4) The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord.

(5) If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month’s written notice must be given of the intention by either party to terminate the lease.

(6) A lease contemplated in subsection (2) must include the following information:

(a) The names of the tenant and the landlord and their addresses in the Republic for purposes of formal communication;

(b) the description of the dwelling which is the subject of the lease;

(c) the amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;

(d) if rentals are not paid on a monthly basis, then the frequency of rental payments;

(e) the amount of the deposit, if any;

(f) the lease period, or, if there is no lease period determined, the notice period requested for termination of the lease;

(g) obligations of the tenant and the landlord, which must not detract from the provisions of subsection (3) or the regulations relating to unfair practice;

(h) the amount of the rental, and any other charges payable in addition to the rental in respect of the property.

(7) A list of defects registered “in terms of subsection (3)(e) must be attached as an annexe to the lease as contemplated in subsection (2).

(8) A copy of any House Rules applicable to a dwelling must be attached as an annexe to the lease.

(9) A landlord must ensure that the provisions of subsections (6), (7) and (8) are complied with.

CHAPTER 4

RENTAL HOUSING TRIBUNAL

Application of Chapter

6. Unless a province has, before or after the commencement of this Act, enacted legislation providing for matters dealt with in this Chapter, this Chapter will apply to such province.

Establishment of Rental Housing Tribunals

7. The MEC may by notice in the Gazette establish a tribunal in the Province to be known as the Rental Housing Tribunal.

Functions of Tribunal

8. The Tribunal must fulfil the duties imposed upon it in terms of this Chapter, and must do all things necessary to ensure that the objectives of this Chapter are achieved,
Composition of Tribunal

9. (1) The Tribunal consists of not less than three and not more than five members, who are fit and proper persons appointed by the MEC, and must comprise—

(a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters;

(b) not less than two and not more than four members, of whom—

(i) at least one and not more than two shall be persons with expertise in property management or housing development matters; and

(ii) at least one and not more than two shall be persons with expertise in consumer matters pertaining to rental housing or housing development matters;

(c) a deputy chairperson, appointed by the MEC from the members referred to in paragraph (b) of this subsection.

(2) The chairperson and members of the Tribunal must be appointed only after—

(a) the MEC has through the media and by notice in the Gazette invited 15 nominations of persons as candidates for the respective positions on the Tribunal; and

(b) the MEC has consulted with the relevant standing or portfolio committee of the Provincial Legislature which is responsible for housing matters in the province.

(3) The MEC may appoint two persons to serve as alternate members of the Tribunal in the absence of any member referred to in paragraph (b) of subsection (1) but such persons must have the relevant expertise contemplated in paragraph (b) of subsection (1).

(4) Any appointment in terms of subsection (1) or (3) must be for a period not exceeding three years but a person whose term of office as a member has expired may be reappointed by the MEC for an additional period not exceeding three years.

(5) (a) Any vacancy in the office of a member of the Tribunal must, within one month of such vacancy occurring, be filled by the MEC appointing another member under subsection (1) or (3).

(b) Any member so appointed holds office for the unexpired portion of the predecessor’s term of office.

(6) The MEC may at any time for reasons which are just and fair remove from office any member appointed under subsection (1) or (3) and appoint another person to the vacancy resulting therefrom in accordance with subsection (5).

(7) A member or an alternate member of the Tribunal other than a person who is in the full-time employment of the State or an organ of state, must be appointed on the conditions of service determined by the MEC with the approval of the Member of the Executive Council responsible for provincial expenditure in the relevant province.

(8) Conditions of service so determined may differ according to whether the person concerned is appointed on a full-time or part-time basis,

(9) Members of the Tribunal must be reimbursed by the head of department out of funds appropriated in terms of section 12(1) in respect of reasonable expenditure incurred in the exercise of their duties under this Act.

Meetings of Tribunal

10. (1) The Tribunal will sit on such days and during such hours and at such place as the chairperson of the Tribunal may determine.

(2) Meetings of the Tribunal must be held or resumed at such times and places throughout the area of a Province as the chairperson may at any time determine.

(3) A local authority may, at the request and at no cost to the Tribunal, make a venue available for meetings of the Tribunal.

(4) Meetings of the Tribunal must be convened for the consideration of—

(a) any complaint referred to the Tribunal in terms of section 13;

(b) any other matter which the Tribunal may or must consider in terms of this Act.

(5) The quorum of any meeting of the Tribunal is three members, of which at least two 55 members must be appointed in terms of section 9(1)(b)(i) and (ii), respectively.
(6) All decisions of the Tribunal, subject to subsection (7), must be taken by consensus.

(7) Where consensus cannot be reached by the Tribunal, the decision of a majority of the members of the Tribunal must be the decision of the Tribunal.

(8) In the event of an equality of votes on any matter, the person presiding at the meeting of the Tribunal will have a casting vote in addition to that person's deliberate vote.

(9) A member or any alternate member of the Tribunal must not attend or take part in the discussions or decision-making on any matter before the Tribunal in which he or she or his or her spouse, or his or her relative within the second degree of affinity, or his 10 or her partner or his or her employer, other than the State, or the partner or the employer of his or her spouse, has any direct or indirect pecuniary interest.

(10) Minutes of the proceedings of the Tribunal must be kept and retained at the offices of the Tribunal.

(11) No decision taken by the Tribunal will be invalid merely by reason of a vacancy 15 in the Tribunal or of the fact that any person not entitled to sit as a member of the Tribunal, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the Tribunal present at the time and who were entitled to sit as members of the Tribunal.

(12) Any person may, in the prescribed manner, obtain copies of minutes 20 contemplated in subsection (10) against payment of a prescribed fee.

Staff

11. (1) The staff required for the proper performance of the Tribunal's functions and the administration of this Act must be appointed subject to the laws governing the Public Service.

(2) The staff contemplated in subsection (1) may include inspectors, technical advisers, mediators and administrative support staff.

(3) Any person appointed in terms of subsection (1) must be provided with a certificate of appointment signed by or on behalf of the head of department.

(4) The Tribunal may, subject to such conditions as it may determine, delegate any 30 powers conferred on it other than a power under section 13(2)(d), (3), (4) and (5) to a member of the Tribunal or a person appointed in terms of subsection (1) but any such delegation will not preclude the Tribunal from exercising any such delegated powers itself, and the Tribunal may set aside or amend any decision of the delegate made in the exercise of such powers.

Funding of and reporting on activities of Tribunal

12. (1) The activities of the Tribunal must be funded from moneys appropriated by the Provincial Legislature.

(2) The head of department is the accounting officer in respect of moneys appropriated in terms of subsection (1).

(3) An annual report on the activities of the Tribunal must be submitted by the chairperson of the Tribunal to the MEC as soon as possible after, but within four months of, 31 March in each year.

(4) The MEC may require the Tribunal to submit additional reports to him or her as the MEC may require from time to time.

(5) Any report referred to in subsection (3) must be tabled in the Provincial Legislature within 30 days after receipt thereof by the MEC if the Provincial Legislature is in ordinary session. or if the Provincial Legislature is then not in ordinary session, within 30 days of the commencement of the next ensuing ordinary session.

Complaints

13. (1) Any tenant or landlord or group of tenants or landlords or interest group may in the prescribed manner lodge a complaint with the Tribunal concerning an unfair practice.
(2) Once a complaint has been lodged with the Tribunal, the Tribunal must, if it appears that there is a dispute in respect of a matter which may constitute an unfair practice—

(a) list particulars of the dwelling to which the complaint refers in the register referred to in subsection (8);

(b) through its staff conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;

(c) where the Tribunal is of the view that there is a dispute contemplated in paragraph (b) and that such dispute may be resolved through mediation, appoint a mediator, which may be a member of the Tribunal, a member of staff or any person deemed fit and proper by the Tribunal, with a view to resolving the dispute;

(d) where the Tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation or where a mediator contemplated in paragraph (c) has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation, conduct a hearing and, subject to this section, make such a ruling as it may consider just and fair in the circumstances.

(3) For purposes of a hearing contemplated in paragraph (d) of subsection (2), the Tribunal may—

(a) require any Rental Housing Information Office to submit reports concerning inquiries and complaints received, as well as on any other matters concerning the administration of this Act within the area of jurisdiction of that office;

(b) require any inspector to appear before the Tribunal to give evidence, to provide information, or to produce any report or other document concerning inspections conducted which may have a bearing on any complaint received by the Tribunal;

(c) require any Rental Housing Information Office to advise the Tribunal on any matter concerning a dwelling or concerning a complaint received from any landlord or any tenant within the area of jurisdiction of that office;

(d) summon any tenant or landlord or any other person who, in the Tribunal’s opinion may be able to give evidence relevant to a complaint, to appear before the Tribunal;

(e) summon any person who may reasonably be able to give information of material importance concerning a complaint or who has in such persons possession or custody or under such person’s control any book, document or object to attend its proceedings and to produce any book, document, or object in his or her possession or custody or under his or her control, to give evidence or to provide information under his or her control;

(f) call upon and administer an oath to, or accept an affirmation from, any person present at the meeting in terms of paragraph (a), (b) or (c), or who has been summoned in terms of paragraph (d) or (e).

(4) Where a Tribunal, at the conclusion of a hearing in terms of paragraph (d) of subsection (2) is of the view that an unfair practice exists, it may—

(a) rule that any person must comply with a provision of the regulations relating to unfair practices;

(b) where it would appear that the provisions of any law have been or are being contravened. refer such matter for an investigation to the relevant competent body or local authority;

(c) make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the aforesaid, a ruling to discontinue—

(i) overcrowding;

(ii) unacceptable living conditions;

(iii) exploitative rentals; or

(iv) lack of maintenance.

(5) A ruling contemplated in subsection (4) may include a determination regarding the amount of rent payable by a tenant, but such determination must be made in a manner that is just and equitable to both tenant and landlord and takes due cognizance of—

(a) prevailing economic conditions of supply and demand;
(b) the need for a realistic return on investment for investors in rental housing; and
(c) incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing referred to in section 2(3).

(6) When acting in terms of subsection (4), the Tribunal must have regard to—
(a) the regulations in respect of unfair practices;
(b) the common law to the extent that any particular matter is not specifically addressed in the regulations or a lease;
(c) the provisions of any lease to the extent that it does not constitute an unfair practice;
(d) national housing policy and national housing programmed; and
(e) the need to resolve matters in a practicable and equitable manner.

(7) As from the date of any complaint having been lodged with the Tribunal, until the Tribunal has made a ruling on the matter or a period of three months has elapsed, whichever is the earlier—
(a) the landlord may not evict any tenant, subject to paragraph (b);
(b) the tenant must continue to pay the rental payable in respect of that dwelling as applicable prior to the complaint or, if there has been an escalation prior to such complaint, the amount payable immediately prior to such escalation; and
(c) the landlord must effect necessary maintenance.

(8) The Tribunal must keep a register of complaints received and complaints resolved with such details as may be prescribed and quarterly provide the local authority in whose jurisdictions dwellings are situated in respect of which complaints have been received with a list of complaints received and complaints resolved in such format as may be prescribed.

(9) As from the date of the establishment of a Tribunal as contemplated in section 7, any dispute in respect of an unfair practice, must be determined by the Tribunal unless proceedings have already been instituted in any other court.

(10) Nothing herein contained precludes any person from approaching a competent court for urgent relief under circumstances where he or she would have been able to do so were it not for this Act. or to institute proceedings for the normal recovery of arrear rental, or for eviction in the absence of a dispute regarding an unfair practice.

(11) A magistrate’s court may, where proceedings before the court relate to a dispute regarding an unfair practice as contemplated in this Act. at any time refer such matter to the Tribunal.

(12) The Tribunal may—
(a) make a ruling as to costs as may be just and equitable; and
(b) where a mediation agreement has been concluded pursuant to section 13(2)(e), make such an agreement a ruling of the Tribunal.

(13) A ruling by the Tribunal is deemed to be an order of a magistrate’s court in terms of the Magistrates’ Court Act. 1944 (Act No. 32 of 1944).

Information Offices

14. (1) A local authority may establish a Rental Housing Information Office to advise tenants and landlords in regard to their rights and obligations in relation to dwellings within the area of such local authority’s area of jurisdiction.

(2) A local authority may, subject to the laws governing the appointment of local government officials appoint officials to carry out any duties pertaining to such Rental Housing Information Office.

(3) The functions of a Rental Housing Information Office are to—
(a) educate, provide information and advise tenants and landlords with regard to their rights and obligations in relation to dwellings within its area of jurisdiction;
(b) provide advice to disputing parties on reaching solutions to problems relating to dwellings;
(c) refer parties to the Tribunal;
(d) comply with any request of the Tribunal in terms of section 13; and
(e) keep records of enquiries received by the office and to submit reports in relation thereto to the Tribunal on a quarterly basis.
Regulations

15. (1) The MEC may, after consultation with the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province, by notice in the Gazette, make regulations relating to—

(a) anything which may or must be prescribed under Chapter 4;
(b) the procedures and manner in which the proceedings of the Tribunal must be conducted;
(c) the forms and certificates to be used;
(d) the notices to be given by the Tribunal in the performance of its functions, powers and duties;
(e) the functions, powers and duties of inspectors for the purpose of carrying out the provisions of this Act;
   unfair practices, which, amongst other things may relate to—
   (i) the changing of locks;
   (ii) deposits:
   (iii) damage to property;
   (iv) demolitions and conversions;
   (v) eviction;
   (vi) forced entry and obstruction of entry;
   (vii) House Rules, subject to the provisions of the Sectional Titles Act, 1986 20
      (Act No. 95 of 1986), where applicable;
   (viii) intimidation;
   (ix) issuing of receipts;
   (x) tenants committees;
   (xi) municipal services:
   (xii) nuisances:
   (xiii) overcrowding and health matters;
   (xiv) tenant activities;
   (xv) maintenance;
   (xvi) reconstruction or refurbishment work; or
(g) anything which is necessary to prescribe in order to achieve the purposes of this Act.

(2) At least one month prior to the publication of any regulations contemplated in subsection (1), the MEC must by notice in the Gazette set out the MEC’s intention to publish regulations in the form of a Schedule forming part of such notice setting out the 35 proposed regulations, and inviting interested persons to comment on the said regulations or make any representations which they may wish to make in regard thereto.

CHAPTER 5

GENERAL PROVISIONS

Offences and penalties

16. Any person who—
(a) fails to comply with sections 4 or 5(2) or (9);
(b) has been duly summoned under section 13 and who fails, without sufficient cause—
   (i) to attend at the time and place specified in the summons; or
   (ii) to remain in attendance until excused by the Tribunal from further attendance;
(c) has been called upon, in terms of section 13(3)(f) and who refuses to be sworn or to make an affirmation as a witness;
(d) fails, without sufficient cause—
   (i) to answer fully and satisfactorily any question lawfully put to any such person in terms of section 1 3(3);
   (ii) to produce any, book, document or object in any such person’s possession or custody or under any such person’s control which any such person was required to produce in terms of section 13(3)(e);
(e) with intent to deceive the Tribunal, produces before the Tribunal any false, untrue, fabricated or falsified book or document;  
(f) wilfully furnishes the Tribunal with information, or makes a statement before the Tribunal, which is false or misleading;  
(g) fails to comply with any ruling of the Tribunal in terms of section 13(4);  
(h) fails to comply with a request of the Tribunal in terms of section 13(3)(a)/(b) or (c); or  
(i) contravenes any regulation, will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and such imprisonment.  

Review  

17. Without prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal may be brought under review before the High Court within its area of jurisdiction.  

Repeal and amendment of laws  

18. The laws specified in the Schedule are repealed or amended to the extent indicated in that Schedule.  

Savings  

19. (1) Despite section 18—  
(a) a tenant of controlled premises as defined in section 1 of the Rent Control Act, 20  
1976 (Act No. 80 of 1976), may not be evicted or caused to vacate the premises—  
(i) unless the tenant has committed a breach of lease, or  
(ii) except under the circumstances and in the manner contemplated in section 28 of that Act, and  
(b) the rent of such premises may not be increased by more than ten per cent per annum, for a period of three years commencing on the date of commencement of this Act.  

(2) During the period of three years referred to in subsection (1) the Minister must—  
(a) monitor and assess the impact of the application of that subsection on poor and 30  
vulnerable tenants; and  
(b) take such action as he or she deems necessary to alleviate hardship that may be suffered by such tenants.  

(3) For purposes of subsection (2) the Minister may define criteria based on age, income or any other form or degree of vulnerability that apply to such tenant or group 35 of tenants and amend or augment the policy framework on rental housing, referred to in section 2(3), by introducing a special national housing programme to cater for the needs of affected tenants that comply with the criteria defined in terms of this subsection.  

Short title and commencement  

20. (1) This Act is called the Rental Housing Act, 1999, and comes into operation on 40  
a date determined by the President by proclamation in the Gazette.  

(2) In applying subsection (1) different sections of the Act may come into effect on different dates and different dates may be determined for different provinces.
## Schedule

### LAWS REPEALED OR AMENDED BY SECTION 18

<table>
<thead>
<tr>
<th>No. and year of law</th>
<th>Short title</th>
<th>Extent of amendment or repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act No. 80 of 1976</td>
<td>Rent Control Act. 1976</td>
<td>The whole</td>
</tr>
<tr>
<td>Act No. 23 of 1989</td>
<td>Rent Control Amendment Act. 1989</td>
<td>The whole</td>
</tr>
<tr>
<td>Act No. 132 of 1993</td>
<td>General Law Fourth Amendment Act. 1993</td>
<td>Section 26</td>
</tr>
<tr>
<td>Act No. 95 of 1986</td>
<td>Sectional Titles Act. 1986</td>
<td>Section 53</td>
</tr>
<tr>
<td>Act No. 95 of 1986</td>
<td>Sectional Titles Act, 1986</td>
<td>Section 10(1) by the deletion of the words: <strong>&quot;or, in the case of a unit which is controlled premises referred to in the Rent Control Act, 1976 (Act No. 80 of 1976), and is subject to the provisions of that Act, within a period of 365 days, of the date of offer, or has, on the expiration of any such applicable period, not accepted the offer&quot;</strong></td>
</tr>
</tbody>
</table>

2. RENTAL HOUSING AMENDMENT ACT, 2007

THE PRESIDENCY

No. 539 13 May 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

No. 43 of 2007: Rental Housing Amendment Act, 2007.

AIDS HELPLINE: 0800-123-22 Prevention is the cure
Act No. 43, 2007

RENTAL HOUSING AMENDMENT ACT, 2007

GENERAL EXPLANATORY NOTE:

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

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(As assented to 8 May 2008.)

ACT

To amend the Rental Housing Act, 1999, so as to substitute a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; and to extend the period allowed for the filling of vacancies in Rental Housing Tribunals; 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 50 of 1999

1. Section 1 of the Rental Housing Act, 1999 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “unfair practice” of the following definition:

“unfair practice means—
(a) any act or omission by a landlord or tenant in contravention of this Act; or
(b) a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord.”.

Amendment of section 4 of Act 50 of 1999

2. Section 4 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

“(1) In advertising a dwelling for purposes of letting it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant’s household or the [bona fide] visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.”;

(b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) his or her possessions seized, except in terms of a law of general application and having first obtained a ruling by a Tribunal or an order of court; or”;

and
(c) by the substitution for subsection (a) of the following subsection:

“(a) The rights set out in subsection (3) apply equally to members of the tenant’s household and to [bona fide] visitors of the tenant.”

Amendment of section 5 of Act 50 of 1999

3. Section 5 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise; and specify the period for which payment is made: Provided that a Tribunal may, in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph.”;

(b) by the substitution in subsection (3)(c) for the words preceding the proviso of the following words:

“the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with [a] financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request”; and

(c) by the deletion in subsection (3) of the word “and” at the end of paragraph (n), the addition of the word “and” at the end of paragraph (o) and the addition to that subsection of the following paragraph:

“(p) any costs in relation to contract of lease shall only be payable by the tenant upon proof of factual expenditure by the landlord.”.

Amendment of section 9 of Act 50 of 1999

4. Section 9 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (c);

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The MEC must appoint a deputy chairperson from the members referred to in subsection (1)(b);”;

and

(c) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) Any vacancy in the office of a member of the Tribunal must, within [one month] three months of such vacancy occurring, be filled by the MEC appointing another member under subsection (1) or (3).”.

Amendment of section 10 of Act 50 of 1999

5. Section 10 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) The Chairperson presides at all meetings of the Tribunal.”

(2B) Where the Chairperson is not present at a meeting, the Deputy Chairperson presides or, if the Deputy Chairperson is not present, the members of the Tribunal present must appoint from amongst themselves a member to preside at such a meeting.”
Amendment of section 13 of Act 50 of 1999

6. Section 13 of the principal Act is hereby amended—  
(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
"(a) rule that any person must comply with a provision of [the regulations relating to unfair practices] this Act;";  
(b) by the deletion in subsection (12) of the word "and" at the end of paragraph (a), the addition of the word "and" at the end of paragraph (b) and the addition to that subsection of the following paragraph:  
"(c) issue spoliation and attachment orders and grant interdicts;";  
(c) by the substitution for subsection (13) of the following subsection:  
"(13) A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and is enforced in terms of that Act;"; and  
(d) by the addition of the following subsection:  
"(14) The Tribunal does not have jurisdiction to hear applications for eviction orders.".

Amendment of section 15 of Act 50 of 1999

7. Section 15 of the principal Act is hereby amended—  
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
"The [MEC may] [Minister must, after consultation with the [relevant] standing or portfolio on housing [of the Provincial Legislature responsible for housing matters in the province] and every MEC, by notice in the Gazette, make regulations relating to—";  
(b) by the deletion in subsection (1)(f) of subparagraph (v) and  
(c) by the substitution for subsection (2) of the following subsection:  
"(2) At least one month prior to the publication of any regulations contemplated in subsection (1), the [MEC] [Minister must by notice in the Gazette set out the [MEC's] Minister's intention to publish regulations in the form of a Schedule forming part of such notice setting out the proposed regulations, and inviting interested persons to comment on the said regulations or make any representations which they may wish to make in regard thereto.".

Amendment of section 16 of Act 50 of 1999

8. Section 16 of the principal Act is hereby amended by the deletion of the word "or" at the end of paragraph (b) and the insertion after that paragraph of the following paragraph:  
"(b) unlawfully locks out a tenant or shuts off the utilities to the rental housing property; or".

Repeal of section 19 of Act 50 of 1999

9. Section 19 of the principal Act is hereby repealed.

Short title

10. This Act is called the Rental Housing Amendment Act, 2007.
3. **RENTAL HOUSING AMENDMENT ACT, 2014**

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

**Government Gazette**

**REPUBLIC OF SOUTH AFRICA**

Vol. 593  Cape Town  5 November 2014  No. 38184

**THE PRESIDENCY**

No. 876  5 November 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

**Act No. 35 of 2014: Rental Housing Amendment Act, 2014**

AIDS HELPLINE: 0800-123-22 Prevention is the cure
GENERAL EXPLANATORY NOTE:

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

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assested to 5 November 2014)

ACT

To amend the Rental Housing Act, 1999, so as to substitute and insert certain definitions; to set out the rights and obligations of tenants and landlords in a coherent manner; to require leases to be in writing; to extend the application of Chapter 4 to all provinces; to require MEC’s to establish Rental Housing Tribunals; to extend the powers of the Rental Housing Tribunals; to provide for an appeal process; to require all local municipalities to have Rental Housing Information Offices; to provide for norms and standards related to rental housing; to extend offences; 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 50 of 1999, as amended by Act 43 of 2007

1. Section 1 of the Rental Housing Act, 1999 (hereinafter referred to as the principal Act), is hereby amended—
   (a) by the insertion after the definition of “financial institution” of the following definition:

   “habitable” refers to a dwelling that is safe and suitable for living in and includes—
   (a) adequate space;
   (b) protection from the elements and other threats to health;
   (c) physical safety of the tenant, the tenant’s household and visitors; and
   (d) a structurally sound building,
   and “habitable” has a corresponding meaning.”;

   (b) by the substitution for the definition of “head of department” of the following definition:

   “head of department” means the officer in charge of a department of the provincial government responsible for [housing] human settlements in the province;”;

   (c) by the insertion after the definition of “lease” of the following definitions:

   “local municipality” means a municipality as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
‘maintenance’ includes such repairs and upkeep as may be required to ensure that a dwelling is in a habitable condition, and ‘maintain’ has a corresponding meaning.”;

(d) by the substitution for the definition of “Minister” of the following definition:
“‘Minister’ means the Minister of [Housing] Human Settlements;”;

and

(e) by the substitution for the definition of “prescribed” of the following definition:
“‘prescribed’ means prescribed by regulation by the [MEC, by notice in the Gazette] Minister;”.

Insertion of section 1A in Act 50 of 1999

2. The following section is hereby inserted in the principal Act after section 1:

“Objectives of Act

1A. The objectives of this Act are to—

(a) create mechanisms to promote the provision of rental housing property;
(b) promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market;
(c) lay down general principles governing conflict resolution in the rental housing sector;
(d) provide for the facilitation of sound relations between tenants and landlords; and
(e) provide for legal mechanisms to protect the rights of tenants and landlords against illegal actions by the other party by affording speedy means of redress at minimum cost to the parties.”.

Amendment of section 2 of Act 50 of 1999

3. Section 2 of the principal Act is hereby amended by the addition of the following subsections:

(5) The Minister must—

(a) monitor and assess—

(i) the impact of the application of this Act on landlords and tenants, and more specifically the impact on poor and vulnerable tenants; and
(ii) the performance of Tribunals and Rental Housing Information Offices;
(b) develop such relief measures and other social programmes as part of the policy framework on rental housing referred to in subsection (3) as he or she deems necessary to alleviate hardships that may be suffered by tenants;
(c) develop programmes, directives and guidelines or amend or augment the policy framework on rental housing referred to in subsection (3) in such a manner as he or she sees fit, to facilitate effective performance by Tribunals and Rental Housing Information Offices; and
(d) annually report to Parliament on the promotion of rental housing property as envisaged in sections 2 and 3.

(6) For purposes of subsection (5), the Minister may define criteria based on age, income or other form or degree of vulnerability that apply to such tenants or group of tenants and amend or augment the policy framework on rental housing, referred to in subsection (3) in such a manner as he or she sees fit.”.
Amendment of section 3 of Act 50 of 1999

4. Section 3 of the principal Act is hereby amended by the addition of the following subsections:

"(5) National Government must develop and fund programmes to train members
of the Tribunals and officials appointed in terms of section 14(2).

(6) Provincial Government must assist local municipalities not yet on level three
accreditation, in establishing Rental Housing Information Offices as contemplated
in section 14.".

Amendment of Chapter 3 of Act 50 of 1999

5. Chapter 3 of the principal Act is hereby amended by the substitution for the heading
of the following heading:

"[RELATIONS BETWEEN] RIGHTS AND OBLIGATIONS OF TENANTS
AND LANDLORDS".

Amendment of section 4 of Act 50 of 1999, as amended by section 2 of Act 43 of 2007

6. Section 4 of the principal Act is hereby amended by the deletion of subsections (2),
(3), (4) and (5).

Insertion of sections 4A and 4B in Act 50 of 1999

7. The following sections are hereby inserted in the principal Act, after section 4:

"Rights and obligations of tenants

4A. (1) A tenant has the right to receive a written receipt from the
landlord for all payments received by the landlord from the tenant, which
receipt must—

(a) be dated;

(b) clearly indicate the address, including the street number and further
description, if necessary, of a dwelling in respect of which payment is
made;

(c) indicate whether payment has been made for rental, arrears, deposit or
otherwise; and

(d) specify the period for which payment is made.

(2) A tenant may request the landlord during the period of the lease to
provide him or her with written proof in respect of interest accrued on the
deposit paid.

(3) Subject to section 4B(3), on the expiration of a lease, a tenant has the
right to receive payment of the deposit plus any interest accrued to such
deposit without any deduction or set-off, within seven days of expiration of
the lease.

(4) The tenant must, on request by the landlord, make himself or herself
available to conduct a joint inspection of the dwelling at a time convenient
for the landlord and tenant, with a view to ascertaining if there is any
damage caused to the dwelling during the tenant’s occupation, as
contemplated in section 4B(5).

(5) A tenant has the right, during the lease period, to privacy, and should
the landlord wish to exercise his or her right of inspection, the inspection
must be done in a reasonable manner after reasonable notice to the tenant.

(6) The tenant’s rights as against the landlord include his or her right not
to have—

(a) his or her person or dwelling searched;

(b) his or her possessions searched and seized, except in terms of a law of
general application and having first obtained a ruling by a Tribunal or
an order of court; or

(c) the privacy of his or her communications infringed."
(7) The rights set out in subsection (6) apply equally to members of the tenant’s household and to visitors of the tenant.

(8) A tenant is liable for rental and other costs agreed upon in the lease upon the due date, but for costs other than those agreed to in the lease, the tenant is only liable upon proof of factual expenditure by the landlord.

(9) A tenant may not sublet a dwelling without the consent of the landlord, which consent may not be unreasonably withheld.

Rights and obligations of landlords

4B. (1) A landlord may require a tenant, before moving into the dwelling, to pay a deposit which—

(a) may not exceed an amount equivalent to an amount specified in the lease or otherwise agreed upon between the parties;

(b) must be invested by the landlord in an interest-bearing account with a financial institution: Provided that the rate applicable to such account may not be less than the rate applicable to a savings account with that financial institution;

(c) must, subject to subsections (3) or (6), be repaid to the tenant together with any interest accrued to such account on the expiration of the lease; and

(d) shall, together with any interest accrued to it, not form part of the assets of the insolvent or deceased estate of the landlord in the event of the insolvency or death of the landlord.

(2) Upon request from the tenant during the period of the lease, the landlord must provide him or her with written proof in respect of interest accrued on the deposit referred to in subsection (1); Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act.

(3) On the expiration of the lease, the landlord—

(a) must, where no amounts are due and owing to the landlord in terms of the lease, refund the deposit together with the accrued interest in respect thereof, to the tenant, without any deduction or set-off, within seven days of expiration of the lease; or

(b) may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys, if any; and the balance of the deposit and interest, if any, must then be refunded by the landlord to the tenant not later than 14 days of restoration of the dwelling to the landlord; and

(c) must make available to the tenant for inspection the relevant receipts which indicate the costs which the landlord incurred as contemplated in paragraph (b).

(4) The tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence of any defects or damage, with a view to determining the landlord’s responsibility for rectifying any defects or damage or with a view to registering any such defects or damage.

(5) At the expiration of the lease, the landlord must arrange a joint inspection of the dwelling at a mutually convenient time to take place within a period of three days prior to such expiration, with a view to ascertaining if there is any damage caused to the dwelling during the tenant’s occupation: Provided that—
(a) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in this subsection, is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair and the landlord will have no further claim against the tenant; or

(b) should the tenant fail to respond to the landlord’s request for an inspection as contemplated in this subsection, the landlord must, within seven days from the expiration of the lease, inspect the dwelling in order to assess any damages or loss which occurred during the tenancy.

(6) The landlord, in the circumstances contemplated in—

(a) subsection (5)(a), must refund the full deposit plus interest to the tenant;

(b) subsection (5)(b), without detracting from any other right or remedy—

(i) may deduct from the tenant’s deposit the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys, if any;

(ii) must refund the balance of the deposit and interest, if any, after deduction of the amounts contemplated in subparagraph (i), to the tenant not later than 21 days after expiration of the lease; and

(iii) must make available the relevant receipts which indicate the costs which the landlord incurred, as contemplated in subparagraph (i), to the tenant for inspection.

(7) Should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling, in such event the landlord retains all his or her rights arising from the tenant’s breach of the lease.

(8) A landlord may inspect the dwelling during the course of the lease, but in doing so must respect the tenant’s right to privacy during the lease period and may only exercise his or her right of inspection in a reasonable manner after giving reasonable notice to the tenant.

(9) Landlords’ rights against tenants include his or her right to—

(a) prompt and regular payment of rental or any charges that may be payable in terms of a lease;

(b) recover unpaid rental or any other amount that is due and payable where the tenant fails or refuses to make payment on demand, after obtaining a ruling by the Tribunal or an order of a court of law;

(c) terminate the lease in respect of a dwelling or rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;

(d) on termination of the lease—

(i) have the tenant vacate the dwelling or rental housing property immediately upon expiration of the lease and to receive such dwelling or rental housing property in a good state of repair, except for fair wear and tear; and

(ii) where the tenant fails or refuses to vacate the dwelling, evict the tenant from such dwelling or rental housing property after having obtained an order of court in accordance with the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998); and

(e) claim compensation for damage to the dwelling or rental housing property and damage to any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant’s household or a visitor of the tenant.

(10) Landlords must ensure that the provisions of sections 5(6), (7) and (8) regarding the lease are complied with.
(11) A landlord must provide a tenant with a dwelling that is in a habitable condition, as well as maintain the existing structure of the dwelling and where possible facilitate the provision of basic services to the dwelling.”.

Amendment of section 5 of Act 50 of 1999, as amended by section 3 of Act 43 of 2007

8. Section 5 of the principal Act is hereby amended—
   (a) by the substitution for subsection (1) of the following subsection:
   
   “(1) [A] The landlord must reduce the lease entered into between himself or herself and [a] the tenant [and a landlord, subject to subsection (2), need not be in] to writing [or]: Provided that the lease will not be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969).”;

   (b) by the substitution for subsection (2) of the following subsection:
   
   “(2) The lease must contain the information set out in subsection (6).”;

   (c) by the substitution for subsection (3) of the following subsection:
   
   “(3) A lease will be enforceable in a Tribunal or competent court.”;

   (d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
   
   “A lease contemplated in subsection [(2)] (1) must include the following information:”;

   (e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
   
   “(b) the description of the dwelling which is the subject of the lease; Provided that a street address will be sufficient;”;

   (f) by the insertion in subsection (6) after paragraph (f) of the following paragraph:
   
   “[(fA)] information relating to the rights and obligations of the tenant and the landlord as set out in sections 4A and 4B;”;

   (g) by the substitution in subsection (6) for paragraph (g) of the following paragraph:
   
   “(g) any other obligations of the tenant and the landlord, [which must not detract from the provisions of subsection (3)] not set out in sections 4A, 4B or the regulations relating to unfair practice;”;

   (h) by the substitution in subsection (6) for paragraph (h) of the following paragraph:
   
   “(h) the amount of [the rental, and] any other charges payable in addition to the rental in respect of the dwelling or rental housing property, which other charges must be identified in the lease;”;

   (i) by the insertion of the following subsection after subsection (6):
   
   “(6A) The Minister must develop a pro-forma lease agreement in all 11 official languages, containing the minimum requirements set out in this Act, which may be used as a guideline by the tenants and the landlords.”;

   (j) by the substitution for subsection (7) of the following paragraph:
   
   “(7) A list of defects registered in terms of [subsection (3)(e)] sections 4A(4) and 4B(4) must be attached as an annexure to the lease [as contemplated in subsection (2)].” and

   (k) by the deletion of subsection (9).

Amendment of section 6 of Act 50 of 1999

9. The following section is hereby substituted for section 6 of the principal Act:

   “Application of Chapter

   6. This Chapter applies to all provinces in the Republic of South Africa.”.
Amendment of section 7 of Act 50 of 1999

10. The following section is hereby substituted for section 7 of the principal Act:

“Establishment of Rental Housing Tribunals

7. [The] Every MEC [may] must within the first financial year following the commencement of the Rental Housing Amendment Act, 2014, by notice in the Gazette, establish a tribunal in the Province to be known as the Rental Housing Tribunal.”.

Amendment of section 9 of Act 50 of 1999, as amended by section 4 of Act 43 of 2007

11. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal consists of [not less than three and not more than five] four to seven members, who are fit and proper persons appointed by the MEC, and must comprise—

(a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters;

(b) not less than [two] three and not more than [four] six members, of whom—

(i) at least one and not more than two shall be persons with expertise in rental housing property management or housing development matters; [and]

(ii) at least one and not more than two shall be persons with expertise in consumer matters pertaining to rental housing or housing development matters; and []

(iii) at least one and not more than two shall be persons with legal qualifications and legal expertise.”;

(b) by the insertion after subsection (1A) of the following subsections:

“(1B) The members of the Tribunal must be broadly representative in terms of language, gender, race and disability.

(1C) The Tribunal may function as two committees, each with three members with the expertise set out in subsection (1)(b) and with one committee being chaired by the chairperson and the other by the deputy chairperson, as the chairperson may determine: Provided that a decision taken by a committee is deemed to be a competent decision of the Tribunal.”;

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) the MEC has consulted with the relevant standing or portfolio committee of the Provincial Legislature which is responsible for [housing] human settlements matters in the province.”;

(d) by the substitution for subsection (3) of the following subsection:

“(3) The MEC may appoint [two] up to six persons to serve as alternate members of the Tribunal in the absence of any member referred to in paragraph (b) of subsection (1), but such persons must have the relevant expertise contemplated in paragraph (b) of subsection (1) and must serve as alternate for a member with similar expertise.”; and

(e) by the insertion after subsection (4) of the following subsections:

“(4A) A person appointed in terms of subsection (4) may not serve for more than two consecutive terms.

(4B) Succession plans must be adopted and must provide for replacement of members in such a manner that, for the sake of continuity, all members are not replaced at the same time.

(4C) Members already appointed at the time of commencement of the Rental Housing Amendment Act, 2014 and who have already served two consecutive terms may be reappointed for an additional term of not more than 18 months, to ensure continuity.”.
Amendment of section 10 of Act 50 of 1999, as amended by section 5 of Act 43 of 2007

12. Section 10 of the principal Act is hereby amended—
   (a) by the substitution for subsection (1) of the following subsection:
   “(1) The Tribunal [will sit] must meet on such days and during such 5
   hours and at such place as the chairperson of the Tribunal may determine
   after consultation with other members of the Tribunal.”;
   (b) by the insertion after subsection (1) of the following subsection:
   “(1A) The Tribunal may, subject to subsection (5), arrange two 10
   separate meetings in dealing with matters contemplated in subsection
   (4)(a), for purposes of effective functioning; Provided that such meetings
   shall happen simultaneously.”; and
   (c) by the substitution for subsection (5) of the following subsection:
   “(5) The quorum of any meeting of the Tribunal is three members, of 15
   which [at least two members] one must be a member appointed in terms
   of section 9(1)(b)(i) and (ii), respectively[iii].”;

Amendment of section 13 of Act 50 of 1999, as amended by section 6 of Act 43 of 2007

13. Section 13 of the principal Act is hereby amended—
   (a) by the substitution in subsection (4)(c) for the words preceding subparagraph
   (i) of the following words:
   “make any other ruling that is just and fair to terminate any unfair 20
   practice, including, without detracting from the generality of the
   foregoing, a ruling to disapprove amongst others, but not limited
   to—”;
   (b) by the substitution in subsection (5) for paragraph (a) of the following
   paragraph:
   “(a) prevailing economic conditions [of supply and demand];”;
   (c) by the substitution for subsection (11) of the following subsection:
   “(11) The Tribunal must within 30 days of receipt of a complaint, refer 30
   any matter that relates to evictions to a competent court.”;
   (d) by the deletion in subsection (12) of the word “and” at the end of paragraph
   (b) and by the insertion in that subsection after paragraph (c) of the following
   paragraphs:
   “(d) make a ruling to compel payment of rent as specified in a lease, and
   arrear rentals, if any; and
   (e) in respect of any matter over which it has jurisdiction, make any
   order that is necessary to give effect to this Act.”; and
   (e) by the insertion after subsection (12) of the following subsections:
   “(12A) The Tribunal may on its own accord and at the request of one 40
   of its members or on application by any affected person, rescind or vary
   any of its rulings if such rulings—
   (a) were erroneously sought or granted in the absence of the person 45
   affected by it;
   (b) contain an ambiguity or patent error or omission, but only to the
   extent of clarifying that ambiguity or correcting that error or omission;
   or
   (c) were granted as a result of a mistake common to all parties to the
   proceedings.
   (12B) The Tribunal may act on its own accord when supplementing or
   amending accessory or consequential matters, including—
   (a) costs orders;
   (b) altering an order for costs where it was made without hearing the 50
   parties;
   (c) interest on ruling debts;
   (d) clarification of a ruling so as to give effect to the Tribunal’s true 55
   intention; and
   (e) correcting clerical, arithmetical or other errors in its ruling:
Provided that any substantive change to the ruling must be made within 14 days of the ruling being made.

(12C) An application for rescission or variation must be brought within 14 days of the ruling being received by the affected person.”.

Amendment of section 14 of Act 50 of 1999

14. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) [A] Every local [authority] municipality [may] must establish a Rental Housing Information Office to advise tenants and landlords [in] with regard to their rights and obligations in relation to dwellings within [the area of such local authority’s] its area of jurisdiction[.] Provided that local municipalities may combine the functions of the Rental Housing Information Office with an existing office.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) [A] Every local [authority] municipality may, subject to the laws governing the appointment of local government officials, appoint or designate officials to carry out any duties pertaining to such Rental Housing Information Office.”.

Amendment of section 15 of Act 50 of 1999, as amended by section 7 of Act 43 of 2007

15. Section 15 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister [must] may make regulations, after consultation with the [standing or portfolio on housing] relevant parliamentary committees and every MEC, by notice in the Gazette, [make regulations] relating to——”;

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) anything which may or must be prescribed under [Chapter 4] this Act;”;

(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the procedures and manner in which the proceedings of the Tribunal must be conducted, including circumstances and process for submitting an appeal;”;

(d) by the insertion in subsection (1)(f) of the word “and” at the end of subparagraph (xv);

(e) by the deletion in subsection (1)(f) of the word “or” at the end of subparagraph (xvi);

(f) by the insertion in subsection (1) after paragraph (f) of the following paragraphs:

“/(fA) norms and standards that are aligned to the policy framework set out in section 2(3), in relation to——

(i) terms and conditions of the lease;

(ii) safety, health and hygiene;

(iii) basic living conditions including access to basic services;

(iv) size;

(v) overcrowding; and

(vi) affordability;

/(fB) the calculation method for escalation of rental amounts and the maximum rate of deposits which may be payable in respect of a dwelling and which may be set per geographical area to avoid unfair practices particular to that area; and”;

and

(g) by the addition of the following paragraph:

“/(3) The Minister must issue the regulations contemplated in section (1)(b), (f) and (fA) within 12 months of the commencement of the Rental Housing Amendment Act, 2014.”.
Amendment of Chapters 4 and 5 of Act 50 of 1999

16. Chapters 4 and 5 of the principal Act are hereby amended by removing section 15 from Chapter 4 and inserting it under Chapter 5 before section 16.

Amendment of section 16 of Act 50 of 1999, as amended by section 8 of Act 43 of 2007

17. Section 16 of the principal Act is hereby amended—
(a) by the substitution for paragraph (a) of the following paragraph:
"(a) fails to comply with sections 4 or {5(2) or (9) 5(1)};"
(b) by the insertion after paragraph (a) of the following paragraphs:
"(aA) interferes with the rights of the tenant and landlord set out in sections 4A and 4B;
(aB) fails to fulfil his or her obligations as landlord in terms of sections 4B(1)(c) and (11) respectively;"
and
(c) by the substitution for paragraph (g) of the following paragraph:
"(g) fails to comply with any ruling of the Tribunal [in terms of section 13(4)]."

Substitution of section 17 of Act 50 of 1999

18. The following section is substituted for section 17 of the principal Act:

"Review

17. Without prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal, including an appeal in terms of section 17A, may be brought under review before the High Court within its area of jurisdiction.".

Insertion of section 17A in Act 50 of 1999

19. The following section is hereby inserted in the principal Act, after section 17:

"Appeals

17A. (1) Any person who feels aggrieved by the decision of the Tribunal may, in writing and within 14 days of receipt of the decision, file an appeal against that decision with the MEC.

(2) The Minister must prescribe the circumstances under which an application for appeal may be submitted, including the procedure for filing and hearing of an appeal.

(3) The MEC must select a panel of adjudicators who possess legal qualifications and expertise in rental housing matters or consumer matters pertaining to rental housing matters.

(4) When appeals are lodged in terms of this section, the MEC must within one day of receipt of the appeal, appoint one or two adjudicators from the panel on a rotation basis to consider the appeals and must so refer the appeals for hearing.

(5) When an appeal has been lodged, the operation and execution of the order in question shall be suspended, pending the decision of the appeal.

(6) The appeal must be finalised within 30 days of referral by the MEC.

(7) The adjudicators may refer the matter back to the Tribunal or confirm, set aside or amend the decision.".

Substitution of expressions in Act 50 of 1999

20. The principal Act is hereby amended by the substitution for the expressions "local authority" and "landlord", wherever they occur, of the expressions "local municipality" and "landowner", respectively.
Transitional provisions

21. Any additional or amended obligations imposed upon a landlord or tenant by the Rental Housing Amendment Act, 2014, shall become effective six months from the date of commencement of the Rental Housing Amendment Act, 2014.

Short title and commencement

22. This Act is called the Rental Housing Amendment Act, 2014, and comes into operation on a date determined by the President by Proclamation in the Gazette.
4. **LIST OF INFORMATION OFFICES ESTABLISHED BY LOCAL MUNICIPALITIES**

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<th>PROVINCE</th>
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<td>1. GAUTENG</td>
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<td>Pretoria Central</td>
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4. LIST OF INFORMATION OFFICES ESTABLISHED BY LOCAL MUNICIPALITIES

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| 4. NORTH WEST    | Bojanala District          | Rustenburg Local Municipality |
|                 |                           | Madibeng Local Municipality  |
|                 | Dr Kenneth Kaunda District | Matlosana Local Municipality |
|                 |                           | Tlokwe Local Municipality    |
|                 | Dr Ruth Segomotsi Mompati | Naledi Local Municipality    |
|                 | Ngaka Modiri Molema District | Head office                |