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SOCIAL SECURITY BENEFITS AS COLLATERAL



**HIGHLIGHT OF THE NEW ISSUED
REGULATIONS ON THE USE OF SOCIAL
SECURITY BENEFITS AS A COLLATERAL
FOR HOME MORTGAGE.**

INTRODUCTION

The Minister for State, Prime Minister’s Office, Labour, Youth, Employment and Persons with Disability Prof. Joyce L. Ndalichako on the 8th of March 2024 issued new Regulations titled “The Social Security (Use of Members Benefit Entitlements as Collateral for Home Mortgage) Regulations, Government Notice No. 141 of 2024.”

These Regulations were made pursuant to Section 38 to allow members of the Social Security Funds to assign a proportion of their membership benefit entitlements from their respective Funds to be used as a security or collateral in creation of home mortgage granted or to be granted by the financial institutions.

Therefore this article is centered on providing a comprehensive analysis of the newly issued Regulations on the use of social security benefits as a collateral for home mortgage.



COMPREHENSIVE HIGHLIGHTS OF THE NEW ISSUED REGULATIONS ON THE USE OF SOCIAL SECURITY BENEFITS AS A COLLATERAL FOR HOME MORTGAGE.

2.1. The Purpose for which a member may use his benefits as collateral

The new issued Regulations set the purposes on which the membership benefit entitlements can be used as a collateral for creation of home mortgage. It is elementally under Regulation 3(1) (a) to (c) that a member of a Social Security Scheme/Fund may assign a proportion of his benefit entitlements from the Fund as a collateral for home mortgage granted or to be granted by institution.

The Regulation defines institutions to mean banks and financial institutions registered and licensed under the Banking and Financial Institutions Act. The benefit entitlements may be used as collateral so that to enable the member of the Social Security Scheme/Fund to;

- i. Construct a Residential house on immovable property in respect of which he obtained ownership.
- ii. Purchase of the residential house.
- iii. Improve, alter or carry out repairs to his house.

Therefore, where a member of the Social Security Scheme/Fund wishes to use a portion of his benefit entitlements as a collateral it must be for the above stated purposes only and not any other purpose.

2.2. Procedures to be Followed in Case a Member of a Social Security Fund/Scheme Wishes to Use his Benefit Entitlements as a Collateral

The Regulations require a member who wishes to use his benefit entitlements as a collateral in creation of home mortgage to submit a formal application to the respective Fund which he has membership in the manner prescribed in the Fund's Operational Manual.

However making application is not an automatic right by virtue of being a member of the fund there are conditions for collateral to members set under the Regulations which must be met. According to the Regulations a member is eligible to access collateral to the fund if he is a Tanzanian citizen, he is eligible member in the sense that he has made at least one hundred and eighty months contributions of which twelve monthly contributions are made prior to the date of issuance of a collateral, another condition is that the validity of the collateral shall not go beyond the member's compulsory retirement age. Basically a member should not make an application when he/she does not meet these conditions.

Thereafter, the respective Fund shall review the member's application for eligibility and notify the decision made to the member accordingly as to whether or not his application has been accepted.

2.3. The Proportion of the Assignable Benefits.

The only proportion available to member as a collateral for home mortgage should be an amount not exceeding 50% of the benefit entitlements available to an eligible member at the time of application and should be the purchase price of the property which shall not exceed the market value of the property, whichever is less.

So a member is allowed to use only 50% of his benefit entitlements as a collateral in creation of home mortgage for the purposes provided under the Regulations. In addition to that, Regulation 9 cement the condition provided under Regulation 4(1)(a) that, the amount to be accessed for the home mortgage collateral under these Regulations shall not exceed fifty percent of the member's benefit entitlements at the time of application.

2.4. Conditions for collateral to Institutions.

Banks and financial institutions which require the Fund to furnish collateral for member's loan is required to do the following;

i. To obtain approval from the Division responsible for social security within the Ministry responsible for social security matters. Application for approval must be made in writing accompanied with a copy of company's registration or incorporation documents, documents relating to operational activities of the institution, a copy of certificate of registration from the Bank of Tanzania, a copy of valid business license, current audited financial statement, details relating to the professional and academic qualifications of the Board of Directors and top management of the applicant, a statement on the experience of the applicant in the provision of products and services relating to collateral for home mortgage and any other authorization from relevant authorities.

Then the Division is required within thirty days from the date of receipt of an application for approval, to consider the application and issue a written approval to the applicant, and where it refuses the application, notify the applicant in writing stating the reasons for such refusal.

ii. To have an adequate operational and internal control system for the purposes of structuring and operating a loan,

iii. To keep and update an accurate record of the transactions from and to a member's loan account and shall generate reports as may be required by the fund.

2.5. Requirements for furnishing Mortgages.

The new Regulations set some requirements and/or conditions which shall be complied with in the process of furnishing mortgages, where the fund shall enter into an agreement with the institution to prescribe the manner in which the mortgage shall be provided as described under the Regulations. Also, the Regulations stress that an institution shall not grant a mortgage to a member unless the provisions of the Regulation have been complied with.

The fund shall not furnish a collateral for home mortgage unless, the house subject to the mortgage is made the first collateral in the mortgage

and also the member must have consented to the fund for his proportion of entitled benefits to be assigned as a collateral for home mortgage. It is further provided under the Regulations that, prior to the approval of the amount of a collateral, an institution shall satisfy the Fund that adequate insurance arrangements have been made in respect of the loan and the property for which the loan is advanced.

2.6. Validity of the Collateral.

After creation of collateral shall remain valid until the cessation of membership from the fund in accordance with the law governing the fund or a member has made repayment of the mortgage in full subject to confirmation from the institution and also a member and institution have engaged into an arrangement that contravenes with the provisions of the Regulations.

2.7. Enforcement of Collateral.

It is worth to note that upon default by a member who created collateral by using benefit entitlements an institution can enforce collateral, however an institution is required to provide adequate evidence that all recovery means, including the use of the first collateral subject to the terms of the agreement, have been fully and reasonably exhausted. All payments in execution of collateral shall be deductible from the payable benefits of the member and the amount to be settled shall not be more than the guaranteed amount.

2.8. Dispute Resolution.

The Regulations did not leave apart the important aspect of dispute resolution in case there is any quarrels or conflicts between the member and institution or fund and an institution regarding any arrangements provided under the Regulations. Hence the Regulations under Regulation 13(1) and (2) provides that in case there is any dispute between a member and institution, the Fund shall act as a mediator and when there is a dispute between the fund and institution the Division shall act as a mediator.

CONCLUSION

The use of social security benefit entitlements as collateral for home mortgages represents a pivotal strategy with far-reaching implications for individuals aspiring to construct, purchase, or enhance residential properties. This multifaceted approach not only serves as a catalyst for realizing housing dreams but also fosters broader socio-economic benefits for Tanzanians.

For individuals embarking on the journey of constructing a residential house, this avenue provides a lifeline, enabling them to transform blueprints and dreams into tangible structures that serve as the foundation of stability and security. Moreover, for those endeavoring to purchase a residential property, whether as first-time buyers or seasoned homeowners seeking to expand their investments, using social security benefit entitlements as collateral opens doors to housing opportunities that may have seemed out of reach. Additionally, for homeowners looking to improve or repair their dwellings, utilizing these benefits offers a means to enhance livability, bolster property values, and invest in the long-term sustainability of their homes.

Nevertheless, it is essential to acknowledge the complexities and potential challenges which might be associated with leveraging social security benefit entitlements as collateral for home mortgages. As such, individuals and policymakers alike must approach this strategy with prudence, ensuring that it aligns with long-term financial goals and safeguards against potential vulnerabilities.

REFERENCES

- The Social Security Act, Cap. 135
- The Social Security (Use of Members Benefit Entitlements as Collateral for Home Mortgage) Regulations, Government Notice No. 141 of 2024.

Available at:

<https://oagmis.agctz.go.tz/portal/revised-acts/revised/102>

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