

OFFICE OF THE VALUER-GENERAL

NO. R. 1321

30 NOVEMBER 2018

**REGULATIONS UNDER THE PROPERTY VALUATION ACT, 2014 (ACT
NO. 17 of 2014)**

The Minister of Rural Development and Land Reform has, under section 20 read together with section 1 of the Property Valuation Act, 2014, made the regulations in the Schedule.

SCHEDULE**Definitions**

1. In these regulations, any word or expression defined in the Act has the same meaning, unless the context indicates otherwise:

“acquisition benefits” means any benefits that accrued to the owner of, and the subject property, because of the manner of acquisition, including that they did not acquire the property at market value and from a willing owner, and where such acquisition and benefit was due to, aided by, or a consequence of past discriminatory laws and practices, or unlawful conduct.

“Act” means the Property Valuation Act, 2014 (Act No. 17 of 2014);

“assumption” means a reasonable supposition taken to be true, and involves facts, conditions or situations affecting the subject of, or approach to, a valuation;

“current use value” means the net present value, as at the date of valuation, of cash inflows and outflows, or other benefits and costs that the subject property generates for the specific owner in perpetuity or, in the case of a lease, to lease expiry, under lawful use, and without regard to its highest and best use, or the monetary amount that might be realised upon its sale;

“departure” means special circumstances where the mandatory application of valuation standards may be inappropriate or impractical;

“highest and best use” means the reasonably probable and lawful use of property, that is physically possible, financially feasible, and that results in the highest value;

“instructing authority” means the department requiring a valuation of the subject property;

“net realisable value” means the price of a property that can be realised upon the sale of the property, less a reasonable estimate of the costs associated with either the eventual sale or the disposal of the property in question;

“net present value” means the difference between the present value of cash inflows, or other benefits, and the present value of cash outflows, or other costs;

“special assumption” means an assumption that either assumes facts that differ from the actual facts existing at the valuation date, or that would not be made by a typical market participant in a transaction on the valuation date;

“subject property” means the property which has been identified for valuation for–

- (a) land reform purposes or
- (b) acquisition or disposal by a department, for any reason other than that mentioned in paragraph (a);

“valuation basis” means a statement of fundamental measurement principles or assumptions on which a valuation is premised.

“valuation certificate” means a summary valuation report containing inter alia, the following:

- (a) legal description of the subject property;

- (b) current use value of the subject property;
- (c) value of acquisition benefits accruing to the owner;
- (d) value of acquisition benefits accruing to the subject property;
- (e) market value of the subject property;
- (f) value of direct state investment in the acquisition of the subject property;
- (g) value of direct state investment in the beneficial capital improvement of the subject property;
- (h) value of the state subsidy in the acquisition of the subject property;
- (i) value of the state subsidy in the beneficial capital improvement of the subject property;
- (j) value of movable property on the subject property (if required);
- (k) purpose of acquisition;
- (l) overall value of the property as at the date of valuation, determined in terms of these regulations; and
- (m) the identity and registration status of the authorised valuer.

“valuation standards” means statements of principles, guidelines and procedures that govern professional valuation practice and are mandatory for authorised valuers, subject to the provisions of any law;

Information required by the Valuer-General

2. The Valuer-General shall, pursuant to Section 13(1) of the Act:

- (a) establish and maintain a database of property and land market information which is reasonably required for valuation, and to store the information in hardcopy, electronic or any other medium, provided that such information is not about, or identifiable as belonging to, or about specific persons;

- (b) request a person or body to disclose, either orally or in writing, any information that may be relevant for inclusion in the database, and question any person about such information;
- (c) determine the manner in which the information stored in the database, either in raw or processed form, may be retrieved or accessed by third parties, including any fees payable;
- (d) determine any other information, with the exclusion of personal information, that must be included in the database; and
- (e) require the owner, agent of the owner, tenant or occupier of the subject property to provide an authorised valuer, within 30 calendar days, either in writing or orally, with the particulars regarding the subject property reasonably expected to be in their possession, and which is reasonably required for the valuation of the subject property, including, but not limited to:
 - (i) the purchase price
 - (ii) the purchase date;
 - (iii) the nature of right transferred;
 - (iv) the internal rate of return and/or yield;
 - (v) the purchase and acquisition costs;
 - (vi) whether the subject property is encumbered, the extent to which it is encumbered and the financial institution involved;
 - (vii) the itemised annual revenues and expenses;
 - (viii) financial statements;
 - (ix) tenancy details (lease expiry dates, rents/royalties reserved and rent review terms);
 - (x) leasing costs, vacancies and collection losses;
 - (xi) capital and maintenance costs;
 - (xii) dates of completion of building works and copies of building plans;
 - (xiii) details of any restrictive conditions, unregistered rights, long term occupiers, restitution claims, registered usage, grave sites and tenure issues;
 - (xiv) Copies of municipal accounts, water usage certificates, prospecting rights and any mining activities on property;
 - (xv) the details of any acquisition benefits;

- (xvi) the details of any direct state investment and subsidy in the acquisition and beneficial capital improvement of the property;
- (xvii) details of declarations of value of the subject property made to the South African Revenue Services (SARS)

Protection of information

3. The Valuer-General, an authorised valuer, any person authorised to undertake a valuation, and/or any person in the staff of the Office of the Valuer-General, may not disclose any information obtained in the process of conducting such a valuation except –

- (a) within the scope of that person's powers and duties in terms of the Act;
- (b) for the purpose of carrying out the provisions of the Act and these regulations;
- (c) for the purpose of legal proceedings, provided if these involve a third party, consent has been duly provided by an owner of the property; or
- (d) in terms of a court order.

Requirements for valuation instructions and subject property inspections

4. (1) An instructing authority requiring a valuation of the subject property which has been identified for land reform must request the Valuer-General, in writing, to conduct such valuation and must include the following information-

- (a) a full description of the subject property;
- (b) the details of the relevant legislation under which the acquisition is to be done;
- (c) the purpose for which the subject property is required, and a statement that this purpose is either in the public interest or for a public purpose, as the case may be;
- (d) the purpose of valuation;
- (e) description of the interest or interests to be valued,

- (f) whether or not movable property, annual crops or growing timber on the subject property and belonging to the owner, as appropriate, is to be included in the valuation;
- (g) if movable property is to be included in the valuation, a full description thereof; and
- (h) the effective date of valuation.

(2) An instructing authority requiring a valuation of the subject property for acquisition or disposal by a department for reasons other than land reform must include the following information in the valuation request-

- (a) a full legal description of the subject property;
- (b) the details of the relevant legislation under which the acquisition or disposal is to be done;
- (c) the purpose or reasons for which the subject property is being acquired or disposed of;
- (d) the purpose of valuation;
- (e) description of the interest or interests to be valued;
- (f) whether or not movable property, annual crops or growing timber on the subject property and belonging to the owner, as appropriate, is to be included in the valuation;
- (g) if movable property is to be included in the valuation, a full description thereof; and
- (h) the effective date of valuation.

(3) The authorised valuer must deliver a written notice to the owner or person in charge of the subject property, at least 14 calendar days prior to the proposed date of inspection of the subject property, unless there is agreement for an earlier date, containing all relevant information, including-

- (a) a full legal description of the subject property;
- (b) the identity of the authorised valuer and proof of appointment by the Valuer-General;
- (c) the purpose of valuation;

- (d) a description of the interest or interests to be valued, and whether or not movable property is to be included in the valuation;
- (e) the extent and nature of the authorised valuer's planned investigations regarding the subject property;
- (f) the nature of information that the authorised valuer will require from the owner, the agent of the owner or person in charge of the subject property; and
- (g) the dates and times that the authorised valuer proposes to physically inspect the subject property.

(4) The written notice to the owner, owners' agent or person in charge of the subject property may be delivered by SMS, email, fax, hand, registered mail, or ordinary post.

Criteria and/or procedures for valuation of property identified for purposes of land reform

5 (1) An authorised valuer shall, in the valuation of the subject property for the purposes of section 12(1) (a) of the Act, apply the following criteria and procedures:

Current use value

(2) The authorised valuer shall establish the current use value of the subject property as at the valuation date.

(3) In establishing the current use value, the authorised shall take into account the following:

- (a) The impact of capital expenditure incurred on the subject property before the date of valuation, but whose effects are yet to fully materialise as at the date of valuation, by reasonably imputing the relevant cash flows, or benefits and costs;
- (b) In the case of timber on the subject property, the full optimal rotation period for the tree species concerned; and

- (c) In the case of mining property, imputed cashflows arising from mineral stockpiles and residual stockpiles on the subject property.

Historical value

(4) The authorised valuer shall establish the historical value of any acquisition benefits, and escalate the value of these benefits to the valuation date, using an appropriate cost or price index.

Market value

(5) The authorised valuer shall establish the market value of the subject property as at the valuation date, taking into account any realisable potential and assuming its highest and best use.

(6) In establishing the market value of the subject property, the authorised valuer must not take account of the following:

- (a) The fact that the property is the subject of an acquisition or expropriation;
- (b) The special suitability or usefulness of the property for which it is required by the acquiring authority, if it is unlikely that the property would have been purchased for that purpose in the open market;
- (c) Any enhancement in the market value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;
- (d) Any diminution in the market value of the property, if such diminution is a consequence of being encumbered by a mining right, permit or permission, and where such encumbrance took place subsequent to assumption of ownership by the owner of the subject property;
- (e) Anything done with the object of obtaining compensation; and
- (f) The value of any movable property, annual crops or growing timber on the subject property, and belonging to the owner, that have not yet been harvested as at the date of valuation, provided that the authorised valuer must determine their value separately if so requested by the instructing authority.

(7) In establishing the market value of the subject property, the authorised valuer may take into account prices paid by the state as evidence for market value, only if-

- (a) the authorised valuer has taken reasonable steps to find transactions where the state is not a party to, and finds that these are not available;
- (b) having regard to the facts and the circumstances of the transaction, and the broader property market, the authorised valuer is of the opinion that the price paid by the state is reasonable and fair, and would represent what a non-state buyer would pay for the subject property, could one be found; and
- (c) the authorised valuer has disaggregated the total price paid by the state into prices paid for movable and immovable property, as appropriate.

(8) The authorised valuer must include in the valuation report his or her use of prices paid by the state as evidence for market value as a departure.

Direct state investment and subsidies

(9) The authorised valuer shall establish the value, as at the valuation date, of any direct state investment and subsidy in the acquisition and beneficial capital improvement of the subject property accruing to the owner of the subject property.

(10) Where the direct state investment and subsidy in the acquisition and beneficial capital improvement of the subject property can, without ambiguity, be attributed to specific improvements existing on the subject property, the value contemplated in sub-regulation (9) must be established on the basis of the replacement cost of those improvements, less the total accumulated depreciation as at the valuation date; and

(11) Where the attribution contemplated in sub-regulation (10) cannot be made, the authorised valuer shall determine the historical cost of

state investments and subsidies, and escalate the said cost to the date of valuation using an appropriate cost or price index.

(12) Where movable property on the subject property, and belonging to the owner, is to be included in the valuation, the authorised valuer must establish –

- (a) the net realisable value of sellable movable property and mature timber that has not yet been harvested as at the date of valuation;
- (b) total expenditure incurred, as up to the date of valuation, on growing crops and immature timber; and
- (c) the replacement cost less accumulated depreciation of all other movable property, provided that these are not sellable.

Purpose of acquisition

(13) The authorised valuer must, on the basis of instructions received from the instructing authority, record that the purpose of acquisition of the subject property is either in the public interest or for a public purpose, as the case may be.

Procedures and guidelines for the determination of the value of the subject property

6. The authorised valuer shall determine the value of the subject property for the purposes of section 12(1)(a) of the Act as follows:

- (a) Where the immovable property is to be acquired together with movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation-
 - (i) adding the current use value and market value of the subject property as at the date of valuation, and as established in terms of regulation 5, and dividing the resulting figure by two;

- (ii) subtracting from the resulting figure the value, as at the date of valuation, of acquisition benefits and the value of direct state investment and subsidy in the acquisition and beneficial capital improvement of the subject property; and
 - (iii) provided that the value of movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation, and as established in terms of Regulation 5, must be added to market value before the division referred to in sub-regulation (i) is performed.
- (b) Where the immovable property is to be acquired without movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation-
 - (i) adding the current use value and market value of the subject property as at the date of valuation, and as established in terms of regulation 5, and dividing the resulting figure by two;
 - (ii) subtracting from the resulting figure the value, as at the date of valuation, of acquisition benefits and the value of direct state investment and subsidy in the acquisition and beneficial capital improvement of the subject property; and
 - (iii) provided that the value of movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation, and as established in terms of Regulation 5, must be subtracted from current use value before the division referred to in sub-regulation (i) is performed;

Valuation reports

7. A valuation report contemplated in section 15 of the Act must in addition to the matters set out in that section, contain the following information:

- (a) Identification of the instructing authority and any other intended users;
- (b) The purpose of the valuation;
- (c) A legal description of the subject property;

- (d) whether the subject property is encumbered, the extent of the encumbrance and the financial institution(s) involved;
- (e) the interest that was valued;
- (f) the valuation basis or bases;
- (g) the date (s) of inspection;
- (h) the valuation date;
- (i) disclosure of any material involvement in the subject property by the authorised valuer, or a statement that there has not been any previous material involvement;
- (j) the identity of the authorised valuer responsible for the valuation and, their registration status;
- (k) any assumptions, special assumptions, reservations, special instructions or departures;
- (l) the extent of the authorised valuer's investigations;
- (m) the nature and source of information relied on by the authorised valuer;
- (n) any consent to, or restrictions on, publication of the report;
- (o) any limits or exclusion of liability to parties other than the instructing authority, or the Valuer-General, as the case may be;
- (p) confirmation that the valuation accords with the provisions of the Act, these regulations and any other applicable prescripts;
- (q) a statement regarding the purpose of acquisition;
- (r) a statement of the valuation approach and reasoning;
- (s) the current use value of the property;
- (t) a statement regarding the history of the acquisition and the use of the subject property, and the historical and present values of any acquisition and use benefits accruing to owner;
- (u) the market value of the property;
- (v) a statement regarding the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and their historical and present values;
- (w) a list of all movable properties on the subject property;
- (x) the value of the subject property as at the valuation date, established in terms of regulation 6; and
- (y) a valuation certificate.

Representations by owner or persons in charge of property

8. (1) On receipt of the valuation report from an authorised valuer, the Valuer-General shall provide the owner, owner's agent or person in charge of the property with a copy of the preliminary valuation certificate which will for the purposes of this section, be designated as a provisional valuation certificate.

(2) The owner or person in charge of the property shall have 30 days in which to make written representations regarding the contents of the valuation certificate and/or valuation report to the Valuer-General if the person so desire.

(3) The Valuer-General shall consider the representations of the owner, owner's agent or person in charge of the property, together with any further adjustments that the authorised valuer may make based on the representations.

(4) The Valuer-General shall deliver the final valuation certificate and final valuation report to the instructing authority.

Systems to monitor compliance with the act

9. (1) The Valuer General shall put in place, an in-house quality assurance system to assist in monitoring compliance with the Act by authorised valuer(s).

(2) A valuation made by anyone other than an authorised valuer does not become a section 12 valuation unless the Valuer-General issues a certificate of compliance.

(3) Before the valuation report can be submitted to the Valuer-General for the issue of valuation certificate, the valuation report must first go through the quality assurance branch of the Office of the Valuer-General for compliance checks.

(4) Such quality assurance process shall have a system of checks and balances to assist it in performing the valuation compliance monitoring function.

(5) The quality assurance branch may require the authorised valuer to provide clarifications, further information or motivations.

Short title and commencement

10. These regulations shall be called the Property Valuation Regulations, 2018 and will come into operation on the date of publication in the *Gazette*.