

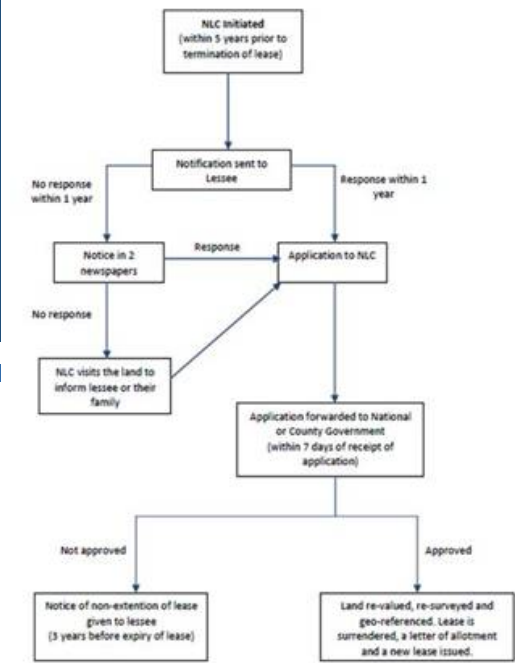
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Overview

On 9 June the Cabinet Secretary for Ministry of Lands and Physical Planning in consultation with the National Land Commission (the "NLC") issued the 'Guidelines for Extension and Renewal of Leases' (the "Guidelines"). The intention is to create a clear process for the renewal or extension of leases.

The Guidelines envision two types of situations: where the NLC informs the lessee that the lease is going to expire and confirms whether they want to extend the lease; and where the lease expired without the NLC giving the lessee prior notice.

NLC Initiated Extension of Lease



Leaseholder Initiated Renewal of Lease

The Guidelines provide that if a lease expires without the NLC giving the lessee notice then the lessee is required to apply for the renewal of the lease.

In contrast to the NLC initiated extension of lease process, applications are received and determined by the NLC alone and not the National or County Government. The NLC will however seek the views of various authorities including the National or County Government in making their decision. If approved by the NLC then the process indicated in the last box of the flow diagram is followed.

Large Scale Investments

The Guidelines provide that if there is a 'large scale development' on the property then the NLC, National or County Government will need to consider if: extending the lease is beneficial to the economy or country as a whole; and whether the investment is in line with national development goals.

There is no definition of what type of development constitutes a 'large scale development' hence this provision is unclear.

Foreign Holders of Leasehold Properties

The Guidelines provide that when considering an application the NLC, National or County Government may require:

1. in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director;
2. a clearance certificate from the relevant authority in relation to all land rates and rents;
3. information whether the title to be extended will be subject to any existing encumbrance(s); and
4. proof that the lessee has complied with the terms of the lease.

The Guidelines then state that the above factors 'may' apply if the lessee is a non-citizen. It is therefore unclear whether different criteria will be established for non Kenyan citizens in addition, the Land Laws provide that the NLC will only issue a notice to renew to Kenyan citizens.

Renewal or Extension of Lease

Rejection of the application to extend or renew a lease will be limited to the following two grounds:

1. the land is needed for public purpose and is included in the County Spatial Plan; or
2. there is proof that the lessee has not complied with the terms and conditions of the existing lease.

The Guidelines provide that an appeal against the decision of the National or County Government lies with an independent appeals committee to be established by the NLC.

Conclusion

Even though the Guidelines seek to streamline the operations of extension and renewal of leases, the time frames for the process are not clearly defined and at present no application forms exist. Furthermore, limiting a leaseholders' right to appeal may be subject to challenge.

For further advice about any of the information contained here please feel free to contact:
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