



SALGA
South African Local Government Association

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FROM : CHIEF EXECUTIVE OFFICER

**TO : EXECUTIVE MAYORS AND MAYORS OF METROPOLITAN MUNICIPALITIES
MUNICIPAL MANAGERS OF METROPOLITAN MUNICIPALITIES**

DATE : 7 APRIL 2014

SIGNING OF EXECUTIVE ASSIGNMENT AGREEMENTS FOR ASSIGNMENT OF HOUSING FUNCTION TO METROPOLITAN MUNICIPALITIES

Introduction

Instruction Note No 1 of 2014: Assignment of Housing Functions from the National Department of Human Settlements (sent 24 March 2014 to all Provincial Heads of Departments of Human Settlements and City Managers of the Metros) indicated that the due date for the signing of Executive Assignment Agreements was March 2014.

SALGA has been providing support to the Metros throughout 2013, through lobbying, advocacy, information-sharing and technical assistance. As part of our programme of support we have held a number of meetings of the Metros to address the challenges related to the handover of provincial staff, assets and projects to the assigned Metros, as well as the other processes related to assignment—including the signing of the Executive Assignment Agreements.

During our recent meeting 28 February 2014, the Metros requested technical input from SALGA to advise on the legal framework regarding who must sign the Executive Assignment Agreement. This Circular provides information and advice to address this question.

Signatories to the Executive Assignment Agreement

According to the Accreditation Framework approved by MINMEC, assignment of the housing function to the metropolitan municipalities is undertaken in terms of Section 126 of the Constitution, which states: "A member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament of a provincial Act, to a Municipal Council. An assignment—

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- a. *Must be in terms of an agreement between the relevant Executive Council member and the Municipal Council;*
- b. *Must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and*
- c. *Take effect upon proclamation by the Premier."*

Further, Section 10 of the Municipal Systems Act, 2000, addresses assignment of functions to specific municipalities by Acts of executive or by agreement, as in the case of the housing function whereby an executive assignment is being undertaken.

With respect to assignment, the Constitution clearly states that the Executive Assignment Agreement (EAA) is an agreement between the MEC and the Council. Therefore there must be a Council Resolution supporting assignment, which is attached to the EAA. The Mayor, in his/her capacity as Head of Council, is therefore the signatory of the EAA on behalf of Council.

If extenuating circumstances exist, the Council may make an express delegation of the signing powers to the MMC for Human Settlements, who, as a member of Council, is authorized to represent Council with such express delegation. The signing of the EAA cannot, and should not, be delegated to a Municipal Manager or other member of the administration, due to the fact that the Constitution clearly states the agreement is to be entered into by the Council, and the Municipal Manager is not a member of Council.

For further clarity, it is noted that the Accreditation Framework contains a number of annexures, one of which is a template for an EAA. (The Accreditation Framework can be found on the SALGA website at <http://www.salga.org.za/pages/Municipal-Focus/Accreditation-and-Assignment-of-Housing-Function>). In the EAA template, the Parties to the Agreement are the MEC and the Executive Mayor, on behalf of the Municipal Council. Duly authorised representatives of the provincial Department and the Head of the national Department are also signatories to this Agreement in recognition of the implications of this Agreement for the provincial Department and the national Department respectively.

Municipalities are further advised that the 2014/15 Integrated Development Plans and Budgets currently being developed must reflect the shift of the housing function and the revised timeframe for assignment.

We trust this legal input assists you to fulfil the necessary requirements towards assignment. SALGA reiterates its commitment to supporting our members with legal and technical assistance, as well as strategic and lobbying support, as the Metros move towards assignment of the function by 1 July 2014, and the direct receipt of the Human Settlements Development Grant 1 July 2015.

Yours faithfully,



PHILA XUZA
ACTING CHIEF EXECUTIVE OFFICER