

OFFICE OF THE VALUER-GENERAL

NO. 365

21 APRIL 2017

**INVITATION TO COMMENT ON THE DRAFT REGULATIONS IN TERMS
OF THE PROPERTY VALUATION ACT 17 OF 2014**

The Minister of Rural Development and Land Reform hereby invites interested persons or bodies to provide written comments on the Regulations made in terms of the Property Valuation Act, 2014 (Act No. 17 of 2014) 'PVA', as set out in the Schedule hereto.

The closing date for comments on the Regulations is 60 calendar days from the date of publication of this notice in the *Gazette*.

Comments may be submitted in writing to:

Postal address: Valuer General: Office of the Valuer General

Private Bag X 812

PRETORIA

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E-mail: vg@ovg.org.za or Thapelo.motsoeneng@ovg.org.za

Comments received after the closing date will not be considered

SCHEDULE

Regulations in terms of the Property Valuation Act, 17 of 2014

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, and where such benefits did not arise from normal market transactions, including that they did not acquire the property on the open market from a willing seller;

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

“assumption” means a 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 or other benefits that the subject property generates for the specific owner 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, appropriately supported, and financially feasible, and that results in the highest value;

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

“**net present value**” means the difference between the net present value of cash inflows, or other benefits, and the net 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 the description of the subject property, the current use value of the subject property, the value of acquisition benefits accruing to the owner or the subject property, the market value of the subject property, the value of direct state investment and subsidy in the acquisition and beneficial capital improvement of the subject property, the value of movable property on the subject property (if required), and the overall value of the property determined in terms of these regulations, all as at the date of valuation, and including the identity and registration status of the authorised valuer;

Powers of the Valuer-General

2. (1) The Valuer-General shall have powers to:

(a) establish and maintain a database of property and land market information, and store the information in hardcopy electronic or any other medium;

- (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 that must be included in the database; and
- (e) require the owner, tenant or occupier of the subject property to provide an authorised valuer, either in writing or orally, with the particulars regarding the subject property reasonably expected to be in their possession, including, but not limited to:
 - (i) purchase price and purchase date;
 - (ii) nature of right transferred;
 - (iii) discount rate and/or capitalisation rate;
 - (iv) purchase and acquisition costs;
 - (v) financing terms;
 - (vi) itemised annual revenues and expenses;
 - (vii) financial statements;
 - (viii) tenancy details (lease expiry dates, rents/royalties reserved and rent review terms);
 - (ix) leasing costs, vacancies and collection losses;
 - (x) capital and maintenance costs;
 - (xi) dates of completion of building works and copies of building plans;
 - (xii) details of any acquisition benefits;
 - (xiii) details of any direct state investment and subsidy in the acquisition and beneficial capital improvement of the property;
 - (xiv) 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, or any person authorized to undertake a valuation, may not disclose to any person 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; and or
 - (d) in terms of a court order.

Valuation practices, methods, standards and procedures

4. (1) All valuations in terms of the Act and these regulations must be conducted in accordance with generally recognised valuation practices and methods.
- (2) 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, and whether or not movable property, annual crops or growing timber, as appropriate, is to be included in the valuation;

- (f) if movable property is to be included in the valuation, a full description thereof; and
- (g) the effective date of valuation.

(3) An instructing authority requiring a valuation of the subject property for acquisition or disposal by a department for reasons other than 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 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, and whether or not movable property, annual crops or growing timber, as appropriate, is to be included in the valuation;
- (f) if movable property is to be included in the valuation, a full description thereof; and
- (g) the effective date of valuation.

(4) The authorised valuer must deliver a written notice to the owner or person in charge of the subject property, at least 7 days prior to the proposed date of inspection of the subject property, containing the following information-

- (a) a full description of the subject property;
- (b) the purpose of valuation;
- (c) a description of the interest or interests to be valued, and whether or not movable property is to be included in the valuation;
- (d) the extent and nature of the authorised valuer's planned investigations regarding the subject property;

- (e) the nature of information that the authorised valuer will require from the owner or person in charge of the subject property; and
- (f) the dates and times that the authorised valuer proposes to physically inspect the subject property.

Procedures for valuations 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 procedures-

- (a) the authorised valuer shall determine the current use value of the subject property as at the valuation date;
- (b) the authorised valuer shall determine 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;
- (c) The authorised valuer shall determine 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;
- (d) In determining the market value of the subject property, the authorised valuer must not take account of the following:
 - (i) the fact that the property is the subject of an expropriation;
 - (ii) 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 opening market;
 - (iii) 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;
 - (iv) anything done with the object of obtaining compensation; and
 - (v) value of any movable property, annual crops or growing timber on the subject property 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.

(e) in determining 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-

(i) 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;

(ii) having regard to the facts and the circumstances of the transaction, and the broader property market, the authorised valuer believes, or should believe, 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;

(iii) the authorised valuer has disaggregated the total price paid by the state into prices paid for movable and immovable property, as appropriate;

(f) 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; and

(g)(i) the authorised valuer shall determine 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;

(ii) where sufficient information exists, the value contemplated in subparagraph (i) must be determined on the basis of current cost, depreciated to reflect value as at the valuation date; and

(iii) where the relevant current information is lacking, 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.

- (h) 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.

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 by:

- (a) 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;
- (b) 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 must be added to market value before the division referred to in paragraph (a) is performed, and if so requested by the instructing authority; and
- (c) subtracting from the figure arrived at in paragraph (b) the value to the owner, 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.

Directives for the valuation of subject property

7. All valuations in terms of the Act, shall be conducted subject to such directives as may be issued by the Valuer-General generally or in respect of a particular valuation.

Valuation reports

8. 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) description of the subject property;
 - (d) the interest that was valued;
 - (e) the valuation basis or bases;
 - (f) the valuation date;
 - (g) 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;
 - (h) the identity of the valuer responsible for the valuation and, their registration status;
 - (i) any assumptions, special assumptions, reservations, special instructions or departures;
 - (j) the extent of the authorised valuer's investigations;
 - (k) the nature and source of information relied on by the authorised valuer;
 - (l) any consent to, or restrictions on, publication of the report;
 - (m) any limits or exclusion of liability to parties other than the instructing authority, or the Valuer-General, as the case may be;
 - (n) confirmation that the valuation accords with the provisions of the Act, these regulations and any other applicable prescripts;
 - (o) a statement of the valuation approach and reasoning;
 - (p) the current use value of the property;
 - (q) 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;
 - (r) the market value of the property;
 - (s) 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;

- (t) the value of the subject property as at the valuation date, established in terms of regulation 6; and
- (u) a valuation certificate.

Representations by owner or persons in charge of property

9. (1) On receipt of the valuation report from an authorised valuer, the Valuer-General shall provide the owner or person in charge of the property with a copy of the 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 provisional valuation certificate to the Valuer-General if they so wish;
- (3) The Valuer-General, shall, within 14 days of the date of receipt of the representations, submit the representations to the authorised valuer concerned, for his or her consideration and response;
- (4) The Valuer-General shall consider the representations of the owner or person in charge of the property, and the response of the authorised valuer to those representations, whereupon he or she may adjust the valuation and certify the valuation certificate as final; and
- (5) The Valuer-General shall deliver the final valuation report and valuation certificate to the instructing authority.

Short title and commencement

10. These regulations shall be called the Property Valuation Regulations, 2017 and comes into operation on the date of publication in the *Gazette*.