



Ministry of Lands, Housing & Urban Development

Land Owners' Tutorials series : no 2

How the Registered Owner can Prevent Fraud

1. Formalization and Registration of land transactions

- a. What is to formalize? To formalize is to make a plan, a decision, or an idea official, especially by describing all the details. Formalization is realized through documentation and registration of agreements relating to land transactions; a document means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used or may be used for the purpose of recording that matter. It is something on which things are written, printed or inscribed, and which gives information; it is any written thing capable of being evidence. Evidence denotes the means by which the truth of any alleged matter of fact may be investigated, proved or disproved.
- b. What is evidence of title? Evidence of title is the means by which the ownership of a particular piece of land is proven to create greater certainty and finality in dealings in the land market and to provide evidence to support the decisions of the Courts of Justice.
- c. What are title-deeds? Title-deeds are the documents and instruments conferring or evidencing the title to land. Title-deeds include certificates of title or Certificate of Customary Ownership.
- d. What is title? A title is the right to the ownership of property in possession of the owner.
- e. What is an instrument? An instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. Registrable instruments include grants or allocations, transfer instruments, mortgage instruments, and lease instruments. Instruments must be registered to have legal effect:
 - i. No transaction shall give the effect of passing any interest in land held under a CCO to which the transaction relates unless it is registered by the Recorder (s. 8(4) of the Land Act).
 - ii. No instrument until registered in the manner provided shall be effectual to pass any estate or interest in any land under the operation of the RTA or to render the land liable to any mortgage (s. 54 of the Registration of Titles Act).
- f. What is Land registration? **Land registration** involves the systems by which matters concerning ownership, possession or other rights in **land** can be recorded in a public register by the Department of Land Registration to provide evidence



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of title, to facilitate transactions by creating greater certainty and finality in land dealings in the market and to prevent unlawful disposal.

- g. What is the scope of land registration in Uganda?
- i. The customary ownership land and the customary land transaction on land held under customary tenure system may be registered under the Land Act (Cap. 227) and the Land Regulations, 2004; land transactions on registered land held under freehold, mailo and leasehold tenure system may be registered under the Registration of Titles Act (Cap. 230).
 - ii. The National Forestry and Tree Planting Act 2003 recognizes the private ownership of forests and forest produce on private land. The ownership of private natural forests and private plantation forests growing of private land, of rights and interests in trees, and of dealings in forest produce may be registered under the Land Act and the Registration of Titles Act.
 - iii. The following easements may be registered under the Registration of Titles Act;
 - Rights of way
 - Water easements
 - Environmental easements

2. The requirement for preparation of a Subdivision Plan

What is a Subdivision Plan?

Subdivision is the dividing of land into two or more parts for the purpose of sale, gift, lease or any other purpose. The document which contains a subdivision of a particular piece of land that has been divided into different lots is called a Subdivision Plan. A Subdivision Plan is required for the subdivision of land under any tenure system of the following tenure systems: freehold, mailo, customary and leasehold.

Who is responsible for the preparation of a Subdivision Plan?

A Subdivision Plan shall be made by a qualified Physical Planner and lodged with the Commissioner for Land Registration at the cost of registered owner (s. 36 of the Physical Planning Act and section 149 of the Registration of Titles Act)

Is it a mandatory requirement for Subdivision Plans to be prepared?

Land within the area of a local government shall not be subdivided except in accordance with an approved Subdivision Plan which has been prepared by a qualified Physical Planner at the instance and at the cost of the registered owner, to be approved in accordance with the approved Local Physical Development Plan of the area where the land is situated (s. 36 of the Physical Planning Act, 2010).



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Accordingly, any proprietor subdividing any land under the operation of the RTA for the purpose of selling the land in allotments shall deposit with the Commissioner for Land Registration the approved Subdivision Plan of that land in accordance with the provisions of sections 149 and 152 of the Registration of Titles Act.

What are the contents of a Subdivision Plan?

A Subdivision Plan shall exhibit distinctly delineated all roads, streets, passages, thoroughfares, squares or reserves appropriated or set apart for the use of the purchasers, and also all allotments into which the land is divided, marked with distinct numbers or symbols, and shall also show the area of each separate allotment, and shall also exhibit particulars of the boundaries and abutments relating to the subdivided land (section 149 and 152(2) of the Registration of Titles Act).

What is an Abutment?

An abutment includes any building, wall, sectional division of a party wall, fence, public or private street or road, lane or passage, land dedicated to or reserved for the public, Government reserve, block or plot of public land, surveyed land described in any certificate of title and any lake, river, creek or natural or artificial watercourse (s. 155 of the Registration of Titles Act).

What are the socio-economic role and function of a Subdivision Plan?

- a) Provides a mechanism for the protection of abutments: mention of an abutment in any certificate of title shall not be deemed to give title to the abutment or to be evidence of the title of any person who is referred to in the description as owner or occupant of the land upon which any abutment stands, or of any land constituting an abutment (s. 155 of the Registration of Titles Act).
- b) After the subdivision of the land and the deposit of the plan with the Commissioner for Land Registration, the numbers of the allotments marked upon the plan, together with a reference to the plan by its deposited number, may be used as sufficient description of the land for the purpose of dealings with any one or more of the allotments on the sale of an allotment according to the plan of subdivision, and on any subsequent dealings comprising the whole of one or more allotment or allotments (s. 153 of the Registration of Titles Act).
- c) Marketing of subdivided land to prospective purchasers or lessee for systematic sale by lots to be sold by auction to the highest bidders at competitive and enhanced sale values, pursuant to the provisions of section 11 of the Auctioneers Act (Cap. 270) read together with Rule 21 of the Advocates (Remuneration and Taxation of Costs) Rules S.I. 267-4) and section 199 of the Registration of Titles Act.



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- d) Promotes the systematic densification of land.; the principal purpose of a subdivision is to divide land into multiple lots for purposes of facilitating the orderly and progressive development of the land by the registered owner. The lots may be developed individually, or as a group, and may be used for a range of uses such as residential, commercial, and/or institutional purposes.
- e) Provides the basis for preparation and enforcement of building schemes or schemes of development by a common vendor making possible the establishment of homeowners associations and for the regulation of the use and development of land by application of restrictive covenants which bind the common vendor and the purchasers and/or lessees on the basis upon which they can sue each other for any breach in the Courts of Law.
- f) Provides a scheme for systematic condominium planning and development on subdivided land.
- g) Marketing of lots by their lot and subdivision deposit numbers and Scheduling the payment of ground rents by different lessee
- h) Avoiding of mistakes or misdescription of which result in double or multiple sales of the same piece of land to different people or the sale of pieces of land with wrong descriptions
- i) Provides the basis for preparation of an inventory of all planned lots as the basis for tracking all private registered landowner's instructions to carry out subdivision surveys, when the subdivision surveys were carried out and by who, and the preparation of the list of all surveyed and un-surveyed lots to be verified against the total number of lots in a Subdivision Plan.
- j) Provides the basis for preparation of an inventory of all planned lots as the basis for tracking all sales or leases of subdivided lots at different point in time to be verified by the registered owner against the total number of lots in a Subdivision Plan
- k) Provides the basis for proper and methodical book-keeping by the registered owner in respect of the income from the land in terms of receipt of rents and profits
- l) Tracking the payments of purchase price by different purchasers who buy land or payment of premia and of ground-rent by different lessees at different points in time.
- m) Provides the basis for audit of the subdivision of land, sales and leasing of land and the registration of subdivision surveys and the transfers and/or leases on subdivided land.
- n) Provides the basis for mobilization of communities into associations in order to facilitate community policing and/or establishment of gated-communities.

3. The requirement for Due Diligence as a prerequisite to entering into Land Transactions

- i. searching the Register Book to verify the information of ownership and incumbrances,
- ii. identifying the person selling to confirm that he or she is the true registered owner by reference to his or national identity card and interviewing his or her neighbours,



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- iii. by inspecting the land being purchased to ascertain whether it is available for sale, is undisputed and that it is under the possession of the person who claims to be the vendor.
- iv. Independent ascertainment of the prevailing market value of the land and/or timber-trees on the land by the vendor and the purchaser, mortgagor and the mortgagee and the lessee and lessor before commencement of negotiations for the purpose of entering into land transactions.
- v. Ascertain the approved best use of the land specified in an approved land use plan in order to avoid land use conflicts and to ensure the most optimal and sustainable utilization and management of the land.

4. The need for Payments through the Banking System

b) Pay, which enables:

- i. Tracing of evidence of payment of consideration between parties to transfers of land, leases and mortgages
- ii. In addition to the use of national identity cards, reliance on, payments based on the banking system enables the authentication of land transaction by making possible the identification of registered owners and by reference to their bank account
- iii. Payment through the banking system provides evidence of the fact that the registered owner and the other party to a land transaction was alive at the time of the making of the transaction
- iv. Payment into the banking system enables:
 - 1. The filing of suits for the recovery of damages from the person who has caused the deprivation of land through mistakes, misdescription or fraud;
 - 2. The recovery of the purchase-price from the vendor where family land had been mistakenly sold in an innocent purchaser without the written spousal consent.
 - 3. Recovery of purchase price by a non-citizen who mistakenly bought freehold, mailo or customary land held in perpetuity; or supports negotiations for down-grading of the estate in perpetuity into a term of years – the leasehold.
 - 4. Recovery of professional fees paid for professional services and damages due to loss arising from professional negligence or indiscipline
 - 5. Supports the claim for specific performance



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5. Settlements

The instrument or instruments by which land is settled; where property is limited upon trust for any persons in succession. Settlements may be created and deposited with the Commissioner for Land Registration pursuant to the provisions of section 50 of the Registration of Titles Act. A settlement is the instrument by which settled land is created. Settled land limited to several persons in succession, so that the person for the time being in the possession or enjoyment of it has no power to deprive others of the right to future enjoyment. Settled land may be created upon a transfer made pursuant to the provisions of section 94 of the Registration of Titles Act which empowers a Proprietor to vest estate jointly in himself or herself and others without limiting any use, etc. Section 94 of the Registration of Titles Act provides that the proprietor of land or of any estate or interest in land under the operation of this Act, whether of the nature of real or personal property, may transfer that land, estate or interest to his wife; or if the proprietor is a married woman, she may make such transfer to her husband; or the proprietor may make such transfer directly to himself or herself and another person, or jointly with any other person to himself or herself alone, or to create or execute any power of appointment or disposition, or to create or limit estates in remainder or otherwise as legal estates of or concerning land the subject thereof.

A settlement may be made:

- 1) In consideration of marriage;
- 2) For the purpose of distributing property of the Settlor among his or her family or those for whom he or she desires to provide or for the purpose of providing for some people dependent on him or her.

A settlement may provide for management of the property of the settlor in trust for himself or herself during his or her life time, who may under the settlement become a tenant for life, who may also provide for his or her spouse by securing the payment of sums of money to the spouse during his or her lifetime and after the death of the Settlor. The settlement may also provide for the children of the marriage by securing the payments to cater for their career until they reach 21 years of age or complete their studies and to cater for their marriage upon attainment of majority.

No more succession fights – no more fights with inept or fraudulent administrators or executors - land is pre-administered by the Settlor during his or her lifetime and is made to be held in perpetuity by the remainderman as settled land as a future interest.

Under Registration of Titles Act which provides for the creation of settled land:

- “Proprietor” means the owner whether in possession, remainder, reversion or otherwise of land or of a lease or mortgage whose name appears or is entered as the proprietor of that land or lease or mortgage in the Register Book; “proprietor” also includes the donee of a power to appoint or dispose of that land or lease or mortgage.



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- Land is the source of income in terms of rents and profits, land being defined in terms of messuages, tenements and hereditaments, and includes easements.

The owner is the person who is receiving rent, or ought to be receiving rent if the land or premises were rented to a lessee or tenant;

The beneficiaries' interests is not in the land but in the proceeds out of trust property under the settlement as a going concern – they do not need to fight over succession, to disorganize, mismanage or bankrupt the business enterprise on the land or to fragment the land.

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