



## Key Issues Relating to the Transfer and Registration of Properties.

Real Property industry is a Booming industry in Tanzania, especially in the urban centres of Dar es Salaam. Investors and Local Business man engage their funds and money in the construction of buildings and apartments. Even in the outcast of the city away from the town. People buy and sell properties such as land and houses almost every day. With this rapid increase of transactions in the real estate industry it is vital for citizens to understand the main issues or rather the whole process of transfer and registration of formal properties.

Formal properties in ordinary meaning refer to properties that are already registered such properties include those with Title Deeds. Formal transfer requires compliance with provisions of the *Land Act No 4 of 1999 [RE. 2002]*, *Land Registration Act CAP 344*, *Town and Country Planning Act CAP 355*, *Stamp Duty Act [RE 2002]*, *The Income Tax 2004* and regulations therein. To avoid future encumbrances to the properties which are to be purchased and registered to the new owner. It is important to note that the following procedures are essentially to be followed to the Buyer.

First and foremost, in any transfer of formal property it highly advised to begin with the Onsite verification which is to be done by the buyer. This stage involves actual visit of the area to be purchased, the aim here is to establish physical environment of the asserted property, visiting the neighbors around the area just to cross check if there is any conflicts related to the boundaries of the said property.

Next to this is the official search mostly this stage is done by the Lawyers, official search aims to assist the buyer to check if the seller is the real owner of the property and if the Plot is free from any encumbrances such as being registered as a mortgage. This is done through the application of official search at the registry of Titles this application follows to submit to the appropriate land registry. In return to the application for official search the registrar will give a certified summary of entries on property. This certificates shall bear the name of the seller and certify that there no any registered encumbrances with the property. With hope that everything has gone well at this stage and the buyer is satisfied that the property truly does belong to the purported seller.

It shall now be advisable to continue to the actual signing of the Sales Contract. The sales agreement should contain the basic essentials of a contract, such as authorized witnesses. It is imperative to have the pictures of both the buyer and seller in the contract.

Auxiliary to the signing of the sale agreement there should be notification to authorized officer at the District land Department this approval in practice takes a long period of time. Further to this the law asserts under section 36 of *the Land Act of 1999 [RE: 2002]* that any person proposing to carry out a disposition he shall send or deliver a notification in the



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prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premier, taxes, and dues prescribed in connection with that disposition. However it is not only the buyer who has to go through this key process of transfer of registered property alone, their stages whereby the seller also comes into place such as;

- It is the seller who notifies the Commissioner (District Authorized Officer of Land Administration) of his intention to dispose of his right of occupancy. Normally this is done through Land Form No. 29 and No. 30 which are to be completed, attached to it in practice will be a certificate of occupancy or letter of offer and three sets of the deed of disposition accompany the form used for such purposes.
- Subsequently to the above step it will be the Valuation report, the valuer under the ministry of land and human settlement will conduct a field inspection. The main aim to this to this step is to check, if the land was developed according to the conditions set under the right occupancy. If the valuer finds that the land was developed but not according to the right occupancy then he shall render the matter to the allocation committee or, if he finds the holder maintained the conditions set in right occupancy he shall issue a valuation report accordingly. But kindly note that practically this is not a one day process, it estimated that approximately the process can take a period of two month.
- Payment of taxes is next to the Valuation Report; the general taxes to be include but are not limited to Capital gains Tax and the stamp duty Tax which are subject to 4% of the valuation report. The law specifies that such taxes are to be paid by the seller. However the practice vindicates that at this stage the seller will normally have gone aloof. Here the buyer is highly advised that before negotiating the actual price of the property to be purchased. It's worth to check all these taxes. If at all there to be paid then while negotiating he or she shall include these expenses to the seller. The payment of Tax should be followed with the payment of any outstanding land rents. To know the outstanding land rents will be through the Valuation report. Caution the Taxes are to be paid to the Tanzania Revenue Authority and the land rents are to be paid to ministry of land.
- Next to the payment of the Taxes and land rents it will be required now from the land Department officer of the district land administration officer to give a notice. The notice will be in a special form; this will be in reply to the request of disposition that must have been given by the parties to sale agreement. The notice will be informing the parties to fulfill certain conditions (if any not met) before proceeding with the disposition at hand. It is not very easy to determine the period of which this stage may take as it is upon the discretion of the officer to approval on the compliance as indicated. Prior to this process the officer shall issue a certificate of approval of the



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disposition.

- Thereafter the stage is built around a more complex arena. We move to the office of Registrar Titles main office. Once one has arrived to this stage it marks the beginning of the other long process. In essence at this stage is where the actual Transfer of Formal Property takes place. At this stage the Application for the Approval and registration of Disposition takes place at the main registry. This is done through the land forms No. 30 and 35, this application should cover the nature of the transaction and particulars of the purchaser and attached document.
- The seller should apply to the registrar specifying his intention to dispose his or her right occupancy, in the application the seller should include amongst other things; original letter of offer, original and rent receipts up to the date of application, original deed transfer, approved valuation report, valuation fees receipt and consent fees receipt. Next to the above their shall be an entry in the presentation book, of which in the book the reception office shall describe documents which have been entered for purpose of application.
- The registrar shall subsequently next to this examine the documents that have been submitted for the approval for the application. Once the document he has gone through the documents shall then direct the documents to the responsible officer of upon his recommendation.
- The responsible officer (assistant officer) examines the documents and gives his observation and makes the recommendation to the registrar indicating to the registrar whether or not the document should be approved for registration. Amongst the many things to be evaluated are as follows to mention the few; stamp duty and registration fee have been correctly paid, consent from the authorized officer required before registration must have been given, to ensure that the name of the owner agrees with the records, to ensure there are no any encumbrances to stop the registration, that there no any probate and administration issues concerning the property that have been handed before and if so what were the outcome, and the correctness attestation and execution of the related documents and lastly the validity of the right occupancy.
- Further to that, once the document has been returned to the registrar he shall observe the legality of the document. Registration of land is a complex issue and in actual sense a risky process as the office of the registrar may get into huge liabilities for such mistakes. Thus the registrar shall take if the contents of the documents fulfill all the necessary legal requirements.
- The ACTUAL REGISTRATION shall involve filing of the duplicate or copy of the document presented for registration at the appropriate register. The transfer shall be noted on the original copy of every document registered, recording the hour and the date of presentation. Every duplicate or copy filed bears the number of the volume and the Folio in which the same is registered, along with hour and date of registration.



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Thereafter the registrar shall issue an official copy of the registered transaction. He should seal and sign the transfer as well as the duplicate.

- A duplicate of the registered document should then be given to the applicant.

The process of registering a purchased property after the buying and selling activities is very cumbersome. In actual sense the process to many has been revealed to be a tiresome one. However looking at the above steps one should get an idea for the reason for such delay. It is approximated that the process takes a period from 6 month to one year and that is if all the documentation appear to be correct and no mistake has been done at any stage.

Kindly note that it is very essential to be carefully at each stage of the transfer as one mistake can make the whole transfer Void, and so call for the restart of the same process again which may cost more time and more time.

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