

## **FREQUENTLY ASKED QUESTIONS ON LAND REGISTRATION**

### **1. What is the importance of a title deed?**

- It being a document of evidence for land ownership thus protects the owner from arbitrary eviction without prompt and fair compensation.
- It makes dealing in land easier, cheaper, safer thus improving accessibility to land.
- Leads to reduced disputes in land ownership and boundaries.
- It enhances incentives to invest in land due to the perceived security that it provides.

### **2. What is a caveat?**

The word caveat means beware, and the lodging of a caveat over a property is a way of telling anyone who wants to deal with the property to be aware of the fact that someone else's interest already has priority.

### **3. What is a caution?**

This is a notice in form of a register to the effect that no action of a specified nature in relation to the land in respect of which the notice has been entered may be taken without first informing the person who gave the notice.

### **4. Who can lodge a caveat and/or caution on land?**

Any person can lodge a caution or caveat so long as he/she claims a contractual or other right over land amounting to a defined interest capable of creation by a registrable instrument e.g. a lease. This can be done with the registrar against any dealing which is inconsistent with his interest. No transaction with respect to a land that has a caution and/or caveat can be entered into without notifying the cautioner.

## 5. What is the importance of a search?

A search usually shows:

- ❖ The registered owner of the land,
- ❖ Acreage of the land as well as
- ❖ Any encumbrances registered against the title deed eg caveats and court orders.

A search is usually done at the lands registry upon producing a copy of the title deed, filling a search application form and paying a search fee.

## 6. What is a lease agreement?

This is a legal document outlining the terms under which one party agrees to rent property from another party. A lease guarantees the lessee (the renter) use of an asset and guarantees the lessor (the property owner) regular payments from the lessee for a specified number of months or years.

## 7. What are the types of land tenure in Kenya?

To begin with, land tenure is the act, right or period of holding land. In Kenya there are two types of land tenure:

- ✓ **Freehold** – the greatest interest a person can have as it gives the holder an absolute ownership of the land for life.
- ✓ **Leasehold** – Is the interest in land for a specific period subject to payment of a fee or rent to the grantor.

## 8. Do I have the right to own land in any part of Kenya?

The 2010 Constitution categorically states under article 40 (1) that every person has the right to either individually or in association with others, to acquire land and own property or any description in any part of the country.

## 9. What are some of the methods of acquiring land?

- **Adverse possession:** This occurs when a person gains title to property belonging to a private person through actual, open and continuous occupation of the land for 12 years without any interference from the real owner.
- **Inheritance:** This is the act of receiving property passed down from a deceased person, to whom one is a beneficiary.
- **Purchase:** This involves buying land from a buyer by the payment of money or any consideration.
- **Allocation:** This is where public land is transferred by the government to individuals for a specified time and for a specific use with conditions.
- **Compulsory Acquisition:** This is the process by which the government acquires land for a public purpose but subject to fair and timely compensation.
- **Settlement Schemes:** This is land provided by the government to persons such as squatters; persons displaced by disasters, conflict and development projects.
- **Adjudication Schemes:** This is when rights and interests to land are determined and recorded in areas of community land. Land owners point out their boundaries. which are then demarcated, surveyed and recorded.

## 10. How can one prevent another from acquiring his land through adverse possession?

The owner of the parcel of land can either:

- ✓ Put up a sign board stating that the land is not for sale on that particular piece of land.
- ✓ Issue a license to the person occupying his/her land.
- ✓ Get a court order to evict the person from that land.
- ✓ Interrupt his residing on that land every now and then.
- ✓

## 11. Why do land transactions need to be in writing?

It is a legal requirement under sec 44 of the Land Registration Act that land transactions need to be in writing owing to:

- ✓ The need for certainty within contractual relationships;
- ✓ The importance of the parties giving serious deliberation to a decision to enter a land transaction;
- ✓ The need to memorialize the agreement for later reference; and
- ✓ The importance of verification of the contract to inhibit the likelihood of fraud.

## 12. What are the institutions in land management?

- National Land Commission – The Commission manages public land on behalf of the national and county governments
- County Registrars - The registrars assist in registration of interests in land
- County Land Management Boards – The boards have a role in sanctioning, approving and monitoring land development proposals
- Provincial Administration – The administration has a role in resolving land disputes at the local level

- County Governments – Their role is to implement land management and administration policies and programmes
- Environment and Land Court – The court deals with disputes relating to land administration and management

### **13. What is the function of the National Land Commission?**

- To manage public land on behalf of the national and country governments
- to conduct research related to land and the use of natural resources
- To initiate investigations into present or historical land injustices
- To encourage application of traditional dispute resolution mechanisms in land conflicts
- To monitor and have oversight responsibilities over land use planning

### **14. What are the correct steps to follow in purchasing land?**

#### ***(a) Land Identification***

The prospective buyer identifies a piece of land that meets their criteria including size, location, soil type among others.

#### ***(b) Search at the lands registry***

- Carry out an official search at the county registry. The search indicates the ownership and status of the land. One needs to have a copy of the title to the land that you intend to do the search.
- You will have to fill a search application form and attach on it single copies of the title deed, ID card and PIN certificate and pay Kshs.500/- at the registry and get an official receipt.



- The search will give you the following information;
  - ✓ The registered owner
  - ✓ Its size
  - ✓ Any encumbrances against the land, for instance cautions, caveats.
  - ✓ It will further show the title and search numbers, date the search was done, nature of title (freehold/leasehold), approximate area in hectares, name and address if proprietor and whether a title has been issued. A title with any unresolved issues of the above is not transferrable.
  - ✓ The search results must be signed and sealed by the registrar. If all is clear, then you may proceed to the next step which is writing a sale agreement.

#### ***(c) Sale agreement***

The purchaser may appoint a lawyer to represent him in the signing of the agreement. The sale agreement is prepared by the seller's lawyer and it indicates the terms of sale including the names of the buyer and seller, price of the land, mode of payment and documents to be supplied by the seller to facilitate registration of the transfer of land to the buyer.

At this point, the buyer may be required to pay a deposit with the balance payable within 90 days after signing of the sale agreement. After the parties have signed the sale agreement, the document must then be stamped to make it legally binding.

#### ***(d) Transfer and procurement of completion documents***

- The transfer document is usually prepared by the buyer's advocate and approved by the seller's lawyer.
- The seller is supposed to procure the completion documents at his costs, including the: original title deed, 3 copies of transfer of land duly completed by the seller, ID Card, certificate of registration of the seller and PIN certificate, 3 passport size photos of seller (if company, photos of two of its directors) land rent clearance certificate (for leasehold land) rates clearance certificates, and consent to transfer and valuation form duly



completed by the seller. The document should also be signed by the buyer who is also required to produce copies of his ID card, PIN certificate and passport photos.

***(e) Stamping the transfer***

- The buyer then applies for the valuation of the land by the government valuer using valuation form duly completed by the seller. Lands office will use these documents to determine stamp duty payable.
- The stamp duty should be paid to the commissioner of domestic taxes usually through the National Bank or any other appointed bank.
- Once the payment is done, the buyer should lodge the documents at the lands office for stamping with duty.
- Thereafter, the buyer should book the following documents for registration: Title deed; land rent and rates clearance certificates, valuation report, consent to transfer, stamp duty declaration and pay-in-slip.

***f) Registration of the transfer***

- This is the last process of the land purchase and it involves the registration of the transfer in favor of the buyer.