

# Land Title Registration. The Ghanaian Experience

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**Key words:** Title registration, Ghanaian experience.

## SUMMARY

Ghana practiced Deeds Registration under the Registration Ordinance of 1883, Land Registry Ordinance of 1895 and Land Registry Act 1962, ACT 122. Deed Registration did not provide for accurate maps, there are incidences of double registration of the same parcel/piece or land. Land ownership in Ghana is characterized by indeterminate boundaries of land owning groups leading to conflicts and litigations. These necessitated the introduction of Title Registration in 1986 to help resolve the problems and improve security of tenure.

The Land Title Registration was introduced in Ghana by the promulgation of the Land Title Registration Law 1986 (PNDCL. 152) and the Land Title Regulation, 1986 L.I. 1241. It is to provide a machinery for the registration of title to land and interests in land.

Title Registration has two fold purpose, first to give certainty and facilitate proof of title. Secondly, to render dealings in land safe, simple and cheap as well as prevent fraud on purchasers and mortgagees.

The existing Land Administration System comprising poor maps and poor records made conversion from Deeds to Title almost impossible. The uncooperative attitude of multiple agencies involved in Land Administration, poor public education, lack of professional and technical skills and the sporadic way of implementation created more problems. The Ministry responsible for Land Administration introduced some administrative fiat to improve working relations among the institutions with respect to their legal mandates. Review of working processes to reduce duplications and cumbersome procedures has greatly improved Land Title Registration, though there is room for improvement.

Currently the Ministry of Lands, Forestry and Mines is implementing a Land Administration Program in 5 year phases over 15-20 years to improve the whole Land Administration System in Ghana. The project provides for legislative and judicial review, reformation of traditional and Government institutions involved in Land Administration.

The work processes will be computerized and a Land Information system will be developed to improve valuation and Land Title Registration. The project will enable capacity building in alternate dispute resolution mechanism at all levels. The various interventions envisaged under Land Administration Project will improve Land Title Registration and improve security of tenure. Lessons learnt from Piloting Systematic Land Registration in Government acquired areas and purely customary land areas will provide lessons for up scaling Title

Registration throughout the country. The development of Land Information System among the transformed land related agencies will make information sharing, information retrieval faster. This will create certainty and improve security of tenure making Ghana an investor friendly country.

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## 1. LAND ADMINISTRATION

### 1.1 Land Ownership

In Ghana Land ownership can be categorized into two broad classes. Customary land and Public lands. Customary lands are lands owned by stools, skins, families or clan usually held in trust by the chief, head of family, clan, or fetish priests for the benefit of members of that group. Private ownership of land can be acquired by way of a grant, sale, gift or marriage. Public lands are lands which are vested in the president for public use. Ownership is by way of outright purchase from customary land owners or private individuals or headed over from colonial governments.

### 1.2 Institutions for Land Service Delivery

A satisfactory system of land administration should give ordinary people a sense of security concerning the lands they hold and freedom from fraudulent claims, it should provide a man who lays out good money whether as a purchaser of land or as a lender against the security of a mortgage of land, with some independent means of assuring himself that he is obtaining good title and not a law suit. The ideal situation would seem to lie in the direction of arranging things in a way that an official record is available for inspection, a record, which shows the title situation concerning any given piece of land. (Bentsi-Enchill K, 1964) This is the primary function of the principal institutions and agencies for land administration and land service delivery in Ghana, namely the Lands Commission, Land Valuation Board, Survey Department, Land Title Registry, Office of the Administrator of Stool lands and the Town and Country Planning Department

A review of these institutions reveals serious shortcomings related to design of the state regulatory framework, and in particular inadequate institutional capacity for the implementation of state management policies to protect the wide range of interests in land. The effectiveness of these institutions has been limited by a variety of factors which can be categorised as institutional, logistical, human resource constraints, lack of funding and unclear definition of scope of functions among others. The result has been an apparent lack of confidence by the general populace of the ability of these estate institutions to protect their rights or secure their tenure (Project Appraisal Document, Land Administration Project, 2003). Some of the populace have resorted to self help by procuring the services of illegal private security known as "land guards".

Service delivery by the land sector agencies has been characterised by lack of coordination between agencies. Often with unclear mandates have resulted in overlapping and duplication of functions among agencies. A typical example is in the administration of vested lands where

there is an overlap of functions between Lands Commission and the Office of the Administrator of Stool lands. These duplications of functions add to the cost of service to the individual and time involved in service delivery. Operation of all these agencies are characterised by manual procedures, manual forms of record keeping and information management making them labour intensive and ineffective.

### **1.3 Deeds Registration**

Land policy and administration since the colonial days had a feature of a centralised system of registration of deeds on land transactions. Facilities for registration of instruments have been in existence since the C18th. The Land Registration Ordinance of 1883 which was repealed by the Land Registry Ordinance of 1895 governed deeds registration until the enactment of the Land Registry Act 1962, (Act 122) after independence. Currently Ghana practices two forms of land registration, namely the deeds registration and title registration..

The Land Registry Act provided for the registration of all instruments affecting land. Registration constituted notice to the whole world and without registration an instrument affecting land was of no effect. With the exception of judges' certificate, the law required all instruments to be registered, and should include a plan or map with the description of the land. It must be noted however that the purpose of the Land Registry Act was to record the documents to the land which was being registered. The deeds registration only helped in cases of conflict of priority of instruments. In other words it was only for the purposes of evidence of which instrument was registered first and does not confer title. The system of deeds registration was found to be deficient in ensuring security of title to avoid litigation, registration did not confer title on the person in whose name the deed was registered.

### **1.4 Challenges of Deeds Registration**

Deeds registration was characterised by certain weaknesses, most plans attached to the deeds were more descriptive in nature because lands were not properly surveyed and demarcated.

- These inaccurate plans or maps often created conflicts among land owners.
- Because registration was based on the deed and not on the land it led to multiple registration for the same piece of land.
- There was no system to detect multiple registration of the same piece of land in the registration process.

The Memorandum to the land title Registration law, PNDCLaw 152 stated it thus:

Systematic research in Ghana has revealed radical weaknesses in the present system of registration of instruments affecting land under the Land Registry Act, 1962 (Act 122). The chief among them being litigation, the common sources of which are the absence of documentary proof that a man in occupation of land has certain rights in respect of it. The absence of maps and plans of scientific accuracy to enable the identification of parcels and

the ascertainment of boundaries and the lack of prescribed forms to be followed in case of dealings affecting land and interests in land

## **2. TITLE REGISTRATION**

The challenges arising from registration of instruments under the Land Registry ordinance and Land Registry Act 1962 Act 122 led to the promulgation of the Title Registration Law 1986 (PNDCL. 152) which would be an improvement on the registration of deeds. The Law provided for accurate parcel or cadastral maps which would reduce fraud, multiple registrations and reduce litigation. It also provided for publication and adjudication of conflicts. Title certificates issued was indefeasible and can only be cancelled by a court of law.

The Land Title Registration Law provides for the registration of all interests held under customary law and also the common law. Under this law the registrable interests include:

- allodial title
- usufruct/ customary law freehold
- freehold
- leasehold
- customary tenancies
- mineral licences

## **3. IMPLEMENTATION OF TITLE REGISTRATION**

The Land Title Registration Law was implemented on a pilot basis. An area is first officially declared a title registration district by the Ministry of Lands. The Registrar then proceeds to compile a list of all land owners with registered deeds within the declared district, invites all owners for registration to enable the Registrar to convert the deeds into titles within 80 days of declaration of any registration district. Thereafter, all land owners within the district are required to register their interest. The law provides for a series of steps to be followed. This includes public notification of such registration in the gazette and the print media, making room to receive objections from interested parties and resolution of conflicts arising out of registration by legally establish Adjudication committees.

It was intended that as much as 70% of land owners in the declared district would register their titles before declaring new districts. Thus registration would be systematic. As part of the registration process the Survey Department is required to prepare a parcel/cadastral plan which is recorded in the records of the Survey Department and the Land Title Registry to prevent multiple registration. The plan is vital to the whole process. Until an applicant's plan is received from the Survey Department, publication cannot be placed in the newspaper, a search cannot be conducted at the Lands Commission and there can be no spatial description in the Land certificate to be issued.

#### **4. PROCESSES INVOLVED IN TITLE REGISTRATION**

##### **- Step #1**

Applicant obtains appropriate registration forms from the Land Title Registry, completes and submits them to the Registry together with copies of all relevant documents and the required registration fees.

##### **-Step #2**

Upon submission of application an applicant is issued with:

- (i) a receipt of acknowledgment (“yellow card”) and
- (ii) a letter of request addressed to the Survey Department for the preparation of parcel plans.

##### **-Step#3**

Applicant pays for and collects parcel plans from the Survey Department whenever they are ready and submits same to the Land Title Registry to assist in the processing of their application

##### **-Step#4**

From the Land Title Registry applicant is issued a photocopy of the parcel plan together with a Request Form to be sent to the Lands Commission for a search report

##### **-Step#5**

Upon receipt of the search report by the Land Title Registry, and satisfying itself that there are no objections or adverse findings in the report, the Registry then proceeds to publish the application in the dailies to notify the general public of such application.

##### **-Step#6**

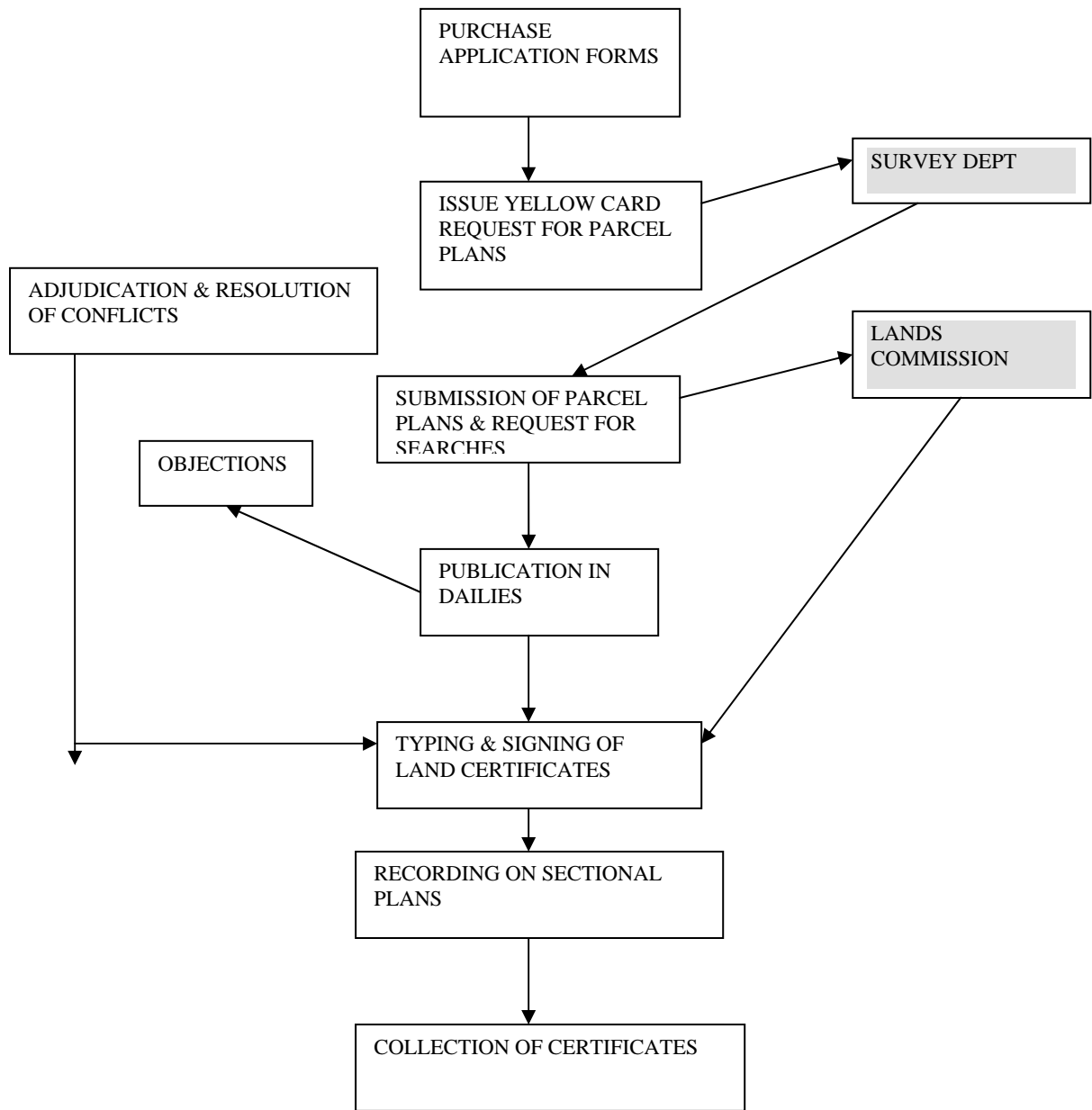
Counting from the date of publication, fourteen days notice is allowed to receive objections from interested parties who may wish to challenge the application. If no objections are received within the fourteen day period the Registry then continues with the process of registration.

##### **Step#7**

The Land Title Registry prints and sign certificates, records particulars on sectional plans and notifies applicants of completion of registration exercise. The Land Title certificates are finally issued out to applicants upon submission of their “yellow cards”

See diagram below on the work flow processes in title registration in Ghana

## PROCESSES INVOLVED IN TITLE REGISTRATION IN GHANA



## **5. CHALLENGES OF TITLE REGISTRATION**

### **5.1 Conversion of Registered Deeds**

Implementation of converting Registered Deeds to title, as has been the experience in other countries like Thailand, was virtually impossible. Most parcel plans in the Deeds were not scientifically derived and could therefore not be physically located on the ground without the assistance of the land owner.

Most of the old Deeds in the Land Registry did not have residential or postal addresses. This situation therefore made it virtually impossible for the Land Title Registrar to notify Registered Deed owners of the intention to register their interests as statutorily required, once an area has been declared a registration district.

Thirdly, the records of the Deeds Registry were not based on districts. Deeds were recorded sequentially in the register of deeds for the whole country.

### **5.2 Preparation of Parcel Plans and Search Reports**

Parcel plans and cadastral plans took about 3 - 12 months to prepare, thus resulting in undue delays in the registration process. The Land Title Registry has no control over this vital input as this activity was in the domain of the Survey Department. Similarly, request for search reports from another agency, the Lands Commission also often delayed, thus making the entire registration process cumbersome.

### **5.3 Fees for Registration**

By law all instruments attract stamp duty, and is based on the value of the property. In title registration payment of fees is also based on property value. This makes title registration unattractive as it appears as double taxation. This is considered excessive compared to registration under the Deeds system where applicants pay only a nominal fee in addition to the stamp duty.

### **5.4 Inadequate Public Education**

The introduction of title registration in Ghana was not accompanied by adequate public education, even within the declared districts. Public education was mainly through the distribution of flyers and brochures, and some public lectures. However, in a society where over 60% of the population are illiterates there is the need for intensive, extensive and sustained public education in the major local languages within the registration districts. Consequently, title registration has been rather slow and has not been extended country wide.



## **5.5 Lack of Cooperation Among Land Agencies**

There is always some amount of resistance to change on the introduction of major policies. The introduction of title registration was no exception. Its implementation was perceived by some agencies as taking over some of their traditional roles. The needed cooperation from such agencies was therefore not forthcoming. Access to vital records on land ownership from these agencies was therefore very difficult, leading to the situation where a one person had title to the land while another person had a registered deed to the same land. Thus, instead of minimizing litigation as envisaged by the law, litigation still continued.

In the face of these challenges the past three years has seen an increase in public education through regular media discussions in English and local languages, and better cooperation among all the land agencies. In addition there has been internal reorganization of the working processes at the Land Title Registry. These efforts have resulted in shortening the processing time for title registration and also increased public response and confidence in title registration.

## **5.6 Objections**

Land title registration makes provision for any person to raise an objection when he suspects his claim to a parcel of land is threatened by an application for registration. The Land registrars handle objections raised at the first instance. If the registrars are unable to resolve it, the matter is referred to an adjudicating committee of three members for resolution. If the parties are still not satisfied then they appeal to the High Court.

Most objections arise from a basic defect in the law. Though the law provides for the registration of the allodial title, generally held by stools, skins and families, it did not require that the members of the land owning group who are legally required to make grants should be registered. The failure to provide for the registration of these specific persons is a constant ground for members of the group to raise objection against any others making the grant excluding those objecting to the registration. The effect is that a lot of applications for the registration of the allodial interest are stayed indefinitely while the determination of who are legally entitled to make grants travel to the highest court of the land, the supreme court.

## **6. LAND ADMINISTRATION REFORMS**

In 1999 the Ministry of Lands and Forestry developed the Ghana Land Policy which identified the problems of land administration. The problems included a number of legislations which were conflicting, outmoded and often overlapping. There were also the problems of insecurity of land tenure, indeterminate boundaries for land owning groups, which often created conflicts and litigation. Other problems identified were, multiple sales of the same piece of land, and the weak capacity and fragmentation of existing land agencies.

The Government took a bold step in implementing land reforms under the Land Administration Program which is funded by some of Development Partners. This program is

a 15-20 year program to be implemented in 5 year phases. The first phase known as the Land Administration Project (LAP) was started in 2003. Some of the reforms in this project include the reform of the legal framework for land administration, and institutional reforms for land sector institutions to remove duplication of roles. The reforms would make the land sector agencies more functional under one umbrella.

As part of the reforms traditional land owning groups will be assisted to improve their land management practices through capacity building and technical support. There will be demarcation of boundaries, improving deeds and title registration. Systematic land titling will be piloted within already declared districts. Processes for land administration would be improved and automated to reduce time. A land information system is to be developed to improve land administration, valuation and land management. This will eventually improve security of tenure, land service delivery, and create an investor friendly environment to propel Ghana's economic development forward.

## **7. CONCLUSION**

The introduction of title registration to replace deed registration in Ghana has not been as effective as was envisaged. After twenty years of its introduction the weaknesses identified under the deeds registration remain unresolved due to poor implementation of the law and other institutional related factors.

The various interventions envisaged under the Land Administration Project is expected to improve Land Title Registration and guarantee security of tenure . The weaknesses within the laws will be strengthened through the review of the whole legal framework. Institutional reforms of all the land sector agencies is expected to take place under the project. In addition, the project is expected to provide training, resource allocation and also to introduce automatation of some of the work processes within the land agencies. The development of Land Information System among the transformed land related agencies will make information sharing, and information retrieval faster These interventions would greatly improve service delivery and engender public confidence in the land administration in the country. It will also will create security of tenure making Ghana an investor friendly country.

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## **BIOGRAPHICAL NOTES**

Rebecca Sittie is the current Chief Registrar of Lands at the Land Title Registry. She holds a Bsc Land Economy from Kwame Nkrumah University of Science and Technology Kumasi. , a Barrister at Law from the Ghana School of Law and a Professional Masters in Geo-information Management , from the International Institute for Geo-information Science and Earth Observation. (ITC) Netherlands. She is a member of the Ghana Institution of Surveyors and the Ghana Bar Association. She has worked with the Lands Commission, Land Valuation Board, The Office of the Administrator of Stool Lands, in various capacities since 1985.

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