

# LAND ACQUISITION IN GHANA – ONGOING REFORMS - ALL YOU NEED TO KNOW

EQUITABLE AND HIDDEN INTEREST AND WHAT DUE DILIGENCE SHOULD INFORM  
AN ACQUIRER UNDER THE LANDS ACT, 2020 (ACT 1036)

# Introduction

- ▶ Right to own property under the 1992 Constitution of Ghana.
- ▶ **Section 281** of Act 1036 defined land as “‘Land’ includes a part of the earth surface covered by water, any house, building, or structure whatsoever, and any interest or right in, to or over immovable property”.
- ▶ This means land can extend beyond the surface of the earth which is covered by water and other development together with whatever interest that may exist in it.
- ▶ Acquisition of land is fraught with a lot of challenges. This accounts for a lot of land litigation in our courts. It is estimated that about 60% of the civil cases in court are related to land.

- ▶ We will focus our discussion on the steps that we have to take to ensure that we do not become a part of the 60% of the cases in court by giving you guidelines on how to acquire problem free acquisitions or possibly to reduce to the barest minimum the challenges associated with land acquisitions.

# DUE DILIGENCE

- Investigations of title to the land/conducting ownership research.
- Taking the proper precautions before purchasing the land is very important. Some people have made a few costly mistakes that could have been avoided with proper due diligence. They did not consult the right people and relied on all the representations of the vendor.
- Attempts should made to ascertain whether all the facts pertaining to the subject property as presented by the vendor are true.
- Under the new Lands Act
- Common law principles.

- You can examine the documents received and also talk with the people in the industry or people who have knowledge of a particular subject property.
- When application for registration was made as evidenced by yellow card
- When the certificate was signed if known
- When the certificate was dispatched for collection.
- What date was the site plan placed in the in the certificates signed before it was dispatched for collection.
- Whether there have been occupants or caretakers on the land

- ▶ What activities have the occupants or caretakers been performing in the land?
- ▶ How many years have they been on the land?
- ▶ On what terms have they been on the land?
- ▶ Have there been any judgments on the land?
- ▶ Have there been any judgment(s) against the person whose name is on the land title certificate?
- ▶ Is there any pending suit in respect of the land between the person whose name is on the land Certificate and any other person?

- ▶ What is the age of the person whose name is on the Land Certificate?
- ▶ Is the person married or single?

# INFORMATION TO SEEK

- ▶ Description of land: You can get a description of the land in the site plan and get a surveyor to confirm that it is correct.
- ▶ Ownership: This is to ensure that the individual you are dealing with is the actual owner of the land. Where the person you are dealing with is not the actual owner and is acting in a representative manner then you need to verify who the actual owner of the land is.
- ▶ Multiple IDs: We have situations where during times of estrangement spouses have sold properties that do not belong to them. They pass off as the owners of the land when they are not.
- ▶ TIN number of the vendor: As a potential buyer or investor, you can check out the TIN number of the vendor.



- ▶ Probate: There are times that as part of the ownership research sometimes you find out that the correct owner is deceased.
- ▶ Please check for probate/LA and vesting assent. If there is a Will ask for the probate granted to the executor(s) and where there is no Will ask for the Letters of Administration granted to the administrators.
- ▶ Power of Attorney: When a property is sold by a Power of Attorney, you need to check whether the person indeed has the right to do so. Also look out for issues such as notarization and whether the POA meets the requirements of the Power of Attorney Act 1998 ( ACT 549). You should always know the capacity in which the person is acting in every transaction.

- ▶ Trust: **Section 180** of the Act. You need to get more information about the trust document.
- ▶ Spouses: **Section 47** of the Act restricts transfer of interest in land by spouse without consent of the other spouse. They need to sign the deed when the land is being sold even if the property was acquired by one of the spouses during the marriage unless there is a contrary intention.
- ▶ For instance, a spouse could sign sole or separate agreement. This agreement helps ensure that the property is kept as sole and separate property.

# WHERE TO SEEK INFORMATION

- ▶ Searches at PVLMD and survey Title. Searches are a requirement as per **section 130** of the Act. The Act requires the Lands Commission to within 14 days from the date of payment of the prescribed fees to provide anyone who conducts a search at its registries with the results.
- ▶ Courts
- ▶ Lands sector agencies
- ▶ Town and country planning
- ▶ Residents/Boundary
- ▶ Customary Land Secretariat under Section 14 to 18 of the Act, a prospective buyer of and interest in land owned by a family, clan, skin or stool may conduct searches at the Secretariat responsible for the area in which that land is located.

# EQUITABLE AND HIDDEN INTERESTS

- ▶ There are instances where certain kinds of interests or rights that may negatively affect the acquisition of interest in land may arise which may be difficult to unravel even with due diligence.
- ▶ Abunu -Abusa (share cropping). Most farmers may not own the farms they cultivate but are just renting it - **section 7** of the Act
- ▶ A beneficiary's interest in a trust – requirements under **section 180**
- ▶ Tenants
- ▶ Easement
- ▶ restrictive covenant
- ▶ Licence

- ▶ profit a prendre
- ▶ contractual licence
- ▶ a user right under a Certificate of Allocation
- ▶ A prospective buyer may need to demand for copies all documents in relation to the said rights.

# CONCLUSION

- ▶ Conducting due diligence is very important in the acquisition of land in Ghana.
- ▶ It reduces the risk of buying impeachable lands
- ▶ It protects investors - principle of *caveat emptor, quia ignorare non debuit quod jus alienum emit* means ("Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party")
- ▶ Prevents unnecessary litigation.