DEVELOPMENT AND DISPOSITION OF UNIT TITLE PROPERTIES IN TANZANIA: SYNOPSIS

1.0 INTRODUCTION

The Unit Titles Act 2008, allow developers to develop unit title properties in Tanzania. The process for development of such unit title properties is detailed and require due consideration. The process commences with the developer developing an interest, writing down his intended plan, acquiring land, getting required money and obtaining necessary permits and facilitations. So the developer must carry out certain tasks. Once the developer has succeeded to develop the units he can disposed them to willing purchasers.

2.0 TASKS FOR THE DEVELOPER

The developer must do the following tasks:

1. He must acquire title to the land as stipulated under the Land Act, 1999. In obtaining the land the developer may need to engage other intermediaries such as lawyers estates agents, land surveyors, and valuers,
2. He must obtain architectural drawings. In order to obtain such drawings he must engage a registered architect and other necessary intermediaries,
3. He must obtain approval of a Registered Land Surveyor. The approval must be endorsed on UTF No. 10A,
4. He may need to consult financiers or credit institutions. In doing so he may need to engage real estate appraisers to provide the value of the property to be developed and its viability,
    a. If the project is viable and the financier is willing to provided credit he must obtain mortgage contract. The contract can be prepared between an agent (lawyer) of the developer and the legal unit of the financier.
    b. Other necessary intermediaries at this stage may be engaged as the need may arise.
5. He must obtain approval of the Local Government Authority,
    a. The approval must be endorsed on UTF No 10B.
    b. He must also make sure that he obtains the necessary building permits and approvals from the Local Government Authority.
    c. He must comply with payment of the required fees.
    d. At this stage there might also be a need to engage assistance of other intermediaries like lawyers and estate agents etc.
6. He must obtain approval of Registered Architect endorsed on UTF No. 10C,

7. He may then commence public advertisement of the intended project through different media,
8. He must submit an application for registration of unit plan. The application is made on UTF No 3 and must be accompanied by 4 copies of complete set of unit title plan. The unit title plan must contain:

    (i) site plan, adequately identifying the land earmarked for development,
    (ii) indication of number of units to be built so as to form a unit property,
    (iii) schedule indicating unit factors,
    (iv) statement of particulars to identify title to common property,
    (v) duly filled certificates from Registered Land Surveyor, Local Government Authority, Registered Architect,
    (vi) building permit,
    (vii) receipts acknowledging payment of required fees,
    (viii) The application must be made in 4 copies,
    (ix) applicants photograph.

9. He must submit an acceptable title deed (as advised by the Registrar) to prove ownership to the land,

10. He must indicate in his application if the development of the property is turnkey or phased. Where the development is phased, he must indicate timetable for the development of the various phases,

11. Before the completion of the construction, the developer must obtain a Certificate of Occupancy as per the Local Government (Urban Authorities) (Development Control) Regulations GN 242/2008.

12. The developer will also need to make application for registration of Unit Title Association under UTF No 11. The application for registration of Unit Titles Association must be accompanied by:

    (a) Association Constitution, (15^{th} schedule),
    (b) Association By-laws (14^{th} schedule),
    (c) Management Agreement (11^{th} schedule),
    (d) Payment of required fees (20^{th} schedule).

13. After the above have been lodged with the Registrar and registered, he may engage engineers and contractors to start construction of the property and pre-completion sale of units,

14. In relation to the sale of units, the developer may facilitate application for registration of units to be made on UTF No 4,

NB: Application for the Certificates from the LGA, Registered Land Surveyor and the Registered Architect will require formal letter of application accompanied by the following documents:- (a) Valid Title Deed

(b) Site Map

(c) Building Permit

(d) Proposed Unit Plan indicating among other things the total area to be covered by the Unit Plan, area for each unit and the common areas such as recreational grounds, assembly points, parking, and gardens as required by the UTA.

Table of Tasks and processes

Task	Required
☑ Acquisition of Title	☑ As required under the Land Act, or any other law. ☑ Engaging Necessary Intermediary
☑ Acquisition of Architectural Drawings	☑ Engaging of a Registered Architect ☑ Engaging Necessary Intermediary
☑ Approval of Land Surveyor - [S.15(1) (a)]	☑ Engaging of a Registered a Land Surveyor ☑ UTF# 10A
☑ Getting FINANCIERS	☑ Engaging Real Estate Appraisers ☑ Engaging BANKERS ☑ Securing a Mortgage ☑ Engaging other Intermediaries – e.g. Lawyers, etc.
☑ Approval of Local Government. Authority (LGA) -- [S.15(1) (b)]	☑ Acquisition of Necessary Permits & Approvals ☑ Engaging necessary intermediaries (Estate agents, Lawyers, etc.) ☑ Pay necessary FEES. ☑ UTF# 10B
☑ Certificate of Architect – [S.15(2)]	☑ UTF# 10C
☑ Registration of UNIT PLAN [Ss 8 & 14; Regs. 3 & 4]	☑ Requirements listed under S. 14 ☑ Required Approvals ☑ Submit Unit Plan in Quadruplicate & indicate Number of Units [S.4(3)] ☑ UTF# 3 ☑ Site plan S.14 (a)- (e) & (i)- (k) ☑ Schedule for unit factors S.14 (1) (f) ☑ Statement of particular to identify title to common property S.14 (1) (g) ☑ Certificates ref. S. 15 :- Cert. Reg. Land Surveyor, Cert from LGA, Cert. Of Registered Architect, Building permit
☑ Application for Registration of UNITS (Reg. 5)	☑ Application - UTF# 4 ☑ Receive Certificate of Unit Title – UTF# 5 under Reg. 5(3).

☑ Application for Registration of Association	☑ Constitution ☑ By-Laws ☑ Management Agreement ☑ UTF# 11 under Reg. 13(7)
☑ Indicate whether Development is Turnkey or Phased [S.4(4)]	☑ If phased submit Timetable [S.4(5)]
☑ Engaging Intermediaries, whenever necessary	☑ Estates Agents, ☑ Land Surveyors/ Architects ☑ Valuers, ☑ Lawyers, ☑ Real Estate Appraisers
☑ Pre-Completion Sale	☑ Estate Agents ☑ Valuers ☑ Lawyers (Sale Agreements/Mortgage Facilitation)

3.0 DISPOSITION BY DEVELOPER

Sect 28(1) Subject to the provisions regarding the dispositions affecting land under the Land Act, each unit of the property constitutes a distinct object of real property and may be subject of disposition by the owner in whole or in part. (2) The dispositions under subsection (1) shall include sale , mortgage, transfer, grant, partition, exchange, lease, assign, surrender or disclaimer, creation of easement, a usufructuary right or any other servitude or appurtenant to the unit as well as the right to use the appurtenant restricted common areas, where applicable.

3.1 APPLICATION FOR DISPOSITION: Consider Land Act & SS. 28, 29, 30 UTA

The developer can dispose a unit property through different ways such as sale, mortgage, or lease. Sale can be done during pre-completion phase or after completion.

3.2 CHECKLIST OF DOCUMENTS S. 29 UTA

Before the developer sells a unit he must deliver to the purchaser copies of

(a) Sale agreement per 1st schedule to the UTA
(b) Existing or proposed by laws,
(c) Existing or proposed management agreement,
(d) Existing or proposed recreational agreement,
(e) Lease of the common property (if any),
(f) A certificate of title for the unit or proposed unit,
(g) Any mortgage / charge that may affect the unit,
(h) Unit plan,
(i) Delivery of notice (in case the property has been mortgaged) indicating:
    i. The maximum principal amount under the mortgage,
    ii. The maximum monthly payment, (if any),

iii. The duration of payment,
iv. The grace period,
v. Pre-payment terms (if any),
vi. The interest rate or the formula for determining interest rate.

NB: The documents must be delivered within 10 days from the date of execution of sale agreement. If the same is not delivered within or before the lapse of 10days, the purchaser may by notice rescind the contract. However, if the documents are delivered in less than 10 days purchaser cannot rescind the contract for the reason of non-delivery. Where the contract has been rescinded, the developer will have to return to the purchaser all the monies paid for the purchase of the unit within 10days from the date of notice of rescission.

3.3 DOCUMENTS OF DISPOSITION: Consider Land Act & UTA

In compliance with section 28(1) of the Unit Titles Act, 2008, disposition of units require the submission of the following documents to the Registrar:

(a) Deed of transfer, including seller and buyers' photographs (2 copies each),
(b) Application for approval and notification (Form #29 and 30),
(c) Sale Agreement,
(d) Proof of citizenship i.e., certified copies of passport,
(e) Valuation report,
(f) Capital gain clearance certificate,
(g) Current land rent receipt,
(h) Stamp duty and registration fees,
(i) Certificate of approval from commissioner for land,
(j) Right of use of fractional of common area per Section 28(2) of UTA.

4.0 PURCHASER'S TASKS AND CHECKLIST

Among the things that the Unit Titles Act 2008 deals with is purchase of units in unit properties. The prospective buyer of units is supposed to carry out a checklist of tasks. The tasks are necessary to enable the buyer to make informed decision and avoid possible market frauds.

The tasks that the buyer must undertake include:

(a) Conduct onsite verification
(b) Administer vendor's questionnaire,
(c) Carry out official search,
(d) Conduct valuation,
(e) Process financial facility
(f) Require the following checklist from the seller:
   i. Get draft sale agreement,

ii. Obtain certificate of title for the unit, /commitment bond (for pre-completion sales)
iii. Obtain proposed bylaws,
iv. Obtain proposed recreational agreements,
v. Get copy of lease agreement of common property (if any),
vi. Get a copy of the Unit Plan,
vii. Get a copy any charge/mortgage,
viii. Rent Clearance Certificate (if any),

(g) Make part payment and execute acknowledge of the payment and commitment to pay remaining sum
(h) Obtain property tax clearance certificate,
(i) Pay Capital Gains Tax and Obtain a Capital Gains Tax Certificate,
(j) Execute sale agreement,
(k) Process approval to disposition,
(l) Pay stamp duty,
(m) Execute transfer.

5.0 TASKS IN SALE OF UNIT BY OWNER / MORTGAGEE S.30 UTA

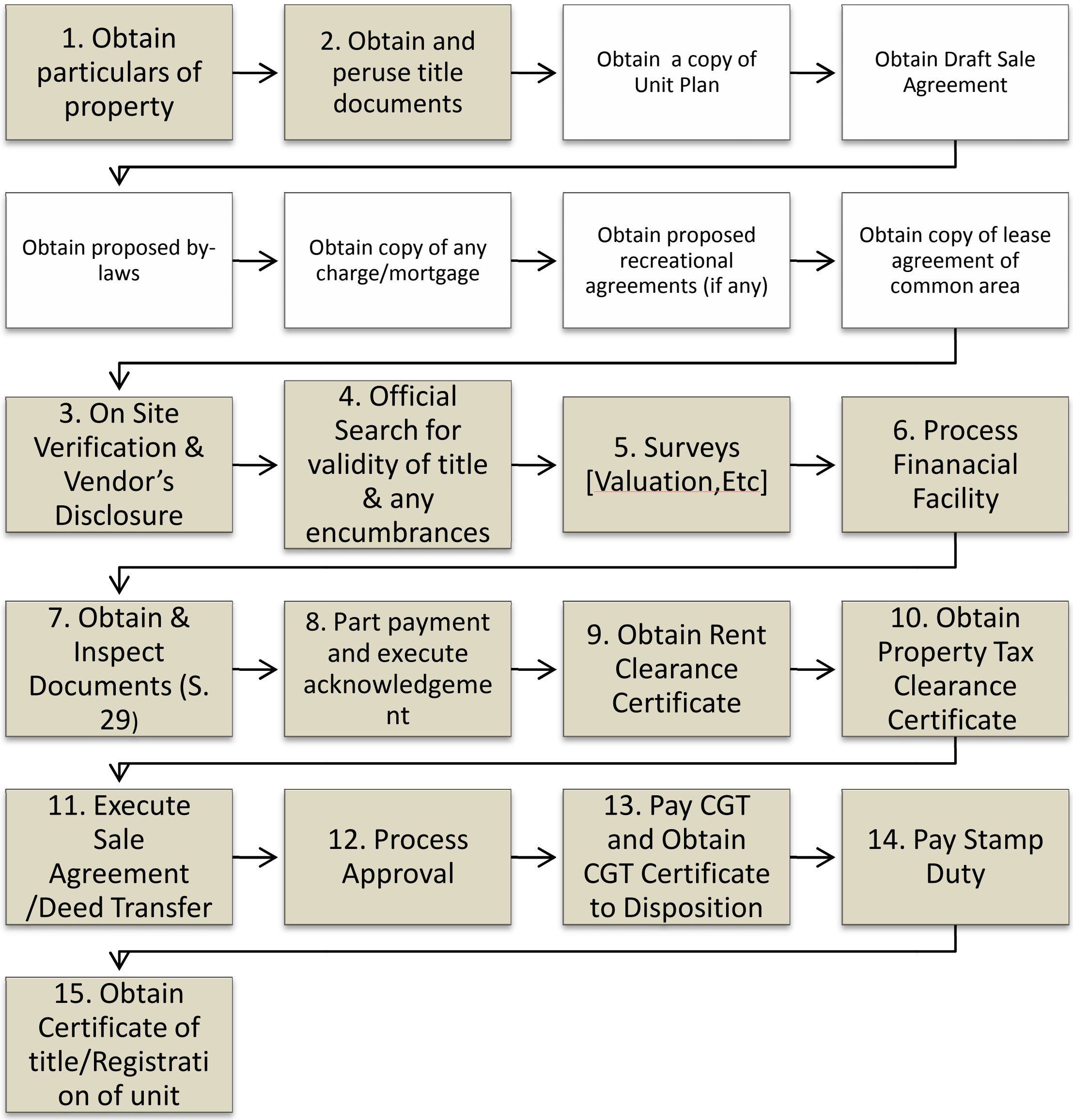
The seller of a unit is required to furnish the following prior to completion of sale:

(1) Copies of by-laws,
(2) Association's current budget and financial statement
(3) Certificate containing a statement of the amount of assessments for common expenses against the unit.
(4) Statement of any unpaid common expenses due and payable with respect to the unit
(5) A statement of any other fees or charges payable by co-owners of the unit.

NB: Association is obliged to provide documents and certificates requested within 10 days from the date of request and after payment of cost of reproduction.

A unit owner is bound to pay all common expenses, assessments and fees in respect o the unit at the time of acquisition. The cost for common expenses is not supposed to be shifted to the purchaser except where there is express undertaking.

Steps in the Sale / Purchase of Units



6.0 LEASING OF A UNIT: Part IX of Land Act & S. 31 UTA

An owner of a unit may lease his unit. In case the owner has leased his unit, the Association may require him to pay to the association a deposit that the association may apply for repairing the property and for maintenance and replacement of any leased property that may be damaged by the tenant. So, the owner of the unit must within 7 days from the date the tenant begins to rent give the association notice in writing stating the particulars of the tenant as per the bylaws. In case the tenancy ceases he must also furnish notice within 7 days to the association that the unit is no longer rented. The association must within 10 days from the date of notice return any unused deposit. In case the association made use of the deposit for repairing and maintaining any damages deliver a statement of account of the amount spent and the balance not used. In case the association will need to do repairs for damages caused, it will have to give a statement of account showing the amount it intends to spend and after 60 days must deliver a final statement of expenditure and the deposit of the balance not used.

7.0 MORTGAGING OF A UNIT: Part X Land Act & Ss. 33&34 UTA

The owner of a unit can mortgage his unit for a loan. The loan can be for buying the unit itself or for other uses. Any case normal rules of lending apply including part X of the Land Act, [Cap. 113 R.E. 2002]. The lender must satisfy itself of the veracity of the borrower and the value of the unit to be offered as a security. Where the unit owner wants to mortgage his unit, the association may need to enter into agreement with the lender. The agreement is intended to help the association and lender secure their interest in the mortgaged unit. The agreement may require the association to:

(a) Give written notice on any state of facts or occurrence that adversely affects the physical or financial condition of the property.
(b) Give written notice on any delinquency by the unit owner in the payment of common expenses for the unit or any intention by the association to enforce a claim to collect unpaid common expenses against the unit.
(c) Not amend any material provision of the bylaws without the consent of the mortgagees holding mortgage in the unit.
(d) Not take specified actions concerning the property without the approval of the mortgagee such as conveying or encumbering any of the common areas, termination of the co-ownership, pledge or assignment of the future income or receivables of the association.
(e) Upon the request of the mortgagee provide a copy of the current financial statements of the association.
(f) Do such other matters on which the association and mortgage creditors may agree provided they do not conflict with the Act.

In case the agreement of behalf of a mortgagee is included in the bylaws, it shall constitute a contractual obligation of the association towards any present or future mortgagee holding a unit. Where there has been a default by the unit owner and the mortgagee has succeeded in the enforcement of its rights preside to all rights and obligations of the unit owner as a co-owner in the unit property.

8.0 INHERITANCE

Disposition by way of inheritance shall be subject to the Probate and Administration Act, Cap. 352, Land Act, Cap. 113, Land Registration Act, Cap 334.