

New Changes from Ghana's New Land Act,

2020 (Act 1036)

The Parliament of Ghana on 23 December 2020 passed into law a new Land Act, 2020 (Act 1036). It was assented to by the President on the same date. The new Land Act, 2020 (Act 1036) was enacted among other things to revise, harmonize, and consolidate the laws on land to ensure sustainable land administration and management, effective and efficient land tenure and to provide for related matters.

1

Criminalizes Land Guards and their Activities

The law provides that a person who unlawfully exercises control or supervision over development of a land in a location or that person has no interest in land yet extorts money or other benefit from a person with interest in land or prevent a developer from developing the land commits an offence and on summary conviction may suffer a term of imprisonment or a fine or both. Again, a person who uses or through another person uses force, violence, or intimidation to prevent or obstruct a lawful owner of land from developing the land also commits an offence and may suffer a term of imprisonment or fine or both upon summary conviction.¹

2

Prohibition of Discriminatory Practices

In tune with the Constitution, 1992, every transaction will be rendered as void, any decision or practice in respect of land under customary tenure which discriminates on grounds of place of origin, ethnic origin, political opinions, colour, gender, occupation, religion or creed, disability, or social or economic status. Decisions in respect of such lands, however, must be in accordance with the customs, traditions and practices of the community concerned.²

3

An action against an unknown trespasser

The law allows a person who has an interest in the land to apply to court for an interlocutory injunction against an unknown trespasser on the land.³

¹Section 12 of Act 1036

²Section 11 of Act 1036

³Section 12(4) of Act 1036

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Expansive/Innovative Implied Covenants

- Where a lease in respect of a bare land is granted by a person who holds an allodial or usufructuary interest in the land and the lessee is an indigene of the area where the land is situated, the lease is subject to automatic renewal where the lessee has developed the land for residential purposes; or farms perennial crops on the land; or has a commercial or industrial property on the land for the same duration as the original lease when the lease expires. ⁴
- The new Act enacts that unless the parties expressly provide in the lease, where bare land is leased to a citizen of Ghana who is not an indigene of the area where the land is situated, there shall be an implied term in the lease that the lessee is entitled to a renewal of the lease. ⁵
- Again, a lease of a bare public land granted by the Republic to a citizen of Ghana is subject to automatic renewal on terms agreed upon by the parties. Note however, this automatic renewal is inapplicable in situations where the lease is in respect of a commercial property; or the leased property is required for re-development. ⁶

5

Usufructuary interest

The holder of the Usufructuary interest is proscribed from alienating any interest in the land to a person who is not entitled to that interest without the written consent of and adequate payment to the allodial owner, which consent shall not be unreasonably withheld. ⁷

Furthermore, Act 1036, gives legal recognition to long peaceful occupation of land by non-indigenes or group of non-indigenes or their descendants for a period of not less than 50 years to be considered as part of the community, and therefore have acquired the usufructuary interest except where the settlement terms were agreed upon. ⁸

⁴ Section 50(9) of Act 1036

⁵ Section 50(11) of Act 1036

⁶ Section 50(12) of Act 1036

⁷ Section 50(20) of Act 1036

⁸ Section 5(1)(b) of Act 1036

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Restrictions on the creation of freehold interest.

The law proscribes the grant of freehold interest in, or right over any clan or family lands to be in alignment with similar provisions on stool lands under article 267(5) of the 1992 Constitution.⁹

7

Consent of Spouse required in a land transaction

It is a requirement for a spouse to obtain written consent before selling, exchanging, transferring, mortgaging or leasing the land, right or interest in the land or enter into a contract for the sale, exchange, transfer. Consent should not be unreasonably withheld by the other spouse.

8

Clarity on Juristic Persons who are non-citizens as regards the acquisition of interests in land exceeding 50 years

A company or corporate body held by individuals (entities) who holds more than 40% of its equity shares is classified as non-citizen (foreigner). This means that such companies shall not be able to hold more than fifty years interest in land.

9

Occupants of Stools are fiduciaries and Accountable

A chief, tendana, clan head, family head or any other authority in charge of the management of stool or skin, or clan or family land, is a fiduciary charged with the obligation to discharge the management function for the benefit of the stool or skin, or clan or family concerned and is accountable as a fiduciary. Such a person shall be transparent, open, fair, and impartial in making decisions affecting the specified land. A contravention of these fiduciary duties shall, upon summary conviction, face a fine or term of imprisonment or both. Further, the provisions

⁹ Section 9(2) of Act 1036

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of the Head of Family (Accountability) Act, 1985 (PNDCL 114) equally apply to all the fiduciaries and not just the head of family. It must be noted, however, that there should be the exhaustion of all customary procedures for the making of the occupant of the stool or the skin or the tendana to render account or maintain records of the stool, skin, or clan lands, where a procedure exists.¹⁰

10

No alienation of an interest in an allodial land unless land is registered

An allodial title holder is prohibited from disposing of an interest in a portion of the land held by the allodial title holder, unless the whole land covered by the allodial title is registered. It must be observed however, that, the allodial title holder is allowed to register an interest in a portion of the land held by the allodial title holder, if upon an application to the Lands Commission, the Commission is satisfied that the remaining portion of the land held by the allodial title holder falls (a) outside the title registration district; or (b) within an area affected by the land in dispute.¹¹

11

State can acquire allodial title upon compulsory acquisition

It allows the State the right to acquire the allodial title through compulsory acquisition. The State may, with the agreement of the owner of any land required for public purposes, purchase that land, for a consideration that may be mutually agreed. Further, the State may accept land as a gift from the owner of the land and the land shall, where the donor specified a purpose for the gift, be used for the purposes determined by the donor.¹²

¹⁰ Section 13 of Act 1036

¹¹ Section 182(4) of Act 1036

¹² Section 2 and Section 234 of Act 1036

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Unlawful occupation of public land creates no interest in the trespasser

Despite the provisions under the Limitation Act, 1972 (NRCD 54) or any other law, a person who unlawfully occupies public land does not acquire any interest and or right over that land by reason of the said occupation. Again, a person shall not acquire any interest in a public land either by prescription or adverse possession. Where a person occupies public land unlawfully, he shall be given 21 days' notice by the appropriate agency to vacate, failure thereof entitles the appropriate agency to eject the person from the land and or confiscate any goods on the land; the law allows the use of reasonable force in this exercise. Note that it is an offence to without reasonable excuse occupy and or encroach or interfere with public land.¹³

13

Vesting of stool, skin, clan, or family land is unlawful

It is unlawful to vest clan or family land in the State. Similarly, it is unlawful to vest stool or skin land in the State.¹⁴

14

Electronic conveyancing

Electronic conveyancing is permitted under the New Act. It is now a lawful means of effecting a transfer of land or an interest in land. This is a more expeditious means of transferring land or interests in land. Legal practitioners granted license may engage in electronic conveyancing.¹⁵

¹³ Section 236 of Act 1036

¹⁴ Section 268 of Act 1036

¹⁵ Section 73 of Act 1036

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Dispute Resolution

It has expansive provisions on dispute resolution. There are numerous provisions for the adoption of alternative dispute resolution (ADR) under the Alternative Dispute Resolution Act, 2010 (Act 798) as the preferred mode of dispute resolution. Some of the provisions are permissive while others are mandatory.

It is mandatory for any action concerning any land or interest in any land as well as any dispute or uncertainty concerning boundaries of land in a registration district to be resolved by ADR under Act 798.¹⁶

Furthermore, the Act enacts that a Court shall not entertain any such action unless the dispute resolution procedures under Act 798 are exhausted.

16

Rules for Conveyancing

The law has introduced clear and simple language or words to be used in a conveyance. Words like "conveys to", "interest", "land" and "all" may be used in a lease instead of the words "demise", "grants and conveys unto", "estate", "piece or parcel of land" etc.¹⁷

17

Consent to Register Large Dispositions of Land

The law requires that registration of large-scale dispositions of land (**four hectares for residential purposes and twenty hectares for agricultural, civic, cultural, commercial or industrial purposes**) requires consent and concurrence from the appropriate stool, skin or family.¹⁸

¹⁶ Section 91(2) (4), 98 of Act 1036

¹⁷ Section 70 of Act 1036.

¹⁸ Section 102 (3), (4) of Act 1036.

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Establishment of Customary Land Secretariat (CLS)

The law makes it mandatory for a CLS to be set up by the customary landowners to manage stool, skin, clan or family lands. The CLS is required to keep records on customary land transactions whether oral or documentary. ¹⁹

19

Exemption from stamp Duty

The law provides that instrument relating to first registration of stool, skin, clan or family lands are exempt from the payment of stamp duty. ²⁰

20

Penalty Regime

The new law has significant provisions for offences relating to Officials of Land Commission, Private persons and transactions relating to land. Some of these offences include but not limited to;

- Land guard activities have been completely outlawed.
- Offences relating to breach of fiduciary duties of chiefs, Tendana, clan or family heads. A breach of an obligation to manage lands for the benefit of the people attracts an imprisonment term between five (5) to ten (10) years or fines between 5000 to 10,000 PU on summary conviction.
- A land registrar can be liable to imprisonment sentence between one to 3 years and/or 5,000 to 10,000 PU for failure to register land in accordance with the provisions of the Act.

¹⁹ Sections 14 to 18 of Act 1036.

²⁰ Section 103(4) of Act 1036.

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