



**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT
STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING**

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2ND AUGUST, 2023

**JOINT MEMORANDUM BY THE STATE DEPARTMENT FOR LANDS & PHYSICAL
PLANNING AND THE LAND-SECTOR PLAYERS ON TRANSITIONAL MEASURES
TO ALLOW REGISTRATION OF LONG-TERM LEASES DURING THE GEO-
REFERENCING OF THE PROPERTIES**

We, the State Department for Lands and Physical Planning (hereinafter referred to as **the Ministry**) **AND** the Law Society of Kenya (**LSK**), Institution of Surveyors of Kenya (**ISK**) and Kenya Bankers Association (**KBA**) (together hereinafter referred to as **the Land Sector Players**, and together with the Ministry “**the Parties**”) have come into a consensus on the above-captioned matter as follows—

1. BACKGROUND

1.1. The Parties are cognizant of the following key provisions of the Land Registration Act, 2012 (**LRA**) and Sectional Properties Act, 2020 (**SPA**) in relation to the geo-referencing of properties—

- a) Section 54(5) of the LRA which provides that the Registrar shall register long-term leases that have the effect of conferring ownership if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.
- b) Section 13(2) of the SPA which provides that all long-term leases that are intended to confer ownership and that were registered before the commencement of the SPA to be reviewed to conform to Section 54(5) of the Land Registration Act within two (2) years of the commencement of the SPA (“**the Moratorium Period**”), which period expired in December 2022.

1.2. It is thus uncontroverted that geo-referencing is a mandatory requirement for registration of long-term leases under the LRA.

1.3. The Parties are however aware that during the Moratorium Period implementation challenges partly affected the timely compliance with the requirements for geo-referencing as a pre-requisite to the registration of long-term leases. These challenges which are transitional have particularly affected—

- a) projects which had partially registered units or long-term leases, and
- b) transactions or dealings with previously registered long-term leases where the transacting unit owner faces the daunting and costly task of having to geo-reference an entire residential or commercial building or complex to transact with their units.

These challenges affect the timelines for the creation, perfection, and enforcement of such interests with financial and fiscal implications.

1.4. It is in this context and for the purpose of ensuring business continuity that the Ministry has agreed at the request of the Land Sector Players to put in place transitional measures to allow for the registration of certain long-term leases and any other transactions or dealings touching on already registered long-term leases while undertaking or during the exercise of geo-referencing and other acts necessary to conform to the requirements of Section 54(5) of the LRA.

2. TRANSITIONAL MEASURES ON REGISTRATION OF LONG-TERM LEASES

Accordingly, and with effect from the date of this Joint Memorandum, the following transitional measures will be applicable to eligible applicants for registration of long-term leases in the two categories as follows—

2.1 **New Application for Registration of Long-Term Leases in Projects or Developments Where Some Long-Term Leases Have Been Registered Although the Properties Have Not Been Geo-referenced.**

- (i) Where a new application for registration of a long-term lease is made in respect of a development where some long-term leases are registered although they have not complied with the geo-referencing requirements, the Registrar shall proceed with the registration of the long-term lease provided that—
 - a) The application for registration is supported and accompanied by the Letter of Undertaking (“the **Undertaking**”) from the registered proprietor of the parent land, in the form and content set out in **Part A** of the Schedule hereto, giving an undertaking to complete the geo-referencing exercise within six months from the date the Undertaking is given.
 - b) The Undertaking in (a) above is supported by a letter of acknowledgement (“the **Surveyor Letter of Acknowledgement**”) issued by a licensed surveyor in the form and content set out in **Part B** of the Schedule hereto, confirming that the surveyor has been duly instructed to carry out the geo-referencing in respect of the development and confirming that the surveyor has established the physical existence of the property and /or building on the ground.

- (ii) Upon receipt of the Undertaking and the Surveyor Letter of Acknowledgement and once the Registrar confirms from the mother title or register that the long-term lease proposed to be registered is from such a development in which some long-term leases are already registered, the Registrar shall approve the application for registration of the long term lease and the same shall be registered either on the Ardhisasa platform or manually where the property has not been captured in the Ardhisasa platform.
- (iii) An application for registration of a long-term lease in respect of a mother title that has been gazetted for conversion shall be registered upon conversion and issuance of a new mother title under the Land Registration Act. Where for any reason the conversion process through Ardhisasa is likely to occasion delay exceeding 14 days from the date the application for conversion is made, the registrar may allow the process to be done manually.

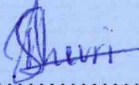
2.2 Registration of Transfers and Dealings Over Long-Term Leases in Projects with Fully Registered Units or Long-Term Leases, Although They Are Yet to Comply with the Geo-referencing Requirements.

Where an application for a dealing (transfer, charge etc.,) is made to the Registrar in respect of an already registered long term lease which has not complied with the geo-referencing requirements, the Registrar shall proceed with the registration of the dealing in respect of such long-term lease provided that—

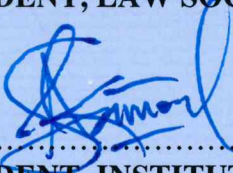
- a) Upon receipt of the application for registration of a dealing the Registrar shall upon approval of the application for registration forward the property details to the Director of Surveys for geo-referencing and determining the cost thereof to be borne by each unit owner prior to the registration of any subsequent transactions.
- b) The Registrar shall register a lien over each of the registered leases for the prorata payment of the geo-referencing cost determined by the Director of Surveys and after such lien is noted on the register of each long-term lease shall require payment of such cost before allowing for any subsequent registration or dealing with any such long-term leases.
- c) The register of the long-term leases will be updated to note the new title numbers for each long-term lease and notices thereof will be sent to the registered proprietors.

IN WITNESS WHEREOF, the Ministry and the Land Sector Players have signed this Joint Memorandum on the date set out above as a testament of their deliberations and agreement, with the intention of ensuring continued engagement in improving service delivery in land administration and registration countrywide.

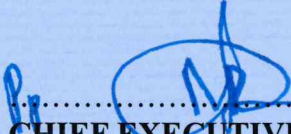
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STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING



.....
PRESIDENT, LAW SOCIETY OF KENYA



.....
PRESIDENT, INSTITUTION OF SURVEYORS OF KENYA



.....
CHIEF EXECUTIVE OFFICER, KENYA BANKERS ASSOCIATION

SCHEDULE

PART A

LETTER OF UNDERTAKING

Date:

**THE CHIEF LAND REGISTRAR
NAIROBI**

**RE: UNDERTAKING TO SUPPORT THE REGISTRATION OF LONG -TERM
LEASE(S) OVER TITLE NUMBER[*] DURING THE COMPLETION OF THE GEO-
REFERENCING EXERCISE**

We [*Name of the registered proprietor of the project title as the Developer*] of [Either : Company Registration Number [*] or Kenya National Identity Card Number/Passport Number [*] (“the **Developer**”, “we” or “our”) whose registered office is [*] and Post Office Box Number [*] being the registered proprietor of Title Number [*] (“the **Project Property**”) **HEREBY** make an applications for registration of long term leases during the completion of the requirements for geo-referencing as provided under section 54(5) of the Land Registration Act and section 13(2) of the Sectional Properties Act based on the following representations and undertaking:-

1. The Developer has developed the Project Property by erecting [residential houses /commercial building] for sale through long term leases and [*] long-term leases in the Project Property have been registered while [*] are pending registration.

2. That in satisfaction and compliance to section 54(5) of the Land Registration Act and section 13(2) of the Sectional Properties Act on geo-referencing, we have appointed Messrs[.....], a registered surveyor [name and registration details with ISK] to undertake the geo-referencing exercise and the preparation of sectional plan(s) for the Project Property, and in this regard, we attach herewith the surveyor's letter confirming this appointment.
3. In the meantime, and in consideration of the Chief Land Registrar allowing the registration of the remaining long-term leases pending the completion of the geo-referencing exercise and preparation of sectional plan(s), WE HEREBY give you our irrevocable undertaking that:-
 - (i) The Developer shall complete the geo-referencing exercise and the preparation of sectional plan(s) of the Project Property within a period of 6 months from the date hereof.
 - (ii) The Developer shall undertake the geo-referencing exercise and the preparation of the sectional plans at our own cost and shall indemnify the Government from any costs incurred by reason of default by the Developer in completing these tasks as required by law.
 - (iii) The Developer shall follow up and notify all registered lease owners of any input required from them to complete the new numbering of their leases to comply with the law.
 - (iv) Time shall be of the essence in respect of all our obligations herein.
4. The Developer understands that the Chief Land Registrar reserves the right not to register the last long-term lease in the Project Property if it is apparent that the registration of all the long-term leases is likely to be achieved before the completion of the geo-referencing exercise within the stipulated period of six months or in the case where the Developer is in breach of this undertaking.

IN WITNESS whereof the Developer has executed and delivered this letter of undertaking as a deed on the date written above.

EXECUTION

[If the developer is a Company or legal person]

SIGNED as a Deed by the Developer through two of)

its duly authorized Directors in the presence of the)

following witness:)

).....

) Director Name

) Signature:

) ID / Passport Number

)

).....

) Director Name

) Signature:

) ID / Passport Number

ADVOCATE)

I CERTIFY that the above-namedDIRECTOR and.....another DIRECTOR of the Developer appeared before me on theday of 20..... and being known to me acknowledged the above signatures to be theirs and that they had freely and voluntarily executed this Deed and understood its contents.

.....

ADVOCATE

[If an Individual or natural person]

SIGNED as a Deed by the Developer the said)

.....)

in the presence of the)

following witness:)

)

) Signature

)

)

) ID / Passport Number

)

ADVOCATE

)

I CERTIFY that the above-named appeared before me on theday of 20..... and being known to me acknowledged the above signature to be his/her and that he/she had freely and voluntarily executed this Deed and understood its contents.

.....

ADVOCATE

PART B

LETTER OF ACKNOWLEDGEMENT BY LICENSED SURVEYOR

Date:

CHIEF LAND REGISTRAR
NAIROBI

RE: LETTER OF UNDERTAKING DATED [..] TO SUPPORT AN APPLICATION TO REGISTER LONG-TERM LEASES DURING GEO-REFERENCING OVER TITLE NUMBER [*]

I refer to the above application by [*Name of Developer*] of [*Either* Company Registration Number [*] *or* Kenya National Identity Card Number/Passport Number [*]] (“the **Developer**”), the registered proprietor of the above Title Number [*] (“the **Project Property**”). I am a licensed surveyor and confirm that the Developer has appointed me to carry out the geo-referencing exercise and the preparation of sectional plan(s) for the Project Property and the various long-term leases, in accordance with section 54(5) of the Land Registration Act and section 13(2) of the Sectional Properties Act.

I have, in this respect, confirmed the existence of the project property and expect to complete the exercise within the stipulated period of 6 months. I have received all requisite documents to undertake the exercise.

I have sent this letter in support of the application by the Developer to be allowed to have the pending long term-leases registered while we complete the stated exercise.

Yours Faithfully

[*Signature and Name of Licensed surveyor]

LSB Registration Number [*]

cc. the Developer