

Real Estate Law

ALERT | 9 April 2024



In this issue

KENYA

Note to lenders: Strengthen your securities by transitioning GLA titles

 [For more insight into our expertise and services](#)

Note to lenders: Strengthen your securities by transitioning GLA titles

Consider a situation where a lender is processing a financial facility secured by two properties within the Government Lands Act (GLA) land regime. On one hand, they receive a converted GLA title, while on the other hand, they encounter a Form LRA 33 transfer instrument as the title document. The lender is suddenly faced with a dilemma: how do they reconcile the differing formats and ensure that both titles are equally credible and secure? This underscores the important question about consistency, reliability and legal interpretation addressed in our [previous article on transitioning GLA titles](#).

Financial institutions always enlist comprehensive legal guidance in the quest to safeguard their interests, optimise their security portfolio and stay ahead of the curve. At the heart of this in 2012 were discussions around a solution that would provide the necessary comforts in relation to GLA titles offered as security during the transitional phase, until certificates of title are issued in the prescribed form. The strategy adopted then was to obtain indemnities from registered property owners as a safety net, ensuring compliance with the specific procedures and requirements for GLA title conversion if their GLA properties were called

for the transitioning process, which overall objective was to changeover from the old deed-based system to the title registration system.

With all the changes since 2012 and things being in a state of flux, it has become essential for lenders to weigh the effectiveness of the indemnities in their vaults and whether a failure or delay to take a proactive approach to initiate transition of GLA titles exposes them to any operational risks, particularly in relation to the enforceability of their interests.

The indemnities were previously supportive of the lenders' interests during the transition process. However, if the legal or regulatory landscape has evolved, and compliance with the applicable regulations or requirements is now possible, it can impact the effectiveness of existing indemnity agreements. Their efficacy can be diminished due to a lack of commitment to prioritising compliance, given the change in circumstances.

Taking these factors into account, it may be fitting and essential to weigh the benefits of prioritising GLA title securities in the ongoing nationwide land conversion and migration exercise and enforce the GLA indemnities. Below are three key considerations that provide further rationale on the importance of this prioritisation.

REAL ESTATE LAW ALERT

Note to lenders: Strengthen your securities by transitioning GLA titles

CONTINUED



Indefeasibility of title

One cannot begin to underscore the benefits of updated titles and how they can address titling issues under the deeds system. By consolidating the chain of deeds that make up a GLA title into a single centralised certificate of title, lenders benefit from the indefeasibility of title, significantly reducing the risk of competing claims.

Enforcement delays

In assessing the effectiveness of indemnities in the event a borrower defaults on their obligations, the recovery process may be subject to delays or bureaucratic hurdles, particularly if there are backlogs in the land office, if the transition process is initiated at that point. This can also impact the marketability of property.

No associated fees

Another benefit is that property owners can convert their GLA titles for free because the law itself mandates the transition, making it accessible and cost effective. Previously, the conversion of GLA titles was a different process involving various steps and associated fees.

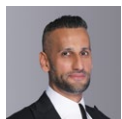
Granted, initiating the transition process may involve an administrative burden as it requires time, resources and expertise to assess lenders' securities portfolio, and navigate and coordinate the transition requirements. The decision ultimately depends on the specific circumstances, risk tolerance, and strategic objectives of the lender. However, there is indisputable value in taking proactive steps to prioritise the transition and conversion of GLA titles. This strategic approach would not only enhance the integrity of lenders' security assets but also contribute to the overall liquidity of these assets.

Lydia Owuor



OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



Muhammad Gattoo
Practice Head & Director:
Real Estate Law
T +27 (0)11 562 1174
E muhammad.gattoo@cdhlegal.com



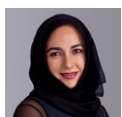
Bronwyn Brown
Director:
Real Estate Law
T +27 (0)11 562 1235
E bronwyn.brown@cdhlegal.com



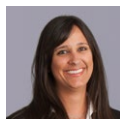
Mike Collins
Director:
Real Estate Law
T +27 (0)21 481 6401
E mike.collins@cdhlegal.com



Simone Franks
Director:
Real Estate Law
T +27 (0)21 670 7462
E simone.franks@cdhlegal.com



Fatima Gattoo
Director:
Real Estate Law
T +27 (0)11 562 1236
E fatima.gattoo@cdhlegal.com



Simone Immelman
Director:
Real Estate Law
T +27 (0)21 405 6078
E simone.immelman@cdhlegal.com



Lydia Owuor
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lydia.owuor@cdhlegal.com



Muriel Serfontein
Director:
Real Estate Law
T +27 (0)11 562 1237
E muriel.serfontein@cdhlegal.com



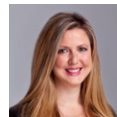
John Webber
Director:
Real Estate Law
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Alex de Wet
Director:
Real Estate Law
T +27 (0)11 562 1771
E alex.dewet@cdhlegal.com



Natasha Fletcher
Counsel:
Real Estate Law
T +27 (0)11 562 1263
E natasha.fletcher@cdhlegal.com



Samantha Kelly
Counsel:
Real Estate Law
T +27 (0)11 562 1160
E samantha.kelly@cdhlegal.com



Kirsty de Sousa
Professional Support Lawyer:
Real Estate Law
T +27 (0)11 562 1747
E kirsty.desousa@cdhlegal.com



Bridget Witts-Hewinson
Senior Associate:
Real Estate Law
T +27 (0)21 481 6447
E bridget.witts-hewinson@cdhlegal.com



Lutfiyya Kara
Senior Associate:
Real Estate Law
T +27 (0)11 562 1859
E lutfiyya.kara@cdhlegal.com

OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



Sune Kruger

Senior Associate:
Real Estate Law
T +27 (0)11 562 1540
E sune.kruger@cdhlegal.com



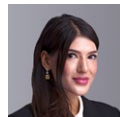
Muneerah Hercules

Associate:
Real Estate Law
T +27 (0)11 562 1579
E muneerah.hercules@cdhlegal.com



Lulama Lobola

Senior Associate:
Real Estate Law
T +27 (0)21 481 6443
E lulama.lobola@cdhlegal.com



Zahra Karolia

Associate:
Real Estate Law
T +27 (0)11 562 1701
E zahra.karolia@cdhlegal.com



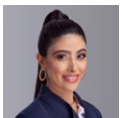
Ceciley Oates

Senior Associate:
Real Estate Law
T +27 (0)11 562 1239
E ceciley.oates@cdhlegal.com



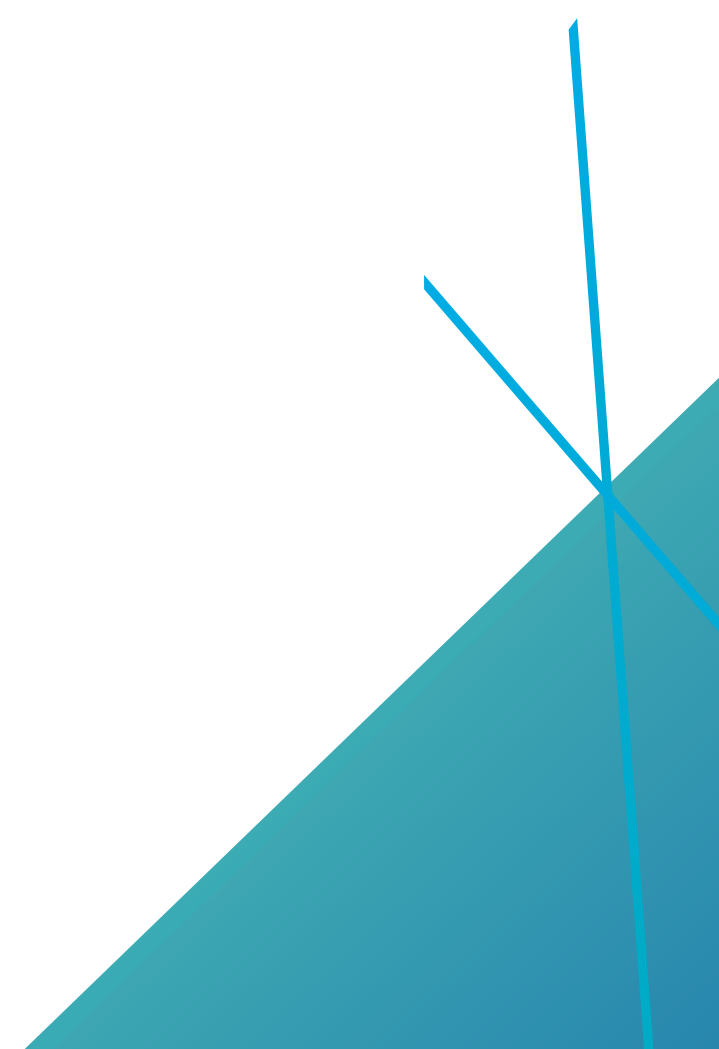
Ebum Taigbenu

Associate:
Real Estate Law
T +27 (0)11 562 1049
E ebun.taigbenu@cdhlegal.com



Fatima Essa

Associate:
Real Estate Law
T +27 (0)11 562 1754
E fatima.essa@cdhlegal.com



BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2024 13324/APR