

## THE UNIT TITLES ACT (2008): PROSPECTS AND CHALLENGES

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### **Abstract**

*The article examines the Unit Titles Act, its background, prospects and enforcement challenges. It is clear that the enactment of the Unit Titles Act aimed to inter alia ameliorate the problems associated with urban housing by providing for division of properties into units where common areas on land may be shared, including facilities and services thereupon. This form of common property ownership provides economized costs by spreading the cost among the occupiers.*

*The article surveys the various modes of disposition through which a person can acquire or transfer a unit property in Tanzania. The modes include sale, lease and mortgage. The article notes that there are challenges that impinge on realization of effective disposition under the Act. Hence, there is need for an effective legal and institutional regime for the Act to achieve its intended objective. Laws like the Land Act, Registration Act should be harmonized with the Unit Titles Act. There should also be robust, well-coordinated administrative machinery to ensure effective development and transfer of unit title properties. Such effort should go hand in hand with improving the capacity of the relevant land departments in the office of the Registrar of Titles and Local Government Authorities.*

**Key Words:** *Unit Titles, Unit Title Properties, Disposition, Unit Plan, Transfer*

### **1.0 Introduction**

In 2008 the Government enacted the Unit Titles Act, Act No. 16 of 2008. The enactment of the Act was considered to be<sup>3</sup> one of the Government's initiatives<sup>4</sup> towards addressing housing problem<sup>5</sup> attributed to poor physical planning, lack of appropriate framework, lack of long term housing finance (mortgage finance), absence of real estate development, weak management, poverty, lack of cash to buy or build decent home and increased urbanization.<sup>6</sup>When

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<sup>3</sup>See Clause 2.2.7 of the URT, MLHSD, National Human Settlement Development Policy (2000).

<sup>4</sup> Other previous efforts include the establishment of the National Housing Corporation in 1962, revolving Housing Loan Fund through circulars No. 8 1962, and No. 4 of 1965, establishment of Building Research Unit (BRU) and Housing Cooperative Societies, Establishment of Ardhi Institute and Centre for Housing Studies now, Ardhi University etc. See the National Human Settlement Development Policy (2000) pp 10-20.

<sup>5</sup>Wan Nor Azriyati Wan Abd Aziz, Noor RoslyHaniff, ZairulNisham Musa, AinozizaMohdAini, Abdul GhaniSarip and ZafirahZyed, in the paper, *Vertical Living Phenomenon in Malaysia* defines condominium solution as vertical living phenomenon solution.

<sup>6</sup>NkyaTumsifu, the Director of Housing Ministry of Lands Housing and Human Settlement Development on 'the Housing Question' presentation in the preparations for the Unit Titles Act., ZelalemYirgaAdamu, 'Institutional Analysis of Condominium Management System in Amhara Region: the Case of Bahir Dar City' notes that, housing is one of the basic

assessing the trend in condominium<sup>7</sup> properties and the challenge of urban housing Kironde noted that, some urban property owners live in 'archetypes' of condominiums but given the enactment of the Unit Titles Act some of the properties will have to be transformed in order to comply with the framework of the Act.<sup>8</sup> The properties were merely informal condominiums, based on some form of co-occupancy<sup>9</sup> which resulted from the lack of an appropriate legal framework.<sup>10</sup> So, the article endeavours to examine some of the prospects and challenges associated with the introduction and application of the Unit Title Act.

## 2.0 Background to the Enactment of the Unit Titles Act

Although the Human Settlement Development Policy (2000) is unclear on vertical property development,<sup>11</sup> the National Land Policy (1995) is explicit that the government will minimize land for building purposes by promoting both compact development and vertical extension of buildings<sup>12</sup> as a solution to urban sprawl. In 2004, the government undertook a major formalisation exercise in the city of Dar es Salaam to issue over 200,000 residential licences to a significant number of informal landholders.<sup>13</sup> Section 23(3) (a) of the Land Act<sup>14</sup> is clear on the issuance of residential licence and the manner of its grant that:

'...a residential licence [could] be granted by a local authority to any person occupying land without official title or right within the area of jurisdiction of that local authority as his home'

The above provision was intended to formalize the occupation as well as conferring upgraded status to informally held urban land. In general however, this was an initiative towards improving not only tenure security but also residential livelihoods of urban dwellers. As a result, about 90,000 licences were issued and the duration of the licences was extended from two to five years to provide more time for further

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necessities for human beings and [...] it is a [more] critical problem for millions of poor people in developing countries, in *African Review of Economics and Finance*, Vol. 3, No.2, June 2012, p 13. See generally the urbanization problem in Ghana, 'Urbanisation And The Challenges Of Development Controls In Ghana: A Case Study Of Wa Township' in *Journal of Sustainable Development in Africa* (Volume 13, No.7, 2011);Tenga W. *The Condominium Property Model in Tanzania: An Overview*, presentation at the Tanganyika Law Society, CLE, Workshop Dar es Salaam, 2009. See also the URT, UN-HABITAT joint Report on *Housing Finance*, 2003.

<sup>7</sup>According to Tracht, Hofstra LJ, 1999, in a condominium development, each property owner has an individual interest in a defined parcel of property, and shares in the ownership (typically as tenant-in-common) of various common spaces and facilities. Thus, in a typical multi-unit residential development, each owner owns an apartment unit plus a proportionate interest, with all of the other owners, in the common elements, such as hallways, lobby, elevators and recreational facilities. This hybrid form of ownership can be contrasted with a cooperative, in which a corporation owns the real property, with each shareholder in the corporation being entitled to a proprietary lease to a specific apartment.

<sup>8</sup>Kironde L. *Land Governance Study, Tanzania Report*, World Bank Nov 2009. p. 56.

<sup>9</sup>*Ibid*, p. 62.

<sup>10</sup> See Tenga W. *The Condominium Property Model in Tanzania: An Overview*, presentation at the Tanganyika Law Society, CLE, Workshop Dar es Salaam, 2009.

<sup>11</sup>See the National Human Settlement Development Policy (2000) p. 45, that the future trend will be vertical growth rather than horizontal growth.

<sup>12</sup> See Clause 6 of the National Land Policy (1995).

<sup>13</sup>*Ibid*.

<sup>14</sup>No. 4 of 1999, [Cap. 113 R.E. 2002].

formalization.<sup>15</sup> The enactment of the Urban Planning Act, 2007,<sup>16</sup> read together with the Land Act, provides room for regularisation of informal areas.<sup>17</sup> Areas like Makongo, Ubungo Maziwa in Dar es Salaam, and Isamilo, Ibungilo in Mwanza communities organised themselves and sought to regularise their areas and get official recognition of their regularisation plans.<sup>18</sup> However, these efforts did not get official approval<sup>19</sup> which rendered the opportunity for upgrading residential properties through formalization to be a suspect option for many informal landholders.

The other option for the control of urban sprawl was the necessity of introducing property ownership that would recognise horizontal ownership as well as utility management arrangements that would favour cooperative living. The best proposition was to consider the condominium form of property holding. According to Masinde, writing in 2006, the land laws did not allow the development of condominium property in Tanzania. She suggested the need to enact an appropriate law that would provide for creation, management and disposition of condominium properties.<sup>20</sup> James notes, in 1971, that most problems associated with operation of condominium schemes were inherently linked to the common law which was applied in Tanzania.<sup>21</sup> He suggested by then the enactment of an appropriate legal framework that would promote the operation of condominium properties in Tanzania.<sup>22</sup> Although his work was published in 1971 such law did not see the light of the day until 2008 when the Unit Titles Act was enacted.

With the Unit Titles Act in place, it has been expected that the challenge of urban housing in Tanzania will be ameliorated as it provides for the development of unit title properties across the country. Prof. Tumaini Nkya, the former Director of Housing in the Ministry of Land, Housing and Human Settlement Development, in his paper notes that:

[m]ajority of Tanzanians have no cash to buy or build a decent home; from household income it takes 15 – 65 years to build a decent urban home in Tanzania while in Europe it takes 3 years. Self-help housing in financing, supervision and construction often compromises quality.<sup>23</sup>

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<sup>15</sup>See section 23(3)(b) of the Land Act.

<sup>16</sup>Act No. 16 of 2007.

<sup>17</sup> See sections 56-60 of the Land Act.

<sup>18</sup>See Kironde *op. cit.*, fn 8 p. 62.

<sup>19</sup>*Ibid.*

<sup>20</sup> See Scholastica Masinde, *Establishment & Management of Sectional Properties in Dar Es Salaam*, MSc. Dissertation in Real Estate, UDSM, 2006.

<sup>21</sup> See James W. *Land Tenure and Policy in Tanzania*. East African Literature Bureau. Nairobi. (1971), this was equally noted by Tenga W. in his presentation *The Condominium Property Model in Tanzania: An Overview*, presentation at the Tanganyika Law Society, CLE, Workshop Dar es Salaam, 2009.

<sup>22</sup>*Ibid.*

<sup>23</sup>See also Tenga W. & Mramba S. *The Unit Titles Framework in Tanzania: An Introduction*, 2016 presentation for TLS Law Lectures CLE, Arusha and [Muzzini et al 'The Urban Transition in Tz' 2008].

So, enacting the Unit Titles Act was a mechanism to solve the problems associated with urban housing.<sup>24</sup>Nkya accepted the position proposed by both James and Masinde in that the laws in Tanzania inhibited development of unit title properties as it restricted division of property vertically not horizontally.<sup>25</sup>

Despite the shortfalls in the legal framework, unit title properties have been deemed to be economical and efficient in terms of land use and provision of social services.<sup>26</sup> The unit properties provide a mechanism where common areas on land may be shared, including facilities and services thereupon.<sup>27</sup> This form of common property ownership provides for economized costs by spreading the cost among the occupiers. The enactment of the Unit Titles Act introduced for the first time the concept of condominium property in Tanzania, named the unit title property, as in jurisdictions such as Australia.<sup>28</sup> The Act defines a unit as a portion of property which is owned by a specific owner exclusively, or co-owned<sup>29</sup> by joint occupiers for the exclusive use of several owners.<sup>30</sup> This means therefore that, instead of the person owning or occupying the entire property he can only own or occupy a portion in the property which could be less expensive to buy the whole property. Unit title properties can be developed in rows, clusters, or high rise.<sup>31</sup> The law regulates the management of such properties by providing legal and institutional framework to that effect. In addition, to ensure better enjoyment of unit title properties the law provides for the issuance of certificate of unit titles to unit owners,<sup>32</sup> including management and resolution of disputes arising from the use of common areas and services within the whole property.

Therefore, with the introduction of the Unit Titles Act, 2008, developers can use the framework of this statutory scheme to develop unit properties in Tanzania. As noted in the preceding paragraphs, one of the notable features of housing problems in Tanzania was lack of mortgage financing. The enactment of the Unit Titles Act (UTA) led to the enactment of the other laws such as the Mortgage Financing (Special Provisions) Act (2008)<sup>33</sup> which amended other laws such as the Land Act,<sup>34</sup>

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<sup>24</sup>*Ibid*, See *op cit*, fn 20 Scholastica Masinde, see further Tenga W. & Mramba S. *Presentation at the Registrar of Titles Workshop*, Ramada Inn, Dar Es Salaam, 15.03.2010.

<sup>25</sup>See section 53 & 83 of the Land Registration Act, Cap. 344 R. E. 2002.

<sup>26</sup> See Clause 6 of the National Land Policy (1995).

<sup>27</sup> See Section 6(3) of the Unit Titles Act for shared properties.

<sup>28</sup> Under section 5(1) and (2), a unit property includes a single building or several buildings comprising of sections of unified site together with the land on which they are located and all real rights existing in their favour. The unit property may be in the form of high rise structures or in rows or terraces. or in buildings in a cluster form.

<sup>29</sup>Section 6(1) provides that [o]wnership of the common areas of the property shall be divided into fractions belonging to one or several co-owners, and every co-owner shall hold an undivided right of ownership in the common areas equal to the relative size of this fractional share.

<sup>30</sup>Section 4(1) of the Unit Titles Act, [u]nit property shall be created when certain units of real property are owned by co-owners for their exclusive use and certain portions of the same property are held in coownership for common use.

<sup>31</sup>See section 5(1).

<sup>32</sup>See also section 9(2) & (4) of the Unit Titles Act.

<sup>33</sup>Act No 17 of 2008.

<sup>34</sup>[Cap 113 R.E. 2002].

Civil procedure Code,<sup>35</sup> Magistrates' Courts Act<sup>36</sup> and the Land Registration Act.<sup>37</sup> These amendments were strategic in that they aimed to enable the financial sector to play its critical part in the development of urban housing in general, including unit titles in particular, by creating the environment where property developers and buyers could get secure financing.<sup>38</sup> While the Act was seen as the nexus for promoting development of decent homes it is almost nine years since its enactment in 2008 but development of unit title properties under the Act is so far mostly carried out by parastatal developers such as; the National Social Security Fund (NSSF), Parastatal Pension Fund (PPF), Avic International, Watumishi Housing Co. Ltd and National Housing Corporation (NHC). In a consultation with the Housing Department of the Ministry of Lands, Housing and Human Settlement Development it was found that there is a need for more public involvement since the extent in which unit title properties are developed is still low and the market is not vibrant despite the myriad of benefits associated with the Act.<sup>39</sup> The next section will survey some of the issues that could impinge on the efficiency of this law.

### **3.0 Procedure for Development of Unit Property**

The Unit Titles Act and regulations made thereunder provide for procedures for the development of unit title properties. The procedures are elaborated under sections 14 and 15 of the Act and Regulation 9 of the Unit Title Regulations (2009). Although the tasks enumerated under the sections as shall be seen are clear however, development of a unit title property must commence with obtaining a valid land title under the Land Act. In that case, the developer will have to buy or apply for the grant of right of occupancy under the Land Act.<sup>40</sup> He must also do initial consultation with experts such as estate agents, land surveyors, valuers, lawyers and planners to get preliminary guidance on the proposed development.<sup>41</sup>

The UTA specifically stipulates that, the developer's unit plan must conform to certain requirements.<sup>42</sup> He must submit the unit plan to the Registrar of Titles for registration. The Registrar under the UTA is mandated to register unit plans. However, before registration the Registrar must satisfy himself that the unit plan has complied with all requirements. He must, for instance, ensure that the unit plan is headed as a unit plan and the delineation of the external surface boundaries of the common property and the location of the building are clearly indicated.<sup>43</sup> The plan must have a drawing illustrating the units and distinguish the units by numbers or

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<sup>35</sup>[Cap. 33 R.E. 2002].

<sup>36</sup>[Cap. 11 R.E. 2002].

<sup>37</sup>[Cap. 334 R.E 2002].

<sup>38</sup> See comments of the task force for the Draft Report of the Mortgage Finance 2007.

<sup>39</sup> Consultation with the Director Housing Department MLHHSD. Jan. 2016

<sup>40</sup> See section 25-30 for the application for granted right of occupancy.

<sup>41</sup> See the NHC and MLHHSD, Manual for the Operationalization of the Unit Titles Act, 2011.

<sup>42</sup> Unit Titles Act, section 14.

<sup>43</sup> Unit Titles Act, section 14(1) (a) & (b).

other symbols and define the boundaries of each unit in the plan.<sup>44</sup> In addition to the boundaries, the approximate floor area of each unit has to be clearly shown.<sup>45</sup> The plan must be supported by a schedule specifying the unit factor for each unit in the common property in whole numbers<sup>46</sup> to show how much area in the common property each unit would be assigned. There must also be a statement containing sufficient particulars to identify the title to the common property.<sup>47</sup> The applicant must have procured specified certificates under section 16 of the Act.<sup>48</sup>

According to section 16, every application for registration of a unit plan must be accompanied by certain certificates. There must be a certificate from a registered land surveyor showing that the structure on the plan is within the external surface boundaries of the common property, the subject of the plan.<sup>49</sup> In case there are projections beyond the external boundaries, it must be shown that an appropriate easement<sup>50</sup> has been granted as an appurtenance to the common property.<sup>51</sup> He must secure necessary building permit / consents which will enable him make application to the registrar of titles for approval and registration of the unit plan. The consent is signified by a certificate from a local government authority<sup>52</sup> showing that the proposed division of the structure as shown on the plan has been approved by the local authority and it conforms to any enactment regulating land use and building construction.<sup>53</sup> Lastly, there must be a certificate from a registered architect<sup>54</sup> indicating that the plan correlate with the existing structure before it is registered.<sup>55</sup> The certificates outline above must follow the prescribed format under schedule 10 to the Regulations.<sup>56</sup> Such application will have to be accompanied by fees.<sup>57</sup> Once the above are fulfilled, the Registrar must ensure that the unit plan is signed by the proprietor or developer and there is a corresponding address.<sup>58</sup> Where the law or regulations prescribe any other particulars, then the applicant must comply accordingly.<sup>59</sup> Also, if the unit plan includes residential units, in addition to the above requirements, the plan must indicate a demarcation of the boundaries of the areas that are to be leased under section 9(3) of the Act.

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<sup>44</sup>*Ibid*, section 14 (1) (c) & (d).

<sup>45</sup>*Ibid*, section 14(1) (d).

<sup>46</sup>*Ibid*, section 14(1) (e).

<sup>47</sup>*Ibid*, section 14(1) (f).

<sup>48</sup>*Ibid*, section 14(1) (g).

<sup>49</sup>Section 15(a).

<sup>50</sup>*Ibid*, see sections 21-23 for easements.

<sup>51</sup>*Ibid*.

<sup>52</sup> See the functions of Planning Authorities under the Urban Planning Act section 28 and section 59 (e) of the Local Government (Urban Authorities) Act, No. 8 of 1982, [Cap. 288 R.E. 2002].

<sup>53</sup>Section 15(b).

<sup>54</sup> Section 22 and 23 of The Architects and Quantity Surveyors (Registration) Act, Act No. 16 of 1997 makes it mandatory that in order for a person to provide the services of an architect he must be registered short of which he will be committing an offence.

<sup>55</sup>Section 15(c).

<sup>56</sup>*Ibid*.

<sup>57</sup> Where the application is for turnkey project the fee will be Tshs. 50,000/- while for phased project each extra phase will be Tshs. 100,000/- as per the Unit Titles (Amendment) Regulations 2015.

<sup>58</sup>*Ibid*, Section 14(1)(h).

<sup>59</sup>*Ibid*, section 14(1)(i).

The implication of the above requirements is that, the developer of a unit title property must procure certified experts to advise on the area for construction, plan and compliance with building regulations. Obtaining the certificates implies cost and time which must be borne by the developer in undertaking the above tasks. Since, the application for the certificates involves different offices there could be delays which may discourage all those involved in the project chain such as financiers, potential buyers/tenants and intermediate parties. Therefore it is important that the developer set aside adequate time and financial resources to accommodate the processes to be done.

#### 4.0 Transfer of Units under the Unit Titles Act

Since a unit under the Unit Titles Act amounts to an object of real property, its acquisition and disposition can be through various modes of conveyancing. Generally, in the disposition of real property in order to have a transfer there must be an acquisition. Thus, as the transferor/seller disposes there must be a willing transferee/buyer to acquire. The two parties are central in the transfer or disposition of property. The Land Act<sup>60</sup> employs the term disposition to imply *inter alia* transfer of an object of ownership or (sic) or right of ownership or occupancy.

Under section 2 of the Act the definition of disposition includes:

‘...any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a right of occupancy or a lease and any other act by an occupier of a right of occupancy or under a lease whereby his rights over that right of occupancy or lease are affected and an agreement to undertake any of the dispositions so defined.’

The section outlines the forms of disposition or the ways through which transfer of property can take place. Since in real property discourse property includes a right of occupancy, it therefore implies that disposition inferred under section 2 of the Land Act is disposition of a right of occupancy.<sup>61</sup>

In the context of the Unit Titles Act,<sup>62</sup> each unit of a unit title property constitutes a distinct object of real property and may be the subject of disposition by the owner in whole or in part.<sup>63</sup> So, while the Land Act views property within the context of right of occupancy, the Unit Titles Act views property in the context of units. In any case as between the two what is vital is occupation. Occupation could be of land or

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<sup>60</sup>[Cap.113 R.E. 2002].

<sup>61</sup>A right of occupancy is deemed under section 2 of the Land Act refers to a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law.

<sup>62</sup>Unit Titles Act, section 29 (1).

<sup>63</sup>*Ibid*, section 28 (1).

building or portion in a building, hence the Unit Titles Act deals with occupation of units. Under the provision that governs dispositions under the UTA is section 28 which provides that:

‘[s]ubject 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 the subject of disposition by the owner in whole or in part.’

Hence, what the section implies is that no disposition can be carried out under the Act without complying with the provisions of the Land Act that governs disposition. So, in order for a disposition to be valid it must follow all the requirements for a valid disposition under the Land Act. This takes us to the theory of transfer under the Land Act that includes writing, consent and approvals etc.<sup>64</sup>

As per section 28(2) of the Act:

‘[t]he disposition under subsection (1) shall include sale, mortgage, transfer, grant, partition, exchange, lease, assign, surrender or disclaimer, creation of an easement, a usufructuary right or any other servitude or interest in a right of occupancy, and in each case, the fractional share appurtenant to the unit, as well as the right to use the appurtenant restricted common areas, where applicable.’

The dispositions envisaged under the above section are similar to those provided under the Land Act. The incidents of unit titles and those for specific dispositions are similar to those of the right of occupancy since a unit title is a derivative of a right of occupancy.<sup>65</sup> What has been added is the fractional share of the unit owners and any restricted common areas.<sup>66</sup> In that view, the provisions on disposition under the Act should be read together with the provisions of the Land Act on disposition. In section 6 of the UTA the fractional share appurtenant to a unit may not be alienated separately from the unit or be the object of an action in partition.<sup>67</sup> Alienation of a divided section of a unit cannot have no legal effect unless the by-laws of co-ownership<sup>68</sup> and the plan of the property have been altered prior to the alienation so as to create a new fractional share.<sup>69</sup>

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<sup>64</sup> See Sections 61-67 of the Land Act.

<sup>65</sup> See the application of section 9 of the Unit Titles Act.

<sup>66</sup> *Ibid*, section 6.

<sup>67</sup> *Ibid*, section 6 (5).

<sup>68</sup> *Ibid*, section 50 that Management of a unit title property requires among other tools by-laws.

<sup>69</sup> *Ibid*, section 6 (6).



## 5.0 Requirements for Certain Transfers of Unit Titles

### 5.1 Sale

From the foregoing, the developer of a unit property can dispose his units. The disposition can involve sale, lease, mortgage, partition or any other form of disposition permitted under the Land Act.<sup>70</sup> The first form of disposition that this article looks at is disposition by the developer by way of sale. The Unit Titles Act allows the developer to transfer by sale, unit(s) or proposed unit(s) prior to completion or after completion to willing buyers.<sup>71</sup> The validity of the sale depends on adherence to the provisions under the Land Act<sup>72</sup> but in addition, the seller (developer) must deliver to the purchaser several documents.<sup>73</sup> He must deliver a copy of the sale agreement which contains the matters set out in the 17<sup>th</sup> Schedule to the Unit Title Regulations (2009).<sup>74</sup> He must give the existing or proposed by laws in the 14<sup>th</sup> schedule<sup>75</sup> and existing or proposed management agreement.<sup>76</sup> He must also provide existing or proposed recreational agreement<sup>77</sup> and any lease of the common property which the unit is subjected to.<sup>78</sup> He must give the certificate of title in respect of the unit or proposed unit<sup>79</sup> and any charge or proposed charge which may affect the title of the unit<sup>80</sup> and the unit plan.<sup>81</sup> In case of a charge or proposed charge he must deliver to the purchaser a written notice indicating the principal amount under the charge<sup>82</sup> and the maximum monthly payment.<sup>83</sup> He must state the amortisation period<sup>84</sup> and the grace period, if any.<sup>85</sup> In case there are pre-payment terms he must state it<sup>86</sup> including the interest rate or the formula for determining the interest rate.<sup>87</sup>

Essentially, the above disclosures are part of the buyer's due diligence.<sup>88</sup> With such details the buyer can make informed choice on whether to buy or not the property. So, the requirements of the provision are more of consumer protection mechanisms<sup>89</sup> intended to ensure that sellers do not take unfair benefit of purchasers' information gap. If the seller has not given all the documents mentioned above to the purchaser,

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<sup>70</sup> See the forms of disposition under section 2 of the Land Act and section 28(2) of the Unit Titles Act.

<sup>71</sup> *Ibid*, section 29 (1).

<sup>72</sup> *Ibid*, section 28 (1).

<sup>73</sup> *Ibid*, section 29 (1).

<sup>74</sup> *Ibid*, section 29 (1) (a).

<sup>75</sup> *Ibid*, 29 (1) (b).

<sup>76</sup> *Ibid*, section 29 (1) (c), see also matters set out in the 11<sup>th</sup> Schedule to the Regulations.

<sup>77</sup> *Ibid*, section 29 (1) (d).

<sup>78</sup> *Ibid*, section 29 (1) (e).

<sup>79</sup> *Ibid*, section 29 (1) (f).

<sup>80</sup> *Ibid*, section 29 (1) (g).

<sup>81</sup> *Ibid*, section 29 (1) (h).

<sup>82</sup> *Ibid*, section 29 (1) (a).

<sup>83</sup> *Ibid*, section 29 (2) (b).

<sup>84</sup> *Ibid*, section 29 (2) (c).

<sup>85</sup> *Ibid*, section 29 (2) (d).

<sup>86</sup> *Ibid*, section 29 (2) (e).

<sup>87</sup> *Ibid*, section 29 (2) (f).

<sup>88</sup> See Abbey and Richards Conveyancing Blackstone P 1998. p 59.

<sup>89</sup> Note the principle of buyer beware (caveat emptor).

he may rescind the sale agreement within 10 days after the date of its execution without incurring any liability<sup>90</sup> with a refund of monies paid.<sup>91</sup> In case all the documents have been delivered to the purchaser in less than 10 days before the execution of the sale agreement the purchaser cannot rescind the agreement.<sup>92</sup> Here the law imports a timeline within which certain things should be done. The time limit guard buyers against speculative sellers who may jeopardize the interest of their clients.<sup>93</sup>

Where a unit owner who is not a developer wants to sell his unit, he must furnish to the purchaser certain documents.<sup>94</sup> He must provide copies of the by-laws,<sup>95</sup> current budget and financial statement<sup>96</sup> of the Association<sup>97</sup> and a certificate containing a statement of the amount of assessments for common expenses.<sup>98</sup> He must also provide the amount of unpaid common expense due and payable and of any other fees or charges payable by the co-owners.<sup>99</sup> The Owners' Association will have to provide copies of all documents and certificates required within 10 days of request by the owner subject to payment of the costs of reproduction.<sup>100</sup> The purchaser will be bound to pay all common expenses due in respect of that unit at the time of the acquisition but he cannot be liable in excess of the amount shown in the sales certificate of the Association.<sup>101</sup>

## 5.2 Lease

The other possible form of disposition under the Act is leasing.<sup>102</sup> As far as leasing is concerned, it is the owner of a unit who may lease his unit.<sup>103</sup> In case the developer develops a unit title property and retains some units for himself then he can lease such units. Also, the developer can lease where after developing the unit property he does not want to sell but simply lease; in such case he will be deemed to be the owner of the units since they will still be in his name.<sup>104</sup> In such case there will not be an Association but the developer will have to register bylaws.<sup>105</sup> An association can only be registered after five or more units have been sold.<sup>106</sup>

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<sup>90</sup>*Ibid*, section 29 (3).

<sup>91</sup>*Ibid*, section 29 (5).

<sup>92</sup>*Ibid*, section 29 (4).

<sup>93</sup> See more in Willy R. & Sist M. *Theoretical Foundations of Land Law in Tanzania*. Law Africa, p. 67.

<sup>94</sup>Section 29 (1).

<sup>95</sup>Section 30 (1) (a).

<sup>96</sup>Section 30 (1) (b).

<sup>97</sup>*Ibid*, see section 35 for the formation of the Unit Owners' Association.

<sup>98</sup>*Ibid*, section 30 (1) (c).

<sup>99</sup>*Ibid*, Section 30 (1) (d).

<sup>100</sup>*Ibid*, section 30 (2).

<sup>101</sup>*Ibid*, section 30 (3).

<sup>102</sup> See more discussion on incidents of leases in Willy T. & Sist M. *Conveyancing and Disposition of Land in Tanzania: Law and Procedure*, Law Africa (forthcoming).

<sup>103</sup>*Op.cit*, section 30 (1).

<sup>104</sup> See the implication of section 11(3) and section 46 of the Act.

<sup>105</sup>*Ibid*, see section 35 (4).

<sup>106</sup>*Ibid*, see section 35 (3).

In the event an owner of a unit wants to lease it he is required to give a written notice to the unit owners' Association stating the name of the tenant occupying the unit and any other particulars required by the by-laws within 7 days from the moment the tenant begins to rent.<sup>107</sup> The Association may require the owner to pay and maintain with the association a deposit which shall be used for repairing or replacing any damaged, destroyed, lost or removed property by the tenant.<sup>108</sup> When tenant ceases to rent, the owner must give to the Association written notice within seven days from the moment he ceased occupation to the effect that his unit is no longer rented.<sup>109</sup> In such a case, the Association will return any unspent deposit to the owner.<sup>110</sup> In case it had applied the deposit to one of the intended purposes, it has to produce a statement of account to the owner showing the expenditure and the remaining balance.<sup>111</sup> In case it intends to use it for the stated purposes, it must deliver an estimated statement of account indicating the amount it will use and provide a statement of account within 60 days showing the amount used and any remaining balance.<sup>112</sup>

### 5.3 Mortgage

Disposition of units could also be by way of mortgage.<sup>113</sup> If the owner of a unit wishes to mortgage his unit he has to adhere to the provisions of the Land Act<sup>114</sup> since section 33<sup>115</sup> provides that mortgage of a unit shall be in accordance with the provisions of the Land Act. In order to protect the mortgagee, the Association may enter into agreements with mortgagees of any unit.<sup>116</sup> In that case, the Association will give written notice to the mortgagee of any state of facts or occurrence which adversely affects the physical or financial condition of the property.<sup>117</sup> It will also be required to give written notice of any delinquency in the payment of common expense by the owner of a unit or any intention of the Association to enforce its claim to collect common expenses against a unit.<sup>118</sup> The Association will not be allowed to amend any material provision of the by-laws without the consent of the mortgagees.<sup>119</sup> It will not to take specified actions concerning the property without the approval of the mortgagees.<sup>120</sup> The actions include conveying or encumbering any of the common areas,<sup>121</sup> termination of the co-ownership<sup>122</sup> or pledge or

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<sup>107</sup>*Ibid*, see section 31 (2).

<sup>108</sup>*Ibid*, section 31(1) (a) & (b).

<sup>109</sup>*Ibid*, section 31(3).

<sup>110</sup>*Ibid*, section 31(4) (a).

<sup>111</sup>*Ibid*, section 31(4) (b).

<sup>112</sup>*Ibid*, section 31(4)(c).

<sup>113</sup>According to section 2 of the Land Act, a mortgage is an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfilment of a condition and includes a sub-mortgage and the instrument creating a mortgage.

<sup>114</sup>See part X of the Land Act.

<sup>115</sup>Section 33 of the Unit Titles Act.

<sup>116</sup>Unit Titles Act, section 34(1).

<sup>117</sup>*Ibid*, section 34 (1) (a).

<sup>118</sup>*Ibid*, section 34(1) (b).

<sup>119</sup>*Ibid*, section 34(1) (c).

<sup>120</sup>*Ibid*, section 34(1) (d).

<sup>121</sup>*Ibid*, section 34(4)(d) (i).

assignment of the future income or receivables of the Association.<sup>123</sup> It will be obliged to provide a copy of the current financial statements of the Association; or such other matters on which the Association and mortgage creditors may agree. The law allows agreements for the benefit of mortgagees to be included in the by-law, in which case, they constitute contractual obligations of the Association toward any present or future mortgagee holding a mortgage on any unit.<sup>124</sup> So, upon acquiring ownership of a unit through enforcement of its rights under a mortgage, the mortgagee succeeds all rights and obligations of a co-owner.<sup>125</sup> The above requirements promote *inter alia* property market and protect the interests of mortgagees and buyers of mortgaged properties.

## 6.0 Unit Title Transfer and its Intricacies

### 6.1 Legal and Institutional Issues

Generally, apart from the clear import of the provisions of the Unit Titles Act, there have been challenges in smooth operation of the unit title market in the country. Such challenges could be attributed to a number of factors. Since the enactment of the UTA, the operating latitude required condition precedent to be effective.<sup>126</sup> The process of obtaining unit title has not been simple. It has been time consuming a disappointing terrain to the parties involved namely the developer or seller thus stifling the unit titles market.<sup>127</sup> As may well be appreciated, developing unit title property requires huge investment involving several actors such as; developers, financiers, unit buyers, and intermediaries such as architects, surveyors, lawyers, planners, engineers etc.<sup>128</sup> So, development of a vibrant unit title market calls for effective interplay of all these actors.<sup>129</sup> The process also requires the involvement of the Commissioner for Land and planning authorities. Consultations with the authority having responsibility for town and country planning in the area where the land is situate; the local authority having jurisdiction in the area where the land is situate, any other authority whose consent to that change of use is necessary<sup>130</sup> is crucial to advise on the suitability of the use for planning purposes. The Commissioner will also need to endorse any change of use on the certificate of

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<sup>122</sup>*Ibid*, section 34(4)(d)(ii).

<sup>123</sup>*Ibid*, section 34(4) (e).

<sup>124</sup>*Ibid*, section 34(4) (d)(iii) .

<sup>125</sup>*Ibid*, section 34(3).

<sup>126</sup> See for instance the enactment of the Mortgage Financing (Special Provisions) Act 2008 which called d for the amendment of the Land Act, Magistrates' Courts Act, Civil Procedure Code and the Land Registration Act.

<sup>127</sup> TLS CLE Workshop Deliberations on the Conveyancing: Issues and Challenges held in Arusha from the 22-23 Feb, 2016., see also the NHC, The Unit Titles Manual 2011.

<sup>128</sup> See NHC and MLHSD, Manual for the Operationalization of the Unit Titles Act 2011 and Willy T. in his presentation *The Condominium Property Model in Tanzania: An Overview*, presentation at the Tanganyika Law Society, CLE, Workshop Mwanza, 19<sup>th</sup> June 2009.

<sup>129</sup> See Willy T. & Sist M, presentation to the Department of Housing on the Unit Titles Act held at the Ramada Hotel Dar es Salaam in June 22-23, 2010.

<sup>130</sup> See for instance section 7 of the Unit Titles Act that, [a] developer or proprietor for a unit development shall procure planning and building permit consent from appropriate local government authority as provided for under Part IV of the Urban Planning Act, 2007.

occupancy;<sup>131</sup> sign the endorsement with his official seal and by the occupier; and ensure the applicant has paid all premia and additional rent have been paid in accordance with the terms and conditions subject to which the change of use is granted.<sup>132</sup>Sometimes there could be a legal requirement of obtaining a certificate of title in case the land for developing the unit title lacks one or it is questionable and it requires clearance.<sup>133</sup> This by itself could take over six months up to a year.<sup>134</sup> In other cases, the developer could be changing a land use from one category to another.<sup>135</sup>So, during these processes, time is of essence and could be a critical impediment.

Furthermore, the other challenge that confronts both developers and unit buyers is the cost of developing and selling or buying of units. This results from the fact that both the developer and the unit buyer quite often get financial facilitation from the banks.<sup>136</sup> Due to the risks inherent in financial lending, banks have been strict on their lending terms thus affecting the unit title market.<sup>137</sup> One of the stringent conditions is the incorporation of buy-back clause in the mortgage deed, requiring the developer in the event of default by unit buyers who purchase through mortgage financing to be willing to buy the unit.<sup>138</sup> This approach has put an extra burden on the developer thus forcing him to sell at a much higher price to cushion the risk. The increased sale price affects the purchasing power of unit buyers thus impacting on the potency of the unit title market. Buy back is not reflected in the law but it is increasingly becoming a practice that requires law to regulate and set criteria for banks and developers in order to exercise such option.<sup>139</sup>

Also, the above challenge goes hand in hand with the rate of taxes that the unit seller/buyer must meet. These taxes include capital gains, Value Added Tax (VAT) and stamp duty all of which cause increase in the property price. Consequently, while the motivation behind the UTA is to promote decent housing, this is being affected by the price and the rate of taxes which hikes up the cost for acquiring the units including properties intended for low end consumers.<sup>140</sup> There is a need for considering the taxes involved in the transfer of such properties such a special VAT and Capital Gains Tax and the manner such taxes should apply. For instance, VAT

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<sup>131</sup> See sections 34 & 35 of the Land Act.

<sup>132</sup>See section 35 (3) & (5) of the Land Act.

<sup>133</sup>See workshop deliberations on the 'Implementation of the Unit Titles Act, 2008 and Its Regulations of 2009,' November, 2015.

<sup>134</sup> See the World Bank Report on the Ease of Doing Business in Tanzania 2016, that globally, Tanzania stands at 133 in the ranking of 189 economies on the ease of registering property in Sub-Saharan Africa it scores 51.37 out of 100 compared to Botswana that scores 67.25, see pp 45 & 46 of the Report.

<sup>135</sup> See section 35 of the Land Act for change of use.

<sup>136</sup>*Op.cit*, fn 10, the institutional structure for the implementation of the Unit Titles Act in Willy T. &Sist M. *Presentation on the Framework of the Unit Titles Act: An Introduction*.

<sup>137</sup>See BOT, *The Tanzania Mortgage Toolkit Developing Capacity Building Programs for the Mortgage Market in Tanzania 2015*.

<sup>138</sup> Consider for instance, the NMB common mortgage clauses in mortgage offer letters and optional buy-back agreements.

<sup>139</sup>*Ibid*.

<sup>140</sup>*Op.cit* fn 133.

on these properties should be reassessed if the focus is to promote decent home and discourage informality. The Capital Gains tax could equally be reduced.

In addition, sometimes the developer might need to consolidate multiple plots to get enough space for developing the unit property.<sup>141</sup> In such case, a different procedure as stipulated under the Land Act will have to be employed which might take up to a year to accomplish.<sup>142</sup> So, while the Unit Titles Act has introduced a new property ownership regime under which ownership can be defined horizontally or vertically, still depends much on the framework and implementation of the provisions of the Land Act and the Land Registration Act.<sup>143</sup> As noted, these delays do not only affect the process of transfer but also the parties involved. For instance, to the lawyer it could imply higher cost and fees for undertaking the exercise.

Also, although the Unit Titles Act is in place and enforced, some of its regulations relating to transformation of existing buildings are not ready.<sup>144</sup> The implication of this is that there are numerous archetypes of unit title properties that cannot be brought to the realm of unit title framework.<sup>145</sup> For instance, while it is well appreciated that transfer of subtitles has been going one such subtitles though related to unit title properties they lack the basic tenets of a unit title properties that is unit owners' association, common properties/ areas and individual units.<sup>146</sup> Although the last two could be present but the first one for a unit owners' association cannot be met.<sup>147</sup> So, these properties find themselves outside the framework of the appropriate framework of the UTA rendering the security of the subtitle buyers unwarrantable. Much as subtitles are archetypes of unit titles the property buyers hold a subtitle while the head or main title is held by another person who can tread it in some other deals.

Furthermore, since its commencement in 2009, the UTA has not been well understood by the public including the to-be implementers.<sup>148</sup> So long as UTA, introduces a new property ownership regime its enforcement requires an increased knowledge above the traditional knowledge of land law or real estate. The issues inherent in transfer of unit title properties are different from the transfer ordinary properties. For instance, the one will have to consider; if there adequate insurance for the whole of the unit title development; if there is a recent building valuation to support the amount of insurance; if the buyer can afford quarterly levies; if there are

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<sup>141</sup>*Ibid.*

<sup>142</sup>*Ibid.*

<sup>143</sup> See sections 9(1) & (2) of the Unit Titles Act that [t]he provisions of the Land Registration Act relating to registration techniques, procedures and practices shall, unless otherwise provided in th[e] Act, apply to the registration of land dealing with units under the [Unit Titles] Act. A certificate of title issued in respect of a unit comprised in a Unit plan registered under this Act shall, upon registration of the plan, be deemed to have been issued under the Land Registration Act;

<sup>144</sup> Consider MLHHS (2010) call for proposals for the drafting of Transformation of Existing Archetype properties Regulation.

<sup>145</sup> See Scholastica Masinde *op.cit* fn 20.

<sup>146</sup> See Willy T. & Sist M. *op.cit* fn 23.

<sup>147</sup>*Ibid.*

<sup>148</sup>*Op.cit*, fn 133.

any special levies planned; if there are any outstanding building works, unpaid invoices, etc. that could result in a special levy; if there is any weekly or monthly tenants in any of the common areas; for example, where someone hires a garage or storage space.<sup>149</sup>

One must search the land transfer register at the office of the Registrar of Titles to make sure that there are no separate dealings in relation to the common property by the current registered owners. If the unit title property has an adequate sinking fund he must take into account the age of the building, the current state of repair and the type of construction. Where there is annual sinking fund he must find out if allocation is adequate.<sup>150</sup> He must consider the current balances in the administrative and sinking fund account. He may also wish to find out any current or proposed litigation matters involving the Owners' Association.<sup>151</sup> In case there are limitations or restrictions on the use of common property which may affect the buyer, he must find out what they are.<sup>152</sup> If there are any outstanding public liability claims involving the Owners' Association he must also consider their nature.<sup>153</sup> In case there are restrictions or conditions or any alterations to the unit that have been approved by the Owners' Association such as installation of an air conditioning unit he must consider their implication to his interest.<sup>154</sup>

The above issues are even more pronounced when it comes to sales before completion.<sup>155</sup> In pre-completion sales, the buyer has the task of ensuring that there are adequate representations and warranties so that he can get appropriate remedy in case there is breach of the representations.<sup>156</sup> So, the contract must be well drafted and the terms must be carefully considered by the buyer. The buyer must also incorporate both precedent and subsequent conditions depending on the nature of the transaction;<sup>157</sup> for instance in case the buyer depends on mortgage finance or it is sold before completion there must be conditions precedent and if the transfer is subject to Commissioner for Lands' or Registrar of Titles' approval there must conditions subsequent.<sup>158</sup>

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<sup>149</sup> See for instance, Nicole Tan and Sumathi Murugiah, Law and Realty: Problems Faced by Owners of Strata Title Properties, available at [www.malaysianbar.org.my/...practice/law\\_realty\\_problems\\_faced\\_by\\_owners\\_of\\_strata](http://www.malaysianbar.org.my/...practice/law_realty_problems_faced_by_owners_of_strata) accessed on 25.05.2016.

<sup>150</sup>*Ibid.*

<sup>151</sup>*Ibid* see also Sam Butler, Should you buy property off the plan? Available at <https://www.mywealth.commbank.com.au/property> accessed on 25.05.2016.

<sup>152</sup>*Ibid.*

<sup>153</sup>*Ibid.*, see also State of New South Wales, Strata living: What you need to know about living in your strata community available at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

<sup>154</sup>*Ibid.*

<sup>155</sup>See section 30(1) of the Act, that sale can be before completion.

<sup>156</sup>See James Home Ratings, The 4 Key Risks in Off-Plan Purchases, available at <http://marketnews.com.au/2010/07/the-4-key-risks-in-off-plan-purchases/> Accessed on 25.05.2016.

<sup>157</sup>*Ibid.*, see Tina L. Stark, 'Thinking Like a Deal Lawyer,' in 54 *J. Legal Educ.* 223 (2004).

<sup>158</sup>*Ibid.*

Moreover, as far as foreign developers or buyers are concerned, section 19 and 20 of the Land Act<sup>159</sup> provides for the interest that a foreigner can enjoy on land in Tanzania. In particular section 19 (2) provides that:

*'[a] person or a group of persons whether formed into a corporate body under the Companies [Act] [Cap 212] or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens, may only obtain - (a) a right of occupancy for purposes of investment approved under the Tanzania Investment Act, 1997;<sup>160</sup> Or (b) a derivative right for purposes of investment approved under the Tanzania Investment Act, 1997; or (c) an interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania Investment Act, 1997 in a joint venture to facilitate compliance with development conditions while section 20 (1) provides that, [f]or avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act.'*

In view of section 20(1), the law does not take away the possibility of grant or allocation of land to a foreigner or foreign company. Also under section 19(2) above, it is apparent that a foreigner or foreign company<sup>161</sup> can be granted a right of occupancy as long as the land will be used for investment purposes and such investment must have been approved by the Tanzania Investment Centre (TIC).<sup>162</sup> Where the foreigner does not get a right of occupancy he can get a derivative right, a partial transfer by a citizen which could include leases, licenses or a joint venture. In all these cases, the precondition is approval of the investment by TIC. It is however, debatable that much as the unit title market is an investment opportunity but one requiring huge investment capital whether a foreigner or foreign company can apply and be granted land under the section for developing unit titles and sell the units to potential buyers in the market. Some foreign investors like AVIC International in Kigamboni did apply but got derivative rights.<sup>163</sup> The problem with derivative rights in unit title properties is the limitation on the right of disposition. In this case, the developer will have to sell through the TIC and the sale agreement will have to incorporate provisions that are part of the developer's terms with the TIC. Also, the developer will be selling subleases not right of occupancy which most buyers would not need. These properties have also raised concerns from house financing institutions as to whether the title based on derivative interest is sufficient to guarantee an adequate security rendering unit buyers ineligible for loans on the basis of such properties.<sup>164</sup> But also, since the buyers are citizens it is not clear why

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<sup>159</sup>[Cap. 113 R.E. 2002].

<sup>160</sup>[Cap. 38 R. E. 2002].

<sup>161</sup> Section 20 (4) of the Land Act, [f]or the purposes of th[e] Act, anybody corporate of whose majority shareholders or owners are non-citizens shall be deemed to be non-citizens or foreign company.

<sup>162</sup>See section 6 of the Tanzania Investment Act on the functions of the TIC.

<sup>163</sup> Comments from participants in the TLS CLE seminar on Conveyancing: Issues and Challenges, held in Arusha, Feb. 22-24, 2016.

<sup>164</sup>*ibid.*



they should get a derivative right and not a right of occupancy under the framework of unit titles.<sup>165</sup>

## 6.2 Administrative Issues

While some of the problems as noted above are linked to the legal framework, there are also administrative issues that call for re-consideration of the working approaches in order to speed up transactions involving unit title properties.<sup>166</sup> For instance, while the law may predicate a certain process to be undertaken the manner such process is undertaken results into undue delays hence affecting the transfer of unit properties. In view of complying with the requirement of section 14 and 15 of the UTA, on issuance of certificates <sup>167</sup> sometimes there has been unnecessary bureaucracy especially on issuance of certificates from Local government authority to certify that the unit plan conforms to the building permit.<sup>168</sup> The practice has been that the building permit ought to be issued by the Municipal Director while in actual sense the building permit is issued by municipal engineer.<sup>169</sup> Perhaps there is need to amend the provisions that requires the Municipal Director to sign the Certificate of Local Authority and instead mandate the Municipal Engineer to sign the same to reduce bureaucracy.<sup>170</sup>

Typical to unit title transactions is the submission of different documents in different offices for different actions at the same time.<sup>171</sup> This happens because both the developer and the unit buyer might need to obtain financial facility from the lenders especially as the developer may sell off-plan (prior to completion).<sup>172</sup> In addition, a title may be lodged at the Local Government office such as municipality for the purposes of Transfer (and it takes long) while the same file could be needed in the ministry for other official processes involving the same property.<sup>173</sup> In this scenario, any transfer process will be affected. One of the processes must wait for some time thus affecting the entire development. This problem is further coupled with nature of the records which are still manual making tracing of information difficult hence delays in handling of applications.<sup>174</sup> Addressing the problem of manual records

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<sup>165</sup>*Ibid.*

<sup>166</sup>*Op cit*, fn 133.

<sup>167</sup> Section 15(1) of the UTA provides that [a] unit plan referred to in section 14 shall be accompanied by- certificate of a registered Land Surveyor to the effect that the structure shown on the plan is within the external surface boundaries of the common property which is the subject of the plan, and if there are projections beyond the external boundaries, that an appropriate easement has been granted as an appurtenance of the common property; and a certificate of a local authority to the effect that the proposed division of the structure as shown on the plan has been approved by the local authority in accordance with any enactment regulating land use and building construction and; a certificate of an registered architect in case the unit plan is of an [existing] building or structure that is to be brought under the operation of the Act before the plan is registered to the effect that the units indicated in the plan correlate with the existing structure.

<sup>168</sup>*Op. cit*,fn 133.

<sup>169</sup>*Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup>*Ibid.*

<sup>172</sup> See *op.cit* fn 157.

<sup>173</sup>*Op. cit.*

<sup>174</sup>*Ibid.*

requires computerization of the process for handling and managing unit title transactions. Since it has been noted that sometimes files may be needed by more than one office at the same time then the need for completing and operationalizing the Integrated Land Management Information System (ILMIS) championed by the MLHHS is needed now, more than before.<sup>175</sup> The system would fast-track handling of unit title applications and transfers.

Administratively further, there has been inadequate capacity of the Land Registry which is exacerbated by the additional tasks from the UTA where the RoT is the central figure. This will require expansion of the registries and addition more working facilities and manpower. To ensure effective expediency and coordination, the ILMIS initiative will lend a great support. In addition, District land offices seem to have been overwhelmed by multiplicity of land related transactions since the enactment and operationalization of the Unit titles Act introduced new work load, while offices remained understaffed and the same budget constraints- Recruitment of more staff and adequate budget allocation.<sup>176</sup>

It is also well appreciated that since the UTA introduces a new property scheme; so more work is needed to provide awareness and knowledge among players (municipalities, office of the registrar and others) in handling Unit Titles properties.<sup>177</sup> Any training to the key players will apparently help to partly address the problem of delays which could also be attributed to lack of adequate competence.<sup>178</sup> Awareness should also be created among architects, surveyors, planners on the requirement of section 14 of the Act.<sup>179</sup> This may also involve liaising with the relevant professional bodies to ensure knowledge of the law is widespread, public campaign to the public in general of the enforcement of the legislation.

Lack of body to regulate the real estate sector implies that there has been increased mushrooming of real estate industry sector.<sup>180</sup> Such increase has led to poor services and posed risk to property buyers due to lack of regulatory machine. In a demand driven property market the need for controlling the operations of such actors is exceedingly important. In condominium property /unit title schemes the risk posed to the consumers is even higher due to the nature of the properties in question. The since the developer can begin advertising unit prior to completion, the buyers need to have assurance that their vested interests will be secure and the quality of the property will be guaranteed.<sup>181</sup> Also, the buyer needs assurance that the property

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<sup>175</sup>*Ibid.*

<sup>176</sup>*Ibid.*

<sup>177</sup>*Ibid.*

<sup>178</sup>*Ibid.*

<sup>179</sup>*Ibid.*

<sup>180</sup>*Ibid.*

<sup>181</sup>*Ibid.*

will be delivered on time and the quality of the fittings, fixtures and other accessories is warranted.<sup>182</sup>

Sometimes developers may also submit their applications for registration to the Ministry of Lands, Housing and Human Settlement Development (MLHHSD) for approval after sale while at the same time there could be pressure at the MLHHSD from the banks to obtain unit titles for mortgage purposes, ensuring that unit plans are registered before construction starts.<sup>183</sup> This implies that applications for unit title should be lodged before sale. So far, there is no mechanism to recognize the interest of the bank before the registration of the mortgage.<sup>184</sup> So, the law should recognize the interest of the bank even prior to the issuance of the Unit Title Certificate otherwise there should be creation of temporary documents.<sup>185</sup>

## 7.0 Concluding Remarks

From the foregoing, it is clear the enactment of the Unit Titles Act was an important development in the real property sector. However, such requires an effective legal and institutional regime in order to achieve the intended objective. Laws like the Land Act, Registration Act should be harmonized with the Unit Titles Act. Also, since the Unit Titles Act was intended to *inter alia* ensure efficient development and transfer of unit title properties, such object will be hard to attain without a robust, well-coordinated administrative machinery to enforce it. This effort should go hand in hand with improving the capacity of the relevant land departments in the office of the Registrar of Titles and Local Government Authorities.

Moreover, as it has been noted, there is limited public awareness which renders the implementation of the law less effective. Hence, there is need for broader public engagement to ensure that there is adequate awareness. All necessary intermediaries such as real estate developers, real estate agents, lawyers, financiers, architects, valuers /appraisers, surveyors, and planners should be involved for smooth operation of the law.

## NOTES TO CONTRIBUTORS

### 1.0 Introduction

The editorial Board of the *Law School of Tanzania Law Review Journal (LST Law Review)* is inviting submission of articles of substantial legal merit. Each manuscript we receive is scrutinized in an extensive review process. The decision to publish an article is based on many considerations, including the significance and timeliness of

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<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

the topic and quality of the writing. The articles must focus on enhancing legal practical skill and promoting legal education. The LST Law Review articles address diverse legal issues and no article shall be accepted for publication before a first draft has been reviewed.

## 2.0 Content Requirements

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*Length:* As a general rule, the *LST Law Review* looks for articles not exceeding 10,000 words, (**about twenty printed pages of this journal**) with some reserves in exceptional cases where the article makes substantial contribution to the field of legal practice.

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Citations must conform to the Chicago Manuals of Style on Usage and Style (16th ed. 2010). Failure to conform to the citation style will be a factor that weighs significantly against acceptance of the article.

Articles to the *LST Law Review* shall be submitted in double-spaced MS Office 2003-2007. For stylistic conventions and citation forms, the *LST Law Review* adheres to a uniform system of citation the Chicago Manuals of Style on Usage and Style (16th ed. 2010). Use footnotes; *ibid*, *op.cit* or *loc.cit* as may be appropriate

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For book reviews, the author, Title, Edition No. (if relevant), (publisher, place, year, number of introductory pages in roman numerals & number of pages) ISBN number) should be indicated.

For case reviews, the case citation, when decided, the principle it establishes or issue it addresses should be stated.

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