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BM

LEGAL NOTICE NO. 101

THE LAND REGISTRATION ACT

(No. 3 of 2012)

IN EXERCISE of the powers conferred by section 110 of the Land Registration Act, 2012, the Cabinet Secretary for Lands and Physical Planning makes the following Regulations—

THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS, 2019

1. These regulations may be cited as the Land Registration (Electronic Land Transactions) Regulations, 2019.
2. These Regulations shall apply to the registries set out in the Schedule.
3. In these Regulations unless the context otherwise requires—
“user” means a person who has entered into a user agreement with the Chief Land Registrar for—
 - (a) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar under the Act;
 - (b) the filing or lodging of any document with the Registrar or the submission, production, delivery or furnishing or sending of any document to the registrar under the Act; or
 - (c) the making of any application, submission or request to the Registrar under the Act.
4. (1) All registry transactions under the Act shall be carried out through the electronic registry system in the registries set out in the Schedule.
 - (2) Notwithstanding paragraph (1), where a transaction cannot be carried out using the electronic registration system, the person seeking to carry out the transaction shall carry out the transaction through such other means as the Chief Land Registrar may determine.
 - (3) The Chief Land Registrar may refuse to process a registry transaction if the person seeking to carry out the registry transaction under paragraph (1) —
 - (a) fails to properly complete the prescribed form in accordance with the instructions contained in the form;
 - (b) fails to attach a document or provide the information in a prescribed form; or

Citation.

Application.

Interpretation.

Electronic registry system.

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(c) fails to pay the prescribed fee.

(4) The Chief Land Registrar may by electronic means on the electronic registry system—

- (a) issue a notice, certificate or document which is required to be issued by the Registrar under the Act;
- (b) certify a form, document or extract of a document required to be certified by the Registrar under the Act; or
- (c) send any document issued or certified by the Registrar to the electronic addresses provided by a user for that purpose.

5. A person who wishes to be registered as a user shall apply to the Chief Land Registrar in the prescribed form.

Registration as a user of the system

6. (1) The Chief Land Registrar shall consider an application made under regulation 5 and may approve or refuse to approve a person as a user.

User Agreement.

(2) The Chief Land Registrar shall determine, in writing, and avail to the public the user requirements and the terms and conditions.

(3) The Chief Land Registrar shall not approve an application under paragraph (1) unless the applicant has entered into a user agreement which includes an obligation on the user to comply with the requirements.

(4) The Chief Land Registrar shall verify—

- (a) the identity of an individual applicant;
- (b) in the case of a partnership, the identity of the person or persons signing the user agreement on behalf of the partnership;
- (c) in the case of a body corporate, the identity of the person or persons signing or witnessing the affixing of the seal on behalf of the body corporate; or
- (d) the identity of a power of attorney appointed to sign the user agreement.

(5) The Chief Land Registrar may impose such additional conditions as may be specified in an approval.

(6) The Chief Land Registrar may at any time by notice, in writing, vary or revoke the conditions specified in an approval.

(7) A user shall comply with the user requirements and terms and conditions of approval.

7. (1) A user shall—

Obligations of users.

- (a) carry out authorized transactions;
- (b) complete such formalities as are required to become a registered user before accessing the system;
- (c) meet the eligibility criteria at all times;
- (d) be responsible for the security of his or her login credentials and for any access made using the login credentials;
- (e) not distribute, sell or combine any information accessed through the system;
- (f) shall not copy, exchange, sell, disclose or use the land related information accessed from the system for any other purpose other than what is stated in the user agreement without prior written approval of the Cabinet Secretary.

(2) A user may—

- (a) request a change of their login credentials; or
- (b) terminate their access to the system by giving a notice.

(3) A user who has terminated their access to the system shall be bound by the obligations in paragraph (1) that relate to land information that was accessed.

8. (1) The Chief Land Registrar may restrict, suspend or terminate a user's access to the system—

Termination of user's access.

- (a) where a user has breached the terms and conditions of access;
- (b) where there is evidence of unauthorized access, by the user or by anyone using the user's login credentials, to land related information by means other than those permitted; or
- (c) in cases of fraud, identity theft, system misuse; unqualified persons accessing the system, or death of a user.

(2) The Chief Land Registrar may suspend access when investigations are being undertaken.

(3) The Chief Land Registrar shall ensure that the user cannot—

- (a) in the case of restriction, access the system other than in accordance with the restriction; or
- (b) in the case of suspension or termination, access the system.

9. (1) The Chief Land Registrar shall not terminate a user's access without notifying the user, in writing, of the intended termination.

Notice of termination.

(2) The Chief Land Registrar shall specify in the notice under paragraph (1) —

- (a) the grounds of termination;
- (b) the facts which, in the opinion of the Chief Land Registrar justify each ground of termination; and
- (c) the period within which the user shall be required to respond in the notice

(3) A notice for termination may be served by—

- (a) post, to any postal address specified in the user agreement as the user's address of service;
- (b) electronic transmission to any electronic address specified in the user agreement as the user's address of service.

(4) A user may respond to notice of termination and request the Chief Land Registrar to suspend the notice—

- (a) in writing and stating the reason why the access should not be suspended; and
- (b) served upon the Chief Land Registrar before the expiry of the notice.

(5) The Chief Land Registrar shall upon receipt of a response under paragraph (4), respond as soon as practicable explaining to the user the effects of the suspension, pending the hearing and determination of the request to suspend the notice.

(6) A suspension shall expire when—

- (a) notice of termination is withdrawn;
- (b) the user terminates the user agreement; or
- (c) so ordered by the court.

(7) The Chief Land Registrar may, if satisfied that it is no longer appropriate to terminate the agreement, withdraw the restriction, suspension or termination notice at any time before the notice expires by sending a notification to that effect to the user and inform the court of the withdrawal where the termination has been subject of an appeal pending before court.

10. (1) A person may, in writing, request the Chief Land Registrar to provide the reasons for his decision to refuse to approve the person as user, suspend, restrict or revoke the person's approval as user or attach, vary or revoke a condition to an approval.

Appeals against the decisions of the Chief Land Registrar.

(2) A person who is aggrieved by a decision may upon receipt of the grounds of the decision from the Chief Land Registrar, appeal against the decision to the Cabinet Secretary.

(3) The Cabinet Secretary shall within fourteen days of receipt of an appeal, constitute a committee comprising of the following to hear and determine the appeal—

- (a) a representative from the Ministry;
- (b) a representative of the Law Society of Kenya;
- (c) a representative of the National Land Commission;
- (d) a representative of the Council of Governors (CoG); and
- (e) any other relevant person.

(4) A person aggrieved by the decision of the committee appointed under paragraph (3) may appeal to the Environment and Land Court.

11. (1) The Chief Land Registrar may authorize a person qualified to draw and engross conveyancing documents and instruments under the Advocates Act to use the system.

Use of the system to draw and engross conveyancing documents.

(2) The authorization under paragraph (1) shall be restricted to law firms and individual licensed advocates whose firms shall clearly state the approved users.

(3) The Chief Land Registrar may authorize parties to a transaction or their appointed nominees to draw documents that do not require drawing and engrossing by an advocate.

12. (1) The forms set out in the Sixth Schedule of the Land Registration (General) Regulations, 2017 shall be authorized for use in the system subject to such modifications as the Registrar may make under regulation 87(1) of the Land Registration (General) Regulations, 2017, from time to time, to enable the use of the forms electronically, in the system.

Creation of electronic documents and instruments.

(2) A person preparing a document that gives effect to a disposition in the electronic form shall ensure that the document provides for the date and time when it takes effect.

(3) Verification and attestation of registrable instruments to be lodged for registration in the electronic registration system shall be done by a person qualified to act as an advocate.

(4) A person preparing a registrable instrument shall ensure that the instrument is serialized and has adequate security features.

13. (1) A user shall identify the type of document they want to generate and register.

Electronic generation of documents for registration.

(2) Certain fields of information such as the address, owner's name and the description of the property should be automatically prepopulated into the document from the database by the system.

(3) After preparing the document, a user shall lodge the documents electronically for registration.

14. (1) A user may lodge documents electronically for the purposes of registration in the forms with such modifications as may be made by the Registrar under regulation 87(1) of the Land Registration (General) Regulations, 2017, from time to time, to enable the use of the forms electronically.

Lodging of documents electronically for purpose of registration. LN 278 of 2017.

(2) A document or instrument lodged electronically for the purpose of registration electronically has the same effect as if the document or instrument was lodged in the form of a paper document.

(3) A user shall—

(a) populate the online forms and attach photos and other relevant documents, if required;

(b) print the form, execute and have it attested before an Advocate; and

(c) scan and upload the form(s) to the system.

(4) A user shall manually lodge documents that cannot be lodged electronically including certificates of title, which the Registrar requires the production of the original.

(5) Where valuation is required, the user shall forward the request electronically and upon receipt, the Director of Valuation shall send a notification electronically to the user indicating the date and time when the request was received.

(6) The user shall, upon the completion of valuation, assess and pay duty and other fees electronically before registration.

(7) The Registrar shall, upon successful registration or otherwise, send a notification electronically to the user.

(8) Documents bearing original signatures and seals shall be retained by the user for such period as may be specified by the Registrar.

15. A user shall make payments in respect to registration of instruments made in electronic form through the existing government payment platforms.

Payment.

16. (1) A Registrar shall access the Electronic Registry System with the authorization of the Chief Land Registrar and after verification against the Integrated Payroll and Payroll Database.

Procedure to be followed by a Registrar in the registration process.

(2) The Chief Land Registrar shall define the scope of activities of each Registrar by a predefined role, responsibility or jurisdiction matrix within the system.

(3) A Registrar shall, upon logging into the system have access to applications within the jurisdiction predefined in paragraph (2).

(4) A Registrar shall be required to process all applications within the predefined jurisdiction within the period specified.

(5) A Registrar shall, for the purposes of processing the applications, rely on the documentation and data available within the system and may, where necessary, refer to the backup of manual records.

(6) Upon completion of processing, the Registrar shall make available to applicants the results of their applications electronically within the dashboards of the applicants while ensuring confidentiality and protection of privacy of the applicants.

(7) All electronic documents submitted to the Registrar for processing shall be stored within a document management system and made available for reference within the system for future reference.

17. The Registrar shall electronically enter, note, record or register in respect of land any matter required by the Act or any other law to be entered, noted, recorded or registered in respect of land.

Recording or registration of electronic documents in the register.

18. (1) A person shall access information maintained electronically through a search via an online platform.

Public access to information maintained electronically.

(2) A person may, under paragraph (1) undertake the following categories of searches—

- (a) a current status search of which the result from the search shall include the ownership, size, encumbrances, inhibitions, unregistered dealings and payment of land rent for that parcel of land; or
- (b) a historical search of which the result shall provide a history of computer folio and list all transactions that should be availed in a chronological order together with the status and status date for each entry.

(2) A person shall not access information maintained electronically without a user agreement.

19. (1) The Cabinet Secretary and the officers of the Ministry responsible for lands shall not, except to the extent specified in the Act, make any express or implied warranty with respect to the accuracy, completeness, merchantability or fitness for a particular purpose of the land related information.

Limitation of liability.

(2) Except as provided under the Act, the Cabinet Secretary or the officers of the Ministry responsible for land shall be liable to a user or any other person or entity for any direct, indirect or consequential damages whatsoever as a result of using the system or the land related information.

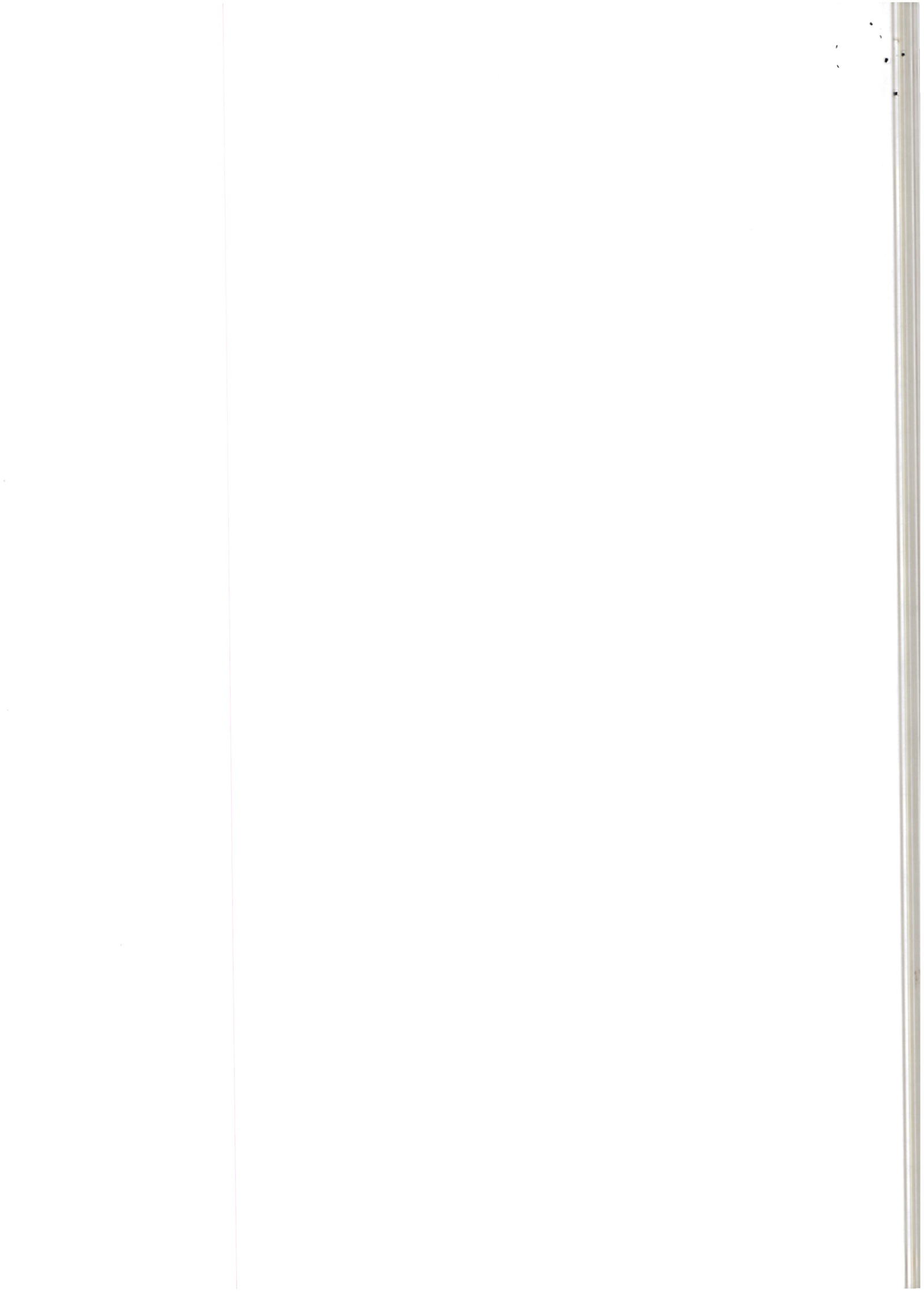
SCHEDULE

(r.2)

REGISTRIES TO WHICH THESE REGULATIONS SHALL APPLY

1. Nairobi Land Registry

FARIDA KARONEY,
Cabinet Secretary for Lands and Physical Planning.



EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS, 2019- LEGAL NOTICE NO.101

PART I

Name of the Statutory Instrument	The Land Registration (Electronic Land Transactions) Regulations, 2019
Name of the parent Act	The Land Registration Act, 2012
Enacted Pursuant to	Section 110 of the Land Registration Act, 2012
Name of the Ministry	Ministry of Lands and Physical Planning
Gazetted on	June 28, 2019
Tabled on	

PART II

1. Purpose of the Statutory Instrument

These Regulations provide for procedure of conducting electronic land transactions in all land registries where an electronic registry system is maintained.

The Regulations also seek to provide for electronic submission and registration of documents having regard to the Advocates Act (Cap. 16) and the Kenya Information and Communications (Amendment) Act (No. 41A of 2013)

2. Legislative Context

The need for land reforms arose from a long history of inefficient and ineffective land administration and governance system. These challenges led to insecurity of tenure, excessive fragmentation and degradation. The entrenchment of the land issues into the Constitution and the adoption of the National Land Policy set the stage for the process of comprehensive land reforms to take place.

The Constitution details the land policy principles which must be adhered to when holding and managing land. Among the national land policy principles are equity, efficiency, security of tenure, sustainable and productive management of land resources, transparency and cost effective administration of land and conservation of ecologically sensitive areas.

Section 6 of the Land Act requires the Cabinet Secretary, Lands and Physical Planning to coordinate the development and implementation of a National Land Information System with the National Land Commission.

Section 7 of the Land Registration Act makes provision for establishment of a land register to be maintained in each land registration unit in the form to be determined by the Cabinet Secretary. Further, **Section 9** requires the Registrar to maintain the register and any document required to be kept under the Act in a secure, accessible and reliable format including electronic files and an integrated land resource register. **Section 10** requires the Registrar to make information in the register accessible to the public by electronic means or other means as the Chief Land Registrar may reasonably prescribe. **Section 110** empowers the Cabinet Secretary to make regulations for the better carrying into effect the provisions of the Act.

Article 35 of the Constitution states that every citizen has a right to information held by the State or any other person which is required for the exercise or protection of any fundamental freedoms.

Under the Access to Information Act, **Section 5** of the Act requires public entities to hold relevant information in electronic form. The Act gave public entities a grace period of twelve (12) months following its enactment in October, 2016 to put the provisions of the Act into effect.

3. Policy Background

The formulation of a comprehensive National Land Policy (Sessional Paper No. 3 of 2009) set the tone to guide the country towards a sustainable and equitable use of land. The policy addresses issues of land management in Kenya and particularly recognized the need to improve the quality of land information through computerization both at the national and local levels. This is because land information in Kenya is currently manually held thus occasioning inefficiency, delay, fraud, loss of revenue etc. Section 3.5.6 (a) of the policy in particular prescribes the establishment of national guidelines on land information, to govern matters such as land information standards, security, dissemination and pricing

It became necessary to put in place guidelines to facilitate electronic land registration. A Taskforce on Electronic Land Transactions, Registration, Conveyancing and other Related Activities under the Land Registration Act 2012, The Land Act, 2012, and the Community Land Act, 2016 was appointed vide

Gazette Notice No 7859 of 3rd August, 2018 by the Cabinet Secretary, Ministry of Land and Physical Planning to amongst other functions develop a draft for electronic land registration.

Consultation outcome

The Taskforce in coming up with the report did conduct extensive public participation with various stakeholders i.e. the National Land Commission, Council of Governors, Law Society of Kenya, Institution of Surveyors of Kenya, Kenya Institute of Planners TCPAK, Kenya Properties Developers Association, Kenya Bankers Association, Land Development Governance Institute etc. Consultations with the members of the public in all regions of the country were also conducted.

Regulations will be applied in a phased manner with respect to registries whose records have been computerized. Customers will be given sufficient notice of this roll out.

4. Guidance

There is going to be need to engage with the users and the enforcement agency involved in the application of these regulations. These regulations being new in many aspects will need to be brought to the attention of the public and users through mass media and other forms. More importantly, the office of the Chief Land Registrar and all involved in registration of interest in land services will need to be educated of the changes wrought by these regulations. The Cabinet Secretary plans to embark on this process by rolling out a program immediately these regulations come into force.

5. Impact

5.1. The Impact on Fundamental Rights and Freedoms

These regulations have been formulated in conformity with the Constitution of Kenya, 2010 and within powers conferred to the Cabinet Secretary under the Land Registration Act. The fundamental rights and freedoms as are spelled out in the constitution have therefore not been interfered with in any way. On the contrary, the right to own and protection to property has been buttressed by way of an effective and efficient land information system. A positive impact in the form of protecting property will yield since it is expected that the runaway fraudulent activities will be arrested courtesy of the information system.

5.2. The impact on the private sector

Going by the response and support received from the private sector during the formulation process of these regulations it is expected that the application thereof will create a positive impact on the private sector. The keeping of information in electronic format allows easy access to the private sector thus enhancing business and transactions over land. The system will also reduce cases of fraud and increased security to proprietors hence a ripple effect to the country at large.

5.3. The impact on the public sector

Land being a critical sector, the public agencies vested with the responsibility of managing and enforcing these regulations have an enormous task of ensuring a positive impact envisaged by these regulations is delivered to the general public. It is expected that through land information management system, public agencies involved in land registration will be able to arrest the vices that have bedeviled the land sector in the past.

5.4. An impact assessment has not been prepared for these regulations

6. Monitoring and review

It is expected that upon application of these regulations, this country will have an effective and efficient registration system leveraging on information technology. Follow up and update of the registration system will be possible in an electronic environment.

Disclaimer

These notes act only as a guideline and as such they are not exhaustive and for clarity proper reference should be made to the main body of these regulations.