The sale of property can be formal (auctions); but it is largely informal (introduction by agents, deals between principals). Since most of these transactions are informal and what is traded are the intangible rights. There has to be a system where such rights can be protected or proved by a purchaser or other party acquiring an interest, for example, a mortgagee (lender) or leaseholder. Such proof may detail the precise boundaries of the land, the duration of the rights which exist over the property, the proprietary interest; the proprietor and so forth. This system of recording property interests is referred to as land registration. Different types of land registration are in place in different countries of the world. The hallmark of these systems is that the register is available for public inspections.

As noted in Dale and McLaughlin (1999), land registration systems provide the means for recognizing formalized property rights, and for regulating the character and transfer of these rights. Registries document certain interests in land, including information about the nature and spatial extent of these interests and the names of the individuals to whom these interest relate. They also normally record charges and liens, that is rights to retain property against debts as in mortgage, although in some countries these are held in separate registries. Also, some land registries provide documentary evidence that is necessary for resolving property disputes.

There are three main types of land registration systems. These are:

i) Private Conveyancing;
ii) Registration of Deeds; and  

iii) Registration of Title.

**Private Conveyancing:**

Under a private conveyancing system, land transactions are handled by private arrangement. Interests in land are transferred by the signing, sealing and delivery of documents between private individuals with no direct public notice, record, or supervision. The pertinent documents are held either by the individual to the transaction or by an intermediary such as a notary. In such systems, the state has little control over the registration process (save for regulating the intermediaries), and there is little if any security for errors or fraud. This system is known to be invariably slow and expensive (Dale and McLaughlin, 1999). Despite these serious limitations, notarial versions of private conveyancing are still in operation in some parts of Latin America.

i) **Registration of Deeds:**

Under a system of registration of deeds, a public repository is provided for registering documents associated with property transactions (deeds, mortgages, plans of survey and so forth). There are three basic elements in deeds registration. The logging of the time of entry of a property document and the indexing or referencing the instrument. Moreover, the archiving i.e. storing of the document or a copy thereof. 

There are many versions of deed registration system; however, they are all based on three core principles (Nichols, 1993), which are:

1) **Security** – registration of a document in a public office provides some measure of security against loss, destruction, or fraud.

2) **Evidence** – registered documents can be used as evidence in support of a claim to a property interest (although they cannot provide an assurance of title).
3) **Notice and priority** – registration of a document gives public notice that a property transaction has occurred and, with exceptions, the time of registration provides a priority claim.

Such authors have documented the limitations of this system as Simpson (1979). Deeds Registration provide a means for registering title documents only; it does not register title to a property. Registration is often not compulsory and, as a general rule, many rights are not registered. Reviewing and assessing all the documents required to determine the validity of a claim to ownership can often be extremely tedious and expensive to undertake and sometimes open to disputes (Dale and McLaughlin, 1999). The predominant system of land registration in Nigeria today. Each State of the Federation has its own Land Instruments Registration Law (Imhanobe, 2007).

**ii) Registration of Title:**

In this type of system, the register describes the current property ownership and the outstanding charges and liens. Here, registration is usually compulsory, and the state plays an active role in examining and warranting transactions. In most climes where it is in place, the entry in the register becomes the proof of ownership. In fact, in most cases, title, once issued, is irreversible. If someone with a better claim to the land emerges and establishes his claim he does not recover ‘his’ property but rather has a remedy against the state in indemnity (Burdon, 1998).

There are various types of title registration system; the best known is that introduced by Sir Robert Torrens in Australia in the later half of the nineteenth century. The Torrens registration system is based on three well known principles:
1) The mirror principle – the register reflects accurately and completely the current state of title; hence there is a need to look elsewhere for proof of title.

2) The curtain principle – the register is the sole source of title information. In effect a curtain is drawn blocking out all former transactions; there is no need to go beyond the current record to review historical document.

3) The insurance principle – the state handles the veracity of the register and for providing compensation in the case of errors or omissions, thus providing financial security for the owners.

Title registration systems represented a significant improvement over the rudimentary deeds registration systems. However, these title registration systems have been criticized for being often too expensive and cumbersome to implement and also for the length of time required for state examination and approval of the title and survey evidence. Some overriding interests that are not specifically registered gradually diminishes the significance of the mirror principle. The details on the title certificate do not reflect all the rights as they exist on ground (Dale and McLaughlin, 1999).

The title registration system is unfortunately not popular in Nigeria. It was operated only in some parts of the old colony of Lagos. These include the present day Lagos Island, Victoria Island, Apapa, Ikoyi, Yaba, Surulere and part of Mushin (Imhanobe, 2007). Despite this, registration of titles is still valid under our Laws.
Land Registration System in Nigeria:
As noted earlier, land instruments registration is the predominant land registration system in Nigeria. The Land Registration Act No 36 of 1924 as variously amended is the major law regulating land registration in Nigeria, and it has been adopted and re-enacted in most states under different nomenclatures (Nuhu, 2009). The Land Instruments Registration Laws of the various states and the federation have been expressly ratified by S. 48 of the Land Use Act of 1978 to the extent of their conformity with the Act. Also, S. 315(5)(d) of the 1999 Constitution provides for the sanctity of the Land Use Act. The Constitution, thus, gave the Land Use Act a strong footing.

These laws prescribe for the establishment of a land registry in the respective states under a land registrar charged with the responsibilities of registering instruments affecting land in the state and to keep registered books and files in relation thereto (ibid).

The Land Registration Act (1924) defines a registrable instrument as a document affecting land whereby one party called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right, title or interest in land. These include a certificate of purchase, deed of assignment, power of attorney as it relates to interest in land, deed of mortgage, instrument creating equitable mortgage is registrable as an estate contract, and so forth but does not include a will.

The Estate Surveyor as the Land Officer:
S. 2(3)(a) of the Land Use Act, 1978 provides for not less than two persons possessing qualifications approved for appointment to the public service as Estate Surveyors or Land Officers; and who have had such qualifications for not less than five years; as members of the Land Use and Allocation Committee. The or used here i.e. estate surveyors or land officers should be read conjunctively.
Grammatically, “or” is used in a disjunctive sense to connote alternative. To A or B means to one of the two alternatively, but where the context admits “or” may be construed conjunctively. This is the case in Federal Steam Navigation Con. V Department of Trade (1974) 2 All E. R. 97 Lord Wilberforce said:

“In logic, no rule requires that “or” should carry an exclusive force. Where it does so depends on the context.”

To avoid the possibility of “or” being interpreted in the conjunctive “or” should always be added the word “either” to precede “or.” For example, “to either A or B”. Thus, under this S. 2(3)(a) of the Land Use Act, “or” is intended conjunctively. This denotes a union or a “marriage” of the estate surveyor and land officer i.e. meaning that the estate surveyor is the land officer. The view canvassed here is that the use of estate surveyor here is intended to define clearly the term “land officer,” which has been used in previous enactments.

Preparation of Title Instruments by and Estate Surveyor:
The Black’s Law Dictionary defines a draftsman as anyone who frames a legal document e.g. a deed of conveyance. From this, it would appear that anyone can prepare a legal document or an instrument of title. However, S. 22(1)(d) of the Legal Practitioners Act Cap 207 LFN specifically indicts any other person than a legal practitioner who prepares for or in expectation of reward any instrument to immovable property. Such person shall on conviction be liable to a fine of N200 or two years imprisonment. S. 22(6) of the same Act renders such instrument, and the transfer of title intended void ab initio.

On the hand, S. 22(3)(b) of the said Legal Practitioners Act permits a person other than a legal practitioner to draw up the title instrument in respect of a property in which he has an interest, including interest as a personal representative. The estate surveyor acts as an agent to property interest holders. The Black’s Law Dictionary defines an agent as a person authorized by another (principal) to act for
or in place of him. An agent here can be taken to mean a **personal representative**. The estate surveyor, while acting in his capacity as an agent would not fall foul of the law if he draws up or prepares the instrument of title for the property in which he is a personal representative. The assertion and the view canvassed here is that the estate surveyor as an agent is legally permitted to draw up the title document for the transfer of title in the property transaction. This is where he represents the owner i.e. the principal, even for a fee. However, it is advised that the estate surveyor in his capacity as an agent does this in conjunction with a lawyer.

**Preparation of Title Document:**

From the above, it has been shown that the estate surveyor can prepare title documents in his capacity as an agent. It is thus, important that he be conversant with the various stages of the preparation of title document. For clarity, the stages in the preparation or drafting a title document can be discussed under the following five heads, namely:

a) **Consultation:** This includes taking and understanding instructions from the client.

b) **Analysis:** The proposed draft should be analysed about the existing laws and practicability

c) **Design:** This is the general outline that helps in visualizing the shape or content of the final document.

d) **Composition:** This stage is the most tasking and requires much concentration. However, if the entire process has been followed logically from the beginning the task of composing the draft is easier, use of standard precedents makes this even easier.
e) **Scrutiny:** The draftsman is expected to have checked and re-checked the drafts in previous stages. An independent eye, preferably a legal practitioner, should be engaged to have a critical look at the draft.

**The Essentials of Title Documents:**

As stated earlier, title documents are those instruments necessary for establishing or for conveying good title e.g. deed. Broadly speaking, a deed can be divided into four parts namely:

1) **Introductory Part:** Consists of preliminary matters such as the commencement, date, parties and recitals i.e. background to the transaction.

2) **Operative Part:** This starts with the testatum and it provides for other important clauses such as the consideration, receipt clause, covenant for title and so forth. This part of the document that transfers the interest from the transferor to the transferee.

3) **Miscellaneous Clauses:** These include such clauses as the indemnity clause, acknowledgement for safe custody and production clause and other clauses depending on the transaction.

4) **Concluding Part:** This starts with the testimonium and provides for the schedule (if any), the execution and attestation clauses.

When drafting the deed, each part starts with words written in capital letters (Imhanobe, 2007).

Execution of a deed requires that it be “signed, sealed and delivered.”

a) **Signature:** The combined effect of Section 91(4) and 100 of the Evidence Act is that unless the maker signs the document, it is not binding on him. The capacity of the parties (individuals, illiterates, blind persons, companies, attorneys) is
important in the mode of execution. For instance, companies are required to affix their common seal.

b) **Seal:** At common law the fixture of a seal on a deed was compulsory. The law now is that the deed is presumed to be valid provided there be an intention to affix a seal. This intention is from the act of signing and attesting the deed (S. 127 of the Evidence Act). However, this principle of presumption of seal does not apply to documents executed by companies, which must apply the company seal (S. 74 of Companies and Allied Matters Act).

c) **Delivery:** In conveyancing “delivery” is used in a technical sense to mean intention to be bound and not the grammatical meaning of handing over. Like the signature, it is very vital to the validity of a deed. Until delivery, deed is inoperative, and it takes effect not necessarily form the date at the top but from the date of its delivery. Delivery is signified by the passing of an interest or right and not by the parting with the physical possession of the deed itself. See *Awojugbagbe v Chinukwe* (1995) 4 S.C.N.J. 162.

d) **Attestation:** Attestation means witnessing of the deed. A deed is valid whether attested or not. However, it is wise to attest as it may facilitate proof of execution if necessary (See S. 126 of the Evidence Act). Also under S. 8(1) of the Land (Instruments) Registration Act. An instrument by an illiterate would not be accepted for registration unless it has an illiterate jurat. Also, if a deed executed outside the country for the purposes of conferring power of attorney to execute a deed, it should be attested to by a Notary Public. See S. 118 of Evidence Act.

**Completion:**
Imhanobe (2007) noted that this is the final stage in the chain of events that started with the contract. This shows that the purchaser has accepted the title offered by the vendor. After this, the conveyance is completed. The main features of the completion stage are:
- the payment of any balance of purchase money;
- the execution of the conveyance;
- delivery of title document; and
- the purchaser acquire legal title.

**Perfection of Title:**
After completion, the vendor is presumably discharged. However, the purchaser will still have a couple of things to do to ensure compliance with relevant statutes and protect the validity of his acquired title. This is the post completion stage or perfection of title in legal terminology. It includes Stamping, Governor’s Consent and Registration.

a) **Stamping:**
S. 22 of the Stamp Duty Act provides that a conveyance must be stamped ad valoren within thirty days of first execution. In practice, documents are submitted to the Stamp Duty Commissioner of the State where the land is situated for assessment and payment. S. 23(1)(3) of the Stamp Duty Act provides for penalty where document is stamped outside thirty days.

There are two consequences of failure to stamp a document:

i) The document will not be accepted for registration; and

ii) It cannot be tendered in evidence to prove title. See Da Rocha v Hussain (1958) SCNLR 280.

b) **Governor’s Consent:**
S. 22 of the Land Use Act makes it mandatory for the holder of right of occupancy to seek and obtain the consent of the Governor before alienating his interest in land. Otherwise, the transaction is void. The Supreme Court followed this line of thought in *Savannah Bank (Nig) Ltd v Ajilo* (1989) INWLR 305. However, in *Awojugbagbe Light Industries v Chinukwe* (1995) 4 NWLR 379, the Supreme Court reversed itself. The position of the law now is that the transaction is inchoate and not void.

c) **Registration:**

S. 2 of the Land Instrument Registration Law (Lagos) is similar to that of other states and the federation. It defines an instrument as a document affecting land in Nigeria by which one party confers, transfers, limits, charges, or extinguishes in favour of another party any right or title to, or interest in land. It includes a certificate of purchaser and a power of attorney under which any instrument for registration.

The purpose of registering instruments is to prevent fraud and problems arising from the suppression or omission of instruments when title is deduced (Imhanobe, 2007). However, **S. 25 of the Land Instrument Registration Law (Lagos) provides that registration will not cure defects in title.** In practice, the application for consent and registration will usually go together, the applicant shall deliver copies of the instrument duly stamped to Registrar of Deeds for registration.

The consequences of non-registration of an instrument are as follows:

i) Under S. 15 of the Land Instrument Registration Law, the instrument cannot be admitted in evidence or pleaded in court to prove title. Nevertheless, an unregistered instrument is admissible to show the exercise of an act of ownership.
ii) Under S. 16 of the Land Instrument Registration Law, instruments take priority in accordance to the date of registration.

In *Nsiegbe v Mgbemena* (2007) 10 NWLR 364, the Supreme Court held that:

“A purchaser of land who has paid and taken possession by virtue of a registrable instrument that has not been registered has thereby acquired an equitable interest that is as good as a legal estate. In other words, the possession of a receipt by a party for payment for the sale of land and the possession of the land by the party raises equitable interest. This may be converted into a legal estate by specific performance. The equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity.”

The procedure for perfecting instruments in Nigeria is usually very cumbersome because of the delays in obtaining the Governor’s Consent and the associated bureaucracy. This has caused untold hardship to purchasers, their solicitors, and agents. A way around this which is very common is practice is that a Power of Attorney is prepared and executed alongside with the Deed of Assignment or other transfer instruments. This kind of Power of Attorney does not require the Governor’s Consent for registration. When registered, it serves as notice to the whole world of the existence of the purchaser’s interest pending Governor’s Consent and registration of the transfer instrument.

**The Role of the Estate Surveyor:**

As noted above, the Estate Surveyor and Valuer is the land, officer. He is a person who possesses the necessary qualifications in land administration, ability and experience to deal with issues arising from the preparation and registration of title documents. He is a member of the Nigerian Institution of Estate Surveyors and
Valuers. He is expected to adhere to the objectives and corporate mission of the Institution; especially to maintain a high and reputable standard of professional conduct and practice in all landed transactions.

The Estate Surveyor should at all times maintain high standard of honesty and integrity and conduct his professional activities while representing clients in the preparation and registration of title documents. Moreover, this should be in a manner not detrimental to his clients, the general public, and the profession. In other words, he must comply with all existing laws and rules about land registration, must not develop a draft document on the bases of falsehood, inaccuracy, or biased opinions and analysis.

The Estate Surveyor must deal with his client’s affair with due discretion and confidentiality. He must perform his assignment with the strictest independence and impartiality and without accommodation of personal interest. He should act promptly and efficiently in carrying out the client’s instructions. Moreover, should keep the client informed of progress and where circumstance may preclude sufficient diligent enquiry, quality of work, and completion within a reasonable time, instructions should be declined.

**The Role of the Institution:**

The Nigerian Institution of Estate Surveyors and Valuers, as the only body for land professionals and administrators, should continue to make the profession better known and recognized. So that the general public continue to utilize the skills of its members in arrears of preparation and registration of title documents. The Institution should continue to trains and re-train its members through this type of Mandatory Continuing Professional Development (MCPD) programme in order attain to the required standards.
The Institution has to set standards of practice in this area of preparation of registration title documents especially for probationers and graduate members to receive supervised practical training prior their becoming corporate members. As a follow-up to this, the Institution has to ensure that the set standards of practice and codes of conduct are enforced.

The Institution will also need to liaise and maintain contact with the governments of the day and their agencies for the purposes of contributing to the development of policies. Moreover, also advice on landed matters on which it is in a good stead to do.

**Concluding Remarks:**
Land registries are perceived as complex and archaic operations that are “captive” to the property professional who work with them (Stigler 1971). Also, land registration systems have traditionally had little influence on land or economic policy and have provided little opportunity for serious revenue collection (Dale and McLaughlin 1999). This has to change especially with the recent Presidential Mandate to the Federal Ministry of Housing and Urban Development:

> “Promote the modernization, computerization and human resources development of land registries throughout the country ….” Obasanjo, 2003

Computerization allows for the traditional process of gathering, storing, retrieving, and disseminating land related data to be undertaken more quickly. Some states have commenced with the process of computerizing their land registries. It is highly recommended not only because of greater efficiency but also for opportunities to exploit the data in a wide range of applications.

The ultimate responsibility for land instruments registration in particular and land administration in general lies with the government. However, there is insufficient
capacity in the public sector for the government to undertake all aspects of the creation and maintenance of the land administration functions. The private sector i.e. the private Estate Surveyor can play a significant role in the day-to-day functioning of the system. The technical processes of inspection and valuation should be outsourced to the private sector for quick and precision delivery.

References:


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