

# Land Registration

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# Introduction

- Land registration is the **official, systematic** process of managing information about **land tenure**( owner, rights, value, use etc)
- It refers to a record created and **maintained by the state**, rather than by **private enterprise**, it may be **publicly accessible**, to a greater or lesser extent, and the state may guarantee its accuracy.
- process of recording **legally recognized** interests (ownership and/or use) in land (McLaughlin/Nichols 1989).
- Land registration is a process of official recording of rights in land through deeds or as title on properties.

# Land registration



Land Registration:

process of **official recording of rights in land** (Who & How)

# Land registration

## Why land Registration ?

- without registration **complex transactions rather risky**; land market **not very active**
- registration system **reduces uncertainty**, (especially the uncertainty of land market)
- Means for recognizing **formalized property rights**
- Regulating character and transfer of rights

# Principles of Land Registration

- booking principle

- Change in right gets effective only after booking
- implies that a change in real rights on an immovable property, especially by transfer, is not legally effectuated (*put into force or operation*) until the change or the expected right is booked or registered in the land register.

- consent principle

- change in right is possible only after the permission of existing right owner
- implies that the real entitled person who is booked as such in the register must give his consent for a change of the inscription (*a thing inscribed, as on a monument or in a book*) in the land register.

# Contd...

- principle of publicity
  - register is publicly open for interested third party for good faith
  - Tied to the third party effect
  - The publicity principle is concerned with the accessibility of information on real rights by third parties
  - implies that the legal registers are open for public inspection.
  - and also that the published facts can be upheld as being more or less correct by third parties in good faith, so that they can be protected by law.
  - Concerning the public inspection, it can be remarked that in various countries the land register is open for inspection whether by anybody who wishes to do so (The Netherlands, Belgium, France)

# Contd...

- principle of speciality (specificity) of Principle of determination
  - parcel and owner are unambiguously identified
  - implies that in land registration, and consequently in the documents submitted for registration, the concerned subject (man) and object (i.e. real property) must be unambiguously identified. (Austria, Estonia, Slovenia)

# Type of Land Registration Systems

- Oral agreement
- Private Conveyancing
  - transaction is **not legally recorded** / registered
  - It is a system in which a **seller and buyer exchange documents** without reference to **any public register** and it **does not** provide any **information to the state**. Hence it is considered as an **inefficient and insecure system** but it is still in practice in many parts of Latin America (Dale and MC Laughlin, 2000)
  - Private conveyancing is generally regarded as inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the vendor is the true owner.



# Types of Transaction Evidence

- Deed Registration
  - The transaction is **officially recorded** but does not ensure its **legal consequence**
  - Under a system of *registration of deeds*) a **copy of the transfer document** is deposited in a **deeds registry**. (recognized by the state).
  - A copy of all agreements that affect the **ownership and possession of the land must be registered** at the registry offices and one copy of all documents is retained.
  - Each document will normally have been **checked by a notary or authorized lawyer** and its validity ascertained
  - Inspection of the register will show how the vendor (seller) obtained the property and the conditions under which it was acquired.

Contd....

Witness  
(3<sup>rd</sup>  
Person)

Official  
Verification

Buyer's and  
Seller's  
Agreement

Land status-  
type/value/  
use

Verification  
Proof

Fig : Deed

# Deed Registration

- As compared to private conveyancing
  - Security
  - evidence
  - notice and priority
- legal documents are registered
- public repository of documents (deeds, survey plans)
- elements
  - logging of time (provide the complete history of how parcel was passed)
  - Indexing
  - archiving of document or copy

# Deed Registration

## Improvements:

- **better records** management
- standardization of **forms and procedures**
- realistic/flexible **survey standards**
- partial / sampling examination of documents
- compulsory registration

## Limitations

- Documents are in **poor physical state**, difficult to **retrieve** and even more **difficult to link into a chain of titles** tracing the pattern of ownership over time.
- No legal consequences

# Title Registration

- The transaction is **officially recorded**, legal consequences are ensured and **state guarantee is ensured**
- In this system each land parcel is **identified on a map** and the rights associated with it are recorded on the register.
- overcome defects of registration of deeds
- **simplify** process of **transaction**
- the register describes current property
- compulsory, examination, warranty
- register becomes '**proof of ownership**'
- State **takes responsibility** in case of any consequences regarding the land.

# Principles of Title Registration

- ‘mirror principle’
  - the register is supposed to reflect the correct legal situation
  - the register reflects (mirrors) accurately and completely all current facts about a person’s title.
- ‘curtain principle’
  - no further (historical) investigation beyond the register is necessary
  - the register contains all the information about the title, a historical search behind the register to verify that the title is good is unnecessary.
- ‘insurance or guarantee principle’
  - the state guarantees what is registered is true for third parties in good faith and that a bonafide (rightful) claimant who is contradicted by the register is compensated by the state.
  - provides compensation for loss of rights if there are errors made by the Registrar of Titles

# Title Registration

- Demerits:

- **expensive** and **cumbersome** to implement (and for govern. to run)
- often involvement needed of (expensive) **private practitioners**, like land surveyors, lawyers/notaries, planners, valuers etc.
- time required for state examination (consume more time) and approval of title and survey (boundary)
- High accuracy instrument for survey.

# In case of Nepal ?

Type of Registration - Improved Deed system

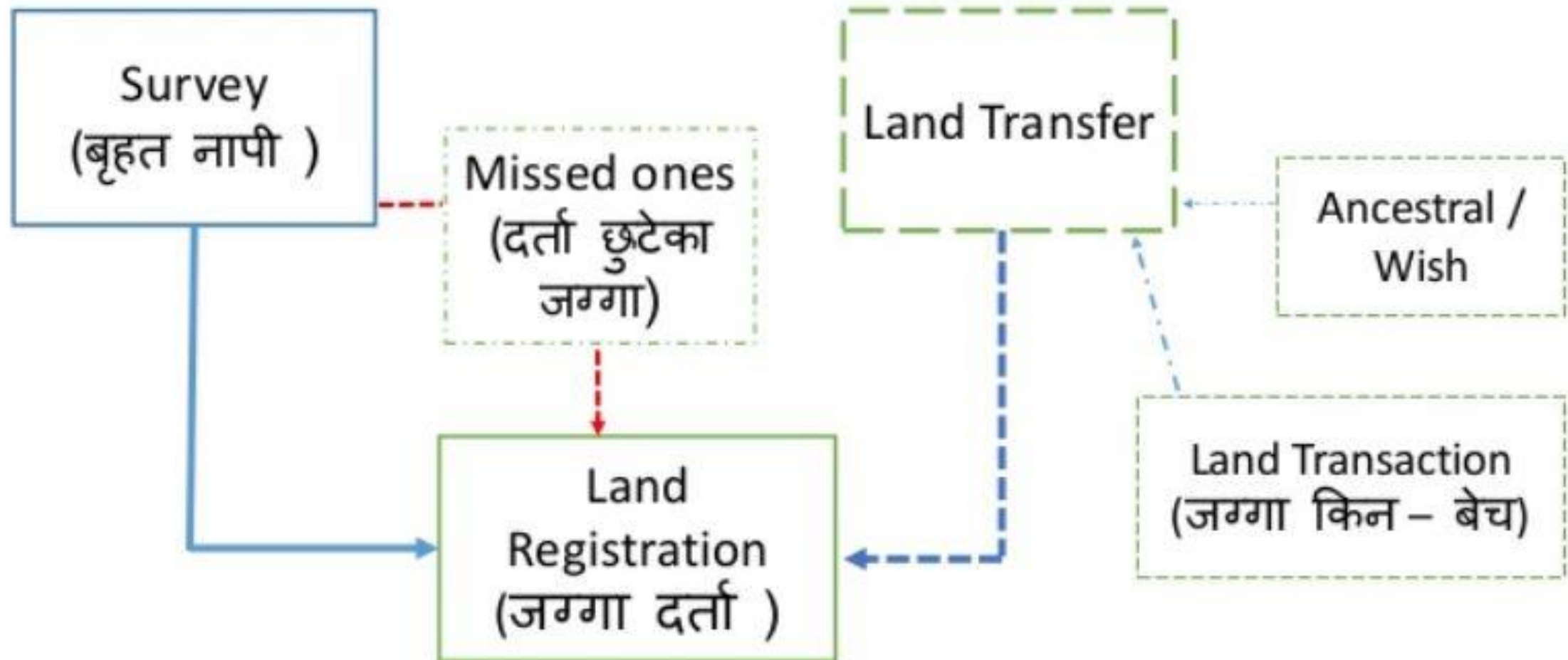
- Land Registration System-

	<b>Deed</b>	<b>Title</b>	<b>Improved Deed</b>
Owner's / Buyer's Info	Yes	Yes	Yes
Legal Guarantee	Yes	Yes	Yes
Government as Witness	Yes	Yes	Yes
Parcel No.	No	Yes	Yes
Compensation for Mistakes	No	Yes	No
Cadastral System	Analogue	Digital	Analogue



Contd...

## Land Registration vs Land Transaction



# Registration Process In Nepal Improved Deed System

CAIE AS SVPI P CCR OROCPFPCS ICCRRUIAI

## **I. Marketing**

1. Contacting real estate agent
2. Advertisement
3. Inspection of property and examining crediting options
4. Examining creditworthiness and promising for loan

## **II. Pre-contracting**

5. Agreement on conditions of sale
6. Signing pre-contract paper

## **III. Payment of revenue & obtaining valuation report & recommendation letter**

7. Submitting application
8. Verification and preparation of documents
9. Payment of revenue
10. Issuing document

## **IV. Contracting**

11. Preparation and signing of deeds

# Registration Process (Contd.)

## **V. Registration**

12. Checking deed and documents
13. Checking records
14. Registration of application (*tokan lagaune*)
15. Order for parcel sub-division
16. Registration of parcel-sub division order
17. Order to the concerning section
18. Checking deeds
19. Parcel identification and area check
20. Field verification
21. Parcel sub-division and temporary update
22. Checking parcel sub-division plan

# Registration Process (Contd.)

23. Submission of parcel sub-division plan

24. Identification of vendor and buyer  
(*Sanakhat Garaune*)

25. Checking price

26. Collection of registration fee

27. Registration in deed register

28. Registration

29. Updating record & preparation of  
ownership certificate

30. Issuing ownership certificate and  
registered deeds

31. Archiving deeds

32. Inking order

33. Inking and updating cadastral records

# Problems of Land Registration in Nepal

- Lack of integrated land policy
- Traditional, complex and cumbersome procedure
- Involvement of many organizations
- Poor management of land records
- Manual data transfer system
- Lack of one stop shopping
- Difficult to retrieve land information
- Lack of skilled manpower
- LAOs far from many parts of rural areas

# Poor recording



# Transaction cost

- **bureaucratic** and **technocratic** demands on getting a transfer finalized give extra costs:
- many **agencies** and **practitioners** involved
- expensive surveying (precision, technology)



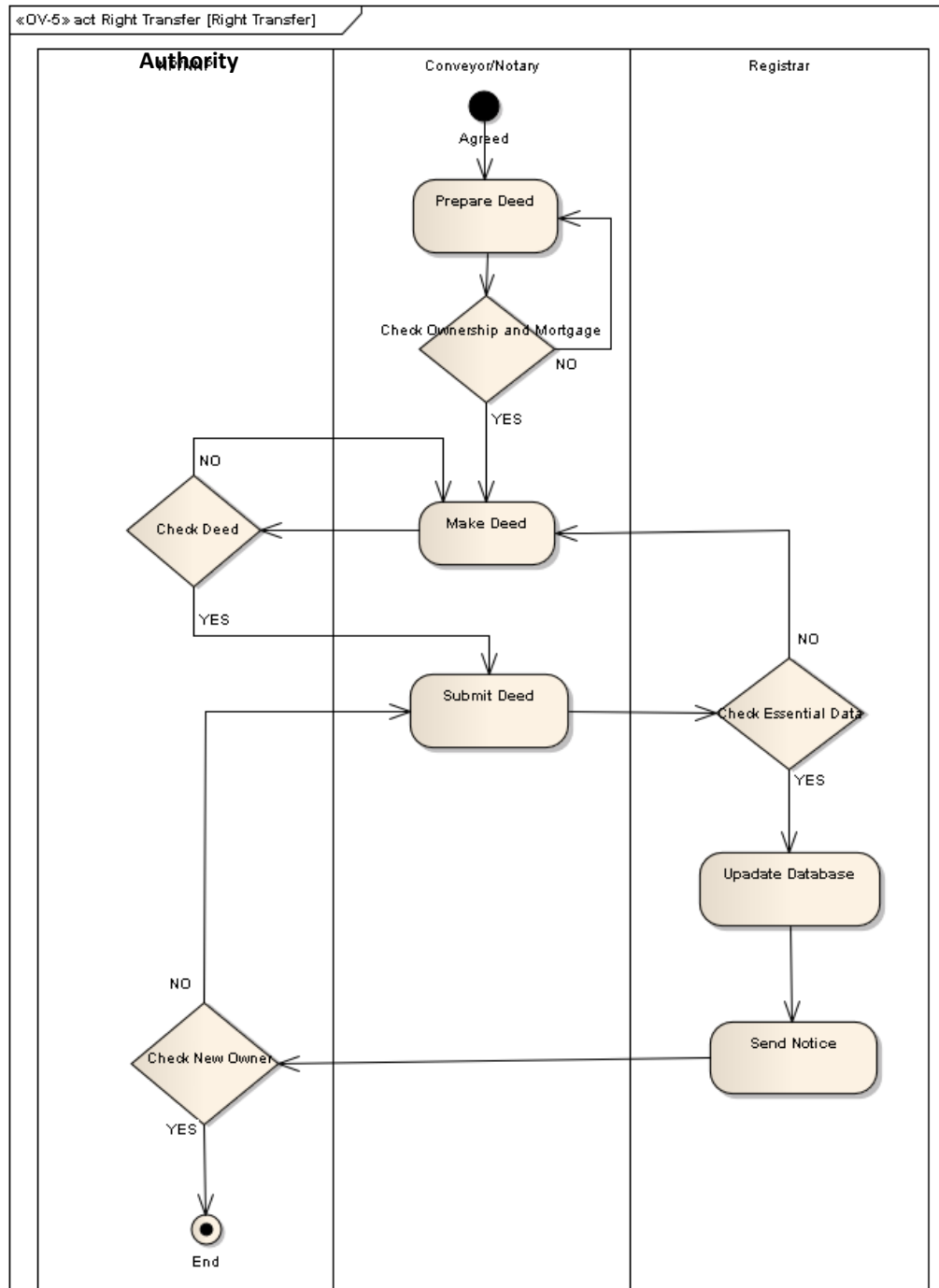


Figure : Activity diagram for Buying and Selling of land (transferring land right)



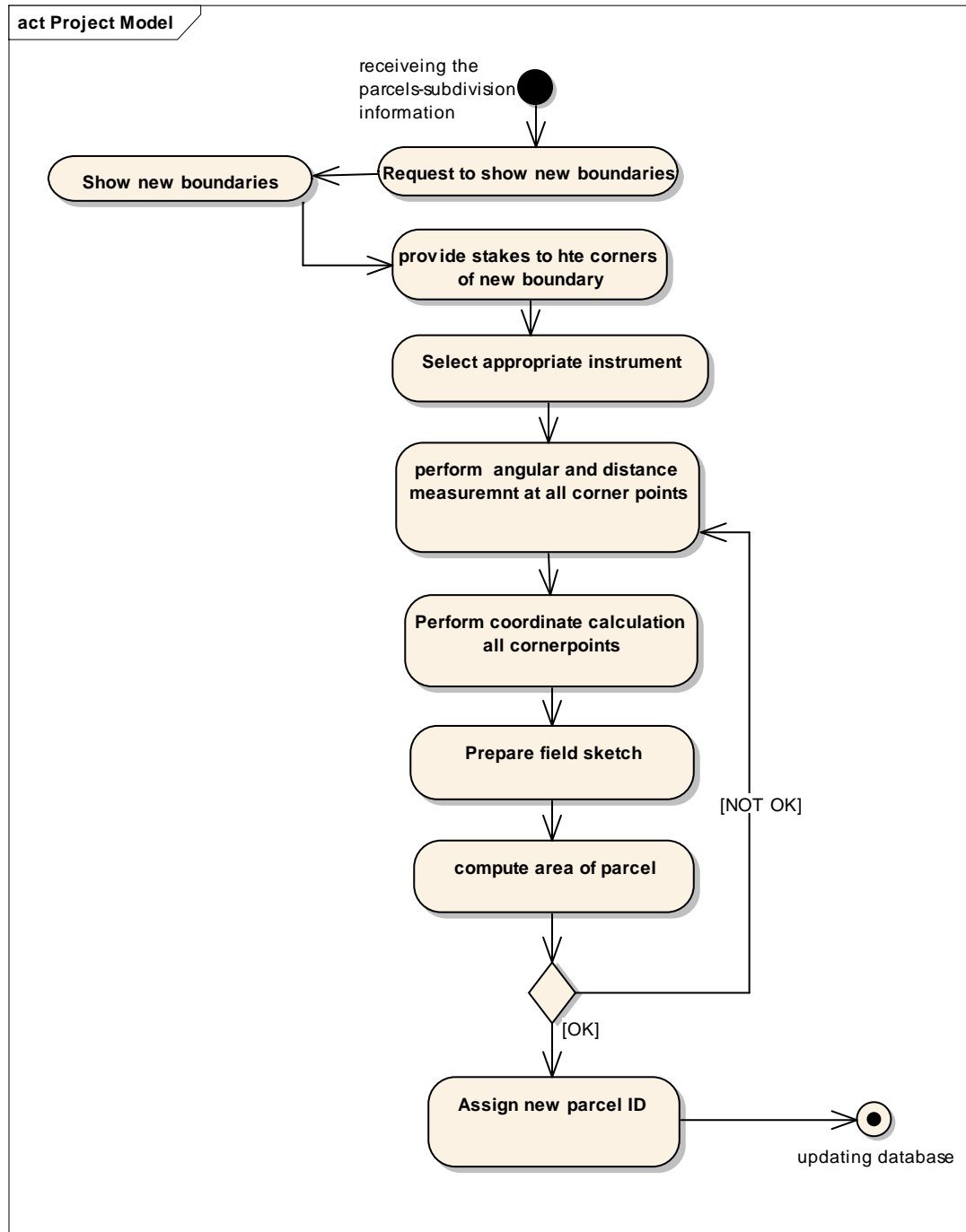


Figure : Activity diagram for parcel subdivision