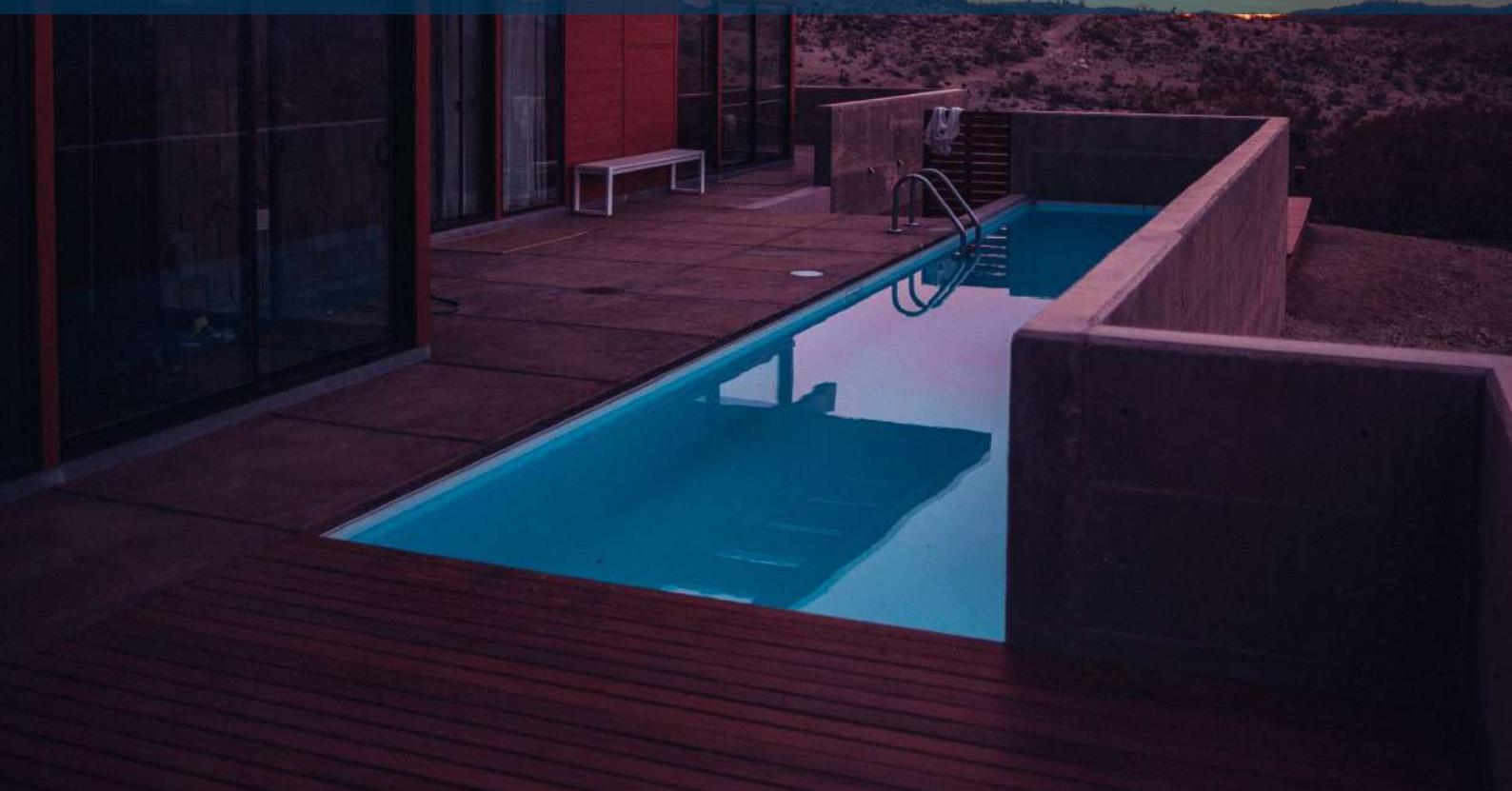




CM ADVOCATES LLP

# Property DIGEST

ISSUE 1 | MONTH 1 | MAY 2021



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OF LAND  
TITLES

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OF A  
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REAL ESTATE, BANKING  
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EXECUTIVE SUMMARY



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## REAL ESTATE BANKING AND FINANCE EXECUTIVE SUMMARY

This is one of the major Business Unit at CM Advocates LLP which mainly handle all matters relating to property and banking security documentation.

### Real Estate

The Unit handles conveyancing and all types of property-related transactions and deals including sales and purchases, leases and licenses, estate planning and administration, real estate venture transactions, construction transactions, change of user and extension of leases and banking security documentation for both local and international clients.

Being part of the larger CM Advocates team, the unit provides legal advisory services for all aspects of real estate transactions including:

- Acting for buyers and sellers in conveyancing transactions, preparation and registration of diverse documents relating to property including leases, licenses, easements, sectional property transactions, joint ventures for real estate development,

construction projects, project structuring and financing, sub-division of land, change of user, extension of leasehold titles, amalgamation, rectification of titles, processing of new titles and grants and replacement of lost titles.

- Carrying out property searches.
- Providing due diligence and forensic audit services for property-related matters.
- Application and procurement of various forms of consents for property matters and pay land rates and rents on behalf of clients.
- Preparation and registration of power of attorneys, prohibitions, restrictions, caveats, trusts relating to land, estate planning and wills & testaments.
- Attending to stamping and registration formalities related to the aforesaid transactions and advise clients on land matters generally.

- Application for stamp duty exemptions on behalf of clients as required

## **Banking and Finance**

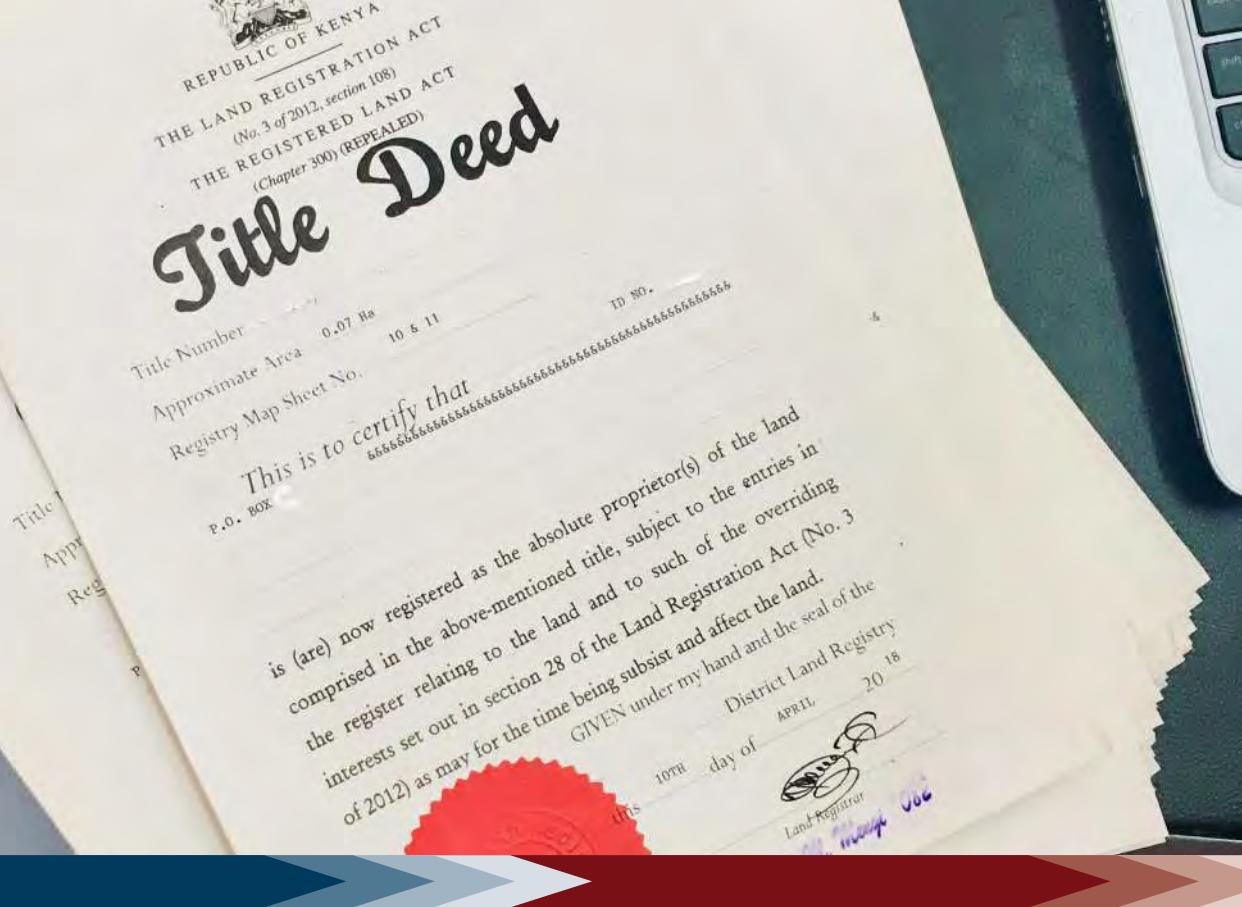
The team has vast experience in the preparation of banking security documentation including perfection of simple and complex legal charges and debentures for individuals and companies (as the case may be). The firm is also proficient in the preparation of related security documents including discharge of

charges, deeds of guarantee, deeds of assignment, deeds of priority, security sharing agreements, loan agreements, deed subordination agreements and escrow agreements.

The firm also reviews security documents for borrowers and banks/financial institutions and advises on collateral securities, debt restructuring as well as other models of raising capital such as private equity arrangement and loan syndication.



**“Marking your territory is just the first step. If you want the property, you’ll also need to put funds into escrow.”**



## CONVERSION OF LAND TITLES

### 1. ISSUES ARISING AND ANALYSIS OF THE ISSUES

- i) What is Conversion of Titles?
- ii) What is the applicable Law?
- iii) What will be the process of converting the titles?
- iv) What are the requirements for Conversion of the Land Titles?
- v) How will Conversion affect land Ownership?
- vi) How will Conversion affect interests of Banking/financial institutions as well as other interest holders, say in case of existing registered leasehold interests?
- vii) Are there any anticipated Challenges?

#### i) What is Conversion of land Titles?

This is a process of registration of current title numbers for various parcels of land under new registration units which shall result in replacement of the old title numbers with new title numbers. This process will require the development of cadastral maps and the conversion list by the Survey of Kenya. The conversion list

shall indicate the new and the old numbers for parcels of land within a registration unit or block. This process will involve a land owner surrendering their old title to the government through the Ministry of Lands. The Cadastral map which generally refers to the Registry Index Map and the survey plans, shall replace the Deep Plans used to process titles in some of the old land law regimes. Currently, the conversion process that has been kicked off, will only affect certain parcels of land within Nairobi County before the exercise is rolled out to the rest of the Country.

#### ii) What are the applicable Laws?

Article 68 of the Constitution of Kenya, 2010 is the main guiding legislation on conversion since it calls for consolidation of the various land registration regimes which were operational before the enactment of the Land Registration Act, 2012 and the Lands Act, 2012. These repealed statutes include The Indian Transfer of Property Act, 1882, the Government Lands Act (Cap 280), the Registration of Titles Act (Cap 281), the Land Titles Act (Cap 282)

and the Registered Land Act (Cap 300). Therefore, the sole purpose of the conversion is to bring all lands within the Republic of Kenya under one regime.

Section 6 of the Act, provides for the establishment of Registration Units by the Cabinet Secretary. The Cabinet Secretary in exercise of the powers conferred under this Section, vide Legal Notice no. 277 of 2017, issued the Regulations. In the said Regulations the Cabinet Secretary established a total number of 61 registration units to facilitate in the conversion process and also increased the number of land registries from 21 registries to 61 land registries.

Pursuant to Gazette Notice No. 11348 dated 31st December, 2020, the Cabinet Secretary issued a Notification of Conversion in respect of certain land reference numbers already converted within the Nairobi Land Registration Unit.

### **iii) What will be the process of converting the titles?**

The conversion process is outlined under section 6 of the Act and in regulations 4 to 9 of the Regulations.

#### *(a) Constitution of the Land Registration Units*

Under section 6 of the Act the Cabinet Secretary has the mandate to constitute the Registration units which she has done by constituting a total number of 61 registration unit in the First schedule of the Order.

#### *(b) Division of the Registration Units*

The Registration Units shall then be divided into Registration Sections identified by a distinctive name and may further be divided into blocks which shall then be given distinctive numbers or letters or a combination of both. This is to assist in the allocation of new numbers that shall replace the old land reference numbers.

#### *(c) Development of Cadastral maps and Conversion List*

This is to be done by the Survey of Kenya which

has already commenced and have so far produced cadastral maps for 23 blocks out of the total 141 blocks in Nairobi. As explained above, the Cadastral maps refer to both the survey plans and registry index maps. The registry index maps are generated from already existing survey plans.

#### *(d) Invitation of the registered Land owners to replace their titles*

Upon development of the Cadastral maps and the conversion list, the Cabinet Secretary shall within 30 days of receipt of the cadastral maps and the conversion list from the Registrar publish a notice in at least two newspapers of nationwide circulation and announce in radio stations of nationwide coverage inviting the registered land owners to make an application for the replacement of their titles.

#### *(e) Invitation to file complaints*

The Cabinet Secretary issued a directive on procedures for handling complaints, though the same did not give clear timeframes on tracking progress and/or conclusion of the conversion process. However, the Ministry has set up a complaints/customer care help desk at its headquarters at Ardhi House Nairobi as well as an FAQ section in the Ministry's website under the FAQ's tab, <https://lands.go.ke/faqs/>.

Complainants are to submit a standard form known as Form LRA 96 set out under the Regulations and annex the following:

- i) Copy of title;
  - ii) Copy of Identification documents and personal identification number (PIN); and
  - iii) Contact address and telephone number.
- Persons eligible to lodge a complaint include land owners who fear that their plot numbers may have been erroneously left out of the conversion list or in instances where parcel numbers have been wrongly stated.

#### **iv) Requirements for Conversion of the Land Titles.**

Every registered land owner shall be required to submit the following documents to facilitate the process of conversion:

- a) Application form for conversion by way of a

- standard form (Form LRA 97);
- b) Original Title document of the property;
  - c) Certified copies of the land owner's Identity documents; and
  - d) If the title is registered under a registered company, a certified copy of the Certificate of incorporation or registration as well as its director's or official copies of Identification documents.

Upon submission of the above documents the Registrar shall then issue a new title and retain the old one.

Currently titles are processed using a deed plans or registry index maps depending on the regime the property is registered under. The deed plan captures information limited to the parcel in question but not on adjacent properties as in the case of a registry index map. Where some properties might be left out in the cadastral map and the conversion list, the affected land owners will be required to register a complaint with the registrar who is required by the order to respond to such complaint within a period of 90 days.

#### **v) How will Conversion affect land Ownership or third party interest?**

Conversion will ease land management and bring efficiency in land transactions which is expected to curb the many cases of fraud, corruption and delays in processing of land ownership documents.

#### **vi) How will Conversion affect interests of Banking/financial institutions as well as other interest holders, say in case of existing registered leasehold interests?**

##### **Due diligence for new lendings**

Banks and other financial institutions should streamline their due diligence processes to ensure that even as they lend, they cross check any properties availed as security with the communicated conversion list to ensure that proper steps are taken in dealing with affected properties while undertaking the loan approval processes. They should cross check all the land titles with the cadastral map and the conversion list.

#### **Legal audit for existing loans**

Financial institutions should also note to undertake legal audit exercises to identify which of their securities are registered against affected properties. Doing this early enough will allow for them to facilitate the conversion process by the land owners to secure their interest in any charged property and regularize their securities.

The information in the old register shall be transferred to the new register and new title meaning that the interest of the financial institution will be automatically registered in the new register and the new title shall be released directly to the institution.

Other interest holders such as lessees with registered leases should also carry out an audit to confirm whether the properties they hold leases under have been listed in the existing and subsequent conversion notices. If so, then such registered leases will need to be surrendered and registered concurrently with the replacement leases.

#### **vii) Are there any anticipated Challenges?**

a) Since it is a transitional process, the practicality of the process really needs to be taken to great consideration in light of ongoing digitization processes which has already led to a lot of delays in conclusion of transactions due to unavailability of files without a clear end date. To this end, the Ministry needs to be very clear on time frames of conclusion of the conversions and processing of the new titles where applications are received as the information shared so far does not capture this.

b) The process creates a back log of various transactions given that the same is to be conducted concurrently with the digitization process which has currently almost halted the daily formalities of the registry.

c) There may be numerous complaints as a result of the conversion and land owners need to be properly sensitized on the conversion process clearly to avoid panic.

d) Challenges may also arise where affected properties also have third party interests registered thereon. These could be court orders, cautions/caveats that need to be withdrawn, bank securities, or long term leases for commercial or residential spaces. Any conversion would need all third parties to give their consent for surrender of the affected titles to facilitate issuance of new ones and to have their interests entered in the new titles.

e) Some rights such as existing court orders, cautions and restrictions existing in land registers will need to be balanced on the land owner's title, that is, the register and the land owners title should reflect each other. While this balancing of entries will cause a delay in the conversion process, some land owners who may not be aware of the existence of such encumbrances will be likely to raise objections hence further delays.

f) Some land owners may have passed on and the succession process may not have been undertaken. This may pave way for fraud should it come to the attention of adverse claimants.

g) Some land owners are in the process of change of user, extension of lease, amalgamation among other property developments. This will need a properly outlined mechanism of handling such land titles and this will also have a time implication.

h) It is not clear what the cost implication will be for the landowners to carry out the conversion, but it is clear that where properties are subject to third party interests, there will inevitably be some form of cost implication to be anticipated. Those with land rent arrears will definitely need to be cleared before the conversion can be undertaken. This is another financial implication for those with arrears.

i) It is also not clear if the conversion will lead to a re-assessment of land rent or rates payable against a property. This may be a possibility.

j) Existence of formal government application booking charges, even though nominal,

towards the application for title surrender and new title issuance process has not been communicated but should be anticipated.

## 2. CONCLUSION

The pronouncement on conversion of titles has undoubtedly caused panic among land owners but we believe the Government is committed to the success of this process as evidenced by the creation of additional land registration units and help desks to enable commencement of conversion processes. We trust that where property is genuinely owned, there will be no threat of loss of ownership or any registered interest or change of tenure of the property and all that the land owners need to do is adhere to the Government's call for conversion of the titles as this is aimed at securing their interest and ease any future transactions on the properties.

a) Land owners will be allowed to make the application for conversion simultaneously with any other dealings they are undertaking on the property that may include:- transactions directly affecting land tenure or usage, transfer of interest or registration of third party interest. Such simultaneous execution may help to reduce delays.

b) The process is transitional and therefore we trust that any pending or ongoing transactions will continue despite the formalities of the conversion process.

c) This is indeed a new creature of sorts for the legal profession as well, since charges for these kind of work are not defined under the Advocates Remuneration order. This remains to be a test of the waters to be preceded by thorough due diligence to establish title authenticity and existence of third party interests, and subsequently guided by the challenges or hurdles that may arise at a case by case basis hence dictating the time to be consumed to conclude each title exercise, being that the Ministry of Lands itself is yet to advise on clear time frames for conclusion of each exercise.



## EFFECTS OF A GUARANTEE

### A. What is a Guarantee?

A contract of guarantee is an accessory contract, by which the surety undertakes to ensure that the principal performs the principal obligations. It has been described as a contract to indemnify the Creditor upon the happening of a contingency namely the default of the principal to perform the principal obligation. The surety is therefore under a secondary obligation which is dependant upon the default of the principal and which does not arise until that point.

A guarantee can be issued by any person above the age of eighteen (18) years or by a body corporate. In most cases, directors of a company guarantee the obligations of a company whether financial or otherwise.

A personal guarantee is a continuing security meaning that there is no agreed termination or end date to the guarantee for as long as the debtor is indebted to the lender. In practice, when a debtor defaults, the creditor has discretion to pursue either the guarantor, the creditor

or both for recovery of the debt owed.

It is worth noting that if a person executed a personal guarantee to support the principal debtor's application for loan, the guarantor concerned puts all his property at risk if the principal debtor defaults. This means, the guarantor of a loan will retain his/her/its burden as guarantor, until the principal borrower clears its debt to the Creditor.

### B. What are the key features of a Guarantee?

Guarantees are contracts and therefore need to have the key elements of a contract that is an offer, acceptance, consideration and intention to be legally bound.

However, since guarantees are embodied in a deed, consideration need not pass.

A guarantee creates a personal liability on the part of the guarantor and this liability is not limited to the charged property meaning that a guarantor personal property will be on the line

and could be sold at the worst-case scenario. ***In CRDB Bank Ltd v. Issack B Mwamasika & 2 Others Civil Appeal of Tanzania No. 139 of 2017 (unreported)*** the court of Appeal in its decision stated that a bank will go after the personal assets of a guarantor should the principal borrower default and further that guarantors cannot escape the legal consequences waiting loan guarantors incase their principal debtors fails to pay their loans or default their repayment schedules.

### **C. What are the consequences of giving a personal guarantee?**

A guarantee when enforced can have negative impact on the guarantor's personal wealth and future securities. There is nothing inherently wrong with issuing a guarantee – in fact, it is a standard for most business financing – but you should have a clear understanding of the possible consequences of personal liability on business debts. A guarantor should understand the practical legal effect of the documentation and the transaction.

The following are some of the repercussions of issuing a personal guarantee:

#### **(a) Bankruptcy Order**

If the principal debtor fails to pay, then the liability of the guarantor arises. If the guarantor fails to make payment, then the creditor may file bankruptcy proceedings against the guarantor and the guarantor may be forced to sell their personal assets to repay the loan.

#### **(b) Reports to Credit Reference Bureaus (CRB)**

If the account is reported to the CRB, the debt will lower the guarantor's available credit and could make it harder to take out a personal loan.

#### **(c) Continuing Obligations**

Guarantees have a continuing obligation clause, in that the liability of the guarantor will be in force for as long as the principal debtor continues borrowing and the amounts

borrowed have not been paid. Therefore, such guarantees rarely have a termination clause. This makes it difficult for a guarantor to pull out of a guarantee.

It is plain that until that transaction is completed, there remain questions which are open for investigation before the guarantor are called upon to discharge their full obligations under the guarantee as demanded of them by the bank.

The available options for a guarantor are either to file for their own bankruptcy or get a release and discharge from the creditor.

### **D. What do you need to watch out for before issuing a personal guarantee?**

One needs to watch out for the following in a personal guarantee:

- Conformity to the basic requirements of a contract***

Ensure that the guarantee conforms to the basic requirements of a contract, such as an offer, acceptance, intention to be legally bound and that it is contained in a deed.

- Continuing Obligations***

If the guarantee creates a continuing obligation on the guarantor, it means that the guarantor will be liable not only for the current financial liabilities but also for future advances, there is therefore no agreed termination or end date to the guarantee.

If the intention is to provide security only for the current advances then ensure that there is no continuing obligation clause. As this will tie down the guarantor.

- Capacity to give Guarantee***

If it is a company giving guarantee, then it should ensure that it is empowered to guarantee loans in its Articles of Association. In addition, the company should ensure to pass a resolution approving the issuance of the corporate guarantee. However, the failure to pass or

produce this resolution would not be affect the validity of the corporate guarantee given that the lender would be protected under the indoor management rule .

- **Duress, Misrepresentation and Undue Influence**

Lenders should ensure that guarantees are not procured under duress, misrepresentation or undue influence. As a precautionary measure the guarantor should be advised to obtain independent legal advice and sign a letter of independent legal advice or confirm in the guarantee that they have obtained independent legal advice and are aware of the consequences of default on the part of the borrower.

- **Indemnity from the borrower/underlying obligor**

A guarantee automatically provides the guarantor with certain rights (such as a right to be indemnified by the underlying obligor and to marshalling). These guarantor rights may come into conflict with those of the beneficiary of the guarantee. For this reason, guarantee documents frequently exclude or restrict the application of these rights. Therefore, if a guarantor pushes to have these rights included in the guarantee, it is advisable for the guarantor to obtain an indemnity from the underlying borrower.

### **E. What defenses does a guarantor have against claims of non-fulfillment of guarantee obligation?**

A guarantor has the following defenses against claims for non-fulfilment of guarantee obligations under a guarantee:

- i. Extension of time: If the creditor affords more time to the principal borrower without the consent of the guarantor, then the guarantor stands discharged from liability;
- ii. Variation to the contract: If the loan contract between the principal borrower and the lender is amended in a way that will affect the obligation of the guarantor without his or her consent, then the guar-

antor shall stand discharged from their obligation;

- iii. Release of the debtor: this is where the creditor releases a security in respect of an outstanding debt;
- iv. Lack of consideration: if the company gives guarantee and does not receive a commercial benefit in consideration of its issuance of the guarantee, the corporate guarantor will have a defense of lack of consideration; and
- v. There are other defenses are duress, undue influence, misrepresentation and non est factum (the guarantee is fundamentally different from what the guarantor intended to execute/mistake). In the *National Bank of Kenya Ltd v. Pipeplastic Samkolit (K) Ltd [2002]2 EA 503* where it was stated:-

**"A court of law cannot rewrite a contract, between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge".**
- vi. Acting in bad faith against guarantor or the creditor connives with the Principal Debtor in respect of the loan facilities.
- vii. If the Creditor commits a repudiatory breach of his contract with the principal so that the principal is entitled to treat the contract as at end, the surety is also discharged from further liability.
- viii. If the Creditor and Principal debtor carried out dealings without the consent of the surety, which dealings are prejudicial to the surety.

In *Keating on Construction of Contracts*, 9th Edition, the Learned Author says the following at page 394: - **"A surety is undoubtedly and not unjustly the object of some favour both at law and in equity and .... is**

***not to be prejudiced by any dealings without his consent between the secured creditor and the Principal debtor. Conduct that prejudices the surety's position may discharge the surety's obligation.***

#### **F. When Does the Obligation of the Guarantor arise?**

Most guarantees are drafted with an indemnity obligation such that the guarantor agrees that they are primarily liable and can be sued regardless of the position of the principal borrower. The liability of the guarantor arises from the terms of the guarantee since a guarantee is a contractual and is binding to the parties, when a party executes its bound by the terms of the guarantee.

- i. The obligation of a guarantor arises upon default by the principal debtor.
- ii. Where the guarantee instrument refers "normal bankers demand rights" and "payable on demand" in such a case the creditor may recall the facilities on demand meaning the debtor will pay the money when demanded.

***In Lalji Karsan Rabadia & 2 Others V. Commercial Bank of Africa Ltd (2015) eKLR.*** It was held that there was

no misconduct on the part of the bank for demanding repayment of the facilities as the was being guided by the contract documents that the provision for repayment of the loan in the long term was subject to demand provisions set out in the contract instruments.

#### **G. Conclusion**

We always advise clients who are considering signing a personal guarantee to take legal advice first. Before they sign, they must fully understand their total liabilities under the agreement and be comfortable with the consequences. An experienced solicitor will be able to limit the guarantor's liability under the personal guarantee, or may be able to suggest alternative security for the loan.

It was stated by *Shah JA in the case of Fina Bank Ltd v Spares and Industries Ltd [2000] 1 EA 52:*

***"It is clear beyond peradventure that save those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain".***



## Who are we?

Property Boutique® is a professional full-service real estate brokerage, management and advisory firm that offers progressive and innovative solutions in the real estate sector. We constantly pursue a culture of high performance guided by professionalism, integrity, respect, teamwork and leadership. With a commitment to excellence, we always strive to add value to our clients and offer them a timely, cost-effective and a stretch service. These are our current guiding principles and the foundation on which we are built and that we continue to build upon. We have designed our services to provide turnkey solutions for developers, buyers, sellers, and investors. Our goal is to facilitate a successful and rewarding transactional experience every time by prioritizing our client's needs.

## What We Do

- Real Estate Agency and Broking
- Property Management Services
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## THE LANDLORD AND TENANT BILL 2021

The Landlord and Tenant Bill 2021 (the “Bill”) that is before the National Assembly aims to, among others:

- i. regulate the relationship between landlords and tenants in order to promote stability in the rental sector;
- ii. consolidate the laws (the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 of the Laws of Kenya (“Cap 301”), the Rent Restriction Act (Chapter 296 of the Laws of Kenya (“Cap 296”) and the Distress for Rent Act Chapter 293 of the Laws of Kenya (“Cap 293”)) governing the renting of business and residential premises; and
- iii. establish tribunals and provide for the adjudication of disputes.

The Bill, should it be passed into law, will repeal Caps 293, 296 and 301.

Key features of the Bill include:

### A. Establishment of new tribunals

The Bill, seeks to establish rent tribunals (the “Tribunal”) which applies to both residential and business premises. The Tribunal is to be established by the Chief Justice by way of a notice in the Kenya Gazette.

The Tribunal will have jurisdiction in the areas as the Chief Justice may consider necessary.

Currently, the appointment of the tribunals is in the ambit of the Cabinet Secretary.

The jurisdiction of the Tribunal shall determine disputes between landlords and tenants.

The Bill applies to controlled tenancies as defined under Caps 293, 296 and 301, only that it does not expressly refer to them as “controlled” but rather, adopts their definition from the said Acts.

The Tribunal shall determine any dispute within a period of 3 months from the date the dispute is lodged. Parties aggrieved by the

decision of the Tribunal may appeal to the High court.

## **B. Due process to be observed before increasing Rent**

This marks the first attempt by the State to regulate rent in an economy that has resisted price controls in favour of economic liberalization.

A landlord shall not increase rent payable without at least issuing the tenant with 90 days' notice of intention to do so. The Bill has proposed a prescribed form of notice whereby the landlord must specify intention to increase the rent and the new rent. If the Landlord fails to issue the tenant with such a notice, any attempt to increase rent will be void.

A landlord can only increase rent where they undertake to carry out capital expenditure, provide a new or additional service or having taken account of inflationary rates in the economy. Additionally, where the land rates have increased or have become payable since letting the premises. The Bill defines specific instances for usage of the capital expenditure and determinants of the inflationary rates. A tenant shall be deemed to agree to the increase in rent where they do not oppose it within thirty (30) days of receiving the notice.

It is noteworthy that Landlords will only be able to increase rent if at least 12 months have passed after commencement of tenancy agreement in the case of a residential property and 24 months after the commencement of a tenancy agreement in the case of a business property.

Parties to a tenancy will therefore be required to have regard to the foregoing rent escalation timelines and considerations when addressing the effective date of rent escalation under a tenancy agreement.

## **C. Termination of Tenancy agreements**

If the Bill is enacted in to law, a landlord will be able to terminate a tenancy without any notice where a tenant defaults on rent payment for a

period of 3 months or sublets the property without giving notice to the landlord or on expiry of the tenancy period.

A tenant may terminate a tenancy by issuing the landlord with a notice of one (1) month in the case of residential property and two (2) months with regards to business property.

## **D. Death of a Tenant or Dissolution of a Company**

Upon the death of a tenant, the tenancy shall automatically determine within 60 days where there are no other tenants residing in the premises.

The same 60 days' determination period shall apply to the tenancy of a limited liability company that is dissolved.

## **E. Assignment of Tenancy**

According to the Bill, a tenant will be able to, with the consent of the Landlord, assign the premises to another tenant. The Bill anticipates that the landlord shall not unreasonably refuse such a request to assign the premises by the tenant for the remainder of the tenancy.

Notably, if the premises is assigned to another person, the tenancy agreement will continue under the same terms and the new tenant will be liable to the landlord for any breach of the tenancy obligations.

***Mandatory Obligation for The Landlord to Keep Record of Payment of Rent***  
the Bill obligates the landlord to keep rent records in respect of the rented premises. A copy of the record which has to be provided to the tenant must contain the following:

1. *Details of the parties to the tenancy*
2. *Particulars of the rented premises*
3. *Payable rent*
4. *Record of all payments of rent made*

The record will be required to be signed by the landlord or his/her own agent.

Failure to keep such a record will result in the

landlord committing an offence and upon conviction will result to a fine not exceeding one month's rent of the premises.

**Tribunal's permission to be sought prior to denying services to tenants in arrears**, to cure the numerous incidences of landlords who have deprived the tenants of essential services such as water, light, conservancy or sweeper especially when rent is due, the Bill requires the landlord to seek permission from the Tribunal before causing such deprivation on the tenant. In contravention of this proposed law, the landlord will face a fine up to no more than Kshs, 10,000.00 or imprisonment not exceeding 6 months or both upon conviction.

#### **G. Due Process to be regarded before exercising Distress for Rent.**

*(consider section 58 of the Bill.)*

The Bill does not necessary involve the Tribunal in the process of levying distress, but states instead that due process should be regarded by the landlord in exercising the right.

The Bill does not however elaborate on what amounts to due process.

**Mandatory requirement for the Landlord to obtain an Order from the Tribunal prior to the Eviction of a Tenant** In order to evict a tenant, the Bill has

proposed conditions to be met by the landlord. It makes it mandatory for the landlord to make an application to the Tribunal seeking an eviction order. In the event an eviction order is granted by the Tribunal, it shall expire six (6) months from its issue date.

A landlord who evicts a tenant without the authority of the tribunal commits an offence and is liable to upon conviction to a fine not two months of rent or imprisonment not exceeding 6 months or both.

#### **Conclusion**

The consolidation of these statutes promises an efficient, convenient and easy administration of tenancies in Kenya. Moreover, the Rent Tribunals established therein will operate in consonance of terms stipulated in respective statutes, a departure from the current minor differences elucidated in those established under each mentioned statute. The relationship between tenants and landlords is expected to be more orderly, should the Bill be passed into Law.

There is still ample opportunity to incorporate additional amendments to the Bill that will reflect the realities of landlord and tenant relationships and disputes.

The Bill can be accessed [here](#).

# MEET THE RBF TEAM

## BUSINESS UNIT HEADS



**Caroline Kamau Kimoita**  
Partner



**Jane Mugo**  
Partner

## SENIOR ASSOCIATES



**Irene Wanjiru**  
Senior Associate



**Anna Wanjohi**  
Senior Associate



**Judy Guandaru**  
Senior Associate



**Miriam Mugo**  
Associate



**Diana Nderitu**  
Associate



**Olive Nyaga**  
Associate



**Judy Gitari**  
Associate



**Suleiman Bashir**  
Associate



**Lydia Oludo**  
Associate



**Susan Mwango**  
Associate



**Mary Mwai**  
Associate

# ES CA DA

On Rhapta Road  
Westlands

Furnished Mini  
One Bedroom

ROI **15%\*** p.a.

Furnished  
Two Bedroom

ROI **13.6%\*** p.a.

Unfurnished Mini  
One Bedroom

ROI **9.9%\*** p.a.

Unfurnished  
Two Bedroom

ROI **9.8%\*** p.a.

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# A Rich Treasure Trove

2 Bedroom  
**FROM  
9.7M\***

1 Bedroom  
**SOLD OUT**



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