

WHAT HAPPENS WHEN A DEED OF FIXED PERIOD STATE GRANT EXPIRES? – *Oratile Gaopotlake (Associate)*

A Deed of Fixed Period State Grant is one of the land tenures that exist in Botswana. It is usually found in properties which are in cities and towns. A Deed of Fixed Period State Grant provides real rights in property.

The Grantee is given all rights of ownership including the rights to cede, assign, transfer, lease, sell and mortgage the land for a fixed term; for residential properties this term is usually ninety nine (99) years and fifty (50) years for commercial properties. Once the term lapses the ownership rights are extinguished. The title document states unequivocally that upon the expiration of the term, ownership of the land shall revert to the State without compensation.

The earliest of this form of deed was issued in the early 1960's.

This then raises the question: ***Will the properties revert to the state without compensation as stipulated in the title deeds?***

Holders of title under this form of tenure are becoming increasingly concerned about the adverse implications of the impending expiration. The difficulty in disposing of such properties is that the prospective buyers are also impacted by the same uncertainty regarding their rights. This lack of continuity and certainty exposes the holders and buyers to increased risk that cannot be ignored.

The enforcement of the aforementioned standard clause under this type of tenure is yet to be practiced. I cannot imagine the State repossessing all these developed properties and re-allocating them as they are, as that would amount to undue enrichment on the part of the new owners. Or worse still, to repossess the properties and demolish the existing structures and re-allocate the land thereafter.

The options to apply for an extension on the term or payment of a fee to “purchase” a further term are unknown at this stage. The landowners have developed the land and invested in their respective properties. Further still, some of these properties are held as securities by lenders.

The effect of repossession without compensation would have a ripple effect. The continued uncertainty is contributing to the decline of investments in commercial properties. It is therefore in the interests of all title holders and the nation that this Land Policy be clarified.

The equitable solution would be the implementation of a method ensuring continuation of the ownership and retention of real rights over the properties affected. Upon this extension being granted, a rectification on all the title deeds under this tenure should be ordered and this clause modified, failing which, this issue will surface annually.

My understanding is that the matter is being considered as part of the parliamentary Land Policy debates. The expectation is that the final policy to be implemented will be equitable and sustainable for both parties... in the long haul.