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WRITE-UP

**PRACTICAL DUE DILIGENCE TO THE
ACQUISITION OF LAND FOR REAL ESTATE
DEVELOPMENT IN GHANA;
ADVISE TO INVESTORS.**

By
Michael Boateng Yeboah

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**PRACTICAL DUE DILIGENCE TO THE
ACQUISITION OF LAND FOR REAL
ESTATE DEVELOPMENT IN GHANA;
ADVISE TO INVESTORS.**

By

Michael Boateng Yeboah¹

Acquiring land in Ghana for real estate has proven to be as difficult as circumventing the uncharted waters of the menacing Bermuda Triangle. The difficulties in acquiring lands in Ghana range from land litigations, difficulties in the acquisition of land title certificates in areas where it is applicable, acquisition of building and demolition permits, endless monetary demands from unbridled youthful violent hooligans christened as “land guards” especially in Accra and some parts of the Central Region.

Previously, investors have solely relied on solicitors in most land transactions and solicitors were deemed as demigods in matters of land transactions. This aged assertion has proven to be infantile because the task of conducting due diligence in land transactions in Ghana goes beyond the realm of mere legalities.

For instance, most solicitors with no knowledge in property valuation cannot be in a position to enlighten their clients on

the precise open market value or the forced sale value (which is normally 70% of the open market value in Ghana) of a property to appropriately advise their clients as to the suitable price for which a property should be purchased for.

Also, most solicitors cannot easily determine whether a land intended for real estate development is flood-prone especially if the said land is inspected during the dry season. It is based on these few postulations that convinces the writer that the 21st-century real estate market transactions eclipse mere wigs and gowns.

Despite the legal background of the writer, he has embarked on an elementary path to demystify the processes of conducting due diligence in real estate transactions in Ghana devoid of technicalities.

It is essential to re-echo that this intellectual piece only deals with due diligence with regards to lands for only real estate and does not pay any attention whatsoever to the acquisition of lands for other purposes.

The writer will firstly examine the natural impediments that has to be considered in purchasing land for real estate in Ghana.

1. The first step a realtor must consider is whether the land to be purchased in Ghana falls within the major earthquake

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zones in Ghana namely; Akwapim, Adenta, Abelemkpe, Tabora, Sowutuom, West Legon, Awoshie, Weija, Elmina, Kasoa, Gbawe, and McCarthy Hills. The lands in these areas are prone to earthquakes due to the fault from the Akwapim range extending to these areas. Though lands in the above-named areas may be relatively cheaper, purchasers of land in these areas must know they come at cost should there be an earthquake in Ghana.

Interestingly, Ghana has records of damaging earthquakes dating as far back as 1636, 1862, 1906 and 1939 as per reports from the Ghana Geological Survey Authority.

2. Owing to the rapid urbanization accompanied by improper planning and poor waste management by the city councils; flooding has become a major issue in Ghana. Notable areas where purchasers of land must exercise caution when purchasing lands due to the impact of flooding are: around the Kwame Nkrumah Circle, Adabraka, Kanashie, Avenor, Odaw, Santa Maria and other areas where there are major drains or river flows. Through diligent investigations from residence, the purchaser will get to know if the land to be purchased is prone to flood or not. In an attempt to avoid flooding

issues, most modern realtors have chosen to invest in previous colonial settlements such as Labone, Cantonments, Ridge and Airport residential area. These areas are very expensive and they are considered to be on high grounds. Also, the lands in these areas are properly laid out and totally devoid of flooding.

3. The third step the purchaser must take into account is to visit the land to be purchased to acquaint himself with the land. The purchaser must pay particular attention to the following: Whether the land is too close to a water body that can cause flooding during the rainy season. Access to the motorable road network, access to water and electricity, access to the police station or other security installation.

4. The purchaser must proceed to hire the services of a licensed surveyor to visit the land and subsequently pick the coordinate of the property which is the subject matter of the transaction. Under no circumstance must a buyer rely on the site plan given to him by the seller. This practise is very suicidal and has led to a lot of fraudulent land transactions in Ghana.

There are several instances where sellers give

purchasers different site plans that do not reflect the actual land on the ground.

Also, the purchaser must always insist on a barcoded site plan from his surveyor. This simply means that the site plan should have a barcode at the back of it. Due to the high rate of fraudulent land transactions in Ghana, a purchaser must never ever rely on the seller's site plan to conduct due diligence!

5. After the purchaser's surveyor is done with the barcoded site plan, the purchaser should present the barcoded site plan to all the three divisions (Survey and Mapping Division, Land Title Division and Public and Vested Lands Management Division) of the Lands Commission to conduct an "official search".

Nevertheless, there is currently a rogue practise in Ghana where most young lawyers and purchasers do swift searches known as the "window search".

This rogue practise of window search involves the payment of moneys without official receipts to any worker at the lands commission to conduct a search on a land without the official providing any detailed information about the land in question. This crude practise is suicidal because the window search always fails to provide essential information as to whether the land

in question is mortgaged or whether there is a judgment or a pending suit relative to the land.

Though most young lawyers, transactional advisers and realtors are always in a hurry to close land transactions; it is always prudent for all stakeholders to rely on only official searches from the lands commission for all their land transactions.

6. To attain maximum due diligence and avoid unnecessary litigation, it is proper for the purchaser to write officially to the registry of the Courts in which the property is situate to conduct searches at the courts to know if the land is a subject matter of litigation pending at the Courts of the first instance or a litigation is pending before any Appellate Court relative to the land. All the records of the outcome of this searches that are conducted must be kept safely. This search results will put a land purchaser in a better position in pleading "a bona fide purchaser for value without any adverse notice" should there be a litigation in future.

7. The next step a buyer of land must consider is to demand for a certified photocopy of a land title certificate from his grantor and compare it to the recitals and any other information as stated in the deed of

conveyance given to the buyer by the grantor.

Very often, sellers of land inadvertently misspell land title certificate numbers, folio numbers and misspell names of their grantors in the recitals of the deed of conveyance given to the buyer. These issues mostly arise when lands are purchased from real estate companies who recklessly rely on boilerplates.

8. In purchasing a landed property from a married person; the seller must always insist that the spouse to the seller serves as a witness to the conveyance or any deed that is executed between the buyer and the seller! There have been several instances where spouses sell spousal properties without recourse to their spouse only for their spouses to end up suing the innocent purchaser.

This quagmire is rampant in Ghana's real estate sphere but can easily be avoided if a spouse to the seller is simply made to sign as a witness to the conveyance. If this is tactics is implored; it will estoppe any spouse from later pleading ignorance to any transaction relative to any spousal property.²

9. Also, the practise where buyers of real estate insist on making payment by way of cheques or bank transfers is one of the safest means by which all purchasers of land

must adopt in handling all their property transactions. This method of payment easily serves as evidence of payment and it avoids the risk of buyers and investors from carrying large amount of cash on them considering the pitiable security arrangement in Ghana.

10. In Ghana, before a developer can erect any structure on his land such as a wall or a building; the developer must first and foremost secure a building permit from the Metropolitan, Municipal, or District Assembly for a building permit. There are several instances where most land owners erect walls to secure their properties without seeking prior approval from the authorities. These structures are considered unlawful structures and they are always amenable to demolition. In such situation where a structure such as a wall or a security post is erected on a land; the buyer must inspect the building permit of the seller to avoid any demolition of the structure by the Local Assembly in future.

11. Lastly, the registration of every conveyance is very key to avoiding any unnecessary litigation. Equitable remedies will always favour the first in time and not the indolent. Hence, purchasers of land in Ghana must take steps to immediately register their conveyance where practicable in order to

2 See ERIC ANSONG V ALBERT GORMAN & MRS GORMAN CA J4/37/2011

avoid any unnecessary litigation relative to their real estate.

In conclusion, the list for conducting due diligence in real estate matters in Ghana is not exhaustive. Conducting of due diligence in relation to real estate matters in Ghana is a very multifaceted business transaction which can be described as a stomach-churning cocktail of complex legalities, armed land militia, bribery, poor records keeping and undischarged mortgage issues.

Purchasers of real estates and investors are to exhibit maximum precautionary measures even when they are guarded by legal gurus in order to avoid fraudulent land transactions.