

**BOTLHOLE**  
LAW GROUP

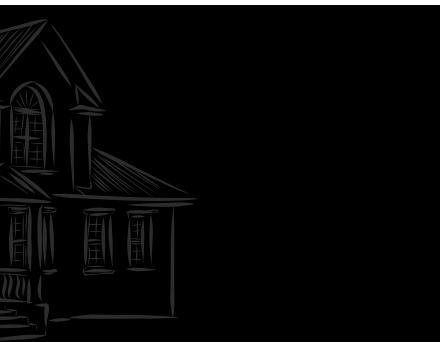
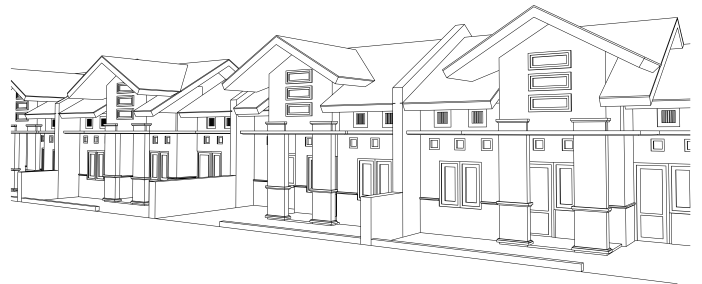
IN ASSOCIATION WITH  
**NEILL ARMSTRONG**

ATTORNEYS, NOTARIES & CONVEYANCERS  
CORPORATE | CONSULTANCY | LITIGATION | TAX

JUNE 2022

# BULLETIN

TRIBAL LAND ACT, 2018



## Continuation of Land Boards

Land Boards established under the repealed Act shall continue to exist as if established under the Act.

## Vesting of Tribal Land in Land Boards

All rights and title to land in each tribal area shall continue to vest in the respective Land Boards.

## The Tribal Land Act, 2018 has commenced.

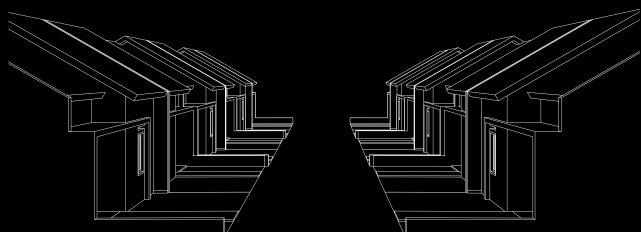
Here is what you need to know

### Issue of Deed of Customary Land Grant by Registrar of Deeds

- The Act introduces a Deed of Customary Land Grant which replaces the existing certificate of customary land grant.
- No person may occupy any land granted under the Act or the repealed Tribal Land Act unless such person has been issued with a Deed of Customary Land Grant by the Registrar of Deeds.
- It is worth noting that the Act also prohibits occupation of land granted under the repealed Tribal Land Act without a Deed of Customary Land Grant. This makes it imperative for all persons holding title under a certificate of customary land grant or common law Lease to apply for registration of such title under the Act.

## Registration of existing title

- The Act makes it mandatory for any person who, at the commencement of the Act, holds a certificate of customary land grant or lease to make an application for registration of his/her title within six (6) months.
- In order to register the title:
  - the holder of a certificate of customary land grant or lease must submit, to the land board of the tribal area within which the land is situated, an application for registration in the format approved by the Registrar of Deeds;
  - a land board shall on receipt of the application, submit same to the Registrar of Deeds where it is satisfied that the applicant is the grantee or lessee of the land.
- Where a person fails to register his/her title within the time allowed, the land board shall complete and sign all necessary documents on behalf of such person and the Registrar of Deeds shall register such title.
- A person who holds a common law lease issued under the repealed Act must make an application for the re-registration of the common law lease as a customary land grant within six (6) months of the commencement of the Act.



## Grant of Land to Non-citizens

- The Act prohibits any land board or subordinate land board to grant any land to any person who is not a citizen of Botswana unless the person has been specifically exempted by the Minister in writing.
- Where a land board makes a grant of land to a non-citizen, after satisfying the requirements of the Act, such grant may only be by way of common law lease.

## Proposed transactions with non-citizens must be advertised

- Any person who proposes to enter into a land transaction with a non-citizen must publish a notice in the gazette and in at least 1 newspaper circulating in Botswana giving in such notice:
  - A description of the land which is the subject of the proposed transaction;
  - The full names of the parties to the proposed transaction;
  - Details of the proposed transaction;
  - The consideration for the proposed transaction;
  - A reference to the right of any citizen of Botswana interested in entering into a similar transaction in respect of the property in question to receive priority notwithstanding the proposed transaction set out in the notice.
- These above requirements do not apply where land is acquired by a non-citizen through inheritance or in execution of a court order in divorce proceedings.

## Land Board's consent to deal with land

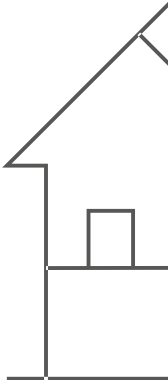
- **The following transactions require a land board's consent:**
    - Transfer, mortgage, charge, bond or lease capable of running for a period of 5 years or more, exchange, partition or other disposal dealing with any tribal land;
    - Sub-division of land to be held under separate titles;
    - The issue, sale, transfer, mortgage or any other disposal of, or dealing with, any share in a private company owning any land.
  - **The following transactions do not require a land board's consent:**
    - a sale in execution to a citizen of Botswana;
    - a hypothecation bond by a citizen of Botswana; or
    - the development of such land on inheritance.
- A company shall be a 'citizen company' where all classes of shares in such company are beneficially owned by individuals who are citizens of Botswana.**

## Grant or refusal of consent by a Land Board

- In determining whether or not to grant consent, a land board takes into account the following:
  - The effect that the grant or refusal of consent is likely to have on the economic development of the land concerned or on the maintenance or improvement of standards on the land concerned;
  - Any objections made by citizens, where the transaction involves a non-citizen.

## Transactions done without consent of land board

- Any transaction carried out in contravention of the provisions of the Act is void.
- Any agreement to be a party to a transaction that requires a land board's consent shall become void:
  - At the expiration of 3 months after the execution of the agreement if an application for a land board's consent has not been made; or
  - If an application for a land board's consent has been made and it has been refused, at the expiration of 30 days after the date of such refusal.



## Recovery of consideration

- If any money or valuable consideration has been paid in the course of a transaction that becomes void in terms of the Act, such money or valuable consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid.