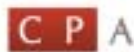


A BRIEF GUIDE ON LAND RIGHTS IN SRI LANKA

CENTRE FOR POLICY ALTERNATIVES

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Centre for Policy Alternatives
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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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1. Lands : State and Private

1) State Land

State land is all land that the State is lawfully entitled to, or land which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached thereto. This also includes lands of various Corporations and Boards. State land is administered at national, provincial, district and divisional levels by the relevant government officials.

2) Private Land

Private Land is land solely owned by individuals or private entities and the ownership of such land is generally transferred through various types of deeds.

2. State Land

2.1 How is State Land alienated?

- By Permit
- By Grant
- By the President

Permit

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Permits are issued to particular categories specified in the relevant laws such as low income earners and those who are landless. Permit holders can use the land as specified in the permit including as a residence and/or for cultivation purposes.

Permit holders are required to pay a nominal monthly rental to the State. Permits can be issued as an annual permit or also known as 'LDO permit' when issued under the Land Development Ordinance.

Grant



- By Grant (Swarnabhoomi, Jayabhoomi, Ranabhoomi, Ranbima) – Permit-holders can convert their permit into a grant or a deed, if they meet specific conditions.

- By the President – The President can grant or lease State land at a nominal price or rent it for charitable, educational, religious, scientific or any other purpose.

2.2 How is land acquired by the State?

Land Acquisition Act

Where the Minister considers that a particular land is suitable/ needed for a public purpose, he shall cause a notice to be given to the owner or owners of that land and to be exhibited in conspicuous places on or near that land.

The notice;

- a) Should be in the Sinhala, Tamil and English languages;
- b) Contain a description of the land which is intended to be acquired;
- c) State that the Government intends to acquire that land for a public purpose, and that written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice.
- d) Specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.

After considering the objections, if the Minister is satisfied she/he can make a declaration in accordance with the criteria established by law that the said land should be acquired. The declaration is published in the Gazette. Then the land is surveyed by the Survey General's Department. When the land is valued at over Rs. 500/- notice is published in the newspapers and notice is also placed on the land. Those who have a claim on the land can then appear before the Acquiring Officer to assess compensation.

Requisitioning of Land Act

Any public officer appointed by the Minister as a competent authority under this act, can with the prior approval of the President take possession of and give written directions necessary to expedite the taking of possession of any land which is required

- a) for the purpose of maintaining of supplies or services essential for the life of the community
- b) for the purpose of implementing any scheme as approved by the President for importing storage and distribution of essential commodities.
- c) for the purposes of use or occupation by the armed forces or any visiting force.

Urban Development Projects (Special Provisions) Act

The President can declare any land in any area urgently required for the purpose of carrying out an urban development project which would meet the just requirements of the general welfare of the People. This declaration is made based on a recommendation made by the Minister in charge of Urban Development.

2.3 What are the limitations with regard to State Land?

- No one can claim prescription against state land.
- Encroaching on a land given on a permit or grant is a punishable offence.
- If the state gives a permit or grant on a land already belonging to another private individual, that person can file action against the State.
- A permit holder cannot sell their land. They can only transfer it in accordance with the law. A permit or grant holder cannot transfer their lands without the prior written approval of the Divisional Secretary.
- Even when transferring with the approval of the Divisional Secretary, the conditions and restrictions imposed on the original permit holder or grant holder continue to apply.
- Each permit holder and grant holder can nominate a successor in title. If there is no nomination then the grant devolves in accordance with the respective law under which the permit was issued.

3.Private Land

3.1 Important terms applicable to Private Land

- **Occupation** : Living in or possessing land.
- **Accession** : The property of one person becomes attached or added to the property of another.
- **Prescription** : When a person possesses land belonging to another for a period of ten years without payment, and where possession of that land was undisturbed and uninterrupted, the person possessing the land can claim legal ownership of the land.
- **Purchase** : Land can be sold by and purchased from private land owners. A sale of land is only valid if the property is transferred through a deed and is signed in the presence of witnesses and attested by a notary public in the presence of one another. The notary public must affirm that the sale documents are true, genuine and correct. The documents can be registered at the relevant land registry to give it

priority over others. Stamp duty has to be paid on a sale of land. The amount of stamp duty varies from time to time and is to be paid by the purchaser.

- **Inheritance :**

With a Last will : When a person dies leaving a last will or even if there is no last will, where the value of the estate is over Rs. 4,000,000/- the law requires that questions of inheritance be decided by the District Court.

Without a Last Will: People can also get private land if they are listed in a will. Where a person dies without a last will there are laws that govern who should inherit the land. For example, if the person is survived by a spouse and children, half of the property would go to the spouse and the other half to the children.

- **Donations :** Land can be donated to a person or an organisation in accordance with the specified laws.

3.2 Can the state acquire private lands?

Yes. The State can acquire private land for a public purpose in accordance with the law (i.e - Land Acquisition Act, Urban Development Projects (Special Provisions) Act).

3.3 Can Pradeshiya Sabhas, Urban Councils and Municipal Councils acquire private land?

The Pradeshiya Sabhas Act, Urban Councils Ordinance and Municipal Councils Ordinance empower the Acquisition of lands or buildings for general public purposes in terms of provisions of the Land Acquisition Act by making due compensation to the owner or occupier of any property required for such purposes, or any person whose legal rights are thereby infringed.

3.4 Is compensation awarded if the State acquires private land?

Yes. The Acquiring Officer should evaluate the compensation following an inquiry. Compensation is evaluated based on the market value of the land. If a claimant is not satisfied with the decision of the Acquiring Officer, an appeal can be made to a Board of Review within 21 days of the notice of the award. A further appeal can be made to the District Court and the Court of Appeal.

4. Know your land rights

4.1 Are you being asked to move?

You have a right to your home and land. Act fast, speak up and seek assistance to ensure the return of your land or secure alternative land and seek compensation for the lost property. If you are asked to leave your residence, check with the authority who gives such an order for the reason of eviction. Ensure that you have accurate information and documentation to prove ownership in order to speed up all remedial actions. Also ensure that;

1. You have valid documents for your Land (see below). If you don't have the required documentation make sure to get legal advice on how to obtain the relevant documents.
2. You ask the relevant authority to give you the relevant information (i.e. reason of eviction etc.) in writing.
3. If you are asked to sign any documents, ensure that it is in a language that you understand, you read it carefully and that you request for a copy of the document for your records. You should not sign any document that you do not understand.

4.2 Do you have valid documents for your land?

To own and control your land you need legally valid land documents. Even though you may have lived in your land for a number of years and have a document from a government official or the previous owner stating that you own the land, it may not be a legally valid document.

4.3 What is a 'deed'?

This is a legal document that gives title to private land. A valid deed has to be executed by a notary public. This will defer with registration of title discussed later in this guide.

4.4 When has a deed been executed by a notary?

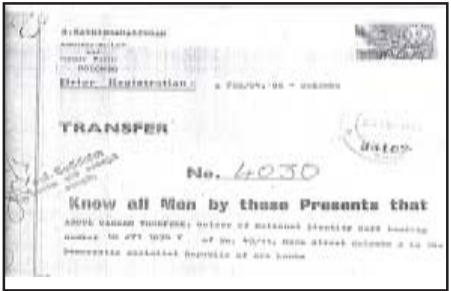
A deed is executed when:

- Affirmed by a notary public that the document before them is true, correct and genuine.
- Signed by the notary, executants and the witnesses in each other's presence.
- A deed can be registered at the relevant Land Registry to give it priority over other deeds.

4.5 Types of Deeds

Recognize the type of deed you own. Ownership of your property is transferred through deeds, last wills and codicils. Conveyance can be done through the following types of deeds.

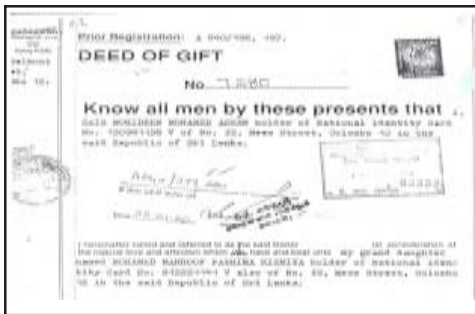
Deed of Transfer



Deed of transfer is a deed prepared when a property owned by one person is sold/ transferred to another. The deed should consist of the names, addresses and National Identity Card numbers of

the transferor (seller) and the transferee (buyer); details about the previous deed by which the title was passed to the transferor; and consideration (sale price). The transferor should sign the deed and after two witnesses placing their signature, it is attested by the Notary.

Deed of Gift



Deed of gift is used to transfer property from one person (donor) to another person (donee), without any monetary consideration.

Deed of Declaration

If any person wishes to make a claim or declare a right to any property, a deed of declaration may be executed to make legal basis for such a right or claim.



When a person has had undisturbed and uninterrupted possession of a property against the right of any other, for a period of more

than ten years such person can execute a deed of declaration and declare that he has gained prescriptive title to the property. In such an instance a Notary cannot practically verify the fact of possession by the declarant and therefore it is advisable as a precautionary measure that the Notary gets an affidavit stating the facts relating to the period of possession from the declarant.

If any person dies without executing any last will or testament during his life time, the beneficiaries can execute a deed of declaration to declare their rights. A deed of declaration can be executed to declare the rights of the beneficiaries.

In such deeds, if details of prior registration are available, they can be registered in the relevant volume and folios (pages). In a deed of declaration for a prescriptive title- if no details on prior registration are available- it has to be registered in a fresh folio.

Last Will

LAST WILL AND TESTAMENT

No.

I INSERT THE TESTATOR'S FULL NAME of INSERT THE ADDRESS in the Democratic Socialist Republic of Sri Lanka do hereby revoke all Wills Codicils and other writings or dispositions of a testamentary kind or nature heretofore made or executed by me and declare this to be my LAST WILL AND TESTAMENT.

I DO HEREBY NOMINATE CONSTITUTE AND APPOINT my wife INSERT THE EXECUTRIX OR EXECUTOR'S FULL NAME of INSERT ADDRESS in the said Republic to be the Sole Executrix of this my Last Will and Testament. In the event however of my said wife predeceasing me or dying simultaneously with me or shall be incapable of acting as Executrix as aforesaid I appoint my INSERT THE 2ND EXECUTOR'S FULL NAME of ADDRESS to be the Sole Executor of this my Last Will and Testament.

SUBJECT TO THE PAYMENT OF MY just debts funeral and Testamentary expenses, Estate Duty (if any) Income Tax and all other duties charges and expenses leviable by reason of my death I give

Last will is the last declaration made by a person (Testator) stating how the property earned during the life time should be disposed of after his/her death. When a person dies

leaving a last will, the last will gets priority over all laws relating to succession.

Codicil

Codicil is a supplementary Deed to a last will adding or altering the contents in the last will by the testator.

4.6 What is ‘registration of title’?

Titles for land can now be awarded under the Registration of Title Act. This is a system introduced in 1998 which has been implemented in a few areas such as Gampaha, Negombo, Ratnapura, Gampola, Anuradhapura, Homagama, Kurunegala, Kandy, Hambantota and Jaffna, and will be expanded to the rest of the country. Registration of title ensures a clearer system of title, which is cheaper than deeds.