

Haiti Land Transaction Manual, Vol. 1

# A HOW-TO GUIDE FOR THE LEGAL SALE OF PROPERTY IN HAITI

Authored by: Haiti Property Law Working Group



JUNE 26, 2012

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With thanks to manual sponsor:



The Digicel Foundation has generously enabled the Haiti Property Law Working Group to develop a common understanding of current land transaction processes and create tools to promote development and security of tenure in Haiti through its support for the production of this manual.





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LET'S. 1960 JACMEL HAÏTI. W. DUFRAY

## ACKNOWLEDGMENTS

The Haiti Property Law Working Group<sup>1</sup> would like to thank The Digicel Foundation for its generous contribution to this manual. Without the Digicel Foundation's support, this important work of the group would not have been possible.

This manual has been a group effort. We would like to thank the many representatives of public, private and nonprofit sectors as well as the international agencies and funders who came together to form and undertake the work of the Haiti Property Law Working Group. These dedicated individuals collaborated on research, contributed their thoughts and ideas, and participated in countless meetings and phone calls, generously providing the tremendous advice and expertise required to create this manual.

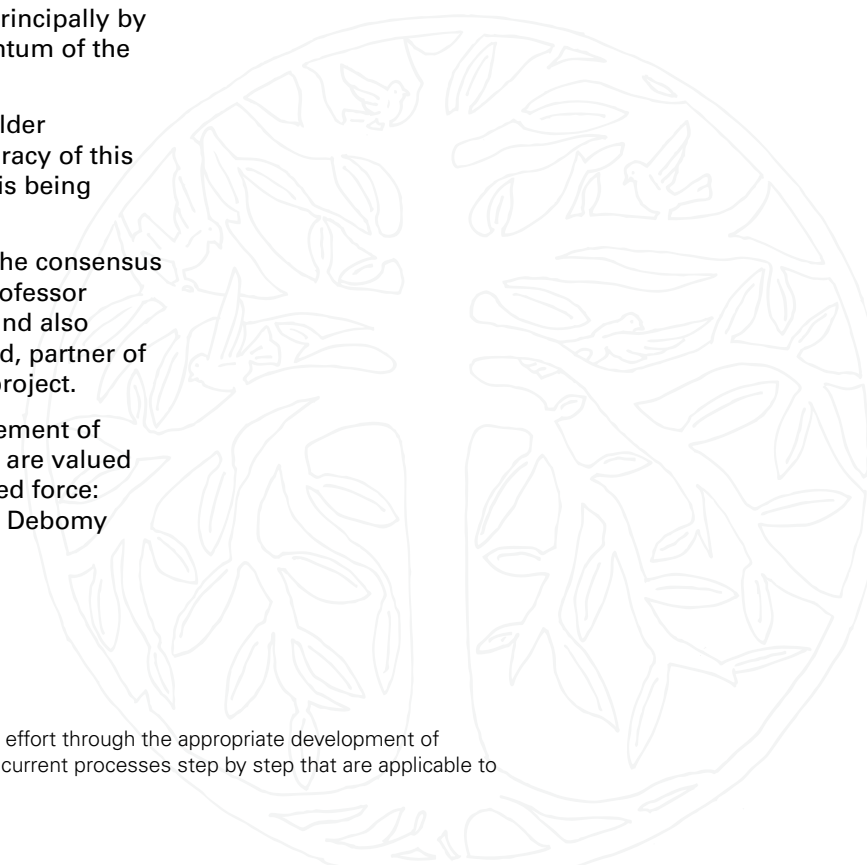
We wish to thank Habitat for Humanity Haiti and Habitat for Humanity International for their leadership, vision and support in helping to found and guide the Haiti Property Law Working Group. Liz Blake, senior vice president for Habitat for Humanity International, has been a steady and tenacious leader in this effort, and Habitat for Humanity has contributed significant resources and expertise to try to ensure that this group's vision becomes a reality. Architecture for Humanity, under the leadership of Kate Stohr and Eric Cesal and represented principally by Frédérique Siegel, has also played a strong, ongoing role in facilitating the momentum of the working group and enabling it to get the results we have here.

With grace and humor, Siegel also played the essential role of leading the stakeholder engagement process, which has done so much to confirm the usefulness and accuracy of this manual. A website to supplement this manual has been generously designed and is being launched by working group member Isabelle Arnold of Best Risks International.

The legal core of the manual represents the output, the opportunity for input and the consensus of the members of the working group. The core of the document was drafted by Professor Gilbert Giordani and his students from the University of Quisqueya's Law School and also reflects the fine legal skills and invaluable contributions of Chantal Hudicourt-Ewald, partner of Haitian law firm Hudicourt Wooley, who has served as an ongoing adviser to this project.

The working group was launched based upon the invaluable advice and encouragement of Greg Milne of the Clinton Foundation and Chantal Hudicourt-Ewald. The following are valued early adopters who fostered the growth of the group into an effective and motivated force: Gilles Damais and Michele Lemay of the Inter-American Development Bank; Sylvie Debomy

1. The Haiti Property Law Working Group was formed in May of 2011 to support and enable the recovery effort through the appropriate development of property in Haiti for job creation, wealth creation, housing and other public purposes by: 1). defining the current processes step by step that are applicable to land transactions and 2). recommending actions to be taken to improve the processes.



of the World Bank; Priscilla Phelps and Leah Mueller of the International Haiti Reconstruction Commission; Stephen Bell and Rod Boggs of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, supporting the work in Haiti of InterAction<sup>1</sup>; Ed Glynn and his colleagues from Venable LLC, Washington, D.C.; Chris Ward and Daniele Jean Pierre, Esq., of US AID; Rachel Beach of J/P HRO; Bernard Smolikowski of the French Embassy; Sarah Farnsworth of the U.S. State Department; Mike Mora of the Organization of American States; Gerard Vaugues of Capital Bank Haiti, representing CLED, the Center for Free Enterprise and Democracy; Martine Deverson, economic adviser to the Haiti private sector; and Rosalia Gitau of the International Organization for Migration, or IOM. Under Gilles Damais' auspices, the IDB generously provided space for the group's meetings.

The legal content of this manual would not exist in its current form without the respectful but vociferous legal debates and hours of review and commentary provided by diligent working group members including Chantal Hudicourt-Ewald; Francklin Guerrier, representing the Canadian International Development Agency (CIDA); Williams Alloncé of ONACA; Martine Deverson, Gilbert Giordani, Christelle Vaval and Ernst Touissant of Cabinet Salès; Didier Gardère, Rasmus Precht and attorney Clevens Sanon of UN-HABITAT.

The working group would also like to acknowledge the support of the government of the Republic of Haiti through the active participation of representatives of six ministries, agencies, commissions and authorities of the government. The group was honored to have Madame Michele Oriol, executive secretary of Haiti's Inter-ministerial Commission on Territorial Planning of CIAT, address the group. In addition, this project has received unwavering support of the Office of the Prime Minister; Patrick Rouzier, President Martelly's housing adviser; Thierry Mayard-Paul, Minister of the Interior, Territorial Collectivities and National Defense; and Elizabeth Landers, adjunct chief of staff, Ministry of the Interior and executive coordinator, Presidential Advisory Council on Economic Growth and Investment.

We would also like to thank the USAID Haiti Task team and the U.S. State Department's Haiti Task team, including Cheryl Mills, chief of staff of the U.S. State Department – for their ongoing leadership, support and advice on Haiti-related issues.

The process of stakeholder review and revisions, the assembling of the manual and the development of related training materials happened through the tireless efforts of Frédérique Siegel of Architecture for Humanity and Dan Petrie, Chris Vincent and Lisa Heintz of Habitat for Humanity with the tremendous support of Habitat Haiti National Director Claude Jeudy and Habitat Vice President Mark Andrews.

We humbly present this manual with thanks to those acknowledged above and in gratitude for the inestimable value of many others who have assisted in making this manual possible.





## ENDORSEMENTS AND WORKING GROUP MEMBERS

The Haiti Property Law Working Group is grateful for the endorsement of its work by:



REPUBLIQUE D'HAÏTI

**MINISTÈRE DE L'INTÉRIEUR  
ET DES  
COLLECTIVITÉS TERRITORIALES**

Port-au-Prince 28 June 2012

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No. ....

*TO WHOM IT MAY CONCERN*

On behalf of the Government of Haiti, I am writing to express my full support of the Haiti Property Law Working Group and its first manual, *Haiti Land Transaction Manual, Volume I, A How to Guide for the Legal Sale of Property in Haiti*.

The Haiti Property Law Working Group is a diverse coalition of nearly 100 Haitian and international experts representing non-governmental organizations, donors, governments, notaries and local Haitians, committed to documenting and clarifying land and property rights issues in Haiti. With land tenure one of the biggest constraints to our country's recovery, I applaud the group's vital efforts to build a more consistent and transparent process for the legal sale of land.

Our government has participated in the Haiti Property Law Working Group through the engagement of representatives of six ministries and agencies. Our government has contributed to the creation of the manual and has reviewed the manual's content. We have been encouraged by the positive feedback received through the stakeholder meetings in Port-au-Prince, Cap Haitien, Les Cayes, and Léogâne. These meetings included national and local government officials, notaries, surveyors, non-governmental organizations, bilateral and multilateral agencies, and members of the Haitian financial and insurance sectors. While this first manual is narrow in scope, we look forward to the development of additional manuals on formalizing rights on government and third party land, eminent domain and the resolution of disputes relating to property.

Haiti's recovery will take time, but steps to clarify our country's land rights will support our country's revival. We are grateful for the contributions of the Haiti Property Law Working Group and look for the broad dissemination and use of *Haiti Land Transaction Manual, Volume I; A How to Guide for the Legal Sale of Property in Haiti*. We also encourage the training of stakeholders and the public in the use of the manual and look forward to future manuals.

In partnership,

*Thierry MACARD PAUL, j.d.*

Minister

**MEMBERS OF HAITI PROPERTY LAW WORKING GROUP**

**HAITIAN GOVERNMENT**

CIAT (Comité Interministériel pour l'Aménagement du Territoire)  
 CNIGS (Centre National d'Information Géo-Spatiale), Ministère de la Planification et Coopération Externe  
 DGI (Direction Générale des Impôts), Ministère des Économies et des Finances  
 FAES (Fonds d'Assistance Économique et Sociale)  
 ONACA (Office National du Cadastre)  
 UCLBP (Unité de Construction de Logements et de Bâtiments Publics)

**HAITIAN PROFESSIONAL ASSOCIATIONS**

AAH (Association des Assureurs d'Haïti)  
 ASNOP (Association des Notaires de Port-au-Prince)  
 APD (Association des Professionnels du Droit)  
 CAJUP (Corporation des Arpenteurs de la Juridiction de Port-au-Prince)  
 CLED (Centre pour la Libre Entreprise et la Démocratie)

**UNIVERSITIES**

Emory University School of Law  
 Faculté de Droit de l'Université de Quisqueya  
 Forham University School of Law

**LAW AND NOTARY FIRMS**

Cabinet Gary Lissade  
 Cabinet Hudicourt Wooley  
 Cabinet Leblanc et Associés  
 Cabinet Salès  
 Étude Cassagnol  
 Étude Notarial Alphonse  
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Best Risks International  
 Development Innovations  
 ESRI  
 Profasa S.A.  
 Smucker Consulting  
 Stewart Title  
 Tetrattech ARD

**MULTILATERAL ORGANIZATIONS**

IDB (Inter-American Development Bank)  
 IHRC (Interim Haiti Recovery Commission)  
 IOM (International Organization for Migration)  
 OAS (Organization of American States)  
 UNDP (United Nations Development Programme)  
 UN-HABITAT  
 World Bank

**NONPROFIT ORGANIZATIONS**

Architecture for Humanity

Clinton Foundation  
 French Red Cross  
 Environmental Law Institute  
 IFRC (International Federation of Red Cross and Red Crescent Societies)  
 Habitat for Humanity Haïti  
 Habitat for Humanity International  
 Haven  
 ILD (Institut for Liberty and Democracy)  
 International Housing Coalition  
 Institute for Justice & Democracy in Haiti  
 J/P Haitian Relief Organization  
 IDLO (International Development Law Organization)  
 Trocaire  
 UINL (International Union of Notaries)  
 TECHO

**BILATERAL AGENCIES AND EMBASSIES**

French Embassy  
 Centre de Coopération Haïti-Canada  
 CIDA (Canadian International Development Agency)  
 Canadian Embassy  
 American Embassy  
 U.S. State Department  
 USAID (U.S. Agency for International Development)

## A WORD ABOUT THE MANUAL

Buying and selling land legally in Haiti is a complex and often misunderstood process. The earthquake in January 2010 exacerbated Haiti's land issues, hampering the country's recovery and slowing redevelopment. This manual documents existing Haitian land laws and customary practices related to the legal sale of land, facilitating a consistent and transparent process that supports tenure security for Haiti's residents and ultimately Haiti's economic growth. This manual is intended to serve as an immediate tool to assist the business and reconstruction communities by clarifying the current legal and customary procedures and standardizing, in writing, the legal procedures necessary to transact and assemble land in Haiti. This manual does not cover all aspects of land transactions in Haiti. Future manuals are planned to document the regularization of land rights and eminent domain.

Our hope is that all entities — from individuals to government officials, from Haitian businesses to multinational corporations and donors — will be encouraged and enabled to engage in the legal sale of property in Haiti. Using this manual and having agreement on the legal process will increase the ability of all actors to be more successful and aware of the legal issues relating to property transfer in Haiti.

The manual was developed by the Haiti Property Law Working Group, which is made up of roughly 100 experts, practitioners, donors and government officials working to clarify Haiti's land law in an inclusive and transparent manner. The nuanced and inclusive process of developing this manual lasted almost a year. To ensure the manual's accuracy, drafts were circulated for comments and regional stakeholder meetings were held in Port-au-Prince, Cap-Haïtien, Les Cayes and Léogâne to solicit feedback. Stakeholder meetings included national and local government officials, notaries, surveyors, nongovernmental organizations, bilateral and multilateral agencies, and the Haitian financial and insurance sectors.

After the publication of this manual and future manuals, assuming funding remains available, the working group will develop and implement training to educate all interested parties about the manuals and to promote their broad adoption and use. Training materials will be available in French, Creole and English, and may include a series of workshops and face-to-face and online training opportunities for public officials, lawyers, notaries and surveyors, among others.

The working group has begun research on other important aspects of secure tenure and land rights in Haiti, including the regularization of title and eminent domain. In addition, the working group has identified bottlenecks and challenges to the effective functioning of the Haitian property rights systems. Subject to the availability of funding, the working group will support capacity building of Haitian institutions involved in matters of property rights and secure tenure.

## INTRODUCTION

In January 2010, Haiti experienced its most devastating earthquake in 50 years. One of the greatest impacts of the earthquake was the loss of homes, which left more than 1.6 million people displaced or homeless. Uncertainty and lack of transparency relating to land issues and procedures have slowed the pace of shelter development and have stifled economic development and the creation of jobs.

Land tenure issues have presented one of the biggest roadblocks to investing and rebuilding in Haiti for some time. This has been exacerbated by the earthquake. A 2009 UN-HABITAT report on Haiti states that “due to inadequate registration and follow-up, there are no clear records of what land is owned by the state or by someone else.” Before the earthquake, less than 38 percent of all property in the metropolitan area of Port-au-Prince had properly registered titles (UN-HABITAT, 2007). Building, whether it is for shelter or commercial development, is risky when one is unable to ascertain who owns the land or who will have rights to the building when it is finished. Re-establishing residencies without security of tenure puts Haitians at the same risk for evictions and above-market rents that existed before the earthquake.

Likewise, investments in industrial and commercial development that are necessary to create jobs and stabilize the Haitian economy are limited by the lack of clarity about land ownership and lack of certainty as to the effectiveness of land transfers. Tenure security incentivizes local and national economic development as residents invest in their homes and communities and international entities invest in Haitian business opportunities. These investments create improved gross domestic product and contribute to the overall economy. They also increase the opportunity for individuals and businesses to leverage their ownership of land to access capital.

The challenges to legal and official transfer of buildings and land in Haiti are complex. Challenges include:

- A procedure that is not easily understood, especially by low-income residents.
- Unaffordable fees and expenses that can add up to 25 percent of the value of the purchase.
- Unclear requirements and inadequate documentation. For example, it is common for both parties to sign a deed of sale called *acte sous-seing privé*, but this is not legally accepted as a deed unless it is properly registered and transcribed by with the Office of Land Registry (Direction de l’Enregistrement et de la Conservation Foncière), which is housed within the General Tax Office (Direction Générale des Impôts or DGI), which is rare (Bloch, 1988).
- Even if registered and transcribed by a deed might not prove ownership against the claims of others, because the DGI is legally required to register and transcribe all deeds brought before it.
- It is not uncommon that the party “selling” the land does not have legal title to the land either. In the case of an informal sale, this adds to the risk for conflicts about ownership down the line.



- Because of the way the land registry is set up, and because of inheritance laws that grant rights to all offspring, even owners with clear, registered title can be pulled into a conflict over their land (UN-HABITAT, 2009).

Similarly, there is a weak public policy context for land, which contributes significantly to insecurity of tenure in Haiti. One reason is that the institutions tasked with the execution of land policies, such as the Office of National Cadastre, or ONACA; General Tax Office, or DGI; and the Ministry of Justice, have limited resources and often do not possess the necessary capacity to execute the requirements of the law. Another obstacle for registration of leasehold and freehold land is that the civil registry is incomplete. Many Haitians lack identification documents and are not consistently considered “legal” citizens.

Moreover, many deaths that occurred during the earthquake have not been formally documented, making claims on land by heirs complicated, if not impossible. Another issue is the lack of capacity to bring disciplinary measures upon those who do not do their due diligence when verifying title and upon those who seek or produce fraudulent documents. Finally, the lack of a functional cadastre and the archaic method by which properties are mapped by surveyors have led to errors and uncertainty concerning property boundaries and locations.

The Haiti Property Law Working Group was formed to address these concerns. This manual is intended to serve as an immediate tool to assist the business and reconstruction communities by clarifying the current legal and customary procedures and standardizing, in writing, the legal procedures necessary to transact and assemble land in Haiti.

# STEP-BY-STEP GUIDE TO THE LEGAL SALE OF LAND IN HAITI

## A. OVERVIEW

This manual is intended to apply to real property, including raw land and land that has been improved by infrastructure or construction of buildings. Throughout the manual, the terms “transfer of land” and “transfer of property” will be used interchangeably. Except as specified in the text, the steps described in the manual relate specifically to the transfer of real property, both unimproved and improved.

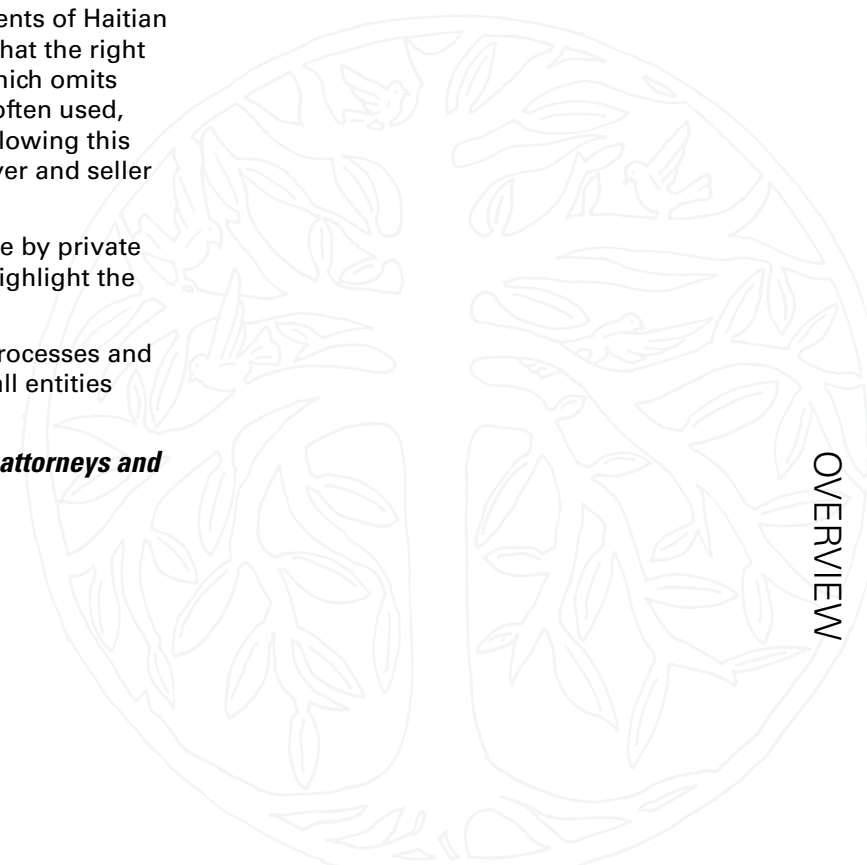
There are two legally recognized ways to transfer real property. They are outlined below. Both methods can reflect the agreement between the buyer and seller. Both may be recorded and transcribed by DGI into the official and legally recognized records of land conservation of the government of Haiti.

One of the methods is the sale by genuine deed, which follows the strict requirements of Haitian law and provides the purchaser with greater protection and certainty in the event that the right to ownership is ever contested. The other method is the sale under private seal, which omits steps from the sale by genuine deed. Although this latter form of sale is the most often used, this manual focuses on the steps required to realize a sale by genuine deed. By following this process, the transfer of land in Haiti is made more secure and risks to both the buyer and seller are minimized.

Where relevant, this manual will note the common customary processes of the sale by private deed that vary from the steps associated with the sale by genuine deed, and will highlight the risks inherent in these alternative practices.

The goal of this manual is to disseminate knowledge and awareness of the legal processes and make the steps associated with these processes more accessible and efficient for all entities involved in the process of land transfer in Haiti.

***It is strongly recommended that all those using this manual consult with their own attorneys and professionals when undertaking a specific transaction.***



## B. EXPLANATION OF LEGAL SALE: TWO APPROACHES

There are two legal ways to sell land in Haiti: the sale by act of genuine deed (see Figure 1), and sale by act of private seal or “*acte sous-seing privé*” (Figure 2). A sale exists as soon as there is agreement on the purpose and price, even before payment of the price.

The genuine deed of sale is prepared by the notary and obeys strict principles required by the law, as described below. The deed of genuine sale must be registered in the municipality where the property is located, which must also be where the notary is commissioned. The deed of genuine sale must then be transcribed at the Office of Land Registry and Mortgages attached to the Civil Tribunal for the municipality where the property is located and the notary is commissioned. The deed is valid upon signatures by the parties before the notary.

The sale by act of private seal requires an agreement between the parties. The sale is completed without the involvement of a notary. The agreement will reflect the intentions of the parties on the subject and the amount of the sale. It includes some steps of the sale by genuine deed, such as the promise of sale and the surveying of the property (*arpentage*). Sometimes the sale documents are signed before a lawyer or a justice of the peace. However, the sale by act of private seal does not fulfill certain formalities required by law, in contrast to the genuine deed of sale. The deed by private seal must be recorded and transcribed in order to be effective against third parties.



### BE CAREFUL ABOUT WHERE DEED IS REGISTERED

Sometimes, to rush the process or for other reasons, the deed is recorded with the DGI in a municipality other than where the property is located. This is not legal and can invalidate the sale.

The sale by act of genuine deed is preferable because it gives more of a legal guaranty than the sale by private seal or *sous-seing* deed. In the case of disputed ownership of property, a genuine deed may not be contested except by another genuine deed (or by fraudulent deed).

## C. PROFESSIONAL RESPONSIBILITY OF NOTARY AND SURVEYOR

If there is any doubt as to the accuracy of the bill of sale or the precision of the survey, either party may, upon request, require the notary and surveyor to appear before the county commission. The county commissioner, that is to say, the chief prosecutor (the local representative of the Ministry of Justice), plays a disciplinary role.

The prosecutor then checks to see if the notary or the surveyor has made errors. In the case of fraud, the prosecutor may file a complaint and the minister of justice and public safety will take appropriate action. Professional licenses may be revoked. In practice, this is an extreme and rare occurrence.



FIGURE 1. SALE BY AUTHENTIC DEED

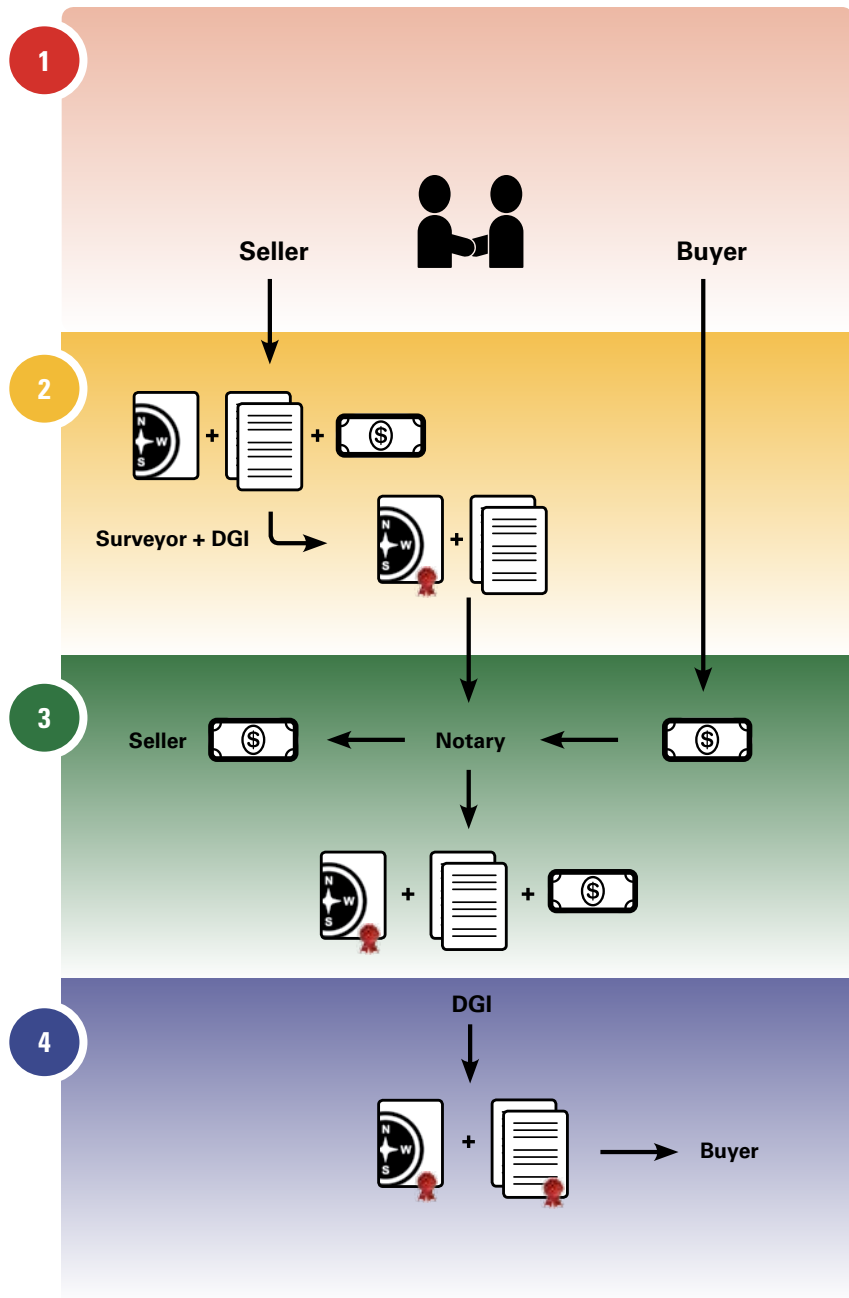
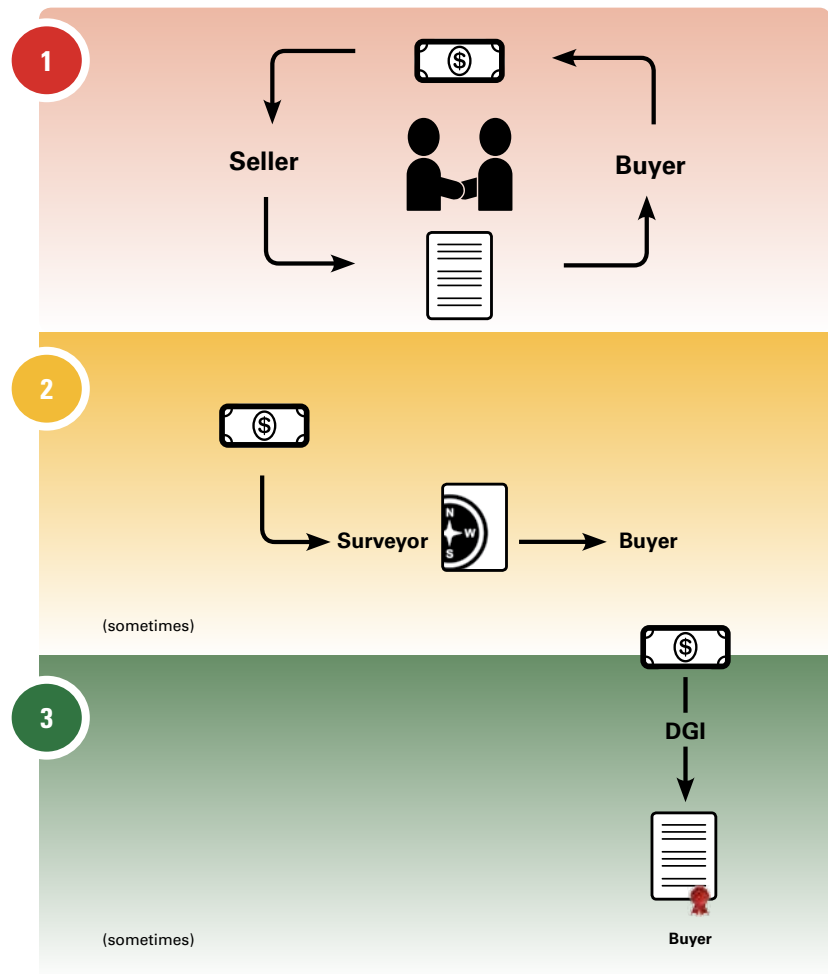


FIGURE 2. SALE BY PRIVATE SEAL



## D. SUMMARY OF THE STEPS TO A SALE BY GENUINE DEED

A sale by act of genuine deed can be divided into four major steps:

1. The preliminary sale agreement (also called the promise of sale or *la promesse de vente*).
2. Survey of the property.
3. Preparation of the bill of sale.
4. Registration and transcription of the bill of sale and payment of taxes at DGI.

This manual is organized around these four steps. Each step is subdivided into additional steps. For example, the survey includes six steps. Depending on the legal status of the buyer or seller, additional formalities must be followed to complete the procedure.

The following chart provides a summary overview of the four steps of the sales process for sale by genuine deed, and the corresponding sections below provide more detail on each step.

Step of the procedure*	Institution or professional involved	Documents needed	Estimated Time	Costs
<b>1. Preliminary sale agreement</b> 1 STEP	Notary	<ul style="list-style-type: none"> <li>• Preliminary sale agreement or promise of sale</li> </ul>		
<b>2. Survey</b> Survey of the property and writing of survey document by the surveyor. 6 STEPS	<ul style="list-style-type: none"> <li>• Surveyor</li> <li>• Court Clerk</li> <li>• District Attorney</li> <li>• Office of Land Registry (DGI)</li> </ul>	<ul style="list-style-type: none"> <li>• Prior survey</li> <li>• Property title</li> <li>• Seller's identity card</li> <li>• <i>Exploit ou sommation</i></li> <li>• New survey</li> <li>• Copy of new survey</li> <li>• Copy of receipt from DGI</li> </ul>	3 to 12 months	
<b>3. Preparation of the bill of sale</b> Verification of title documents, compilation of documentation for the sale, writing of bill of sale, collection of fees and taxes by the notary 6 STEPS	<ul style="list-style-type: none"> <li>• Notary</li> <li>• Office of Land Registry (DGI)</li> <li>• Ministries, consulate, general assembly, etc. (depending on legal status of seller or buyer)</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of new survey with the old property title in the margin and the DGI receipts</li> <li>• Mortgage situation of the property</li> <li>• Evidence of payment of taxes on built properties (CFPB) and bills for utilities (DINEPA and EDH) for the past five years, including the current year</li> <li>• Documentation proving the identity of the seller and the buyer and required permissions (4-6 docs.)</li> </ul>	10 days to 5 months	
<b>4. Registration, transcription and payment of taxes</b> Notary submits the deed of sale to the DGI for registration and transcription and pays the fees and taxes to the DGI 4 STEPS	Office of Land Registry (DGI)	<ul style="list-style-type: none"> <li>• Bill of sale with all of the above documents in the annex</li> <li>• Receipt of payment of taxes and fees from DGI</li> </ul>	3 months to 1.5 years	
<b>Total: 17 steps</b>	4 to 8 institutions and 2 professionals	14 to 16 documents	6 months to 2.5 years	

\*Certain procedures can be done simultaneously.

## STEP 1. PRELIMINARY SALE AGREEMENT OR PROMISE OF SALE

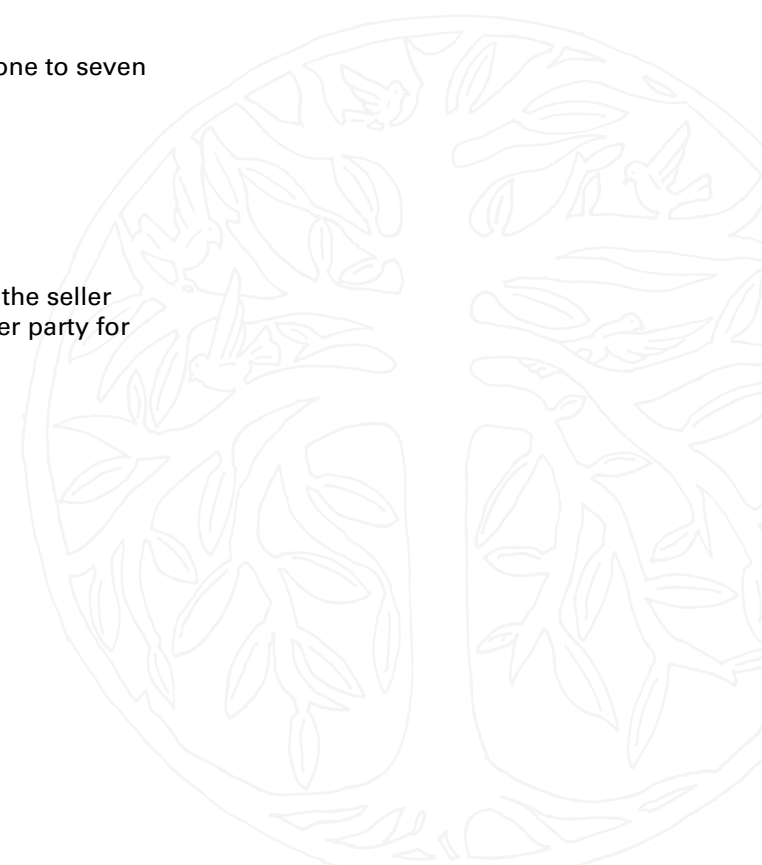
A preliminary agreement or promise of sale (*promesse de vente*) marks the formalization of the negotiations between the buyer and the seller. It reflects the decision that a sale of property should take place based on an agreed upon set of terms, including a description of the property and the price. Some notaries have a form that the parties can fill out. The notary's job is to review the description of the property, the contract price and terms, and lay out the procedures to follow before signing the bill of sale. The agreement may be in writing before the notary or verbal between the parties. It is worth mentioning that once the promise of sale and preliminary sale agreement have been signed and executed before the notary, the sale is deemed to have occurred.<sup>2</sup> Given that under Haitian law a "promise of sale is a sale," the preliminary agreement or promise of sale must include an automatic or other termination clause, in case a condition to finalize the sale does not materialize. In absence of a termination clause, the sale can only be cancelled by agreement of the parties or by a court order.

The formalities and conditions of the preliminary sale agreement generally are:

1. Surveying and measuring the dimensions of the property, which can take from one to seven months if the date of the last survey is more than 5 years old.
2. Procuring all documents necessary in the case of a married or divorced seller.
3. Procuring all probate documents in the case of the sale of inherited land.
4. Paying all outstanding loans.
5. Paying fees and methods of payment.

If, during the process of obtaining the documents listed above, either the buyer or the seller breaches the agreement, the party causing the breach is generally liable to the other party for damages.

2. Article 1368 of the Civil Code





## STEP 2. SURVEY

The survey is the process of measuring and documenting the dimensions, boundaries and surfaces of the land. It includes an analysis of historical documentation of the land and determines how the land may be used.

### WHO IS THE SURVEYOR?

The surveyor (*arpenteur*) is a licensed public official sworn to carry out the duties of measuring the land, without any limitations, determining its square footage and setting its boundaries.

Qualifications of a surveyor:

- Degree from the State University School of Survey of Port-au-Prince, which is in charge of overseeing the needs of all jurisdictions of the country.
- If there is no qualified candidate for the succession of a surveyor, the Department of Justice may appoint someone who will have:
  - Completed a minimum of two years' internship with a licensed surveyor.
  - Worked for two years at the Government Office of Survey and Topography or with a private firm, which is verified with a certificate awarded from the Association of Surveyors or the director of the private firm.<sup>3</sup>



### WHAT IS THE SURVEY?

The survey (*arpentage*) is the process of determining the boundaries of the land, confirming adjoining lands and examining chain of title. It includes a technical drawing of the land according to measurements by metes and bounds, and a record containing the following particulars:

- Name of the surveyor and county where he or she is licensed.
- Name of the owner of the land.
- Origin of the property.
- Applicable permits.
- Square footage.
- Boundaries (points of reference separating the parcel and neighboring land) and measurements, including the length of the sides of the property.

A surveyor is authorized to work only in the municipality where he or she is licensed, but he or she can work in another community if assisted by a local surveyor licensed in that area and with the authorization of the chief justice of the competent civil court.

3. The Judicial Profession. Ministry of Justice and Public Safety.



### BEWARE OF UNAUTHORIZED SURVEYORS WORKING OUTSIDE OF THEIR JURISDICTION

Some surveyors do not respect the limits of their license and do surveys outside of the municipality where they are authorized to work. In addition, some surveyors improperly use the name of another surveyor who is authorized to work in that jurisdiction.

### Typical procedure for survey

Stage of the procedure	Institution or professional involved	Necessary documents	Time	Costs
1. Obtaining permit to conduct survey (valid in theory for one month, but in practice for three months)	<ul style="list-style-type: none"> <li>• Court Clerk</li> <li>• District Attorney</li> </ul>	<ul style="list-style-type: none"> <li>• Previous survey</li> <li>• Property title</li> <li>• DGI receipts</li> </ul>	30 to 45 days	---
2. Notice to neighbors, publication	"Huissier"	"Exploit de sommation"	8 days	---
3. Survey	Surveyor	<ul style="list-style-type: none"> <li>• Property title</li> <li>• Identification card of seller</li> </ul>	1 to 8 days*	Depends on size and location
4. Registration of survey	Office of Land Registry (DGI)	New survey	1 week to 3 months	Pay Doc. Stamps
5. The original with the receipt of registration remains in the surveyor's files	Surveyor	<ul style="list-style-type: none"> <li>• New survey</li> <li>• Receipt from DGI</li> </ul>	---	---
6. A copy of the survey and of the receipt of the DGI are attached to the deed of sale.	Surveyor	<ul style="list-style-type: none"> <li>• Copy of the new survey</li> <li>• Copy of the DGI receipt</li> </ul>	1 week to 3 months	---
TOTAL 6 steps	4 institutions + 1 professional	10 documents	53 to 151 days**	Depends on size, location and value of property

\*Survey can take from one to seven months if the date of the last survey is more than five years old.

\*\*If the last survey is more than five years old, the total will increase by one to seven months.

### Fees of the surveyor

Fee	Approximate size
10.000 Gourdes	0 to 500 m <sup>2</sup> (~0.12 acres)
15.000 Gourdes	500 to 1000 m <sup>2</sup> (~0.25 acres)
25.000 Gourdes	½ carreau (~1.59 acres)
50.000 Gourdes	1 carreau (~3.18 acres)

This fee structure was obtained from the CAJUP, the Corporation of Surveyors for the Jurisdiction of Port-au-Prince. Outside of the capital, this fee structure does not apply. In addition, the cost of the survey is often higher on difficult terrain.<sup>4</sup>



### PROCEDURE IN CASE OF OPPOSITION

During the process, any person, even one who is not on title, may validly object to and prevent the surveying process. In this case, the party objecting to the survey has 15 days to file his or her claim with the justice of the peace. One of three things will follow:

- If the judge finds good cause for the objection, the process is stopped and the parties commence a proceeding in Civil Court to review title. This is called an Action to Quiet Title.
- If the judge rejects the objection, surveying resumes from Step 3 above.
- If the objecting party fails to act within the 15 days, the surveyor must start the surveying process over from the beginning.

### WARNING FOR SALE WITH A DEED UNDER PRIVATE SEAL

In the agricultural regions of Haiti, very often the parties will just do a survey and sign an agreement before a lawyer, a justice of the peace or a witness without completing the process through a notary. This is a form of sale with a deed by private seal (*acte "sous seing privé"*).

### MAKE SURE THE SURVEY IS REGISTERED

Sometimes surveyors deliver a copy of the survey to the owner without registering it with the DGI. The client thinks that he or she has a valid or authorized survey in hand, but he or she does not.



4. Decree of Feb. 26, 1975, and surveyor’s fees manual.



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## STEP 3. PREPARATION OF BILL OF SALE

The official process of an authentic sale requires the documentation that guarantees proper due diligence related to the property, such as verification of the property rights of the sellers and the identity of the buyers and sellers. This step also includes the drafting of the bill of sale, which requires the use of a notary, and payment by the buyer.

### WHO IS THE NOTARY?

The notary (*notaire*) is a public official who is *sui juris* or independent and qualified to draft, authenticate and record legal instruments and transactional documents. He or she receives the documents to be authenticated and fixes the date of transaction. He or she retains and keeps a copy of the legal and transactional instruments, and issues copies and excerpts. These documents are authentic acts and thus difficult to challenge.

Qualifications of the notary:

- Law degree.
- License signed by the Minister of

Justice after successfully completing a professional examination before the Commissioner of the Court of First Instance. (The Commission has not administered this exam since 1998.)

- Internship for three consecutive years as a notary clerk, with a certificate issued by the supervising notary and countersigned by the commissioner.
- Appointed by succession in their municipality and for life by the President of the Republic.<sup>5</sup>



### STANDARD PROCEDURE FOR THE PREPARATION OF THE BILL OF SALE

The standard and most simple procedure for the preparation of the bill of sale is the one followed by the notary when both buyer and seller are Haitian citizens or permanent residents.

1. The seller files the deed with the notary, who does a title search going back 20 years.
2. The notary collects all other pieces of documentation necessary to the execution of the transaction: (see table on following page)

5. The Judicial Profession Ministry of Justice and Public Safety “Les Professions Judiciaires,” Ministère de la Justice et de la Sécurité Publique. <[http://www.mjsp.gouv.ht/Pro\\_judiciaire.htm](http://www.mjsp.gouv.ht/Pro_judiciaire.htm)> Décret du 27 nov. 1969 sur le notariat

## Bill of sale procedure

Steps of the procedure*	Institution or professional involved	Documents needed or supplied	Time	Cost
1. Review chain of title going back 20 years (more if there has been no sale for the past 20).	Notary	<ul style="list-style-type: none"> <li>Land title documents of the seller</li> <li>Old survey act</li> </ul>	1 week to 3 months*	
2. Compile all the documentation relating to the identification of buyer and seller. This may differ if buyer and seller are not Haitian citizens or residents (see next section, "Additional procedures for other types of buyers and sellers").	Notary	<ul style="list-style-type: none"> <li>18 years old or authorization</li> <li>Fiscal identity card (NIF)</li> <li>National identity card (CIN)</li> <li>Affidavit for proof of inheritance (<i>acte de notoriété - en cas d'héritage</i>)</li> <li>Marital status (marriage license - check marriage settlement or prenuptial agreement, divorce papers, or death certificate in case of widowhood)</li> </ul>	1 day*	
3. Obtaining all other documents necessary to close the transaction.	Surveyor	Copy of the survey act with the old titles in the margins	1 week to 3 months*	
	Office of Land Registry (DGI)	Mortgage situation of the site	2 to 3 months*	
	<ul style="list-style-type: none"> <li>Seller (or)</li> <li>EDH / DINEPA (if the person must pay retroactively)</li> </ul>	Proof of payment of the taxes on built properties (CFPB) and the receipts from utilities companies (DINEPA and EDH) going back five years	1 day to 1 week (if the person must pay retroactively)*	
4. Notary prepares bill of sale, and the parties sign the bill of sale.	Notary	Authentic bill of sale	1 day to 2 weeks	---
5. Buyer pays the purchase price to the notary, then the notary pays the seller after deducting the capital gains tax or the transfer fees, as is the case (these are taxes on revenue).	Notary		Varies	
6. Notary receives his fees and the DGI fees for registering and transcribing the deed of sale.	Notary		1 day	6.5 to 12%
Total 6 steps	1 to 4 institutions and 2 professionals	12 to 15 documents	10 days to 5 months	6.5 to 12% of the sale price (paid by buyer)

\*Certain procedures can be done simultaneously.

**BE CAREFUL ABOUT VERIFICATION OF PRIOR TITLES**

Notaries in the towns out in the provinces who do not have the means to travel to Port-au-Prince to do the proper research on prior titles will often fail to do research and review titles going back 20 years on the property.



**PROBATE LAWS IN HAITI**

Inheritance laws generally provide that property is divided in equal shares to the children of the deceased. The law allows the deceased to dispose of his property to one or more children or third party, within the following limits: 1/4 if there are three or more children, 1/3 if he has two children, and 1/2 if he has only one child. In those instances, the separation of the land and the transfer are usually done informally. This in turn creates confusion and uncertainty in the chain of title, undermining incentives for long-term development.



**WARNING ABOUT INHERITED LAND**

Because of the uncertainty created by these laws of inheritance and disposition of estate land, heirs to a property might willfully hide one of the members during the closing of the transaction so they could later contest the transfer. A purchaser is well-advised to make sure that all heirs are accounted for at the closing.



**LEASE WITH PROMISE TO SELL**

A property owner may contract to lease his land with a promise to sell to the renter after a given period of time.



**SIGNATURE ABOUT INHERITED LAND**

If the sellers are married under the principles of community property, to avoid any contest from one of the spouses, both spouses must sign the deed of sale, unless the property was acquired before the marriage.



**WARNINGS ABOUT PAYMENTS**

Sometimes the seller demands part of the payment in advance. Sometimes the buyer does not pay the full purchase price at closing. This may create liens on the property. A new buyer should make sure that all liens are satisfied and all payments from the previous sale are made in full.



**FEES OF THE NOTARY**

The notary's fees are paid by the purchaser. While the legal rate is one percent, in practice it can vary from 1.5 to 2.5 percent of the total sales proceed. Generally, the scale depends on the complexity of the sale. Additional fees may be charged for services that are incidental to the sale (for preparation of documents, affidavits, and other services.)



Typically, the notary collects both his or her fees and the DGI fees in a lump sum payment and is then responsible for the distribution. The total amounts are about 6.5 percent in Port-au-Prince and it may go up to 12 percent in other parts of Haiti.

### ADDITIONAL PROCEDURES IN TRANSACTIONS BETWEEN OTHER TYPES OF BUYER AND SELLER

The documentation relating to the buyer and seller varies depending on the legal status of the parties (see Step 2 above). In order to obtain some of these additional documents, the buyer or seller must visit certain ministries of the government of Haiti, each of which has its own required procedures. The full extent is not described below, and the buyer and seller are advised to go through these procedures with the assistance of a Haitian lawyer.

If buyer or seller is listed in the categories below, the notary will require additional documentation.

- Foreigner present in Haiti, Haitian citizen residing abroad.
- Haitian corporation (institution, firm, association).
- Foreign corporation.
- Haitian religious institution.
- NGO or Haitian nonprofit.

#### (a) Foreigner present in Haiti (almost identical for buyer and seller):

Necessary documents	Institution or professional involved	Time	Costs
Same as a person residing in Haiti	Buyer / seller	---	---
Stay authorization for more than 90 days	Ministry of the Interior	1 month	5 to 30,000 HTG
Buyer's permit (only relevant for the buyer)	Ministry of Justice and National Security	5 to 30 days	10 HTG stamp tax + 200 HTG for private residences or 500 HTG for commercial property
5 documents	2 institutions	35 days to 2 months	215 to 30,510 HTG

For each purchase, the buyer must request a new buyer's permit, through the presentation of his residency permit, which needs to be validated once a year in October with the payment of a stamp tax.

#### (b). Haitian citizen residing abroad:

Necessary documents	Institution or professional involved	Time	Costs
Same documents as Haitian natural person	Seller / buyer		
Consular mandate selecting a local representative for the sale	<ul style="list-style-type: none"> <li>• Haitian Consulate</li> <li>• Ministry of Foreign Affairs</li> </ul>	3 days to 1 month	
5 documents	2 institutions	3 days to 1 month	

**(c). Haitian religious institution (identical for buyer and seller):**

Necessary documents	Institution or professional involved	Time	Costs
Certificate	Ministry of religious affairs	Unknown	Unknown
(If part of a network) mandate	Hierarchical authority of the institution	Unknown	Unknown

The Catholic Church has had a written accord with the Haitian government since 1860, stipulating that their properties are exempt from property taxes (“Contribution Foncière des Propriétés Bâties,” CFPB).<sup>6</sup>

**(d). Haitian corporation (institution, firm, association) (identical for buyer and seller):**

Necessary documents	Institution or professional involved	Time	Costs
Publication of the statutes, of the recognition of public utility or legal personality in Le Moniteur	Le Moniteur	1 to 3 days	
Minutes authorizing an individual to sign the transfer on behalf of the legal person	Board of directors of the corporation	1 week to 1 month	
Copy of tax registration card (NIF)	Seller / buyer		
A copy of the patent	Seller / buyer		
4 documents	2 institutions	8 days to 1 month	

**(e). Foreign corporation (almost identical for buyer and seller):**

Necessary documents	Institution or professional involved	Time	Costs
Proof of legal existence and inclusion of the name of the company in the trade books	Ministry of Commerce or Chamber of Commerce in country of incorporation	1 week to 1 month*	
Minutes authorizing an individual to sign the transfer on behalf of the legal entity	Board of directors of the corporation	1 week to 1 month*	
Translation and legalization of the documents above (for the buyer only)	<ul style="list-style-type: none"> <li>Embassy of Haiti or consular services</li> <li>Ministry of Foreign Affairs</li> </ul>	1 week to 2 months*	
Authorization to acquire the property (for the buyer only)	Ministry of the Interior	5 days to 1 month*	500 HTG for commercial property
Consular term designating a local representative in the sale (for the seller only)	<ul style="list-style-type: none"> <li>Embassy of Haiti or consular services</li> <li>Ministry of Foreign Affairs</li> </ul>		
6 documents	5 institutions	1 week to 2 months	

A foreign company may also form a subsidiary company in Haiti, with a sole shareholder of Haitian nationality with a minimum of one share (the company must have a minimum of three shareholders). Thus, as a Haitian corporation, the limits and requirements of the foreign corporation would not apply.

\* These procedures can be done simultaneously.

6. 28 mars 1860, government of Haiti signed a concordat with the Vatican and several other religious institutions, providing special privileges. Article 10 of decree of 1979

**(f). NGO or Haitian nonprofit (identical for buyer and seller):**

Necessary documents	Institution or professional involved	Time	Costs
Publication of the bylaws, of the recognition of public utility or legal name in Le Moniteur	Le Moniteur	1 to 3 days	
Authorization (legal recognition)	Ministry of Planning and External Cooperation	1 month	
Mandate authorizing a physical person to sign on its behalf	Board of directors of the corporation		
NIF or patent	Seller		
4 documents	3 institutions	1 month	

**HAITIAN GOVERNMENT AS SELLER**

There are two types of properties belonging to the government of Haiti: land in the private domain and in the public domain. Both are immune to adverse possession.

The properties in the public domain are inalienable and assigned to a collective use. They include:

- Coastline.
- Creeks.
- Rivers.
- Waterways.
- Mines and quarries.<sup>7</sup>

**WARNING ABOUT PUBLIC DOMAIN PROPERTIES**

A multitude of parcels in the public domain have been trespassed on and seized over time. The trespassers are in flagrant violation of the law and consequently have no property rights. They are squatters without title or authorization.

If land from the public domain is to be sold, it must first be declassified as such by law, then transferred to the private domain and disposed of as follows:

The sale of property in the private domain must be authorized by law. Once the sale is authorized, the minister of the economy and finance is the only person authorized to sign the bill of sale on behalf of the state.

7. Constitution of 1987, art. 36-5.

**WARNING ABOUT MUNICIPALITIES**

The municipal council is responsible for managing properties in both the public and private domain of the government that are within its jurisdiction, but it does not have the right to dispose of those properties. Only the minister of economy and finance may dispose of property of the private domain of the government.<sup>8</sup>



**TENANTS OF THE GOVERNMENT**

One can own property built on government land of the private domain by becoming a tenant of the government (*fermier de l'État*). This is done by leasing the land from the DGI represented by the Direction du Domaine (Domain Department) after a survey done by a DGI surveyor.

Any tenant of the government has the pre-emptive right to acquire after five years of renting the land. This is the right of first refusal.<sup>9</sup> This procedure is similar to the purchase of property in the private domain

of the government. Therefore, in practice, this is beyond the means of the ordinary Haitian person, and the right is rarely exercised or respected.

When a tenant of the government sells his house, the purchaser will have the same right as the seller. The building belongs to him, but the land belongs to the government to which he must pay rental fees. Assignment of the lease must have been previously authorized by DGI upon payment of a fee. After the sale, the purchaser should return to DGI to register the transaction.<sup>10</sup>



**THE STATE SELLS PROPERTIES SEIZED THROUGH EMINENT DOMAIN TO A PRIVATE PERSON**

Property may be expropriated by the State for public utility purposes. First, there must be a decree declaring the project to be a public purpose project. Thereafter, the transfer of expropriated property is done with the adoption and implementation of a report drawn up by a committee of acquisition. Expropriation is not proper for the execution of works of general interest. The State can make the expropriated property available to various public entities. However, it is difficult for the State to sell expropriated property to a private person for purposes other than in the public interest <sup>11</sup>

8. Décret du 16 janvier 1963

9. Page 265 of the Fiscal Code, Book 2, "Leasing government land"

10. A plan is under consideration in Parliament to allow government farmers to exercise their right of redemption after three years.

11. Article 36-1, alinéa 2 de la Constitution de 1987 et non amendé.





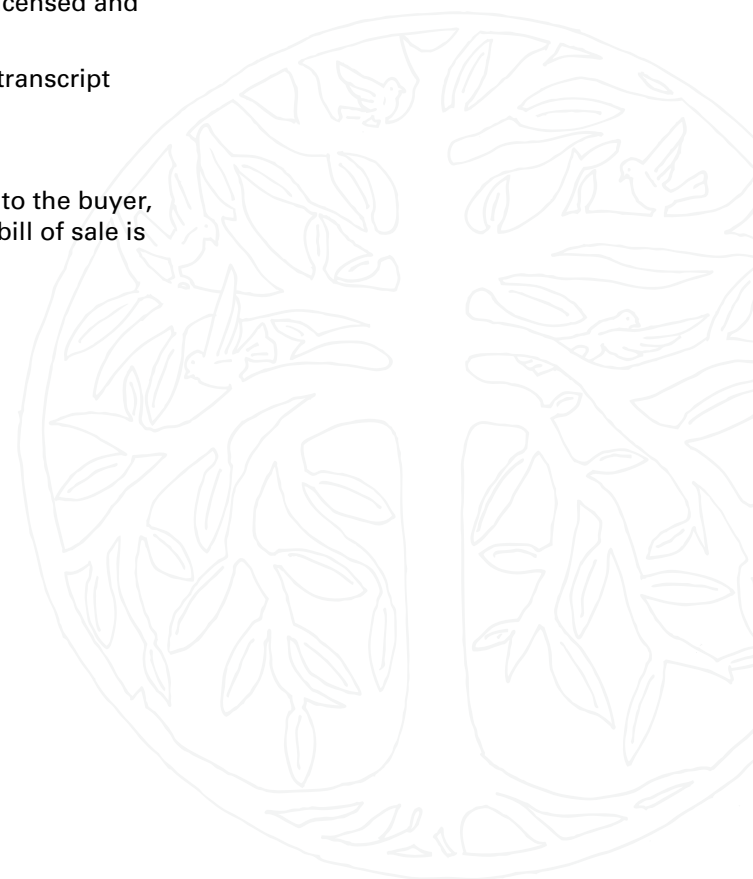
## STEP 4. REGISTRATION AND TRANSCRIPTION OF BILL OF SALE AND PAYMENT OF TAXES

This is the final step involving the authenticating of the bill of sale and payment of taxes and fees at DGI. In order to authenticate the sale, the bill of sale needs to be recorded and transcribed. Once this is confirmed, the official, authentic deed of sale is final. In this step, the notary ensures that the government has received the payment of all appropriate taxes and fees. The process includes the following actions:

1. Notary requests the fee estimates from the DGI, including value-added tax, transfer fees and the fees associated with registration and transcription.
2. Notary receives the fee schedule and pays the amount on behalf of the buyer.
3. Notary notes the receipt number for the payment of registration and transcription fees and the date in the margin of the bill of sale.
4. The Recorder's Office branch of the DGI in the municipality where the notary is licensed and the property is located records the bill of sale by hand.
5. DGI is then responsible for sending the registered or recorded bill of sale to the transcript office at the departmental capital to be transcribed (also done by hand).

The original bill of sale stays in the possession of the notary.

For sale of large parcels, the notary does not surrender the prior titles and surveys to the buyer, only an abstract of survey and a sworn affidavit evidencing the transfer. The initial bill of sale is initialed, signed by the notary and returned to the seller.



## Registration and transcription of bill of sale

Steps of the procedure	Institution or professional involved	Documents needed	Time	Cost
1. Notary requests the fee estimates from the DGI, including taxes (VAT and inheritance tax), change fees, and the fees associated with registration and transcription. He or she pays the fees and sums on behalf of the buyer and submits the original copy of the bill of sale (" <i>minute</i> "), as well as accompanying documentation, to the DGI.	Office of Land Registry (DGI) Office of Income Tax (DGI)	<ul style="list-style-type: none"> <li>• Original copy of Bill of Sale (handwritten, known as "<i>la minute</i>")</li> <li>• Accompanying documentation assembled by notary</li> <li>• Receipt of tax and fee payment (known as "<i>avis de cotisation</i>")</li> </ul>	1 day	
2. The notary makes a copy of the deed ( <i>expédition</i> ), and writes the number and date of the receipt of payment of the registration and transcription fees at the bottom of the page. He or she hands over this documentation to the buyer, who is from this point on able to sell the property or a part of it using the copy.*	Notary	Copy of the bill of sale (known as " <i>l'expédition</i> " and typed on a computer)	1 week to 3 months	5.2% of the sale price + 17.50 HTG + 6 HTP per register
3. The original copy of the bill of sale is registered in the local government's land registry ( <i>Répertoire d'Entrée</i> ). This is done by hand.	Office of Land Registry (DGI) in the municipality where the property is located	Original bill of sale	1 week to 3 months	---
4. DGI is then responsible for sending the recorded Bill of Sale to the Transcription Office at the departmental capital to be transcribed (also done by hand). Once the deed is registered and transcribed, it is returned to the notary with two stamps with the signatures of the directors of the Registration and Transcription Offices. The notary keeps the original bill of sale in his or her archives.	Office of Land Registry (DGI) attached to the Civil Tribunal for the jurisdiction in which the property is located	Original bill of sale	3 months to 1 year	These have been paid in Step 4.
Total 4 steps	3 institutions and 1 professional	4 documents	3.5 months to 1.5 years	5.2% of amount of sale + 17.50 Gdes + 6 Gdes per role

\* In cases where only part of a property is sold, the notary does not transfer either the full survey or the title documents to the buyer. He only hands over the survey of the extracted parcel and the notarized deed documenting the sale. The notary writes a note in the margin of the original deed for the entire property to indicate the area that has been sold, signs it, and returns it to the seller.

### DGI FEES

The notary is responsible for collecting fees due the DGI, which are paid by the buyer.

- Registration fee: 3%
- Right of transcript: 1%
- Right to write: 6 Gdes by role
- Proportional fee: selling price x 2/1000
- Stamps: 17.50 Gdes
- Additional fee: 1% sale of the proportional fee.<sup>12</sup>

### VALUE-ADDED TAX

Value-added tax is paid by the seller and is calculated according to the following criteria:

For the sale price of a property owned by a corporation, the tax on the gain is 15 percent of the difference between the selling price of the property and the depreciated value of the property on the books of the company. The amount of value added tax is not dischargeable and must be reinstated in the annual taxable income of the company, and the tax already paid shall be considered an advance tax deducted from the annual tax. The tax laws do not allow for a deduction for depreciation of land.

For the sale of land owned for less than 10 years, the tax on the value-added is 10 percent to 75 percent of the capital gain,

and does not discharge the obligation. If the property were acquired and owned for more than 10 years, the tax will be 10 percent to 50 percent of the capital gain, and does not discharge the obligation.

For the sale of a property that was followed by construction after its acquisition, the tax on the gain will be 2.1 to 5 percent of the selling price tender. The seller will not join in the gain in annual revenues.

For the sale of a portion of the land, the tax on capital gains is 4 percent of the selling price and does discharge obligation. The seller can not integrate the value-added in his annual revenues.

For the sale of a building constructed on land leased from the state, the tax on the value-added is 2.5 percent of the selling price dischargeable, but varies between 3 and 9 percent of the selling price.<sup>13</sup>

### INHERITANCE TAX

If sold by the heirs, they pay in lieu of the value-added, a tax called “transfer fees” ranging from 1.5 percent and 9 percent of the amount of the sale, depending on the relationship between the deceased and the heirs. The more remote the heir is from the deceased, the more the tax increases.<sup>14</sup>



12. Decree of Sept. 28, 1927.

13. “Doing Business: Registering Property in Haiti,” International Finance Corporation.

<<http://www.doingbusiness.org/data/exploreeconomies/haiti/registering-property>> Décret du 29 septembre 2005 relatif à l’impôt sur le revenu.

14. Loi du 28 Septembre 1977.

**MAKE SURE THE BILL OF SALE IS RECORDED**

Sometimes the notary will have the bill of sale executed without sending it to be recorded and transcribed at the DGI. The bill is valid but does not have the same strength in case of a dispute because only the recording and transcriptions will ensure ownership with certainty. If the bill is not recorded, it is not enforceable against third parties. Only recording the bill gives it a certain date, and only the transcription gives notice of the sale, making it effective against third parties.

Where more than one authentic bill of sale exists for the same property, the one first recorded and transcribed with the DGI has priority. One must make sure that the notary completes all the steps after receiving his fees.

**WARNING ABOUT DELAY IN THE TRANSCRIPTION**

The DGI generally takes a long time to transcribe the bill of sale. This procedure is done by hand, and the files are sent back to the regional offices through the DGI branch of each county. The agency does not have the manpower to handle volumes; therefore, there is always a backlog at the DGI.



## E. CONCLUSION

This manual explains step by step the procedure for selling property for potential buyers, sellers, professionals and government stakeholders. This manual has documented the existing legal procedures and advice where procedures differ under customary law. It also demonstrates the challenges that exist in practice when as an alternative approach is taken to a sale by genuine deed.

Through this thorough explanation, we hope that these procedures are now more transparent and will be more affordable for all concerned.

The Haiti Property Law Working Group in Haiti seeks to promote greater security of land ownership in Haiti, and we hope that this manual advances us towards this goal. By using this manual, we are also trying to standardize procedures in the hope of improving the efficiency and predictability of land transactions, to stimulate investment and economic growth in Haiti.

Thus, it is the hope of the Haiti Property Law Working Group that this manual has contributed to a common understanding of current land transaction processes and provided effective tools to promote development and security of tenure in Haiti. May the use of the manual contribute to the recovery of Haiti and the betterment of the quality of life for its citizens.

## GLOSSARY

**Affidavit of inheritance (*acte de notoriété*)** — Verified statement in support of inheritance rights.

**Arpenteur** — Surveyor.

**Avis de cotisation** — Notice of assessment prepared by the DGI in connection with the sale of land. The *avis de cotisation* reflects DGI's calculation of fees and taxes to be paid in connection with the sale. The *avis de cotisation* must be written manually and appears as an annotation on the side of the bill of sale.

**Bill of sale or deed (*acte de vente*)** — Document evidencing the parties' agreement on transfer of ownership of property by a person or entity called seller to a person or entity called buyer or purchaser. In connection with a genuine sale, the bill of sale is the official document with the signature and seal of the notary, signifying the completed sale of the land.

**CLED** (Center for Free Enterprise and Democracy) — An organization that has existed since 1992, formed by businessmen interested in public policies in Haiti that could help to create free enterprise.

**Commissaire du Gouvernement** — Government commissioner.

**DINEPA** — Government agency responsible for water and sanitation.

**DGI (*Direction Générale des Impôts*)** — The Tax Department of Haiti, part of the Ministry of Economy and Finance.

**DGI CFPB (*Direction de l'Enregistrement et de la Conservation Foncière*)** — Office of registration and conservation and part of the Ministry of Economy and Finance.

**DGI de Delmas** — Example of a *DGI bureaux déconcentrés*, local branch of DGI located in Delmas.

**Expédition** — Copy of a deed or bill or sale that has been authenticated. The original is called a "*minute*".

**Genuine sale, or authentic sale (*La vente par acte authentique*)** — A sale in the presence of a notary (*notaire*) in strict accordance with the requirements of the law.

**Haitian Consulate** — Haitian official representing the country outside of Haiti, who is under the Ministry of Foreign Affairs. If the seller is living abroad, the Haitian consulate must validate the signature of the seller and his authorized representative; the signature of the consulate must then be validated by the Ministry of Foreign Affairs.

**Inheritance laws** — Inheritance laws in Haiti generally provide that property is left to the children of deceased owners in equal shares which leads to fragmentation of properties and land disputes.

**Le Moniteur** — The official journal of the Republic of Haiti where laws, regulations and official notices are published.

**Ministry of Economy and Finance (*le Ministère de l'Économie et de Finances*)** — Ministry of the government of Haiti responsible for domestic finance matters, including taxes and census. The Minister of Economy and Finance signs on behalf of and represents the government of Haiti when the state acquires or sells property belonging to the private domain of the state.

**Ministry of Justice (*le Ministère de la Justice et de la Sécurité Publique*)** — Ministry of the government of Haiti responsible for legal matters, the judiciary and matters of security, including licensing of surveyors, notaries, and the issuing of authorization when the buyer or seller is a foreign entity or natural person.

**Ministry of Foreign Affairs** — Ministry of the government of Haiti responsible for relations with other countries and supervision of diplomatic agencies and consulates. In the case of property where the seller is living abroad, the Haitian consulate must validate the signature of the seller or representative of the seller. The signature of the consulate must be validated by the Ministry of Foreign Affairs.

**Notary (*notaire*)** — An individual licensed by the government of Haiti to witness and attest to the validity of certain documents and transactions, including bills of sale, deeds and documents related to the transfer of property. The notary is required to advise his clients.

**Office of Religions (*le Bureau des Affaires Religieuses du Ministère des Affaires Etrangères et des Cultes*)** — Office responsible for religious matters. In the case of property, if the buyer or seller is a religious institution, documentation for the notary must include a certificate from the Office of Religions.

**Recorded bill of sale** — Recording of the contents of a bill of sale in the Land Registry upon the payment of a fee. It assures the publication of the a bill of sale and renders it binding on third parties. The transcription is done by hand and the registry is organized according to the date of transcription in chronological order.

**Registration** — Registration of a document at the Directorate of Registration and Conservation of Lands at the DGI branch where the property is located upon payment of a fee.

**Registered bill of sale** — Bill of sale registered and transcribed by the DGI (*Direction Générale des Impôts*), at the DGI branch where the property is located, upon payment of a fee. The registered bill of sale has a fixed date. The DGI Registration Office affixes a seal on the document after having the details of the sale are entered in the Directory (*Répertoire*

*d'Entrée*). Both a genuine sale and a sale under private seal may be registered and transcribed by the DGI.

**Registration fees for inheritance (*droits de mutations or droits d'enregistrement*)** — In the case of inheritance, this is the registration fee paid to change the ownership to the heir.

**Sale** — According to Haitian law, a sale of property is a transaction generally accomplished through the use of a document (bill of sale) evidencing the parties' agreement to transfer the right and title to property from one person or entity called the seller to another person or entity called the buyer or purchaser.

**Sale under private seal (*la vente par acte sous-seing privé*)** — A sale between the buyer and seller without the use or involvement of a notary.

**Surveyor (*arpenteur*)** — An individual authorized by the government who is sworn to and entrusted with the responsibility to measure and fix the attributes of a piece of property, often in connection with its purchase, sale or other transfer.

## MINISTRIES AND DEPARTMENTS

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### EXECUTIVE BRANCH: COUNCILS AND PRIMATURE

#### Council of Ministers

Presided over by the president of Haiti, the Council of Ministers includes the prime minister and all other ministers. For issues concerning land laws and transactions, its mandate is to:

- Approve the proposition of laws (fiscal laws, laws authorizing the sale of state private domain land) before their presentation to the Parliament.
- Approve the recommendations of Ministry of the Economy and Finance regarding state-owned property in the private domain: sale and acquisition of property, lease or joint-venture contract.
- Adopt regulations for the application of land laws and also laws related directly or indirectly to land transactions (private-private or public-private).
- Approve decisions related to expropriation process and eminent domain.

#### Council of Government

Presided over by the prime minister, the Council of Government includes all ministers and the secretary of state. For issues concerning land laws and transactions, it has the responsibilities to propose strategic orientation and decisions to the Council of Ministers for approval, especially those related to:

- Regulations, administrative procedures and institutional arrangements needed to be adopted for the application of existing laws or to facilitate investment and land transactions.
- Draft of laws (new laws or modifications of existing laws).
- The legislative agenda that will be adopted by the Parliament for each session.
- Revision of taxes, duties and fees applied to land transactions (directly or indirectly).
- Taxes, duties and fee exemptions (nature, approval process, conditions of application and implementation).

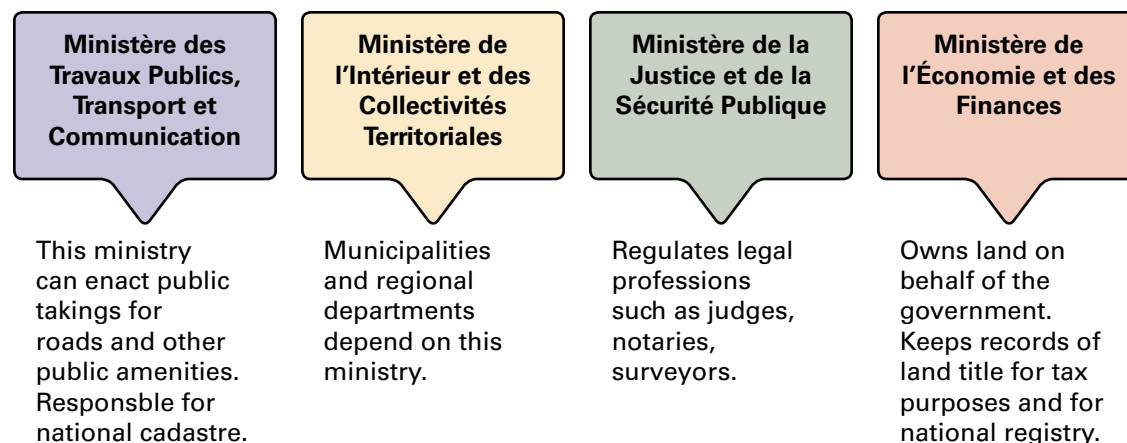


**“La Primature” - Prime Minister’s Office: The legal department**

By constitutional right, the prime minister has the duty to apply the laws. The legal department of the Prime Minister’s Office is in charge of reviewing all propositions of laws and regulations before their presentation to the Council of Ministers and the Council of the Government. This unit analyzes the legal and administrative coherence of decisions in compliance with existing laws and international agreements signed and ratified by Haiti, the competence of the institution; it also formulates recommendations for the implementation of these legal or administrative instruments.

This department reviews all propositions received from ministries, government agencies or independent institutions.

**EXECUTIVE BRANCH: THE MINISTRIES INVOLVED IN LAND TENURE**



**Ministry of Economy and Finance (MEF)**

MEF plays a central role in transactions involving public-owned lands, especially transactions related to the state-owned lands in the private domain. It has the responsibility to:

- Prepare the draft law authorizing the sale of land.
- Negotiate and sign leasing contracts.
- Negotiate and sign joint venture contracts for investment projects (the state contributes to the equity funds for the value of the land where the project will be implemented). In other words, when private development is done on state-owned land in private domain, the developer must go through an approval process with MEF.

In accordance with Article 74 of the 1987 Constitution, MEF needs the advice of the Municipal Assembly before concluding a transaction for a state-owned land in the private domain. Because of the absence of those entities, MEF can only lease or do joint-ventures, and it has set a temporary procedure for that.

MEF also has a mandate to propose fiscal system reforms — laws<sup>15</sup>; regulations; nature and level of taxes, duties and fees; administrative procedures; and tools — to the government.

### **General Tax Directorate**

The DGI is a dependency of the Ministry of Finance and has the task of registering all property transactions and titles. Its duties include:

- Registering all property transactions and titles submitted by the parties or the notary.
- Managing land in the private domain of the government (“*biens du Domaine Privé de l’État*”). The Minister of Finance is the only one authorized to sign a sale of government land.
- Levying the tax on built property (“CFPB, *Contribution Foncière de Propriétés Baties*”) for municipalities. Land without built property is not subject to a property tax.
- Collect all taxes, duties, fees and revenues associated with a transaction (sale of property, loans, survey, income, corporate brut profit, capital gains, etc.).
- Administering sequestrated property, bankruptcy, property of vacant estates or property with no ownership.
- Represent the state in justice proceedings.

The DGI has a decentralized system with branch offices in each municipality, extending operations throughout the country.<sup>16</sup> It has six main departments involved in land tenure:

- **The Office of Government Land:** The Domain Department in charge of managing land within the private domain of the government. This direction does evaluation and makes recommendations if the state wants to sell or to lease its property, or to buy lands from a private owner (individual or company).
- **Directorate of Registration and Property Conservation:** Department of Land Registry and Conservation, where any land transaction or survey is registered. There are fees for each piece. There is one registry in each place where there is a civil court. It registers the land transactions for the area on which the civil court has jurisdiction. Since 1824, the Port-au-Prince office has amassed a registry of 2,500 books, none of which have been digitalized. Land titles are archived in the registry in chronological order based on the date of registration. Because of this archiving method, it takes months and maybe years to verify duplicity and

15. By constitutional rights, only the Executive branch of the State can propose fiscal laws or modifications of existing fiscal laws.

16. Mora, Mike. “Current Land rights infrastructure.” Organization of American States. June 3, 2011.

control against fraud. At the end of each year, each land registry of the country makes a summary of the land transactions of the year, classified by name of sellers, name of buyers, name of notaries, municipalities and dates.

- **Direction of Operation, Direction of Tax Collection and Direction of Verification:** These three directions are in charge of collecting revenues, taxes, duties and fees in accordance with the rate and modalities fixed by fiscal laws and regulation. DGI also collects for the municipalities.
- **Direction of Legal Affairs:** This direction collaborates in the preparation of draft tax laws and performs all studies related to the application of legislation, in compliance with existing laws and international agreements signed and ratified by Haiti. It gives recommendations on all disputes arising from the application of tax laws between DGI and the taxpayers. It executes decisions of justice related to sequestered property, bankruptcy and those relevant to the state.

The Parliament is working on a new law for the DGI that the government introduced in 2009, and the Ministry of Economy and Finance launched a reform of the fiscal institutions.

#### ***Fund of Economic and Social Assistance***

FAES is a semi-autonomous agency under the Ministry of Finance, which finances projects such as capacity building in local government, and social or economic initiatives. They sometimes undertake projects that involve land development.

#### **Ministry of Public Works, Transportation and Communication**

MTPTC is in charge of authorizations and permits related to construction, (authorizations for residential and housing developments, construction permit), and supervises and controls the implementation of infrastructure for private projects. It shares these responsibilities with the municipalities.

##### ***Directorate of Public Works***

The Department of Public Works is the primary implementation arm of MTPTC for developing public infrastructure, and within it:

1. Urban Planning Service: Develops master plans and infrastructure development plans for urban and rural centers. Develops standards for urban development and construction.
2. Urban Engineering Service: Implements infrastructure, services and plans developed by SPU.

##### ***National Office of the Cadastre***

ONACA is a semi-autonomous agency that depends on MTPTC. It is responsible for enacting the national cadastre of the territory of Haiti.

### ***National Directorate for Potable Water and Sanitation***

This agency executes the government's water and sanitation policy. It provides water resources and sets national standards.

### ***Haiti Electric Company***

The state-owned company responsible for generating, transmitting and distributing electricity in Haiti. The Minister of Public Works is the president of EDH's board of directors. A seller must show payment of electricity bills going back five years.

### **Ministry of the Interior, Territorial Communities, and National Defense**

The Ministry of the Interior supervises the local authorities for the Executive branch and manages jointly with the competent administrative bodies the state-owned lands in the public domain.

#### ***Directorate of Local Authorities/Territorial Communities***

The regions ("*collectivités territoriales*") depend on this ministry, through this agency.

#### ***Directorate of Immigration and Emigration***

Foreigners must obtain permission from this department of the Ministry of the Interior in order to be able to purchase land in Haiti.

### **Ministry of Justice and of Public Safety**

#### ***Control Department/Directorate for Judicial Professions***

The Ministry of Justice, through this agency, supervises surveyors, notaries and district attorneys ("*Commissaire du Gouvernement*"), justices of the peace, and court clerks.

### **Ministry of Planning and External Cooperation**

#### ***National Center for Geospatial Information***

The CNIGS depends on the Ministry of Planning and External Cooperation. It was created in 2006 as a result of the fusion between two smaller entities. The agency collects satellite imagery of the Haitian territory with modern technology and qualified personnel and, similar to the function of ONACA, provides different layers of information on the land, which it proceeds to sell as services and products to other institutions that need such information. After the earthquake in January 2010, CNIGS lost nine people, including the people in charge, and 70 percent of their technological assets. Fortunately, their main server (5TB) was spared, as were the rest of the 60 employees.<sup>17</sup>

17. Ibid

## **Ministry of Agriculture and of Rural Development**

### ***National Institute of Agrarian Reform***

The 1987 Constitution established a special organization called the National Institute of Agrarian Reform (INARA). Its responsibilities are described in the 1987 Constitution (Article 248) and the Decree of April 19, 1995: “organize the redesign of land structures and implement agrarian reform for the benefit of the persons occupying the land”

One of INARA’s tasks is to redistribute land. INARA is authorized by official decree of Oct. 29, 1996, to take possession of any land in dispute that has been recognized as vacant estates or state-owned lands in the private domain.

INARA had developed an agrarian policy based on the optimization of productivity through the establishment of infrastructure for the protection and development of the land. It also has operational procedures that were applied for actions already taken: The land registry divides confiscated land into half-hectare lots and makes them available to people.

Another duty of the INARA is to settle land disputes. Unlike courts, INARA does not charge to hear a case and has a transparent policy. Anyone can present documents or lodge complaints, and all parties are told what is occurring. Parties work to reach an agreement before a grand assembly. Verbal agreements have the force of law. Anyone refusing to honor the agreements faces reprisals.<sup>18</sup>

INARA had already prepared the draft of the law on the agrarian reform. For its application, it will need to be voted by the Parliament and publish in the official journal.<sup>19</sup>

## **Ministry of Social Affairs and Labour**

This ministry is in charge of the social policies of the government and is involved in all issues related to vulnerable or fragile groups of the population. After the Jan. 12, 2010 earthquake, it was in charge of the Interministerial Commission on Housing.

### ***National Office of Insurance for Retirement***

This institution, which is under the authority of the Ministry of Social Affairs, owns properties and is engaged in real estate development projects.

### ***Public Enterprise for Social Housing***

This institution is in charge of low-cost housing projects and owns a number of sites that are already built. It has some sites available and is looking for funding to continue its program.

EPPLS had developed procedures to allocate units to beneficiaries and has a policy for the transfer of title to them.

18. Bethell, Amber. “Land Tenure and Reform in Haiti.” Spatial Information Science and Engineering Department at the University of Maine. May 2002.

19. Ibid

## EXECUTIVE BRANCH: INTERMINISTERIAL COMMITTEES

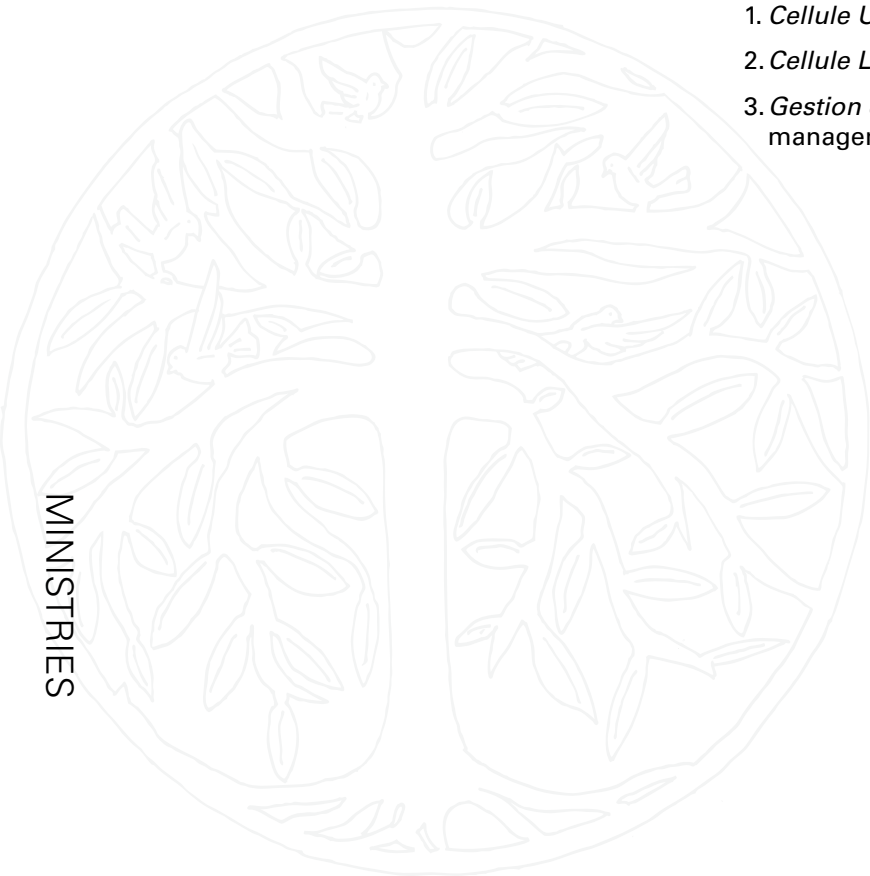
### *Interministerial Committee for Territorial Planning (CIAT)*

Interministerial committee directly under the Prime Minister's Office, tasked with coordinating among the following ministries on the issues of land management, protection and management of watersheds, sanitation, urban development, and land tenure:

1. Ministry of the Interior (*Ministère de l'Intérieur*)
2. Ministry of Economy and Finance (*Ministère des Économies et des Finances*)
3. Ministry of Public Works (MTPTC)
4. Ministry of Agriculture and Rural Development (*Ministère de l'Agriculture*)
5. Ministry of Planning (*Ministère de la Planification*)
6. Ministry of the Environment (*Ministère de l'Environnement*)

There are three units (« *cellules* ») within CIAT:

1. *Cellule Urbanisme et Habitat*: urban planning and habitat.
2. *Cellule Législation, Institution et Foncier*: land tenure, institutions and legislation.
3. *Gestion des Bassins Versants et Ressources en Eau*: watershed and water resource management.



## **UNIT FOR THE CONSTRUCTION OF HOUSING AND PUBLIC BUILDINGS (UCLBP)**

New agency created in 2012 to lead on the issue of housing and government buildings, particularly in response to the heavy damage and destruction caused by the earthquake of 2010. In its current state, the agency initiates policies and guides and coordinates action on these issues. It is also intended to grow and take on an implementation role, as well as implementing capacity building for local government around the country.

## **JUDICIAL BRANCH: THE COURTS AND THE PARQUET**

### **Prosecutor's Office**

*Le parquet* is the District Attorney's office, and the District Attorney, called *Commissaire du Gouvernement* or alternatively *Chef du Parquet*, is the head of it. This office authorizes surveyors ("*arpenteurs*") to begin a survey after analyzing the deed. They also represent people in land disputes related to rural land.

### **The Justice of the Peace**

The Justice of the Peace ("*Juge de Paix*") deals with cases relating to occupancy, for example opposition to surveys, trespassing, eviction of unauthorized occupants. There are 189 *Tribunaux de Paix*; in theory there should be one in each municipality.

### **The Courts of First Instance/Trial Court**

The "*Juge d'Instruction*" presides over the Civil Court ("*Tribunal de 1ère Instance*"). This is the judicial level at which conflict relating to ownership rights are resolved. The average length of a land ownership dispute case is five years. There is one in each of the 16 judicial districts.

## **INDEPENDENT STATE AGENCIES**

### **Bank of the Republic of Haiti/Central Bank**

The Central Bank owns property. The decisions to sell, lease or buy lands depend only on the board of the Central Bank and are done in accordance with its needs and annual operating plan and budget.

## LOCAL GOVERNMENT

### Municipalities

By constitutional rights, each Municipal Council has priority in management of the state private domain property located within the limits of its municipality.

The municipalities also have their own lands.

The principal source of income for a municipality comes from property CFPB tax (*Contribution Foncière des Propriétés Bâties*), which is a tax on built property and is collected by DGI. Land without built property is therefore not subject to this property tax.<sup>20</sup>

### Municipal Assemblies

There is one for each municipality, composed of representatives of the Communal Sections of the municipality (one per locality). By constitutional rights, these assemblies have to give their advice before any action on state private domain property. They have not been established yet, and it is a major constraint for public-private land transactions: The government cannot sell, and this is why the MEF has adopted a temporary procedure that allows only the state to lease its property or to invest in private-sector projects.

20. Smucker, Glenn. "Notes from Meeting with Glenn Smucker." July 20, 2011.





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## ADDITIONAL RESOURCES AND READING

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World Bank and the International Finance Corp., "Doing Business 2012: Doing Business in a More Transparent World, Economic Profile: Haiti," Washington, D.C., 2012.

## TRAINING RESOURCES

Greater understanding will lead to more consistent processes and more participation in the legal transfer of land in Haiti. The Haiti Property Law Working Group hopes this guide will lead to greater development in Haiti.

One of the goals of this manual is to make the current process for buying and selling land in Haiti known and accessible to all people and groups interested in participating in the process. The following training resources have been created to aid in that process. They are intended to facilitate learning and understanding of this nuanced process.

Training Resource	Uses	Audience	Objective
Additional Reading	To learn more about legal land transactions in Haiti.	For anyone interested in further references on buying and selling land in Haiti.	To learn more about the history and current practices.
Process Map Poster	For training purposes, this poster outlines the step-by-step process of land transactions on a large display.	For any groups, especially useful for groups in the training workshop.	To have a large display illustrating the five-step process outlined in the manual.
Training Workshop	Two-hour workshop for anyone involved or interested in the process of buying or selling land in Haiti.	For any groups, including: <ul style="list-style-type: none"> <li>• Government employees.</li> <li>• Businesses.</li> <li>• NGOs.</li> <li>• Professionals (notaries, surveyors, etc.).</li> <li>• Potential buyers.</li> </ul>	To understand the purpose of the manual, exactly what your role in the process is, and how the process relates to your role in it.



## ACRONYMS

BRH: Banque de la République d'Haïti

CIAT: Comité Interministériel d'Aménagement du Territoire

CNIGS: Centre National d'Information Géo-spatiale

DGI: Direction Générale des Impôts

DINEPA: Direction Nationale de l'Eau Potable et de l'Assainissement

EDH: Électricité d'Haïti

EPPLS: Entreprise pour la Promotion et la Production de Logement Sociaux

IHSI: Institut Haïtien de Statistique et d'Informatique

ISPAN: Institut de Sauvegarde du Patrimoine National

MAST: Ministère des Affaires Sociales et du Travail

MCC: Ministère de la Culture et de la Communication

MCI: Ministère du Commerce et de l'Industrie

MDE: Ministère de l'Environnement

MEF: Ministère de l'Économie et de Finances

MENFP: Ministère de l'Éducation Nationale et de la Formation Professionnelle

MICTDN: Ministère de l'Intérieur, des Collectivités Territoriales et de la Défense Nationale

also called MICT Ministère de l'Intérieur, des Collectivités Territoriales

MPCE: Ministère de la Planification et de la Coopération Externe

MTPTCE: Ministère des Travaux Publics, Transports, Communications et de l'Énergie

ONG: Organisation non gouvernementale

UCLBP: Unité de Construction du Logement et des Bâtiments Publics

## LIST OF ABBREVIATIONS

- CCCM: Camp Coordination Camp Management Cluster
- CIDA: Canadian International Development Agency
- GDN: Gender and Disaster Network
- IDP: Internally Displaced Persons
- IHRC: Interim Haiti Recovery Commission
- IJDH: Institute for Justice and Democracy in Haiti
- IOM: International Organization for Migration
- MINUSTAH: United Nations Stabilization Mission in Haiti
- NGO: Nongovernmental Organization
- UN: United Nations
- UNDP: United Nations Development Programme
- UNESCO: United Nations Educational, Scientific, and Cultural Organization
- UN-ISDR: United Nations International Strategy of Disaster Risk Reduction
- UN-OCHA: United Nations Office for Coordination of Humanitarian Affairs



