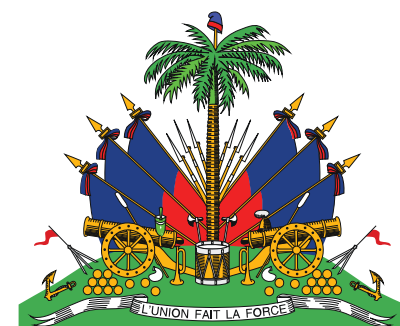




MANUAL OF HAITIAN LAND TRANSACTIONS VOL. 2

SECURING LAND RIGHTS IN HAITI: A PRACTICAL GUIDE

Written by the Haiti Property Law Working Group



PUBLISHED DECEMBER 1, 2014 / TRANSLATED JUNE 2016

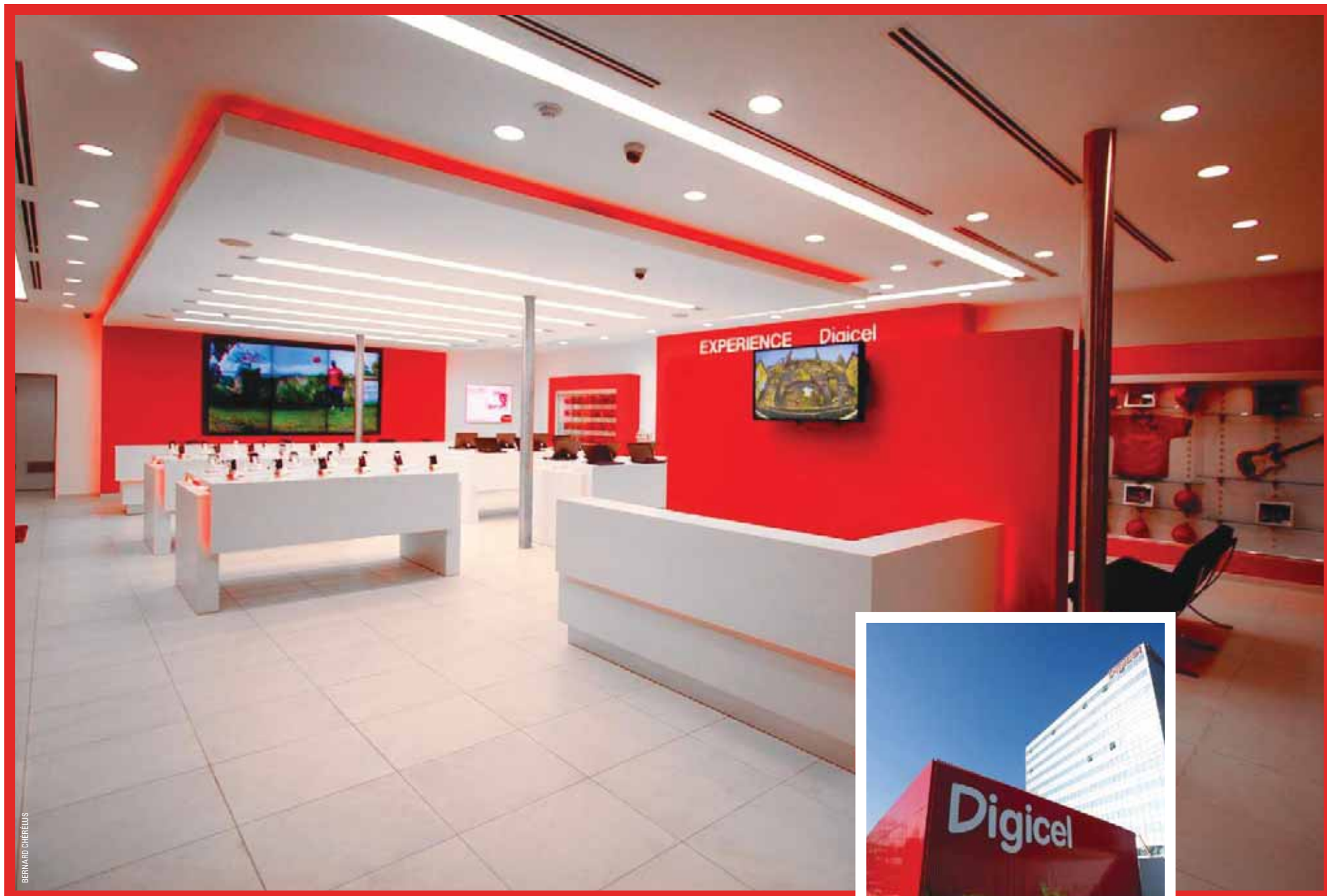
BERNARD CHELUS



LE GROUPE DE TRAVAIL SUR
LE DROIT FONCIER EN HAÏTI
HAITI PROPERTY LAW
WORKING GROUP



Habitat for Humanity®
Habitat pour l'humanité®
Haiti



With thanks to our 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 to create tools to promote development and security of tenure in Haiti through its support for the production of this manual.

TABLE OF CONTENTS

Acknowledgments	1
Endorsements.....	4
Composition of the group	6
Working group members	7
Introduction.....	8
Rationale	8
Structures and objectives.....	8
Methodology	9
I. Protection of private property	11
1. Protection of one's property against private individuals	11
A. Action to establish property lines	12
B. Development or improvement of property.....	13
C. Protection against a third party: Action for the recovery of property	14
2. Attempts by the government to obtain private property.....	15
A. Expropriation	16
B. Political measures (nationalization or confiscation)	16
3. Legal encumbrances to property	16
A. Private rights of way	17
B. Public rights of way or easements	17
C. Urban planning and land use regulations	18
II. Rights and protections in precarious land tenure situations	21
1. Rights resulting from a precarious acquisition of private land	21
A. Types of precarious situations.....	21
B. Precarious occupation	22

C. Usucaption possession.....	22
D. Protection of property acquired by possession	26
III. Rights resulting from a precarious acquisition of State land	33
1. Rights resulting from a precarious occupation of State land in the Public Domain	33
A. Individuals occupying lands in the Public Domain with the permission of authorities	34
B. Individuals occupying State land in the Public Domain without legal authority	34
2. Rights resulting from a precarious occupation of State land in the Private Domain.....	35
A. Occupants in a precarious situation	35
B. Precarious occupants with no relationship to the DGI Office of Government Land	35
IV. Procedures for collective acquisition	43
1. Land subdivision	43
2. Co-ownership of buildings	45
A. Co-ownership framework.....	45
B. The functioning of co-owned property	47
C. Legal status of co-owners	50
V. Practical questions	53
1. What will happen if a fake owner sells a property?	53
2. Lease granted by a fake owner.....	53
3. Property in joint tenancy sold by a co-owner without the other owner's approval	53
4. What happens in the case of the production of fraudulent titles? Are there legal protections and remedies in place?	53
5. Construction without permit	54
6. Deterioration of a protected cultural heritage site belonging to an owner.....	54
Glossary	55



ACKNOWLEDGEMENTS

The Haiti Property Law Working Group would like to express its profound gratitude to the Founder of the DIGICEL Foundation, Mr. Denis O'Brien; its Executive Director, Mrs. Sophia Stransky; and its Head of Projects, Mrs. Rachel Pamela Pierre, whose contributions enabled the realization of this work. We would also like to express our thanks to the U.S. Ambassador to Haiti Mrs. Pamela White and to the United States Agency for International Development (USAID), including Mr. John Groarke, Interim Mission Director; Mr. Steve Olive, former Interim Mission Director; and Mr. Chris Ward, Advisor on Development, Housing and Planning.

We would also like to thank the members of the Haiti Property Law Working Group consisting of representatives of the private and public sectors as well as international entities and donors who participated in the work of the Working Group and gave their engaged support to the preparation of this manual. They participated regularly and actively in numerous meetings.

Habitat for Humanity Haiti and Habitat for Humanity International deserve our gratitude. We benefited from their leadership, vision and constant support; they helped form and sponsor the Haiti Property Law Working Group and accompanied us throughout the preparation of this manual. Mrs. Elizabeth Blake (Liz), former Senior Vice-President of Advocacy, Government Affairs and General Counsel for Habitat for Humanity International, has been a steady and tenacious leader. Mr. Claude Jeudy, National Director for Habitat for Humanity Haiti, provided us with resources as well as the necessary expertise to ensure that the Working Group's vision became a reality.

We would like to thank Architecture for Humanity represented by Mrs. Nancy Doran; Mr. Eric Cesal; and particularly Ms. Frédérique Siegel, who played an important role in coordinating the Working Group's activities. When Ms. Siegel left, the Working Group was able to maintain and continue its coordination efforts thanks to Jane Charles-Voltaire of the Cabinet Leblanc et Associés; Ms. Clevers Sanon; and Ms. Tabitha Lumarque of the Bureau de Consultation Aleph and Cabinet Talleyrand R. St Pierre & Associés. We would also like to thank Mr. Guy Maximilien, who reviewed this manual.

The core of this document was written by Mr. Gilbert Giordani, Professor and Vice-Dean of the University of Quisqueya's Law School, and his team. This manual benefited from their legal expertise. Our thanks also goes to Ms. Chantal Hudicourt-Ewald, partner in the Haitian law firm of Hudicourt-Wooley, who has served as an ongoing advisor to this project.

The Haiti Property Law Working Group was encouraged and supported from its inception by: Mr. Greg Milne of the Clinton Foundation; Ms. Chantal Hudicourt-Ewald; Mr. Gilles Damais; and Mrs. Michèle Lemay of the Inter-American Development Bank (IDB); Mrs. Sylvie Debomy of the World Bank; Mr. Chris Ward and Ms. Danièle Jean-Pierre of USAID; the USAID- HAITI working team; Mrs. Rachel Beach of J/P HRO; Mr. Bernard Smolikowski of the French Embassy; Mr. Gérard Vaugues of Capital Bank, S.A, representing the Center for Free Enterprise and Democracy (CLED); and Mrs. Martine Deverson, economic advisor to the private sector in Haiti.





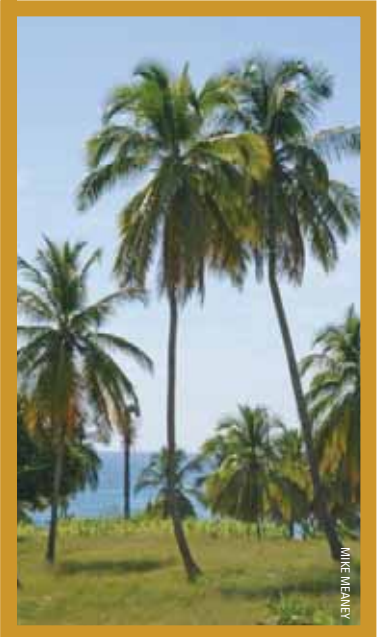
We also express our thanks to: Mr. Franklin Guerrier of the CCHC (Centre de Coopération Haitiano-Canadien); Ms. Martine Prinston of INARA; and Mr. Joab Thelot of ONACA (Office National du Cadastre d'Haïti); Mr. Ronald Augustin and Ms. Rose-Berthe Augustin of IOM; Mr. Daniel Jeudy, President of the Legal Committee of Unité de Construction de Logements et de Bâtiments Publics (UCLBP); Mr. Jacky Lumarque, Rector of the University of Quisqueya; Mr. Bernard H. Gousse, Dean of the University of Quisqueya's Law School; Mr. Alain Guillaume, Professor of Public Law at the University of Quisqueya; Mr. Fritz Frédéric, Professor of Business Law at the University of Quisqueya; Ms. Mireille Zamor from Cabinet Zamor; Ms. Wilmine R. Saint-Pierre; and Mr. Robinson Pierre Louis; and Romelyne Saint-Fleur from the Cabinet Talleyrand R. Saint Pierre & Associés; Ms. Daphne Leblanc from the Cabinet Leblanc & Associés; Dr. Ely Thelot, former consultant to the Inter-Ministerial Commission on Territorial Planning (CIAT); Mr. Julius Sainterme from the Cabinet Sainterme; Mr. Carlos Hercule, President of the Bar of Port-au-Prince; Mr. Daniel Jadotte from the American Chamber of Commerce (AMCHAM); Mrs. Lucie Couet, project leader with FOKAL; Mr. Clément Bélizaire, Director of the Division of Relogement et Réhabilitation Quartiers Précaires of UCLBP; Mrs. Mariana Vazquez, former Social Director of TECHO; Mr. Olson Régis, current Social Director of TECHO; and Mr. Donald Dorelus, responsible for the educational program of TECHO, for dedicating their time to revise the legal content of Manual II. We thank Mr. Jean-Elie Gilles; Mr. Mike Meaney, Director of Operations at Habitat for Humanity; Mr. Joseph Edgard Celestin; Mr. Richard Buteau, General Director of the Karibe Convention Center; and Mrs. Candice Cadet, for their technical assistance.

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 more than six ministries, agencies, commissions and representatives of the government. The Working Group was honored by the presence of certain staff members of CIAT such as Mr. Ely Thelot. This project also received the support of the former Prime Minister, Mr. Laurent Lamothe. We will continue to work with state institutions, many of which are already part of the Working Group.

All these people helped the Working Group to become an effective and motivated force.

The process of revisions, the assembling of the manual, and the development of related training materials are the result of the tireless efforts of Dan Petrie and Chris Vincent from Habitat for Humanity International; Claude Jeudy, National Director for Habitat for Humanity Haiti; and Torre Nelson, Vice-President of Habitat for Humanity International for Latin America and the Caribbean.

We present this manual in gratitude to all mentioned above and to many others who have assisted in making this manual possible.



ENDORSEMENTS

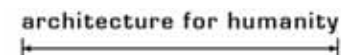
The Haiti Property Law Working Group is grateful for the endorsement of its work by:



ASNOPH



USAID
FROM THE AMERICAN PEOPLE



Canadian International
Development Agency

Agence canadienne de
développement international



MIKE MEANEY



REPUBLIQUE D'HAÏTI
Le Premier Ministre

PM/LSL/Vij-cbi/1535

Port-au-Prince, le 17 novembre 2014

Monsieur Claude JEUDY
Directeur Régional
Habitat pour l'Humanité-Haïti
En ses bureaux.

Objet : Groupe de travail sur le droit foncier –
Manuel sur la sécurisation des droits fonciers en Haïti, Volume II

Monsieur le Directeur,

J'accuse réception de votre lettre du 15 octobre dernier me demandant l'appui de la Primature de la République dans le cadre des travaux du Groupe de travail sur le droit foncier.

Je voudrais vous assurer que je suis personnellement convaincu que le foncier reste un des problèmes majeurs limitant les efforts de reconstruction et l'essor de l'économie haïtienne car, aucun pays ne peut prétendre se développer sans des procédures de transactions foncières et un cadastre clair. Aussi, j'encourage toutes initiatives qui permettent de trouver des solutions durables, légales et approuvées par tous, en particulier celles du Groupe de travail sur le droit foncier.

En conséquence, je vous invite à continuer le travail initié, tout en vous assurant de garder des liens permanents avec les institutions étatiques impliquées. Je pense particulièrement au CIAT, à l'ONACA, au Ministère de l'Économie et des Finances et autres instances concernées. Il est impératif que vos propositions soient validées par les organismes nationaux compétents en la matière car il sera du ressort de l'État Haïtien de les mettre en œuvre le cas échéant.

J'attends donc la sortie officielle prochaine de votre second manuel sur la sécurisation des droits fonciers et vous souhaite d'ores et déjà bonne continuation dans vos travaux futurs.

Je vous prie d'agréer, Monsieur le Directeur, l'expression de ma parfaite considération.

Laurent Salvador LAMOTHE



Primature de la République

UNITÉ DE CONSTRUCTION DE LOGEMENTS
ET DE BATIMENTS PUBLICS



Port-au-Prince, le 6 janvier 2015

Réf : UCLBP/DE/MFH/06012015/1061

Monsieur Claude Jeudy
Directeur Général
Habitat pour l'Humanité

Monsieur le Directeur Général,

L'Unité de Construction de Logements et de Bâtiments Publics (UCLBP) Appuie le Groupe de Travail sur le Droit Foncier (GDTF) pour l'élaboration de ce deuxième volume du Manuel des Transactions foncières en Haïti portant sur la sécurisation des droits fonciers.

L'UCLBP apprécie grandement cette contribution puisque ce second volume vient à point nommé après le premier portant sur la vente légale de bien foncier en Haïti. En tant qu'entité en charge du secteur du logement, elle appuie inconditionnellement cette initiative qui se propose d'apporter une meilleure compréhension des questions foncières en Haïti. En effet, la plupart des études et publications sur le secteur du logement identifient la problématique foncière comme un frein à un développement harmonieux et soutenable du secteur.

Puisse ce vade-mecum mettre à la disposition de chacun, surtout des non-spécialistes, des outils efficaces pour des transactions foncières conformes aux lois de la République contribuant en conséquence à la sécurisation foncière.

L'Unité de Construction de Logements et de Bâtiments Publics vous prie d'agréer, Monsieur le Directeur Général, l'expression de sa considération distinguée.

Harry Adam
Harry Adam
Directeur Exécutif

COMPOSITION OF THE GROUP

This manual is the result of many years of reflection and collaboration on land issues between and among more than a hundred actors from various sectors (public, private) as well as various Haitian non-governmental organizations.

The Haiti Property Law Working Group members have met regularly since June 2011. The Group's steering committee is composed of a consortium among University of Quisqueya's Law School, Haitian attorneys and Habitat for Humanity International.

More than six state institutions and many donors have participated in the creation of this manual: UCLBP, ONACA, INARA, PACEGI/CCPDEI, MCFDF, APB, BUH, CCIH, USAID, IDB, ACDI, UN Habitat and the World Bank.



MIKE MEANEY



BERNARD CHÉRELUS

MEMBERS OF THE HAITI PROPERTY LAW WORKING GROUP

Haitian government institutions

CIAT (Comité Interministériel pour l'Aménagement du Territoire)
DGI (Direction Général des Impôts)
FAES (Fonds d'Assistance Economique et Sociale)
INARA (Institut National de la Réforme Agraire en Haïti)
MAEC (Ministère des Affaires étrangères et des Cultes)
MCFDF (Ministère à la Condition Féminine et aux Droits des Femmes)
MJSP (Ministère de la Justice et de la Sécurité Publique)
ONACA (Office National du Cadastre)
UCLBP (Unité de Construction de Logements et de Bâtiments Publics)

Haitian professionnel associations

AAH (Association des Assureurs d'Haïti)
ASNOPH (Association Syndicale des Notaires Professionnels d'Haïti)
APB (Association Professionnelle de Banques)
APD (Association des Professionnels du Droit)
CCIH (Chambre de Commerce et d'Industrie d'Haïti)
CAJUP (Corporation des Arpentiers

de la Juridiction de Port-au-Prince)

AMCHAM (Chambre de Commerce Américaine en Haïti)
CLED (Centre pour la Libre Entreprise et la Démocratie)
FENAMH (Fédération Nationale des Maires en Haïti)

Financial institutions

BRH (Banque de la République d'Haïti)
BUH (Banque de l'Union Haïtienne)
Groupe Sogebank

University

Faculté de Droit de l'Université Quisqueya

Law firms and notaries

Cabinet Leblanc & Associés
Cabinet Achille Joseph
Cabinet Augustin
Cabinet Hudicourt-Wooley
Cabinet Jeudy & Associés
Cabinet Lolo & Associés
Cabinet Lundy
Cabinet Pétion & Associés
Cabinet Raymond Saint Pierre & Associés
Cabinet Sainterme
Cabinet Théard & Associés
Cabinet Zamor

Etude Notariale Cassagnol
Etude Notariale Danielle Giordani Adé
Etude Notariale Guy Mario Gai
Juris Excel Cabinet d'Avocats

Private companies

CERAMEX
Groupe Jean Vorbe
Imprimerie Eclair
INGSA (Les Industries Gerby SA)
WE Architects

Multilateral organizations

World Bank
IDB (Inter-American Development Bank)
IOM (International Organization for Migration)
UN-Habitat
UNDP (United Nations Development Programme)

Non-profit organizations

Architecture for Humanity
Caritas Haïti
Clinton Foundation
CORDAID
French Red Cross
UK Red Cross
IFRC (International Federation of Red Cross and Red Crescent Societies)
FOKAL (Fondation Connaissance et Liberté)

Fondasyon Félicité
Fondation DIGICEL
Habitat For Humanity Haïti
Habitat for Humanity International
J/P Haitian Relief Organization
Mercy Corps
SOS Centre-Ville
TECHO
UMCOR (United Methodist Committee on Relief)

Bilateral agencies and embassies

Embassy of Canada, Haiti
Embassy of the United States, Haiti
CCHC (Centre de Coopération Haïti-Canada)
DFATD (Department of Foreign Affairs, Trade and Development Canada)
USAID (U.S. Agency for International Development)

INTRODUCTION

RATIONALE

This manual is the second volume in a series on land tenure in Haiti produced by the Haiti Property Law Working Group or “Working Group.”

Lack of transparency in the property sector leads to a sense of insecurity in rural and urban areas and in humanitarian and commercial activities, and undermines investments to modernize agriculture as well as industrial and tourist projects which are drivers for the country’s economic growth.

This manual concentrates on key aspects of law which have become important such as rights and obligations of land owners, families precariously occupying private or public land, expropriation on the basis of public utility, subdivision and condominiums etc.

STRUCTURES AND OBJECTIVES

The main purpose of this manual is to help land owners, state farmers, developers, renters, future owners and NGO’s anticipate and prevent complications resulting from the purchase of properties in order to avoid land conflicts. It will also help users understand some informal and customary practices that often differ from formal procedures. This manual will address certain Haitian practices in the area of land rights and procedures where there is a disconnect between the written law and what people are actually doing. The reader will be informed not only of what is required by the law but what is really happening despite the adoption of certain laws.

Information on the legal and regulatory framework has been illustrated by practical case studies. We want to present to our readers the current laws and procedures on land tenure and thus contribute to a better understanding of land issues.

The initiatives of the Haiti Property Law Working Group are certainly not meant to replace measures adopted by the government but only seek to support key features of national policy and thus facilitate dialogue.





WARNING

This manual is a follow-up to Volume I: How-to-Guide for the Legal Sale of Property in Haiti published in June 2012. Land tenure is a very complex issue, and the manual offers a range of information and solutions for non-specialists who may feel that their property rights are at issue. By no means should the use of these manuals

replace the advice and assistance of a notary, a surveyor and/or a lawyer. Even if you read this manual when undertaking a specific transaction, we strongly recommend that you consult professionals working in this field.



METHODOLOGY

This manual is the result of in-depth work, in consultation with the following stakeholders: the Haitian government, local authorities, professional associations, NGO's, investment institutions, and bilateral or multilateral donors. There were three levels of consultations:

First, Quisqueya's University team, guided by Mr. Gilbert Giordani, notary and professor of property law, researched the topics and carried out field studies and expert interviews, including with Cabinet Juris Excel, the Notary Gay and the notary office of Giordani Ade. Second, the Working Group met several times between September 2013 and the beginning of November 2014 to discuss and obtain a consensus on law interpretations.

Finally, the manual was validated by consultation sessions that took place in Port-au-Prince among different members of the Working Group. Comments and corrections were made, and real cases were presented to enrich the manual. These meetings enabled us to take into consideration the needs and points of view of a wide range of stakeholders and to obtain their adherence to and support for this manual's publication.



I. PROTECTION OF PRIVATE PROPERTY

A property right is sacred. It prevails against third parties and is an absolute right. Nevertheless, the owner has an obligation to protect his rights particularly in case of a dispute or an encumbrance.

A legitimate owner is not necessarily protected from disputes. This is why the Haitian Civil Code has included legal procedures regarding access to property and the protection of the rights of the owner including exceptions.

1. PROTECTION OF ONE'S PROPERTY AGAINST PRIVATE INDIVIDUALS

SUMMARY:

Once property is purchased according to the conditions established by law, even though the property right is protected by the Constitution, the owner has the following obligations:

- A. To determine the square footage and boundaries of his land by a survey. For better protection against squatters and other unauthorized occupants, it is recommended that a fence be built.
- B. If there is a building or other construction on the site, to regularly pay the CFPB tax which is a tax on built property called *Impot locatif*.
- C. If the land is not occupied, it is recommended that a custodian be hired to protect the property and that a contract be signed with him.

DISPUTE:

- A. If two individuals hold title for the same property, they have the right to file an action for recovery of property before the Civil Court which will examine and analyze the authenticity of all relevant documents.
- B. However, in the event of a conflict with a squatter who has been on the property for some time, it is highly recommended to have legal counsel since the squatter may also be entitled to some legal protections.

ATTENTION: *It is not recommended that one take steps to evict or physically remove an individual or to pay for his removal without written authorization. This action can backfire in the future.*

Even though property rights are sacred and inviolable, they can be jeopardized by others. Thus, we recommend that the owner take steps to protect his rights by setting the boundaries of his property, by developing the property and, if necessary, by filing an action for recovery of property.

A. ACTION TO ESTABLISH PROPERTY LINES¹

A land owner has the right to file an action to establish the property lines of his land vis-a-vis his neighbors. It is an indefeasible action undertaken at the election of the owner and it interrupts the statute of limitations resulting from an extended possession. It is final and any subsequent action of the same nature is estopped.

It is important to note that if the property is part of the Public Domain, only the State can ask for the establishment of property lines. In addition, only a licensed surveyor authorized to survey government land can carry out this survey.

Since an action to establish property lines is an actual case, it falls within the jurisdiction of the Court of First Instance regardless whether there is a dispute on the land title or on the property. An action to establish property lines is not a possessory action, but a declaratory action. Article 8 of the Civil Procedure Code does not concern setting the property lines themselves but rather the displacement of boundary markers which implies a pre-existing property line. This procedure only marks the property lines of each owner's land but does not protect the land.



WARNING

During an action to establish property lines, a third party may object to the surveying of a portion or all the land and thus prevent the survey from taking place. This is called opposition to survey.



WARNING

In the absence of clear title, if there is a lack of title documents or incomplete documentation of ownership, and if there have been no disputes about ownership, the Dean of the Court of First Instance for the jurisdiction where the property is located may grant an authorization to survey the property to an occupant who has openly occupied the land for at least five years. This will be a survey on a consultative, provisional or temporary basis and will serve as evidence of a peaceful possession. The date of this survey will be used to officially start the running of the statute of limitations.

1. Also known as "Action to Quiet Title." Under Common Law, a property owner can file a quiet title lawsuit and request that a judge determine the boundary lines of his property. This action often also includes a determination of property ownership.

B. DEVELOPMENT OR IMPROVEMENT OF PROPERTY

Once a property is purchased in accordance with existing laws and in good faith, the owner has a range of rights on his property. He has two available options to develop or to improve his property.

a. Legal development

Built property: The obligation of the owner is to pay the CFPB tax (Contribution Foncière des Propriétés Bâties) which is a tax on property with improvements such as commercial or residential buildings, paid annually to the DGI by the presumed building owner after evaluation by the municipal administration. In other words, the person who pays this tax is considered to be the owner of the building but not necessarily the owner of the land.²

- Payment of the CFPB tax is very important. If it is not paid, the administration has the authority to take coercive measures.
- By paying this tax, a person who is not really the owner of the property may use payment of this tax to his advantage as evidence of his occupation of the property during the statutory period required to acquire title by adverse possession and thus benefit from the statute of limitations.

Vacant land: Decree of April 5, 1979, modified by Decree of December 23, 1981 (*Moniteur No.2 of January 7, 1982*).

b. Development of a property by its owner

It is indeed important, regardless of whether the property is vacant or improved, not to leave it idle without occupying it or using it. Article 36.2 of the Constitution as well as the act of July 31, 1975, set forth the obligation of the land owner to develop his property. The 1975 law was aimed undoubtedly at farmland outside of urban areas. However, Article 36.2 of the Constitution is less restrictive and concerns all properties, including those located in urban areas.

Certain precautions should be taken:

Custodian on the property: If there is a custodian on the property, it is important to execute a fixed term contract and not one that is renewable by tacit agreement.³ If a contract does not exist and if the property is abandoned, the custodian after a certain period of time may be considered as the owner of the property as a possessor and/or eventually as formal owner of the property by acquisitive prescription or adverse possession.⁴

In the absence of a contract, it is necessary to pay the custodian regularly for the work done and obtain a proof of payment. This document will prove his presence on the property is as an employee and not an owner.

2. Tax is payable in connection with the construction on or improvements to the land. However, there is a draft law project which provides for payment of a tax on the land.

3. Automatic renewal.

4. Articles 1998 to 2009 of the Civil Code.



WARNING

It is important to emphasize that even if the custodian has a contract for an unlimited period of time he cannot legally take any action against the owner for he is and will be considered a precarious holder unless there is a break in the title of the owner (Articles 1998 to 2009 of the Civil Code). However, if the custodian carries out projects on the land, reserved uniquely for the owner (such as paying taxes), without any objection from the owner, after a statutory period, he will no longer be considered a precarious holder but the actual owner himself.

C. PROTECTION AGAINST A THIRD PARTY: ACTION FOR RECOVERY OF PROPERTY

A third party may challenge the validity of a property title and even attack the credibility of an owner, who has clear and registered title. The right to contest is open to all. However, the real owner has the right to respond and file an action for recovery of property.

This procedure allows the owner to go to court in order to:

- Prove his right to the property after analyzing all documents and doing a title search (to prove that the third party is a precarious holder or is dishonest);
- Take possession of his property, including improvements on it.

PLEASE NOTE: *The real owner has to be identified not only through a site survey but also through the evaluation of all land title documents. Generally, the judge is faced with three situations:*

Occupation versus occupation: If two people present claims to property that they have occupied, the judge will decide in favor of the one who has occupied the land the longest.

Title versus title: If the two individuals purchased the land from the same seller, priority is once more given to the one who has the older title. If the sellers (former owners) are different, the situation becomes more complex and requires the judge to undertake a more thorough analysis. He will take into consideration past factors, establishing with the most credibility who has rights to the property.

Title versus possession: If the title is prior to the date of possession, except for adverse possession, the holder of the title will be preferred. But if the possession took place before the existence of a formal title, the occupant, even though in a precarious situation, will have priority.

TABLE 1: ACTION TO CLAIM OWNERSHIP

DEFINITION	AUTHORITIES INVOLVED	RESULTS OBTAINED
An action to claim ownership is a civil lawsuit to prove the legal right to real property. ⁵	Civil Court (Civil Judge)	Ruling of the court determining the identification of the real owner of the property.

2. Attempts by the government to obtain private property

Even though the 1987 Constitution guarantees the absolute right to own private property, there are legal constraints called easements or rights of way (to protect the general public interest or to protect the rights of a third party or a group).

1. The State can only expropriate property for a public use, nationalization or confiscation.
2. Expropriation is the forced acquisition of a property by the State which must give compensation to the owner according to the law and must be done to benefit the general public (Law of September 5, 1979).
3. Nationalization or confiscation is the State using its rights to take private lands usually in the context of an agrarian reform (for example, in the case of Artibonite, the creation of INARA).
4. Limits aimed to protect third parties (private right of way/ public right of way).
 - a. Private right of way (easement) example: An obligation imposed on a real property to enable the use of another property belonging to another owner (Article 526 of the Civil Code).
 - b. Public right of way: A right of way or easement established for the use of natural resources, rural development, land planning, public sanitation or other activities related to public services (Law of September 3, 1979).

5. The Code of Civil Procedure annotated by Pierre Marie Michel, 2nd Edition.

A. EXPROPRIATION (ARTICLE 449 CIVIL CODE; ARTICLE 36.1 CONSTITUTION OF 1987)

Even though the right to own property is constitutionally guaranteed (Article 36.1), such a right is subject to conditions prescribed by the Constitution and the law. Article 36.2 of the Constitution establishes the main condition under which a property may be expropriated by the State which is for public utility purposes. Expropriation for public utility purposes is the forced taking of a private property by the State in strict accordance with the law and in the public interest.

Expropriation has to be accompanied by fair and prior payment or compensation following an appraisal. The decision to expropriate must be related to a project in the public interest. If the project is abandoned, the expropriation will be cancelled. The Constitutional law is intended to prevent the use of this procedure for speculative purposes. The Law of September 5, 1979, sets forth the detailed requirements for expropriation for public utility purposes. The Expropriation procedure begins and is intended to be done on an amicable basis. However, if it fails, it is possible to have recourse to the courts with a jury procedure designed to guaranty maximum objectivity. The amount of compensation takes into account the value of the property and the added value of improvements. Usually, a public utility decree is adopted prior to the expropriation decision; however, this decree does not constitute by itself an expropriation decision. Expropriation was traditionally within the prerogatives of State authorities but has been extended by Decree of February 1, 2006, on Municipal Collectivity to municipal authorities (Article 198). The possibility of Municipal expropriation is presented briefly in the provisions of the Act of September 5, 1979.

B. POLITICAL MEASURES (NATIONALIZATION OR CONFISCATION)

Article 36.2 of the 1987 Constitution prohibits any confiscation or nationalization for political reasons. However, it may be applied for other reasons. Based on the current status of Haitian law, this procedure can be done through a decision of a judge on the basis of agrarian reform. Agrarian reform is under the supervision of a specialized institution, the National Institute of Agrarian Reform (INARA), which aims to reorganize land rights.

3. Legal encumbrances on real property

The owner is under certain obligations to ensure the protection of his real property as provided above. These obligations include marking boundaries and the installation of a fence. However, such steps must be carried out while respecting third party's rights.

Although Article 448 of the Civil Code provides for the absolute right to quiet enjoyment, this right is nevertheless limited in order to protect the rights of others (residents, neighbors) and also to protect the community. There are both **private rights of way or easements** (to benefit a neighbor's property) and **public ones** (to benefit the community represented by the Government of Haiti).

When installing a fence, the owner must take into consideration limits imposed by the law, including such rights of way and easements.

A. PRIVATE RIGHTS OF WAY

Private rights of way or easements are defined by Article 526 of the Civil Code as the right to use or enter the real property of another without possessing it.

This implies that while two neighboring properties exist, one land owner may have an easement over the property of another. This is the case of a right of way given to land with no access to public roads.

It is not easy to give an exhaustive list of all easements in this manual. However, we will mention two of them:

- Article 518 of the Civil Code makes provision for water flow coming from a higher land.
- Article 549 of the Civil Code makes provision for a right of way for land surrounded by another property with no direct access to public roads.

B. PUBLIC RIGHTS OF WAY OR EASEMENTS

Public rights of way are mainly governed by the Law of September 3, 1979. According to Article 5, public rights of way or easements are: liabilities or permanent obligations on land established by laws, decrees and regulations imposed in the community's interest. Based on the Constitution and in fact, only a law can establish public rights of way or easements. Regulatory acts may only specify conditions relative to the application of a law (Articles 36, 111 and 159). According to this Article, rights of way or easements are established to protect and make better use of the following: natural resources, rural development, land development, public sanitation, or other public services such as for security issues and urban planning.

As mentioned in the definition, various sectorial texts set up rights of way or easements and applications without completely removing the rights inherent in property ownership, and legislators can limit the exercise of such rights. When property is subject to public easements, the owner can no longer use his property as he pleases and, in fact, must comply with certain affirmative obligations inherent to living within a society.

Those obligations can be of different types:

- The owner may have the obligation to perform some works (for example, protect the soil against erosion).
- Certain land use may be prohibited that could cause nuisances to the community (for example, certain types of constructions or works on the land may be prohibited).
- Public easements may also enable the government to use portions of the land for the benefit of the community (for example, to bury pipes to evacuate waste water or to bury electric wires). The owner has no right to oppose these interventions which are beneficial to the community.



MIKE MEANEY

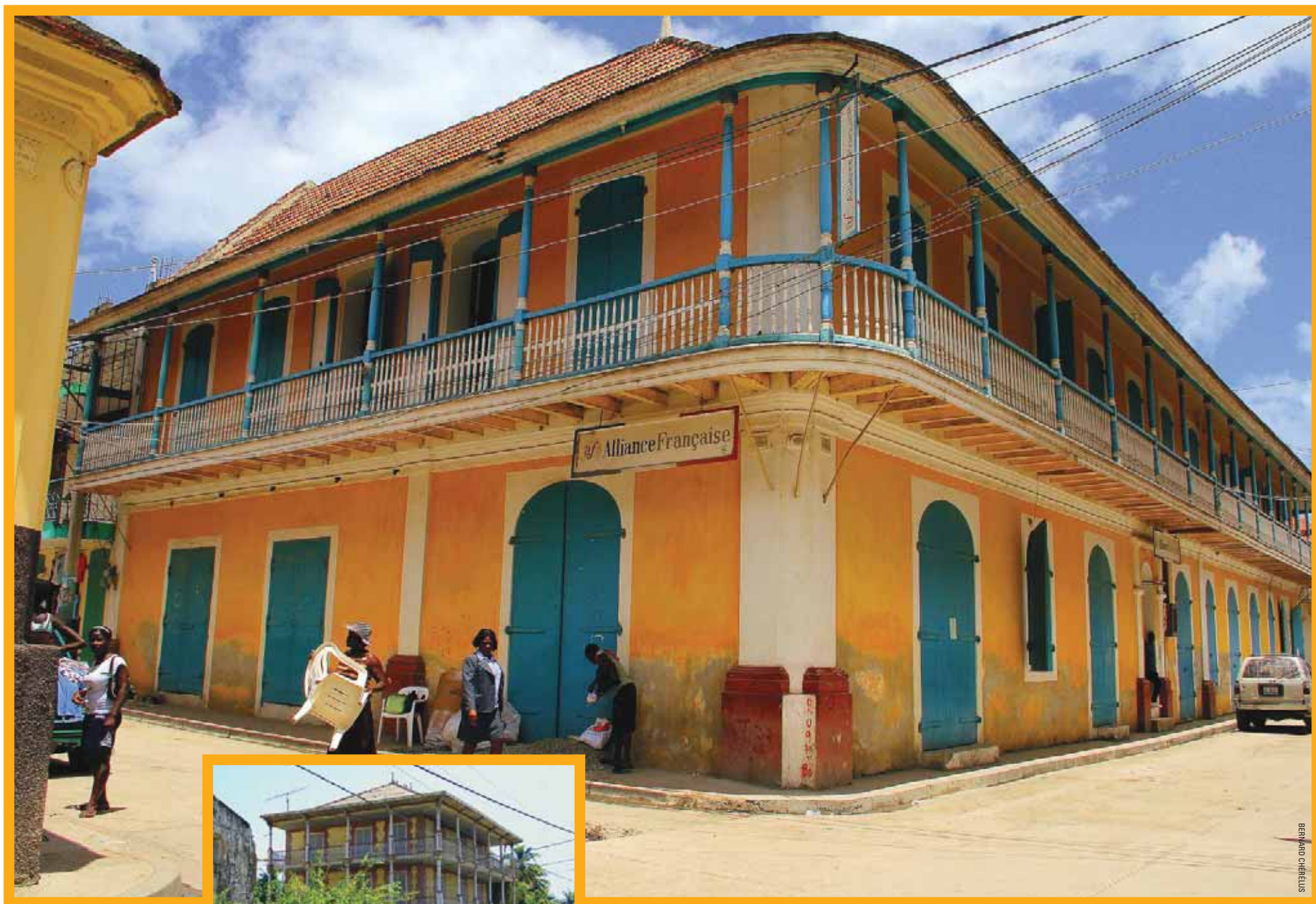
C. URBAN PLANNING AND LAND USE REGULATIONS

An owner's use of his property is also subject to certain limitations in connection with public interests and urban planning. These limitations are aimed at reducing the vulnerability of people to natural hazards such as landslides and hurricanes, etc. and also to preserve natural resources by prohibiting certain types of construction.

Land use regulations vary, and it is not possible to enumerate them all.

However, without going into detail, some are presented below with relevant legal references:

- The obligation of land owners to leave at least two meters between their fence and the road in order to enable the government to widen main roads (Article 14.2, Paragraph 1, May 29, 1963, Housing and Town Planning).
- Set-back requirements that prohibit building on land which does not have eight meters between it and an existing building or between two houses built on the same parcel (Article 17, May 29, 1963, Town Planning).
- Regulation of public rights of way that require clear access and egress to cities, large roads and streets with heavy traffic (Article 14, May 29, 1963, Housing and Town Planning).
- Visibility requirements which include: obligation to bring down walls and replace them with fences, to round off angles, not to build certain types of constructions and other steps to allow the Transportation Ministry to increase visibility for vehicle drivers (Decree of June 1, 2005).



BERNARD CHÉRELUS



MONICA MEANEY



II. RIGHTS AND PROTECTIONS IN PRECARIOUS LAND TENURE SITUATIONS

1. **Occupation:** To use or reside on property with no ownership rights with the intention to become the property owner. Occupation can include use of the land for hunting and fishing and residing on the property abandoned by its owners. The building (house) is excluded. Occupation is of land and only concerns temporary structures (movables). It is considered a possession when referring to real property.
2. **Holding:** To hold property for a third party, also known as being a custodian or guardian, the holder will never become the owner of the property no matter how long he or she has the opportunity to enjoy the property.
3. **Possession:** To take possession of a building and land for a long period of time can give the possessor certain rights to acquire by prescription. It is called usucaption. There are two forms: long term which represents a continuous possession of 20 years (called acquisitive prescription or “la grande prescription”) and short term which is 10 years (“la petite prescription”). To have legal effect, the possession should be continuous, uninterrupted and free of turmoil and violence. Acquisitive prescription is retroactive to the first day of possession. However, the possessor may renounce his rights at any time.

1. Rights resulting from a precarious acquisition of private land

Beyond the regular purchase process, other acquisition procedures which are not necessarily legal are used and may become legitimate due to the negligence of the owner towards his duties and obligations.

A. TYPES OF PRECARIOUS SITUATIONS

a. Occupation

To take possession of a property that does not have an owner. If a property is vacant, it is susceptible to being occupied by any individual having an interest in becoming an owner. However, Haitian legislation considerably limits the opportunity for occupants to become owners through Articles 444 and 576 of the Civil Code and Article 3 of the Decree of September 22, 1964, relating to rents and tenant farming of lands in the Private Domain of the government.

Article 444: “All vacant property without ownership [...] belongs to the public domain.”

Article 574: “Property without owners belongs to the State.”

Article 444: “All unoccupied property without ownership and property that had belonged to individuals who died without heirs or whose successors have abandoned the property belong to the public domain.” The article has been modified by Article 3 of the Decree of September 22, 1964, relating to tenant farming of land in the Private Domain of the government. “The State’s rights to private domain property are inalienable and are composed of : [...] all unoccupied property or property without owners.” (Article 2 of Decree of September 22, 1964.)

Article 442: “State-owned properties are administered or leased and may only be disposed of according to specific terms and conditions prescribed by law.”

Article 443: “Paths, roads, streets and public squares, rivers, shores, objects brought by high and low-water mark, ports and harbors, islands and islets, and generally all portions of the Haitian land which are not subject to become a private property are considered being part of the public domain.”

It should be noted that properties without owners are not automatically given to the State. To obtain the property, the State has to apply for possession.

B. PRECARIOUS OCCUPATION

A custodian or caretaker is a precarious holder who has the right to occupy a property for a limited time given to him by the owner himself with the expectation that the property will be returned to the owner.

The custodian will not become owner no matter what length of time he occupies the property.

C. USUCAPTION OR POSSESSION

Possession can give rise to ownership of property. However, at the beginning, an individual who uses or occupies a property does so without any ownership rights. The *de facto* right to possess and the *de jure* right of ownership may coexist on the same property.

Possession is “a relation between something and an individual by which this person has the possibility to accomplish personally or through a third party, actions which correspond to the exercise of a right whether this person is or is not entitled to this right.”

For possession to give rise to rights, the possession must be continuous, peaceful, public and unequivocal.

This possession allows for the acquisition of a property. This acquisition procedure may seem shocking because it transforms a *de facto* situation into a *de jure* situation of ownership. Appearance triumphs over the law. But often, the deed of possession only reflects the law since the holder and the owner are usually the same person. However, this law is subject to a statute of

limitations where an occupant who has treated the land as his own for a prolonged period of time becomes recognized as the owner.

Conditions: Acquisitive prescription is the acquisition of ownership rights by continuous possession resulting in the consolidation of legal rights when time limits have passed. Also called prescription, it becomes an acquisitive prescription when the period prescribed by the statute of limitations has passed and property rights are given to the individual who seeks to exercise his rights. It is called extinctive prescription when a real or personal right is lost due to the prolonged inaction of the holder of the right which results in the extinction of the property owner's right to claim ownership of this land due to the lapse of time.

The prescription is the proof of a peaceful and continuous possession which translates into ownership rights. In possession, it is not the property right which is taken into consideration but the exercise of this right. Therefore, possession is based on the statute of limitations and can be acquired or lost. It is important to mention that prescription gives the holder the possibility to acquire rights to property while taking them away from the original owner.



WARNING

The owner does not lose his right to the statute of limitations for it never ends. However, the statute of limitations may be an obstacle for the original owner when exercising a claim of ownership.

Possession is acquired by bringing together two elements: The action of seizing or occupying a property, and the quiet, continuous, public and unequivocal enjoyment of the property by the possessor. (Article 1997 of the Civil Code.)

Thus possession cannot be considered if:

- There is an interruption even temporary of the possession and thus an interruption in the effort to seek to assert rights in regards to the property.
- The possessor's rights have been obtained through violence. The act of possession has to be peaceful in order to be taken into consideration. Otherwise, private properties would often be threatened.
- It is secret and nobody can determine if the person is acting as the owner or as a proxy. Nevertheless, a possession will be deemed public if the owner is aware of the situation.
- If there is ambiguity and the possessor does not clearly behave as an owner. Therefore, possession is not valid when certain confusion persists as to who the real owner is.

NB: The concept of good and bad faith may have a decisive effect on the possession. The good faith holder is better protected than the person who acts with the intention to steal.

Haitian Court of Cassation February 16, 1923, Staco-Massac case: If the sale of another person's property is null and void, this alone does not mean that the buyer bought in bad faith. Another condition is needed; the buyer must have been aware of the property's status and must have known he was buying in bad faith.

Possessor acting in good faith, supported with clear titles, may benefit from the shorter statute of limitations:

- 10 years if the real owner lives in Haiti.
- 15 years if the real owner is domiciled outside of the jurisdiction where the property is located or if the owner is outside of the country (see Article 233 of the Civil Code).

Prescription is presumed to be an act in good faith.

Results: Possession gives the holder the right to what is called acquisitive prescription. Once the holder has clear and registered title, in good faith, he will be able to benefit from the shorter petite acquisitive prescription (ten years). Failing that, he may also be able to benefit from the long-term statute of limitations which is twenty years. (See Article 2030 of the Civil Code.)

Once the possession has been established and all related conditions are present, the possessor is entitled to the ownership of the property. The possessor is the beneficiary of this right and he has the capacity to defend himself in case of a dispute. Since possession presumes a property right, it is the responsibility of the real owner to protest against a possession if he feels his rights have been violated.

a. Surface rights

Article 457 of the Civil Code states: "Ownership of the land overrides the ownership of what is on the land..." However, there is a limit to these surface rights. Surface rights are recognized rights that an individual holds to everything that is on a property belonging to him. These rights apply to all land surfaces, a limited parcel or just to objects which are on the land. The subsoil is not included.

The Civil Code recognizes implicitly surface right in Article 459: "All constructions, landscaping or agriculture, and structures on a land or inside the land are carried out by the presumed owner, at his expense unless otherwise proven; without prejudice to the property acquired by third party or which a third party could have acquired by prescription, whether it is subsoil or under all or part of a building belonging to another." Analyzing this article, it is clear that the legislature admits the possibility that the owner of the land is not necessarily the owner of the construction on the land. The legislature also provides for the possibility that one party may have possession of the subsoil without prejudice to the rights of the party benefiting from the surface rights.

TABLE 2: POSSESSORY ACTION

DEFINITION	AUTHORITIES INVOLVED	RESULTS OBTAINED
<p>Possessory action is a legal action to protect one's possession and the peaceful enjoyment of a building.</p> <p>The different types of possessory actions are: the complaint, the denunciation and the recovery of property.</p>	Civil Court (Possessory Judge)	<ul style="list-style-type: none"> • Suspension of disturbance of possession (complaint); • Suspension of use constituting nuisance for the plaintiff; • Nuisance not yet effective (action for disturbance of possession or denunciation); • Recovery of real estate lost by dispossession accompanied or not by acts of violence (recovery of property).

Surface rights can exist:

- **With a title:**
 - The real owner may renounce his surface rights to a third party while keeping subsoil ownership. The owner of real property may renounce his rights on all landscaping or agriculture and construction through an agreement.
 - The owner may enter into a property lease agreement and define the terms and conditions between himself as the lessor and the tenant.
- **By prescription (Statute of Limitations):** One may acquire surface rights by prescription since these rights are considered a form of genuine property right. However, it will be difficult to assert these rights since, in general, the statute of limitations concerns the whole property and not a parcel. Problems have arisen with non-owners or even false owners who grant to a third party acting in good faith surface rights to the property of another individual.

Relations between the owner of the property and the surface owner

In fact, the owner of the property and the owner of surface rights are not joint co-owners for they do not share the same space. The owner of the property is entitled to a payment for the use of the exploitable surface. The owner of a surface right will enjoy his rights within the limits established by the owner of the property.

Surface rights never end even if not used. If there is construction on the surface, it will be governed by Article 461 of the Civil Code.

6. The Code of Civil Procedure, annotated by Pierre Marie Michel, 2nd Edition.



If surface rights arise out of a lease agreement with permission to build, the construction will belong to the owner, not the tenant. It is possible to make provision in the contract for the lessor to buy the construction and the surface rights if he decides to end the contract before the date of maturity. If the tenant can no longer pay his obligations, he may end the contract and abandon all built construction and surface rights to the lessor or give up his rights and building to a third party with the approval of the lessor.

D. PROTECTION OF PROPERTY ACQUIRED BY POSSESSION

Possession in good faith or in bad faith may lead to possessory actions.

The Haitian judicial and legal practices are inspired by Article 2282 of the French Civil Code which states that “The possession is protected without regards to the substance of the law, against disorder which affects or threatens it...” and grants special protection to the holder in good faith and even one holding in bad faith. Thus, any act of a third party disturbing peaceful possession may lead to a legal action to restore the rights to the possessor or holder.⁷

The plaintiff has the three following actions available depending on the case and can present himself before the Court of Peace of the jurisdiction where the property is located:

- a. **Suspension of disturbance of possession (complaint).**
- b. **Action for recovery of property lost by dispossession.**
- c. **Action for disturbance of possession (denunciation).**

(See Articles 39 and 40 of Code of Civil Procedure by Pierre Marie Michel.)

The possessory disturbance action may be filed by an individual who contests the right of a person who claims to be the owner. The disturbance must not arise from an obligation within a contract. It has to come from a third party.

Example: The owner who causes any disturbance to the tenant and does not respect the terms and conditions of a lease agreement cannot proceed with a possessory action. He may, however, have recourse to the courts. The judge will not seek to determine who the owner of the property is but who had the right of possession at the time of disturbance.

The holder is entitled to assert the following actions:

- **The suspension of disturbance of possession (complaint):** This action is available to the holder or possessor if the following two conditions are met: a possession of more than a year and possession free of trouble or violence of any kind. This action also puts an end to the actual disturbance.
- **The recovery of real estate lost by dispossession:** This action aims to stop a disturbance perpetrated by a third party (even the real owner) or coming from acts of violence. It condemns disruption of public order (to take the law into one's hand by chasing an individual off a property without soliciting the assistance of competent authorities).

Example: An owner who chases a squatter from his property without the assistance of a judicial authority. The owner may be compelled to give up this action.

7. Possessory action requires neither title nor good faith. Should the possession serve as a basis for a possessory action, it is not necessary to present a title or be in good faith. (Manual of Civil Procedure, Pierre Marie Michel, p 304.)

- **The action for disturbance of possession (denunciation):** This action helps prevent future disturbances based on certain factors. To be accepted by a judge, there should be plans to be carried out which will lead to a disturbance of possession. The judge recognizes the owner's status and will order the person causing the disturbance to stop his activity.
Example: A holder who, after five years and upon request of the owner of the property, is forced to accept the presence of workers proceeding to building a wall.

To exercise these actions, the holder must prove that he has been present for at least one year, and he must take legal action during the year of the disturbance. (See Article 39 of the Civil Procedure Code.) The Court of Peace for the place where the property is located has jurisdiction to hear the case. However, some areas (Gonaives and Saint-Marc) benefit from a special land court created by the Decree dated July 30, 1986.

TABLE 3: ACQUISITIVE PRESCRIPTION OR USUCAPTION

DEFINITION	AUTHORITIES INVOLVED	RESULTS OBTAINED
Acquisitive prescription is a method used to acquire rights to land.	20 years	<ul style="list-style-type: none"> • Possession as if an owner (animo domini); • Possession without disturbance; • Public possession; • Continuous possession; • Possession putting the property to use; • Validation of the situation of a Civil Court.

TABLE 4: RIGHTS RESULTING FROM AN IRREGULAR PRESCRIPTION OF PRIVATE PROPERTIES

The irregular acquisition of property confers a precarious or uncertain status on the acquirer. In the case of a building transferred by a seller who is not the owner, the sale is declared null and void.

However, the legislature establishes a difference between the irregular buyer in good faith whom it protects and the irregular buyer in bad faith whom it does not protect.

IRREGULAR BUYER PROTECTED ⁸		IRREGULAR BUYER NOT PROTECTED ⁹	
CONDITIONS	RIGHTS	CONDITIONS	RIGHTS
a. Good faith at the time of the acquisition. b. Good title.	Benefits from the prescription: a. 10 years if the real owner lives in Haiti b. 15 years if the real owner lives outside of the country.	Bad faith at the time of the acquisition.	Does not benefit from prescription.

Good faith refers to the purchaser’s total ignorance of the fact that the seller is not the owner of the property sold. The buyer is always presumed to have acted in good faith.

Bad faith refers to the fact that the purchaser knows that he is buying a property that does not belong to the seller. However, whoever alleges bad faith must provide proof.

⁸ Civil Code of Haiti, annotated by Jean Vandal, February 2004.
⁹ *Ibid.*

TABLE 5: SUMMARY TABLE

NATURE OF THE ACTION	POSSESSORY ACTION	CLAIM OF OWNERSHIP
Purpose of the action	Protect the possession	Protect the property
Plaintiff	The possessor	The owner
Forms of Action	Suspension of disturbance of possession, action for disturbance of possession, recovery of real property lost by dispossession.	Two (2) actions exist: claim of ownership and action to establish boundaries of land. However, some actions can result in the stripping of property rights (actions relative to usufruct or to easements).
Conditions to succeed	Must be in possession for at least one year except for the recovery of real property lost by dispossession.	The possessor must not be subject to the following prescriptions: 10 years if he is in good faith; 15 years if the owner is outside of the Republic of Haiti; and 20 years if the owner is in bad faith.
Competent Court	The Court of Peace for the place where the building is situated.	Court of First Instance for the place where the building is situated.
Status of the owner	Precarious holder	Owner
Legal status	He holds the property with the consent of the holder or the owner. He exercises the corpus on behalf of the owner or the holder. There is no animus.	He holds the property without the owner's consent. There exist the corpus and the animus.
Situation related to prescription	Has no animus (open and hostile possession) and cannot benefit from prescription.	There is the animus and the corpus, which may refer to 10 year prescription if he acts in good faith and 20 years if he acts in bad faith.
Change of situation	May become the owner and benefit from prescription in case of conversion of title.	He will become the owner through acquisitive prescription.



PRACTICAL CASES

Uncertain access to property:

The son of a custodian who died 10 years ago occupies the land.

Even if the time limit has passed (10 years), the son does not become the owner if he acknowledges that his father was the custodian, and that he occupied the land on behalf of a third party.

After his father's death, he must perform an unequivocal action and behave as if he were the real owner. All depends on his behavior on the site (for example, selling part of the parcel, building without authorization, etc.).

He must perform actions showing conversion of title. The prescription shall begin to run with the conversion of title from precarious holder to owner.

It may be much easier for a squatter to become the owner of a property by prescription where his presence on the site does not depend on anyone's will. Animus and corpus (open and hostile occupation) are more easily detected. Possession may be accompanied by an act of

violence. However, if violence ceases when occupying the property, possession will be considered in accordance with the terms of Article 1997 of the Civil Code.

In the case of an occupied land belonging to someone exiled for a political reasons, one must refer to the Civil Code provisions relating to the statute of limitations. Cases for which statutes of limitations can run are established by law (Article 2019 of the Civil Code).

Finally, it should be noted that the possessor who is seeking a prescription is not required to wait for the owner's action to oppose the prescription. He may have recourse to a usucaption action, meaning that he may seek to bring the owner before the court in order for him to admit that there is a prescription against the owner. It should be noted that prescription can be proved by various means for it is a *de facto* situation.





III. RIGHTS RESULTING FROM A PRECARIOUS ACQUISITION OF STATE LAND (PUBLIC AND PRIVATE DOMAIN)

There are two categories of State land: State land within the Private Domain and State land within the Public Domain. Land within the Public Domain is imprescriptible (unable to be taken away by prescription or lapse of time) and inalienable. Land in the Private Domain can be developed through a fixed-term contract or a farming contract.

Land in the Public Domain is generally assigned to public use and exceptionally to private occupation. This is the most protected land since it is not subject to either prescription or assignment. (Article 36.5 of the Constitution; Article 442 of the Civil Code; Article 2 of Decree of September 22, 1964, on rents and tenant farming of Private Domain.)

Lands in the Private Domain although inalienable can be subject to a private use by the government itself or by individuals through a lease contract.

Since the State is a major land owner, State properties are greatly coveted and subject to irregularities arising from the way the properties are being used. As the number of occupants on State land continues to rise, many questions are being raised about the rights of those who occupy State-owned lands in the Public and Private Domain.

1. Rights resulting from the precarious occupation of State land within the Public Domain

Identification of State land within the Public Domain: There are several types of properties within the Public Domain outlined in different standard-setting texts (Constitution, Civil Code, legislation) based on their nature. **These properties are, for example, roads, public squares, waterways, ports and harbors, islands, islets and historic monuments.**



It is possible for the Government to transfer a property from Public Domain to Private Domain if the property will be sold, leased or used on a private basis. However, this requires the passing of a special law for a change of status (Article 2 of Decree of September 22, 1964). Even this process, however, is impossible in the case of land categorized in an enumerated list under Article 36.5 of the Constitution. This is because a law cannot derogate the Constitution. Lands that cannot change status without a Constitutional revision include: coastlines, streams, rivers, mines and quarries.

Normally, State land within the Public Domain cannot be occupied by private individuals. Dwellings cannot be erected on these lands. However, two exceptions exist: temporary occupation of properties in the Public Domain (for example: a public square used for a paying concert; use of public right of ways by merchants by paying a fee; and use of public squares for the construction of stands during carnival festivities) and also a long-term lease that can be granted to private sector operators pursuant to Article 39 of the Code of Investments for projects in the tourist sector. Otherwise, one needs to question the situation of people illegally occupying State-owned lands in the Public Domain.

A. INDIVIDUALS OCCUPYING STATE LAND WITHIN THE PUBLIC DOMAIN WITH THE PERMISSION OF AUTHORITIES

There are cases when individuals are considered to have been permitted to occupy State land within the Public Domain due to the non-opposition of the authorities. State acquiescence can be considered either as an act of social pacification or due to a lack of resources to enforce the law. The issue of non-action of the government has resulted in a general understanding that those occupying land have acquired certain rights to the land. This is the case for example with certain island dwellers. Article 443 of the Civil Code and Article 2 of the Decree of September 22, 1964, classify islands and islets as part of State land within the Public Domain. Any person that has erected a structure on any of the adjacent islands of the country has done so illegally according to Article 39 of the Code of Investments unless the State has transferred the property by a legislative act or that property has otherwise been legally acquired. If the land has been re-classified in order to be incorporated into the State Private Domain, the land can be leased to an individual. In reality, since the islands and islets were incorporated into the State Public Domain through legislative texts, they can be equally re-classified with new legislation.

Otherwise, a person occupying land situated on an island is not entitled to acquisitive prescription since State lands are not subject to prescription. As such, persons who have benefited from the tolerance of the authorities are not legally protected.

B. PERSONS OCCUPYING STATE LANDS IN THE PUBLIC DOMAIN WITHOUT LEGAL AUTHORITY

Persons illegally and anarchically occupying State land within the Public Domain are within an even more precarious situation. This is particularly the case for those persons erecting houses within protected areas, such as river beds, etc.

These structures may be destroyed by the State for several reasons: the occupant's lack of rights; the need to protect the environment; sanitation; and public safety safeguards, etc.

Example: Residents of slums (*bidonvilles*); persons occupying protected zones within the State Public Domain (parks, historical sites, state forests, river beds, etc.).

If a person occupies State land within the Public Domain due to an illegal act performed by a public authority, this does not change the status of the person with relation to the land and will not protect him.

Example: A Mayor decides to lease out State land situated in a public park. The beneficiary of this illegal act will not be entitled to claim any rights to this land. No public authority may authorize permanent construction on park land. Moreover, it is unlikely if the person in question decides to go before a court to seek compensation from this authority, that his claim will be accepted since one cannot use mistake and/or ignorance of the law to his advantage.

2. Rights resulting from a precarious occupation of State land within the Private Domain

A. OCCUPANTS IN A PRECARIOUS SITUATION

State land within the Private Domain can be leased (rental, tenant farming) by the General Tax Directorate (DGI) under the conditions prescribed by the Decree of September 22, 1964. If all legal procedures have been respected, occupants benefit from the protection of the law, particularly against evictions, etc. Leases on State land within the Private Domain are indefinitely renewable by tacit agreement based on priority and preference (Article 8). However, should the occupant find himself in a precarious situation as a result of not paying rents or improper use of the land, the government may take legal action against the occupant through various means. Non-payment of rent at the end of the fiscal year could lead to the termination of the lease and eviction following an order from the Justice of the Peace (Article 14). The government can, however, waive the invalidity of the lease if the farmer or occupant agrees to pay a fine of 10 percent for every month of delay. Such a decision is an option but not an obligation for the government. **The farmer or occupant cannot appeal the decision made by the government.**

In certain cases, the farmer or occupant may find himself in a precarious situation due to an inappropriate use of the land.

For example: Erecting a structure without the appropriate building permits; failure to comply with urban planning regulations, and, in particular, public servitudes that will be considered regardless of the occupant's status as a "Farmer of the State." Structures built by legal occupants on State land without legal permits and/or in violation of urban planning regulations can be demolished by the State.

B. PRECARIOUS OCCUPANTS WITH NO RELATIONSHIP TO THE DGI OFFICE OF GOVERNMENT LAND

It may happen that leases are granted to a person through illegal procedures or that a person's occupation of the land has become precarious. In certain cases, the situation can be ambiguous. One of most common situations is when a Mayor grants a lease without complying with relevant legal provisions. Quite often municipal authorities use a questionable interpretation of Article 74 of the Constitution, which considers the Municipal Council as a privileged manager of State land (situated in the Commune) within the Private Domain. In misunderstanding the limitations of their role as managers, Municipal Councils

sometimes grant a lease without intervention of any other authority. In the absence of a law explaining how to apply the Constitutional Article, the provision cannot be interpreted as systematically transferring the authority of the DGI with regards to State land within the Private Domain to the Municipal Authorities. Moreover, according to the same article, all transactions made on State land within the Private Domain require prior notice to the Municipal Assembly. As such, a lease related to State land within the Private Domain granted by the Mayor is illegal. The potential beneficiary has no rights to the land. The proper legal process for renting State land within the Private Domain would be to contact the DGI, which is the competent authority. Any action taken against an incompetent authority that has illegally granted a lease will not change and/or regulate the occupant's status.

The same is true for State land in the Private Domain that has been “sold” illegally to a person by a Municipal Authority. This person is a precarious occupant who has no legal rights to the land. The Ministry of the Interior has urged members of the Municipal Councils and the population not to participate in this type of activity.

This is all the more true for squatters who build structures on State lands. They will face the same problems. This is true even for those individuals who benefitted from the support of various entities (particularly NGO's) and were recipients of housing constructed on State land following the earthquake of January 12, 2010.

In all of these cases, the duration of the precarious occupation on State land will not benefit the precarious occupants. State land cannot be prescribed.

TABLE 6: JUDICIAL REGIME OF STATE LANDS

	STATE LANDS IN THE PUBLIC DOMAIN	STATE LANDS IN THE PRIVATE DOMAIN
DEFINITION	Lands not subject to private use but accessible to the general public for collective use. These lands are inalienable and imprescriptible.	Lands belonging to the State but not subject to public use.
Properties concerned	Properties for collective use: <ul style="list-style-type: none"> • Public streets • Public squares • Historical monuments¹⁰ • Coastlines • Streams • Springs • Rivers • Mines and quarries • Islands and islets 	Lands for the State and local authorities <ul style="list-style-type: none"> • Vacant lands • Confiscated lands • Lands given to the State because no heir exists • Acquisition of State lands¹¹
Sale procedures	Inalienable lands cannot be sold unless there is a change of status (1).	Transferable lands (can be sold by competent authorities) by law. ¹²
Competent authority (management, tenant farming, sale)	Ministère de l'Intérieur et des Collectivités Territoriales et le Ministère de l'Economie et des Finances. * To boost the economy through investment in the tourism sector	<ul style="list-style-type: none"> • Office of Government Land in DGI under the supervision of the Ministry of Economy and Finance • Municipal Council • Municipal Assembly (must be advised before any transaction)¹³ • Public Accounting Service¹⁴

10. Decree of September 22, 1964.

11. Article 3 of Decree of September 2, 1964.

12. Article 442 of the Civil Code

13. Article 120 of the Decree of February 1, 2006, on the Commune

14. Decree of February 12, 2005.

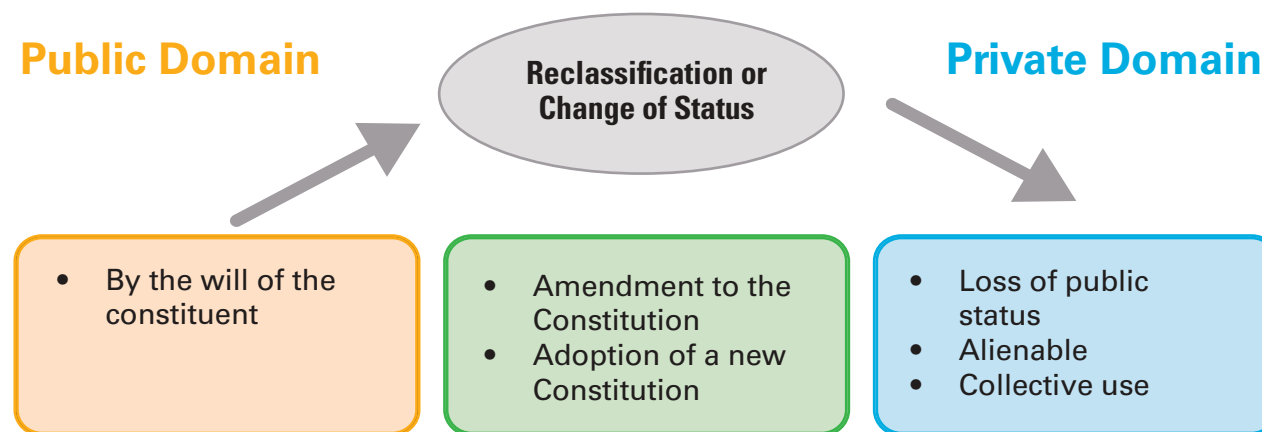
a. Reclassifying State land

How can one acquire State land?

Reclassification is a mechanism by which State land changes from the Public Domain to Private Domain, and vice versa. Thus, State land within the Public Domain can be reclassified as State land within the Private Domain, and State land within the Private Domain can be re-classified as State land within the Public Domain. The intent behind this procedure stems from the fact that State lands in the Public Domain are inalienable. As such, if the Government of Haiti wanted to sell property within the Public Domain, the property would have to be re-classified under the Private Domain in order for the sale to take place.

The mechanism for re-classification occurs through a legislative or constitutional process. This procedure will depend on the nature of the text and the property in question. If the property falls under a legal regime established in the Constitution, only a modification or the adoption of a new Constitution can change its status. For property classified under a legislative act, a status change can be done through a legal or constitutional process.

SCHEME 1: CHANGE OF STATUS OF A STATE-OWNED LAND

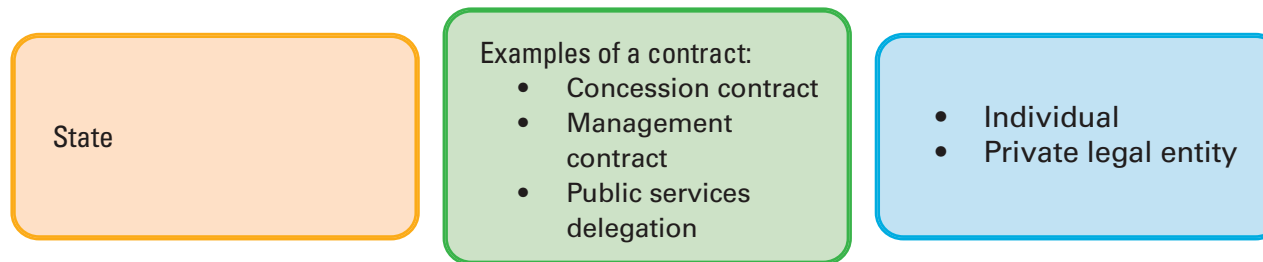


b. Contract for private use

For general interest purposes and efficiency, State land can be allocated for use by a private individual or a legal entity. Private use of State land is subject to a contractual agreement between those private entities and the State as authorized by competent authorities.

Example:

- Rental of public places for carnival or cultural activities;
- Rental of a road for private competitions (car racing, marathons, etc.)

SCHEME 2: PRIVATE CONTRACT**c. Properties situated on islands**

An island is a natural extension of land surrounded by water and open to the sea (United Nations Convention of 1982 on the Law of the Sea). According to the Haitian Civil Code, islands are part of the State's Public Domain and are inalienable. As such, all property situated on an island is part of the State's Public Domain.

Thus, the inhabitants of islands—except in the case of a reclassification (See SCHEME 1 above)—are occupants of land belonging to the State, but they are not owners of the land; furthermore, those lands cannot be used for tenant farming.¹⁵ As a result, these inhabitants find themselves in a precarious situation and are subject to eviction by the State.

However, the reclassification of island land to the Private Domain sets aside the principle of inalienability and of collective use.

It should also be noted that in regards to land situated on an island, the issue of non-private use without a reclassification in status is subject to certain legal dispositions pursuant to Article 39 of the Code of the Investment, which states that these properties can be used **“to help boost the economy through investment in the tourism sector”** all the while maintaining their status as State land within the Public Domain.

Example: The presidential¹⁶ Decree of April 15, 2013, declared Ile-à-Vache “a reserved zone and a zone for tourism development.”

15. Decree of September 22, 1964

16. The author of this text should have been the Prime Minister, holder of regulatory power according to Article 159 of the Constitution.



Thus, without changing status, this land within the Public Domain will be available for long-term leases for tourism projects that are respectful of the natural environment.

SCHEME 3:

1. Request made by the investor

2. Approval of the project by:
- The Interministerial Commission on Investments
 - The municipality

3. Authorization to grant a lease (for a maximum period of 50 years) by the Minister of Tourism.



IV. PROCEDURES FOR COLLECTIVE ACQUISITION

1. Land subdivision

Land subdivision is defined as: “An operation or the result of an operation aimed at dividing one or several properties into lots for sale or for rental (simultaneously or successively) in order to build homes, gardens, or industrial or commercial facilities.” (French Code on urban planning.)

Lot: Portion of land to be sold by parcels; each parcel divided (into lots).

Article 5 of Decree of January 6, 1982, defines land subdivision as “the division of a property or several properties into parcels that will be sold, donated or rented successively or simultaneously, for residential, commercial, agricultural, industrial, private, public, mixed-use purposes or any other activities but excluding land shared by reason of inheritance.”

Based on this text, any parsing off of a piece of land from a larger piece of a land should be considered as subdivision of land. Subdivisions can be used for residential, commercial, industrial or mixed-use purposes.

The two key elements are:

- It is important to emphasize that properties acquired through inheritance are excluded from the legal standards relating to land subdivision. Dividing property among heirs is not carried out in accordance with these standards.
- It is an important point to note that certain formalities are required for the creation or establishment of land subdivision. The proposed subdivision must be submitted for approval to the Ministry of Public Works, Transportation and Communication (MTPTC) and requires the assistance of an engineer or an architect duly accredited and registered by the National College of Haitian Engineers and Architects.

a. Steps of the procedure to subdivide

- **A location certificate** should be issued by the Ministry of Public Works, Transportation and Communication (MTPTC). To obtain this certificate, the development envisioned must comply with the zoning and land use policy requirements set by the applicable regulatory and legislative standards. This includes the relevant



urban planning standards designating uses of urban spaces. The developer must submit to MTPTC a plan locating the land within the urban area (cadastral scale or 1/5000) with a statement on the proposed future use of the land whether for commercial, residential or other purposes.

- The project's study will be carried out by an engineer or an architect affiliated with the National College of Haitian Engineers and Architects in compliance with all standards.
- The request for land subdivision should be submitted to the Municipal Administration in charge of forwarding all documents to MTPTC; including the location certificate with the plan, property titles, survey, plan presenting division of parcels, plan of the actual land, drainage plan, road plan, road network connection plan, terms of reference and technical specifications. An explanatory note must be attached to the documents outlining the purpose of the land development and all necessary steps taken to comply with environmental and urban planning norms, programs and working plans, and drainage system calculations.

b. Non respect of norms relative to land subdivision:

- Any individual who undertakes land subdivision without proper authorization is subject to a penalty from 1500 to 25000 gourdes, and the site will be closed.
- For the duration of the project, the authorization document should be available on the site otherwise it can be closed until the document is produced.
- If the land development does not comply with relevant standards, MTPTC may require the demolition of irregular construction.

TABLE 7: CO-OWNERSHIP

Land subdivision¹⁷ is the division of a property in parcels to be sold, donated or rented on a successive or simultaneous basis for residential, commercial, agricultural, industrial, private, public or mixed-use purposes.

*** It should be noted that inherited property being divided is excluded.*

PROCEDURES	AUTHORITIES AND PROFESSIONNALS CONCERNED	INFORMATION AND DOCUMENTS REQUIRED	ABSENCE OF AUTHORIZATION
1. Location certificate	Ministry of Public Works, Transportation and Communication (MTPTC)	Detailed land plan	Prohibited from carrying out the subdivision

¹⁷ Decree of January 6, 1982, on land development and division.

PROCEDURES	AUTHORITIES AND PROFESSIONNALS CONCERNED	INFORMATION AND DOCUMENTS REQUIRED	ABSENCE OF AUTHORIZATION
2. Project study	Architect or engineer accredited and legally registered with the National College of Haitian Engineers and Architects	Documentation of the proposed use of the land	Work site is closed
3. Authorization to subdivide	Communal Council (Request produced by an engineer or an architect responsible for the work)		Cannot obtain deeds re-lating to division of parcels Invalidity of deeds rela-tive to plots
4. Completion of land development			
5. Issuing a certificate of conformity	MTPTC	Approval from MTPTC	

2. Co-ownership of buildings

The regulations on co-ownership of buildings were first established in Article 458 of the Civil Code. The regulations were amended by the Law of August 13, 1984 and completed by the Decree of December 15, 2011.

A. CO-OWNERSHIP FRAMEWORK

The Law of August 13, 1984 on co-ownership of buildings determines which buildings are subject to co-ownership.¹⁸ Several documents have to be submitted.

a. Basis of co-ownership

Buildings subject to co-ownership are determined under Article 1 of the Law of August 13, 1984. It applies to “any building or group of buildings whose ownership is divided into lots among several individuals each owning a private portion and a portion of common areas.” This definition includes elements such as co-ownership of buildings, ownership by several owners and the co-ownership of lots.

18. Le Moniteur #82 of November 26, 1984.



Buildings

The Law of August 13, 1984 relates to buildings and does not apply to unimproved land (land that has not been built on). There are two types of buildings subject to co-ownership: vertical co-ownership which is the superposition of properties one on the top of the other (apartments by floor) and horizontal co-ownership which is a juxtaposition of buildings side by side. Each co-owner owns private units and portions of common areas.

Co-ownership exists when the building and the land belong to several owners. This applies as well to properties that comprise a complex, including groups of houses, construction used for residential purposes, multi-dwelling buildings and other construction. They are subject to a co-ownership status if they have private units and common areas.

Co-ownership status is subject to conditions relating to the building's structure and to improvements carried out in the building. Should a building be entitled to co-ownership, its private and common areas ought to be independent of each other (Article 5, Law of August 13, 1984). Furthermore, access to a public road, common courtyard and a right of way for each lot should be provided.

Plurality of owners

Although the Law of August 13, 1984 has not specified a minimum or maximum number of people who can be part of co-owned property, there should be at least two people. Co-ownership can arise from various situations: two or more individuals can share their resources and construct a building; it can also result from the sale of one portion of a building as long as the sale attributes property rights to at least two persons. Co-ownership also applies in cases where the sharing of a jointly-owned building gives rise to divisions of private and common areas.

A co-ownership lot

A co-ownership lot includes a private unit as well as a portion of common areas (Article 1, Law of August 13, 1984). The lot is indivisible and one part cannot be disposed of without the other. In other words, the co-owner can only transfer all parts of his co-owned property, including his private unit and his portion of common areas.

The private unit is reserved for the exclusive use of its owner (Article 2, Law of August 13, 1984) and the owner enjoys all prerogatives prescribed to a property owner. However, he must comply with the building's regulations and refrain from any action contrary to those regulations. For example, he cannot do business in a residential building where commercial activity is prohibited by the building's regulations. He cannot block necessary work to be carried out in his private unit if the work is necessary for the benefit of the building as a whole.

However, the common areas are available to all or to several of the co-owners (Article 2, Law of August 13, 1984). The legislature listed some examples of common areas such as: the overall structure, grounds, parks, building foundations, access points, plumbing infrastructure, common equipment and devices, and basements.

b. Co-ownership documents

The organization of a co-ownership property requires several legal supporting documents including co-ownership regulations and the building plans.

Co-ownership regulations

Regulations for co-ownership properties are required under Article 9 of the Law of August 13, 1984. The law defines the contents of the regulations and prescribes that they must be notarized. The purpose of the regulations is to define the location of private units and common areas, the surface area of the building or the group of buildings, and the conditions relating to its enjoyment and the use of common areas. It is important that the building regulations define the rights and obligations of co-owners. The regulations are an essential document for co-ownership properties.

There has been controversy surrounding the legal nature of co-ownership regulations. Real examples have considered building regulations to be: a membership contract; a private¹⁹ regulatory deed; or, a mandatory legal deed regrouping several characteristics of a contract and an institution¹⁹.

Building Plan

The building plans are required under Article 5 of the Law of August 13, 1984 relating to co-ownership of buildings. The plans must set forth all specifications relating to private units, common areas and adjoining units. This information will be posted in the building and must be available in a place where it can be consulted. It is essentially a technical document.

B. THE FUNCTIONING OF CO-OWNERSHIP PROPERTY

To ensure the proper functioning of a co-ownership property, the Law of August 13, 1984 has established several management structures and has also taken into consideration several different relationships among co-owners. The following are the types of ownership bodies and the legal status of co-owners.

a. The Syndicate

The Syndicate is a legal entity created to be responsible for overseeing the management of the co-ownership property. It is governed by two bodies: the General Assembly of Co-owners and the Board. The Syndicate is formed by all co-owners and is a legal entity in its own right (Article 14, Law of August 13, 1984). The Syndicate has a special status and cannot be considered as a company or corporation since the co-owners are not shareholders. Furthermore, the Syndicate has no real ownership rights to the building.

The mission of the Syndicate is to preserve the building and the common areas (Article 14, Paragraph 2, Law of August 13, 1984). The Syndicate can take legal action against third parties and even sue one or more individual co-owners in

19. F. Terre, P. Simler, op cit, #618

20. J-B Seube, op ci, #455



order to defend the interests of the building (Article 15, Law of August 13, 1984). However, co-owners also have the right to take legal action to defend their property or the enjoyment of their respective units. The legislature remained silent with regards to the liability of the Syndicate in the event of damage caused to third parties by co-owners.

We consider that the victims should have the choice between bringing an action against the Syndicate or against the co-owner involved. However, the co-owner cannot hide behind the Syndicate to escape from his responsibility. Two options are available. In the first, the co-owner assumes responsibility while using the Syndicate as a guarantor; in the second, the Syndicate assumes responsibility and, in the future, will bring an action of redress against the offending co-owner. However, the first option is the more appropriate.



The governing bodies of the Syndicate

The Syndicate's governing bodies are the General Assembly of Co-owners and the Board. Each will be discussed below.

- **Deliberative power remains with the General Assembly of Co-owners (AGC).** As such, Article 16 of the Law of August 13, 1984 states that "the Syndicate's decisions are taken by the General Assembly; their execution is entrusted to a board designated by the General Assembly under the conditions provided for in the co-ownership regulations." Thus, AGC decisions are binding and the board must comply. Decisions taken contrary to the direction are null and void even if all co-owners agree.

The AGC is comprised of all co-owners or their representatives. It intervenes if changes are to be made in co-ownership regulations and also on the building status. It is necessary to have the presence of three fourths (3/4) of the co-owners/representatives in order for the General Assembly to meet and to act a vote of two-thirds (2/3) of voters is required.

- **The Board:** The Board is appointed by the AGC (Article 16, Law of August 13, 1984) and the conditions relating to service on the Board, its termination of service (wrongdoing, duration of its mandate) and compensation for board members are determined by the co-ownership regulations (Article 18, Law of August 13, 1984). The law does not prohibit the Board from including members who are professionals, co-owners, natural persons or legal entities. While the law does not mention it, the Board members may carry out its functions without remuneration.

The Board is the executive body of the Syndicate. It ensures the execution of all decisions taken by AGC and is responsible for implementing the provisions of the co-ownership regulations. The Board manages, protects and maintains the building. In urgent matters, it can carry out works that are necessary for the preservation of the building (Article 17 Law of August 13, 1984). The Board can represent the Syndicate in all civil and legal actions.

The scope of the Board's powers determines the liability of the Board. Article 19 of the relevant law highlights the responsibility of the Board, by stating that "the Board is responsible for the execution of the Syndicate's decisions and for any wrongdoing committed during the performance of its mandate." The liability of the Board is not only with regards to the Syndicate but towards the co-owners. However, this liability will be mitigated if it performs its duties free of charge and in accordance with mandated regulations.

Other bodies: The regulations of the Law of August 13, 1984, dated from December 15, 2011, created the Syndicate Council as the regulatory body for co-ownership properties. However, association with the Syndicate Council is optional for co-ownership properties. The Council's mission is to control the Board's management. On this basis, the Syndicate Council controls "...the board's accounting, allocation of expenses, conditions in which it calls for tenders and other contracts which are procured and executed, preparation of estimated budget and monitoring." (Article 28, Law of December 15, 2011.)

C. LEGAL STATUS OF CO-OWNERS

The co-owner is a member of both the AGC and the Syndicate. He is entitled to vote and has property rights. With regards to their units, co-owners have the right to dispose of their private units and their portion of the common areas.

a. Disposal of one's unit as a co-owner

The co-owner owns his unit. As such, he can dispose of it, benefit from rights such as the right to mortgage, or authorize its use. He may grant a third party enjoyment of his property. However, this only applies to enjoyment of his private unit. Common areas are excluded.

Sometimes co-ownership regulations impose limitations on a co-owner's rights to sell, dispose of or transfer his unit. Furthermore, the Syndicate must be notified of any proposed transfer of a co-owner's unit and can exercise rights conferred upon the Syndicate by building regulations particularly if the co-owner owes the Syndicate money.

b. Rights on private units

The co-owner has property rights on his private unit and since he is the sole owner of his unit he can use, renovate, modify, gain benefits from and dispose of it as he pleases. He can also instigate the following lawsuits: possessory actions, actions to stop disturbances from neighbors, and petitory actions to establish title to property.

However, there are limits to a co-owner's rights. The first limit comes from the fact that he cannot oppose works to be carried out for the benefit of the building, even if it occurs within his private unit. The second limit refers to the building's purpose. A co-owner cannot use his private unit for any activity violating the building's purpose. He cannot perform commercial activities in his private unit should the building be required to be used for residential purposes. Also, the co-owner cannot decide to unilaterally change the use of his private unit to a use not permitted by the building regulations.

c. Rights on common portions

Co-owners are entitled to joint ownership of common areas. Rights to common areas cannot be transferred without the transfer of the related private unit since the common area property is indivisible from its related private unit. When using his rights to common areas, a co-owner should neither interfere with the rights of other co-owners nor with the building's purpose. For example, he cannot leave his personal belongings in the corridors.

Each co-owner is required to contribute to the expenses relating to common areas. The amount to pay will be determined proportionally according to the surface area of his private unit compared with the surface area of the remaining private areas (Article 29, Law of August 13, 1984).

TABLE 8: CO-OWNERSHIP

Co-ownership²¹ refers to a building or group of buildings belonging to several owners.

PROCEDURE	AUTHORITIES AND PROFESSIONALS	INFORMATION AND DOCUMENTS REQUIRED	ABSENCE OF AUTHORIZATION
1. Presentation of a request	Mayor of the commune involved	<ul style="list-style-type: none"> Plans for the property Detailed description of the lots Dimensions of the the private, common and adjoining parts of the lots. 	
2. Building Inspection	Two or three engineers accredited by the commune involved		
3. In case of approval, issuance of an eligibility certificate or certificate of co-owner status	Mayor of the concerned commune		

21. Law of August 13, 1984, organizing co-ownership regime.



V. PRACTICAL QUESTIONS

1. WHAT WILL HAPPEN IF A FAKE OWNER SELLS A PROPERTY?

A sale made by a fraudster posing as an owner raises questions as to what the purchaser knew. The concept of good faith is essential in these cases. The purchaser will be treated as a acquirer and possessor in good faith provided that he was not aware that the seller was a fraud.

2. LEASE GRANTED BY A FAKE OWNER

When a lease is granted by someone who is not the owner, the analysis of it generally falls under the legal rubric related to business management on behalf others. If the lessee is acting in good faith, the real owner should not be concerned since the falser owner or lessor is not acting on his own behalf but on behalf of the real owner. If the fake owner/lessor is acting in bad faith, not only will he have to return all the money collected for the rent, but he will not be reimbursed for expenses he made in connection with the lease. Should the lessee have also acted in bad faith, he will have no recourse against the real owner who will be able to claim his property without paying any compensation and without delay.

3. PROPERTY IN JOINT OWNERSHIP SOLD BY A CO-OWNER WITHOUT THE OTHER OWNER'S APPROVAL

Property in joint ownership refers to persons having the rights of ownership to the same property. Such joint ownership arises out of inheritance, the dissolution of a marriage or even the joint acquisition of property.

In the case of joint ownership, each undivided co-owner is considered the owner of the whole property and is considered to be an essential owner should the property be divided. A joint owner will not be able to sell any portion of the property if it has not been legally divided into lots. In some cases, the sale could even be challenged.

This situation is similar to the sale of a third party's property. The only difference is that the seller's bad faith is clearly established.

4. WHAT HAPPENS IN THE CASE OF THE PRODUCTION OF FRAUDULENT TITLES? ARE THERE LEGAL PROTECTIONS AND REMEDIES IN PLACE?

Many property titles these days are subject to some doubt. Counterfeiters have become more sophisticated, and they can produce title documents which appear to be real. To address such a risk, it is recommended not to proceed with a sale under private seal and use the sale by genuine deed, which provides the purchaser with greater protection and certainty and gives him the possibility to use legal proceedings in the event of fraudulent documents.

In the event of fraudulent titles, the sale will be considered null and void and is comparable to a sale in bad faith of a third party's property. However, it is often impossible to find the seller and there may be little chance that he will be brought to justice. It is thus necessary to implement a solid monitoring system and call on professionals to be vigilant.

5. CONSTRUCTION WITHOUT PERMIT

The owners of buildings have no right to build on their property if they have not obtained proper construction permits even if they own the land. (Law of 1963 on urban planning.)

6. DETERIORATION OF A PROTECTED CULTURAL HERITAGE BELONGING TO AN OWNER (GINGERBREAD HOUSES BOIS VERNÉ/CHAMPS-DE-MARS)

If a building is part of Haitian protected cultural heritage or is a historical monument, it cannot legally be destroyed or displaced in whole or in part. In addition, restoration or modification of such property cannot be undertaken without the approval of the Council of Ministers following a report and under the supervision of ISPAN (The Institution to Safeguard the National and Cultural Heritage). The owner will be able to transfer his rights in a designated historic building only by a legal deed and will have to give notice of the transfer to the concerned ministries according to the Decree of May 10, 1989, relating to the National Heritage and the National Heritage Commission. Furthermore, no prescription right can be exercised on a designated historic building. It is necessary to have the approval of the Council of Ministers in order to enforce easements on the building. Furthermore, no new construction can be built next to a designated historic building or next to a building in the process of being designated without the Council's authorization.

GLOSSARY

Authentic deed (*Acte authentique*)—The deed drawn up and executed by a notary or a public official with the power to act in the locale where the deed was drawn up, acting with the requisite authorization (notary/Justice of the Peace).

Action to establish boundaries (*Action en bornage*)—Case by the land owner to determine the boundaries of his land vis-à-vis his neighbors.

Action for recovery of property or Petitory Action (*Action en revendication ou action pétitoire*)—An action at law that allows the owner (holder of a sale under genuine deed or a sale under private seal) to go before the Court of First Instance and request:

- Recognition of his property rights after carefully examining and verifying the authenticity of his title (it is sufficient to demonstrate that third party is in a precarious situation or acted in bad faith).
- The return of possession of his property including possession of any improvements and equipment on the property that the Court of the Peace may have conferred on the occupant.

An action to establish and enforce title to property.

Possessory action (*Action Possessoire*)—A legal action brought before the Court of the Peace to obtain or recover the actual possession of property. It is not based on property titles but on facts and circumstances relating to possession as they prevail at the moment of the action. A *de facto* situation prevails over a *de jure* situation.

It aims to reestablish the right of the possessor even if he acted in bad faith.

- **Suspension of disturbance of possession (*Complainte*)**—Legal action to establish possessory rights should a possessor of a property or even a precarious holder be the victim of disturbance. A complaint is a general possessory action, and action for disturbance of possession is one option if the disturbance is threatened but has not yet taken place.
- **Action for disturbance of possession (*Dénonciation de nouvel oeuvre*)**—Possessory action exercised by the possessor of a building or even a simple holder against the owner of a neighboring property who is undertaking work that is or will disturb the possessor. This action allows the prevention of future disturbances based on certain elements. In order to be accepted by a judge, the neighbor must have started a project which will be a nuisance to others.
- **Recovery of property lost by dispossession (*Réintégration*)**—A legal action taken by any person who has been dispossessed of his property by an act of violence.

Survey (*Arpentage*)—Process of measuring land; a preliminary operation for determining the boundaries of a piece land by a licensed public official.

Surveyor (*Arpenteur*)—A public official sworn to carry out

the duties of a surveyor measuring the land, without any limitations, determining the square footage and setting its boundaries.

After each operation, he delivers a survey in accordance with the minutes prepared.

He works upon request and written authorization submitted by competent authorities (See Articles 1 and 2 of Decree of February 26, 1975, published on March 17, 1975, establishing surveyor's duties and regulations relative to the profession). There are public surveyors who measure State land, and ministerial surveyors who take care of lands belonging to individuals. State properties can only be surveyed by surveyors appointed by the State (DGI), and they cannot work in the private sector.

Property—All goods used by a man including tangible items and tangible goods (e.g., car, house).

Tangible properties—All existing material goods (e.g., chair, tree, wall).

Intangible properties—Properties with no physical existence such as: copyright, debt and property rights, salaries, bonds, and equities of a company, clients, etc.

Personal property—Property which can be moved from one place to another without being destroyed. Movables are characterized by their nature or by determination of the law.

- **Movables characterized by their nature**—According to Article 431 of the Civil Code, "... are movables that are by their nature tangible can be moved from one place to another or can move themselves, like

animals, or they can change places by an external force, such as inanimate things."

- **Movables by the determination from the law**—These movables are comprised of any intangible personal property. Article 432 of the Civil Code, "...movables by the determination of the law include bonds and equities with amounts due, shares and interest in financing, trading or industrial companies."

Also included are life annuities.

Real property—Property not likely to be displaced nor considered capable of being moved (by law or jurisprudence).

Such properties are classified by their nature, by their destination or by the object to which they apply.

- **Properties classified by their nature**—It is a fixed property and generally a building is a property which cannot be moved. Lands and construction are properties by their nature (see Article 427 of the Civil Code).
- **Properties classified by their destination**—They are movable properties that the owner decided to integrate in a building that belongs to him (see Article 428 of the Civil Code).
- **Properties classified by the object to which they are applied**—This category refers to intangibles properties; meaning to rights.

According to Article 429 of the Civil Code, "are properties by the object to which they apply:

- usufruct of real estate, easements or land services;
- actions to claim a property."

Properties without owners— Properties whose owner

is not known or whose owner never appeared. All vacant properties without owners; properties belonging to a deceased person with no heir; properties whose successions are abandoned.

Good faith—An individual who considers that he complies with the law without violating other's rights.

Co-ownership—Complex real properties comprised of houses, buildings use for residential purposes, multi-family housing or other construction subject to co-ownership status should they have private portions and common areas.

- **Private portions**—Units destined to the co-owner's exclusive use.
- **Common areas**—Units destined to collective use.

Dismemberment of property's rights—When a property is divided between a usufructuary (the beneficiary who has the right to use the property and collect revenues) and a bare owner (who can sell it, give it away or bequeath it) without having the possibility to enjoy or use it; these two prerogatives belong to the usufructuary.

State land in the Private Domain—State properties which can be sold in accordance with certain legal procedures.

State land in the Public Domain—State properties which generally serve public interest. They are imprescriptible and inalienable. Examples include sidewalks, parks, squares, sea shores, rivers and streams, mines, etc.

Right of accession—The ownership of a property (whether it is a real estate or a movable) gives the owner rights to all the property produces whether it occurs naturally or

not. It is a right, for example, granted to an owner who can benefit from all elements being deposited on his property after heavy rains and floods, the ebb and flow of tides.

Right in rem (real right)—A right to a thing. The most important of rights in rem are the right to ownership (which has three prerogatives: the right to use it, to benefit from it and to dispose of it) and the limited incumbent right to property arising from certain prerogatives (i.e., easements, usufruct).

Rural regulations—Regulations initially grouped in a rural code governing planning and development of rural areas, veterinary public health, and the protection of plants, farming, rural leases, professional agricultural organizations, agricultural production and markets, social provisions, education, vocational training and agricultural development.

Urban area—Areas in major cities.

Rural area—Areas within and surrounding towns, countryside and settlements.

Expropriation for public utility purposes—Expropriation is the action by the State of taking property from its owner for a public use or benefit, paying compensation, as strictly defined by law, and carried out in the general interest of the community (see Law of September 5, 1979).

Joint ownership—Ownership arising by law or agreement made between two or more of several owners sharing interests in the same property. It is characterized by different people having the same rights to a property or several properties which are not divided. Joint ownership may be temporary except when it is a forced joint

ownership meaning that the common areas are essential to all (i.e., yard, common wall, well). In that case, no co-owner can require partition of the property.

Subdivision—It is an operation to divide into lots (several land parcels) one or several properties by sale or rent (on a simultaneous or successive basis) to construct buildings, industrial and commercial facilities, create gardens (French Code on urban planning).

According to the Decree of January 6, 1982, it is the division of a property into parcels to be sold, donated or rented simultaneously or successively to build for residential, agricultural, commercial, industrial, private, public or mixed-use purposes.

Possession—To hold or to enjoy a thing or a right that we have or that we exercise for our own benefit or someone else has it or enjoys it on our behalf.

Statute of limitations (Prescription)—Statute of limitations is a way to acquire a property or to free oneself after a certain period of time and according to the conditions set up by the law.

Property rights—A right to enjoy and dispose of a thing in the most absolute manner provided that one does not make of it in a manner that is prohibited by the laws or regulations.

- **Bare ownership**—Prerogatives an owner has to a property subject to land division. The owner has the right to legally dispose of it but he cannot use or enjoy it for these prerogatives benefit the usufructuary (beneficiary).

- **Usufruct**—Usufruct is the right to use (*usus*) and enjoy the fruits (*fructus*) of a property belonging to another but not to dispose of it (*abusus*) (rights to dispose belong to the bare owner). However, the beneficiary can dispose of his own rights and can also cede his usufruct rights.

Allowance—Allowance is an amount of money given periodically by a person called a payor of an allowance during a time period set up in a contract or until he dies to a person called the payee or recipient of an allowance. In the latter case, it is called a life annuity. It is perpetual unless the payor of the allowance frees himself of the obligation by repayment of capital.

Servitude (or easement)—An obligation imposed on a property which will be used for the benefit of another property owner. The servitude does not give to one property preeminence over another property. It comes from the natural situation of the land, obligations imposed by the law or conventions established between the owners.

Sale—Contract by which a person, the seller, transfers or has the intention to transfer his rights in a property to another person, the buyer, who has the obligation to pay the agreed sum.

Remarks—If the right transferred is a personal right, the term used is assignment (i.e., assignment of a claim).

- **Assignment**—Transmission rights *inter vivos*. It is the transfer of property rights between two people. A transfer by means of assignment refers to the sale of a portion of one's rights in a property.

Inter vivos—This term is mostly used for gifts and donations between two living persons.

Assaults—In civil proceedings, any conduct constituting an infringement of personal rights or failing to comply with legislation or regulatory requirements to cease the illicit disorder. The finding of an assault entitles the wronged party to compensation.



ACRONYMS

AAH: Association des Assureurs d'Haïti

AMCHAM: American Chamber of Commerce

APD: Association des Professionnels du Droit

ASNOPH: Association Syndicale des Notaires Professionnels d'Haïti

IDB: Inter-American Development Bank

BRH: Banque de la République d'Haïti

BUH: Banque de l'Union Haïtienne

CAJUP: Corporation des Arpenteurs de la Juridiction de Port-au-Prince

CCIH: Chambre de Commerce et d'Industrie d'Haïti

CCHC: Centre de Coopération Haïti-Canada

CIAT: Comité Interministériel d'Aménagement du Territoire

CLED: Centre pour la Libre Entreprise et la Démocratie

CNIGS: Centre National d'Information Géo-spatiale

DFATD: Department of Foreign Affairs, Trade and Development Canada

DGI: Direction Générale des Impôts

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

EDH: Electricité d'Haïti

EPPLS: Entreprise Publique de Promotion de Logement Sociaux

FAES: Fonds d'Assistance Economique et Sociale

FENAMH: Fédération Nationale des Maires en Haïti

FICR: Fédération Internationale de la Croix Rouge

FOKAL: Fondation Connaissance et Liberté

IHSI: Institut Haïtien de Statistique et d'Informatique

INARA: Institut National de la Reforme Agraire en Haïti

INGSA: Les Industries Gerby SA

ISPAN: Institut de Sauvegarde de Patrimoine National

MAEC: Ministère des Affaires Etrangères et des Cultes

MAST: Ministère des Affaires Sociales et du Travail

MCC: Ministère de la Culture et de la Communication

MCFDF: Ministère à la condition Féminine et aux Droits des Femmes

MCI: Ministère du Commerce et de l'Industrie

MDE: Ministère de l'Environnement

MEF: Ministère de l'Economie et des Finances

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

MICT: Ministère de l'Intérieur et des Collectivités Territoriales

MJSP: Ministère de la Justice et de la Sécurité Publique

MPCE: Ministère de la Planification et de la Coopération Externe

MTPTC: Ministère des Travaux Publics, Transports et Communications

IOM: International Organization for Migration

NGO: Non-governmental Organization

UCLBP: Unité de Construction du Logement et des Bâtiments Publics

UMCOR: United Methodist Committee on Relief

USAID: United States Agency for International Development



The translation and printing of this Manual has been made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the Haiti Property Law Working Group and do not necessarily reflect the views of USAID or the United States Government.



121 Rue Louverture, coin Clerveaux
HT6140 Pétion-Ville, Haïti
(509) 3701-3249 infohaiti@habitat.org habitathaiti.org



Le Manuel des transactions foncières haïtiennes, Vol. 1, est disponible sur le site Internet du "Groupe Foncier" landlaws.org