



# **Ombudsman Commission of Papua New Guinea**

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## **Investigation into**

***ALLEGED IMPROPER DEALINGS INTO THE NATIONAL HOUSING CORPORATION PROPERTY- SECTION 119, ALLOTMENT 8 ON LAND VOLUME 25 FOLIO 133 SARAGA STREET BOROKO, NATIONAL CAPITAL DISTRICT***

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**FINAL REPORT**

**APRIL 2011**

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## LIST OF ABBREVIATIONS

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NHC	-	National Housing Corporation
DLPP	-	Department of Lands & Physical Planning
GSOS	-	Government Sell Off Scheme
MD	-	Managing Director of the National Housing Corporation
NHC Act	-	National Housing Corporation Act 1990
NCD	-	National Capital District
OLOC	-	Organic Law on the Ombudsman Commission
OC	-	Ombudsman Commission



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## CHRONOLOGY OF EVENTS

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### 1981

*November 19* - The complainant, Mr Allan Ugup, '**commenced tenancy**' on the NHC duplex property at Section 119, Lot 8, Unit 17, Saraga Street, Boroko, NCD.

### 1995

*November 21* - The State made an '**offer**' through the NHC to sell Unit 17 of the duplex property at Section 119, Lot 8, Flat 17 to Mr Allan Ugup under the GSOS.

*December 27* - Mr Allan Ugup gave '**Notice of Acceptance**' and agreed to purchase the Unit 17 by installment purchase over a period of ten (10) years.

### 1996

*June 06* - Both Units 16 & 17 of the duplex property were gazetted for sale through mortgage with other houses to respective tenants under one Gazettal Notice Number: G-45.

*June 20* - The NHC served a '**Letter of Confirmation**' upon Mr Allan Ugup as an approved applicant eligible for the purchase of Unit 17 of the Property.

*June 21* - A prescribed form for '**mortgage installment**' calculation was filled by Mr Allan Ugup and approved by NHC.

*July 15* - '**Permanent Variation Advice**' which ceased pool rental deductions and commenced mortgage installment of K100.22 as of 02 August 1996.

### 2001

*June 04* - '**Permanent Variation Advice**' being for an increase in mortgage installment to K130.22 per fortnight, commenced as of 29 June 2001.

*November 29* -The State grants to the lessee NHC '**State Lease**' Section 119 Lot 8 for '**residential**' purpose comprised in State Lease Volume 25 Folio 133.

### 2002

*January 25* - '**Contract of Sale of Land**' was signed between the NHC and Mr Raka Itana a tenant of Unit 16 and the title was subsequently transferred to him.

*February 28* - At about 10:46 am, the NHC '**transferred**' the Land Title Volume 25 Folio 133 and the duplex property in consideration of K28, 084.40 to Mr Raka Itana.

*February 28* - At about 10:48 am Mr Raka Itana, '**transferred**' the title of the duplex property to a third party Mr Sawan Tili in consideration of K50, 000.00.

- February 28* – At 3 pm the transfer was entered in the Registrar Book, “**registration**” of State Leases Volume 25 Folio 133.
- April 15* - Mr Sawan Tili wrote to Mr Allan Ugup and informed him about the purchase and transfer of the duplex property to him and compelled Mr Ugup to pay rentals to him.
- April 18* – Mr Allan Ugup wrote to the then Corporate Secretary for the NHC expressing his discontentment and disputed the entire sale and title transfer.
- July 03* - The then Lands Coordinator for NHC Mr Copeland Sumani advised the MD on the entire transaction on the sale and transfer of the duplex property and gave his opinion.
- August 19* - Mr Copeland Sumani advised the MD on the whole dealing from title registration to transfer of the title as questionable and suspicious. He then recommended for a Caveat to be placed on the property.
- October 16* - Mr Copeland Sumani advised the MD about the controversial sale and simultaneous transfer of title over the whole property.
- 2003**
- July 28* - The Acting MD, Mr Walter Kapy, wrote to Dennis Lawyers, lawyers for Mr Sawan Tili described the transfer of title over the property as a mistake.
- July 29* - Dennis Lawyers wrote to the MD for NHC to settle the transaction being the sum of K17, 008.23 as proposed by the Acting MD.
- July 29* - A BSP bank cheque of K17, 008.23 was paid to NHC by Mr Sawan Tili and was subsequently receipted on the 30 July 2003.
- 2005**
- January 28* - Mr Sawan Tili ‘**mortgages**’ the property to Bank of South Pacific Limited.
- 2007**
- May 21* - Mr Allan Ugup wrote to the MD of the NHC about a brief background of his commencement as a tenant of Unit 17 and the existing purchasing agreement under the GSOS and up till the third party purchaser’s attempts to evict him out of the duplex property.
- 2008**
- March 28* - A reconciliation statement of Mr Allan Ugup’s purchasing Account No: H40565 under the GSOS with the NHC revealed that installment payment commenced on 21 July 1996 and was supposed to have ceased on 19 July 2006 but fortnightly deduction continued until 22 April 2008.
- September 04*- The NHC provided reconciliation statements for both accounts; Raka Itana Account No: H40853 and Allan Ugup, Account No: H40565.

*September 18-* Mr Daniel Katakumb, Director for Land Administration Division of the DLPP wrote a reference letter on the conflict over Section 119 Allotment 8.



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## EXECUTIVE SUMMARY

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### Overview

This is a Final Report by Ombudsman Commission on a complaint by Mr Allan Ugup to establish whether or not there was any wrong conduct surrounding the sale and transfer of land title over the duplex property of National Housing Corporation located at Section 119, Allotment 8 at Saraga Street, Boroko, National Capital District.

The Ombudsman Commission investigation found that NHC failed to follow the Legislative Model for the Sale of Dwelling under Part IV Division 2 of *National Housing Corporation Act 1990 (NHC Act)* which had affected tenants like Mr Allan Ugup. The Ombudsman Commission therefore makes recommendation for NHC to follow the Legislative Model for the Sale of Dwellings as set out in the *NHC Act* and other Acts governing its operations when selling NHC properties (duplex or single detached house) in future. The NHC also need to put in place a sell off scheme policy to assist with the Sale of Dwellings.

The Ombudsman Commission is mandated here to undertake investigation and establish the facts surrounding the complaint and make recommendations to rectify the problems and prevent future occurrence of such similar incidents.

### Principal Findings

- (1) In the opinion of the Ombudsman Commission, it appears that the National Housing Corporation did not follow or comply with the Legislative Model for the Sale of Dwelling under Part IV Division 2 of the *NHC Act*.
- (2) In the opinion of the Ombudsman Commission, the National Housing Corporation appeared to have failed to sign a Contract of Sale with respective purchaser as required under Section 38 (4) of the *NHC Act*.
- (3) In the opinion of the Ombudsman Commission, it appears that there was no mortgage over the respective unit of the duplex property as required under Section 38 (4) (b) (c) and Section 44 of the *NHC Act*.
- (4) In the opinion of the Ombudsman Commission, the National Housing Corporation failed to transfer the property (title) to each purchaser before the commencement of the mortgage installment payment.
- (5) In the opinion of the Ombudsman Commission, the National Housing Corporation failed to surrender the State Lease for its subdivision for new separate description and issuance of two separate lease titles to respective tenants before the sale.

- (6) In the opinion of the Ombudsman Commission, the National Housing Corporation does not have a Government Sell Off Scheme (GSOS) policy.
- (7) In the opinion of the Ombudsman Commission, the National Housing Corporation wrongly collected K17, 008.23 from Mr Sawan Tili being for the amount paid by Mr Allan Ugup through installment payment for Unit 17 of the duplex.
- (8) In the opinion of the Ombudsman Commission, the National Housing Corporation failed to provide alternate arrangements for Mr Allan Ugup to continue to participate in the purchase of a dwelling.
- (9) In the opinion of the Ombudsman Commission, the National Housing Corporation failed to refund the over deduction amount of K4, 291.71 to Mr Allan Ugup and failed to manage and maintain proper accounting systems.
- (10) In the opinion of the Ombudsman Commission, the National Housing Corporation failed to manage and maintain proper property records.

## **Irregularities**

In the opinion of the Ombudsman Commission based on our final investigations, there were many irregularities by National Housing Corporation in dealing with the property at Section 119, Lot 8 at Saraga Street. In particular;

- The sale of the unit appeared to be inconsistent with the legislative model for Sale of Dwelling in the *NHC Act* under Part IV Division 2.
- Failure to execute a Contract of Sale and Mortgage in the initial arrangement with Mr Allan Ugup.
- Non compliance with the *Land Registration Act* 1991.
- Non compliance with *Frauds and Limitation Act* 1998.
- Non compliance with the *NHC Act*.
- Failure by National Housing Corporation to transfer title to purchasers before the commencement of the mortgage payments. (Non-compliance with the *NHC Act* Section 47)
- Failure to surrender State Leases to the Department of Lands for subdivision.
- Absence of a Government Sell Off Scheme (GSOS) policy.
- Alleged illegal collection of K17, 008.23 from Sawan Tili, the amount paid by Mr Allan Ugup.
- Failure to properly account for monies paid and monies owed to purchasers of the property.

- Failure to maintain proper accounting records regarding the unit.

## **Findings of wrong conduct**

The were no particular findings of wrong conducts against any particular officers in regard to handling of this case, however the following officers were senior officers of the National Housing Corporation under the Management of former Managing Director Mr Paul Asukusa who failed to satisfactory identify and settle the dispute with all parties concerned:

- Managing Director for National Housing Corporation, Paul Asukusa
- Acting Managing Director for National Housing Corporation, Mr Walter Kapy
- Lands Coordinator for National Housing Corporation, Copelean Sumani
- Acting General Manager Property Division for National Housing Corporation, Kenneth B. Cooke
- General Manager Property for National Housing Corporation, Keileni Toea
- Senior Housing Officer NCD for National Housing Corporation, Madeline Paulisbo

## **Recommendations**

1. The Ombudsman Commission recommends that the acting Managing Director for NHC;
  - (a) ensure compliance with the Legislative Model for Sale of Dwellings.
  - (b) extends scope of review to include all tenants who are likely to be affected for non-compliance with the Legislative model for Sale of Dwelling. This recommendation would address Ombudsman Commission's findings N<sup>o</sup> 1, 1.1, 1.2, 1.3 & 2.
2. The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation immediately put in place a policy to deal with sale of single detached house and duplex properties respectively.
3. The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation address the issue of wrong collection of sum K17, 008.23 from Mr Sawan Tili forthwith.
4. The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation provide an alternate arrangement for Mr Allan Ugup to continue to participate in the purchase of a dwelling.
5. The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation address the issue of overpayment of K4, 291.71 by Mr Allan Ugup.
6. The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation maintain proper accounting records systems.

## Conclusions

This Report has found that there were many irregularities by National Housing Corporation in dealing with duplex property at Section 119, Allotment 8, Saraga Street, Boroko. These include;

- The sale of the unit appeared to be inconsistent with the Legislative Model for Sale of Dwelling in the *NHC Act* under Part IV Division 2.
- Failure to execute a Contract of Sale and Mortgage in the initial arrangement with Mr Allan Ugup.
- Non compliance with the *Land Registration Act*.
- Non compliance with *Frauds and Limitation Act*.
- Non compliance with the *NHC Act*.
- Failure by National Housing Corporation to transfer title to purchasers before the commencement of the mortgage payments (Non-compliance with the *NHC Act* Section 47).
- Failure to surrender State Leases to the Department of Lands for subdivision.
- Absence of a Government Sell Off Scheme (GSOS) policy.
- Alleged illegal collection of K17, 008.23 from Sawan Tili, the amount paid by Mr Allan Ugup.
- Failure to properly account for monies paid and monies owed to purchasers of the property.
- Failure to maintain proper accounting records regarding the unit.

The National Housing Corporation had not lived up to the obligation entrusted to it by the State. It failed to follow its own administrative systems, processes and procedures and the Legislation governing its operation. It must diligently implement the recommendations of this Report to promote good governance, transparency, and accountability in the Corporation as intended by the State.



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# 1. JURISDICTION AND PURPOSE OF INVESTIGATION

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## [1.1] INTRODUCTION

This is an investigation by the Ombudsman Commission on a complaint by Mr Allan Ugup to establish whether or not there was any wrong conduct surrounding the sale and transfer of land title over the whole duplex property of NHC located at Section 119, Allotment 8, Saraga Street, Boroko, NCD. The property was transferred by NHC to Mr Raka Itana, a tenant on Unit 16 and then from Mr Itana transferred to Mr Sawan Tili, a third party on the same day. These transactions were done without the knowledge and consent of Mr Allan Ugup, the other tenant on Unit 17 despite respective existing agreement with NHC to purchase separate Units through mortgage installment. Both Unit 16 and 17 of the duplex house are located on Section 119, Allotment 8, Saraga Street, Boroko, NCD.

Notices were issued under Section 17 (1) of the *Organic Law on the Ombudsman Commission* to the Managing Director of the National Housing Corporation and the Secretary for Department of Lands & Physical Planning on 22 February 2008 advising them of the Commission's decision to investigate this matter.

## [1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

Sections 218 (b) and (c) of the *Constitution* state two of the purposes for establishing the Ombudsman Commission:

- to help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219 (1) (a) (ii) of the *Constitution* empowers the Ombudsman Commission to investigate, either on its own initiative or on complaint by a person affected by any conduct on the part of any governmental body or any of its officers or employees of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where the conduct is or may be wrong, taking into account, among other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2 (1) of the *Constitution* defines “governmental body” as:

- (a) *the National Government; or*
- (b) *a provincial government; or*
- (c) *an arm, department, agency or instrumentality of the National Government or a provincial government;*
- (d) *a body set up by statute or administrative act for government or official purposes.*

The National Housing Corporation (NHC) and the Department of Lands & Physical Planning (DLPP) are governmental bodies created by Section 188 (2) of the *Constitution* and respectively established by statutes, namely the *National Housing Corporation Act 1990*, *Lands Act 1996*, *Lands Registration Act* (Chapter 191) and *Physical Planning Act 1989*.

The Ombudsman Commission therefore has jurisdiction to inquire into the question of whether the NHC and the DLPP have made improper decisions on the sale and transfer of the title over the duplex property on Section 119, Allotment 8 to Mr Raka Itana, a tenant on Unit 16 and then from Mr Itana to a third party, Mr Sawan Tili without the consent of Mr Allan Ugup, the other tenant on Unit 17 despite respective existing agreement with NHC to purchase each Unit through mortgage installment.

### **[1.3] PURPOSE OF THE INVESTIGATION**

In accordance with Section 219 (1) (a) (ii) of the *Constitution*, the general purpose of this investigation was

- to determine whether any of the conduct under investigation was wrong,
- to determine whether any laws or administrative practices were defective or breached in relation to the decision of the NHC and the DLPP.

### **[1.4] METHOD OF INVESTIGATION**

The Ombudsman Commission issued a notice on 22 February 2008 under Section 17 (1) of the *Organic Law on the Ombudsman Commission* to Mr Paul Asukusa, the then Managing Director of the NHC and to Mr Pepi Kimas the Secretary for the DLPP, advising of its intention to investigate the allegation.

Section 17 (1) states:

*“Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.”*

The Ombudsman Commission obtained documents and other evidence from a number of sources and used its powers under Section 18 of the *Organic Law on the Ombudsman Commission* to require people to produce documents and information. On 29 August 2008, the Commission served a summons to Mr Kenneth B. Cooke, the Acting General Manager for Property Management Division of the NHC to produce certain documents and information.

Section 18 (1) states:

*“Subject to the provisions of this Section and of Section 20, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.”*

## [1.5] INTERVIEWS CONDUCTED DURING THE INVESTIGATION

The Commission conducted interviews with key witnesses pursuant to Section 18 (1) and 18 (3) of the *Organic Law on the Ombudsman Commission*. The following people were called and gave evidence before the Ombudsman Commission:

No.	Interviewee	Designation	Department
1	Mr Raga Kavana	Registrar of Titles	Dept. of Lands & Physical Planning
2	Mr Kenneth B. Cooke	Coordinator – Conveyancing Division	National Housing Corporation
3	Mr Keileni Toea	General Manager – Property Management Division	National Housing Corporation
4	Mr Bugave Gabina	Manager – NCD/Central Properties	National Housing Corporation
5	Ms Madeline Paulisbo	Senior Housing Officer – NCD/Central Properties	National Housing Corporation
6	Mr Allan Ugup	Tenant of Unit 17	Complainant
7	Ms Elisabeth Bowada	Senior Legal Officer – Legal Division	National Housing Corporation

## [1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON LEGALITY OF ADMINISTRATIVE CONDUCT

When the Ombudsman Commission conducts an investigation, it is not confined to reporting on whether or not there have been breaches of the law. The Commission’s constitutional mandate is broader than this. It is authorised to report on what, in its opinion, is “wrong conduct”, irrespective of whether that conduct has been in accordance with the law.

## [1.7] DEFINING WRONG CONDUCT

Section 219 (2) of the *Constitution* specifies that a conduct is wrong if it is –

- (a) *contrary to law; or*
- (b) *unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or*
- (c) *based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or*
- (d) *based wholly or partly on a mistake of law or of fact; or conduct for which reasons should be given but were not, whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (decisions in “deliberate judgment”).*

## [1.8] THE PRELIMINARY REPORT

Whenever the Ombudsman Commission prepares a report of this nature, it has a duty to observe procedural fairness.

The duty is imposed by Section 17(4) of the *Organic Law on the Ombudsman Commission*.

**Section 17(4)(b) states:**

**Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that ...**

- (a) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without –**
  - (i) providing him with reasonable opportunity to be heard; and**
  - (ii) fairly setting out his defense in its report.**

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a preliminary report of this investigation on 30 August 2010.

A Preliminary Report allows person who may be affected by the Commission's Final Report to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of a Preliminary Report is to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the matter under consideration and to seek comments and submissions from those affected.

All of the findings in the Final Report are qualified. That is, they are made subject to submissions received in response to the Preliminary Report.

Accompanying the Preliminary Report was a direction, pursuant to Section 21(1) of the *Organic Law on the Ombudsman Commission* that is all evidence, documents, papers and things referred to therein, including all findings and opinions, shall not be published without the consent in writing of the Commission. Breach of this is a criminal offence.

A copy of the Preliminary Report was hand delivered to the Acting Managing Director for National Housing Corporation, Mr Raho Kevau on 30 August 2010. NHC was invited to respond orally or in writing to the Ombudsman Commission within a 21 day period. The letter stated that if NHC did not respond, the Ombudsman Commission would consider they have accepted the report's findings.

## **[1.9] GENERAL OBSERVATION AND CRITICISMS**

The Acting Principal Legal Officer for NHC, Mr Paul Pera reviewed the Preliminary Report presented to him through the office of the Acting Managing Director on 30 August 2010 and made several comments. He commented that PNG does not have a strata title system whereby a house such as duplex can be legally disposed off to a tenant in one duplex while the other tenant continues to occupy the other part. Additionally, he commented that PNG has an indefeasibility of title system whereby land on one section and allotment can only be owned or sold to one person or entity unless it is a joint property.

Generally, the Acting Principal Legal Officer of NHC, Mr Paul Pera has agreed to and accepted the findings of the Ombudsman Commission. His comments are quoted below as;

- *“There was a standing arrangement between Mr Allan Ugup and NHC for the property (one unit) to be sold and I believe NHC has similar arrangement with other apartment occupant. Those arrangements were void abinito.”*
- *“When the land was sold to Mr Itana then the whole land passed to the said Mr Itana. Mr Ugup then missed out and Mr Itana had a right to demand rent from Mr Ugup though it was not his doing to be placed in the position he was.”*
- *“It baffles me that Mr Itana having occupied the property and title proceeded to dispose of the property to third party the very same day.”*
- *“Warning from Corporate Secretary was not heeded to and further no alternative arrangements were done to have Mr Ugup obtain another NHC property.”*
- *“Having said that, I would tend to agree with the preliminary findings of the Ombudsman Commission.”*

## **[1.10] COMMENTS**

The response from NHC did not address the fundamental issue of non adherence to the Legislative Model set up under the *NHC Act* for the Sale of Dwellings which resulted in the complaint. If the issue is not addressed similar complaints will continue to arise in future.



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## 2. FINDINGS OF FACT

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This Chapter deals with the sale and transfer of NHC duplex property at Section 119, Allotment 8, Units 16 and 17, Saraga Street, Boroko, NCD. This property was registered under one land title Volume 25 Folio 133. It was sold and transferred to a sitting tenant and then to a third party notwithstanding respective agreements to purchase through mortgage installment for separate Units existed between the two sitting tenants with the NHC.

### FROM TENANCY TO PURCHASE THROUGH MORTGAGE INSTALLMENTS

- [2.1] On 11 November 1981, the complainant, Mr Allan Ugup, a public servant employed at the Transport Department ‘**commenced tenancy**’ on the NHC duplex property at Section 119, Lot 8, Saraga Street, Boroko, NCD. He is a tenant of Unit 17. A map illustrating the description of the property was produced.
- [2.2] On 21 November 1995, the State made an ‘**offer**’ through the National Housing Corporation to sell Unit 17 of the property at Section 119, Lot 8, to the sitting tenant, Mr Allan Ugup under the Government Sell Off Scheme (GSOS).
- A similar offer for Unit 16 was made to another sitting tenant Mr Raka Itana.
- [2.3] On 27 December 1995, the complainant Mr Allan Ugup gave ‘**Notice of Acceptance**’ to NHC and agreed to purchase the property being offered to him by way of mortgage installment over a period of ten (10) years.
- [2.4] Both Units 16 and 17 of the duplex property were gazetted for sale through mortgage with other houses to respective tenants under one Gazettal Notice Number: G-45 date 06 June 1996.
- [2.5] On 20 June 1996, the NHC served a ‘**Letter of Confirmation**’ upon Mr Ugup as an approved applicant eligible for the purchase of dwelling, Unit 17.
- [2.6] On 21 June 1996, the authority for irrevocable salary deduction was completed to effect purchase installments by way of fortnightly deductions from Mr Allan Ugup’s salary to his purchasing account with the NHC.
- [2.7] On 21 June 1996, a prescribed form for ‘**mortgage installment**’ calculation was filled by Mr Allan Ugup and approved by NHC and recorded as listing No. 35. The form titled ‘**GSOS price calculations**’ sets out the mortgage price calculations.
- [2.8] On 15 July 1996, the ‘**Permanent Variation Advice**’ was issued which effectively ceased pool rental deductions and commenced mortgage installment of K100.22 as of pay number 16, dated 02 August 1996.

[2.9] On 29 May 2001, the **‘Irrevocable Authority for Salary Deductions’** was signed by Mr Allan Ugup and a Housing Officer to effect deductions and credited to purchasing account with the NHC which commenced on 13 June 2001.

[2.10] On 04 June 2001, **‘Permanent Variation Advice’** being for an increase GSOS mortgage installment increased to K130.22 per fortnight which commenced as of pay number 13, dated 29 June 2001.

A copy of a pay slip for pay period ended 23 August 2002 showed actual fortnightly deductions of an amount of K130.22 being for purchasing of house under GSOS.

[2.11] On 20 July 2001, the Minister for DLPP, Honorable Charlie Benjamin, MP, published his declaration of land and grant of leases of improved Government Land to the NHC by virtue of his powers under Part XI of the *Land Act* 1996, Gazettal No. G154-29 November 2001. The property land Section 119, Allotment 8 at Saraga Street, Boroko was included in the schedule.

## **TRANSFER, SALE AND REGISTRATION OF STATE LAND**

[2.12] On 29 November 2001, the State granted NHC a **‘State Lease’** over Section 119 Allotment 8 – Boroko, NCD under Sections 111 and 113 of the *Land Act* 1996 for a period of 99 years for **‘residential’** purposes which comprised in State Lease Volume 25 Folio 133.

[2.13] On 30 December 2001, NHC submitted **‘Application for Remission of Rent’** and on 22 February 2002, the delegate of the Minister for Lands decided to **‘grant the remission of rent’**.

[2.14] On 25 January 2002, **‘Contract of Sale of land’** was signed between the NHC and Mr Raka Itana, a tenant of Unit 16 of the duplex property, purportedly for the entire property under one title Volume 25 Folio 133.

[2.15] On 28 February 2002, at about 10:46 am the NHC **‘transferred’** the land title and duplex property in consideration of K28, 084.40 to Mr Raka Itana, a tenant of Unit 16 without the knowledge of Mr Allan Ugup, a tenant on Unit 17.

[2.16] On 28 February 2002, at about 10:48 am Mr Raka Itana, **‘transferred’** the title to a third party Mr Sawan Tili in consideration of K50,000.00, without the knowledge of Mr Allan Ugup a mortgage installment purchaser of Unit 17 of the duplex property.

## **CORRESPONDENCES ON THE SALE AND TRANSFER OF TITLE**

[2.17] On 15 April 2002, Mr Sawan Tili wrote to Mr Allan Ugup and informed him about the purchase and transfer of the duplex property to him and compelled Mr Ugup to pay rentals to him notwithstanding the existing purchasing agreement with the NHC.

[2.18] On 18 April 2002, Mr Allan Ugup wrote to the then Managing Director of the NHC expressing his discontentment and grievances against the entire sale and transfer of the duplex property to Mr Raka Itana, and then to Mr Sawan Tili simultaneously within

the same day despite the existing purchasing agreement. He subsequently requested the NHC for an urgent Caveat to be furnished with the Registrar of Titles to stop or forbid further dealings.

On 23 July 2002, Mr Allan Ugup made a follow up letter to NHC on his request for an urgent Caveat to be furnished over the property.

- [2.19] On 03 July 2002, the then Lands Coordinator for NHC, Mr Copeland Sumani briefly informed the then Managing Director on the entire transaction on the duplex property and gave his opinion to relocate Mr Allan Ugup to another property and also to allow Mr Sawan Tili to buy off the other Unit 17 to avoid legal implications.
- [2.20] On 19 August 2002 and again on 16 October 2002, Mr Sumani advised the then Managing Director and stated that the whole dealing from sale to transfer of title were questionable and suspicious. He recommended among others that NHC file a Caveat to stop or forbid further dealings and to bring the matter to Court to compel Mr Raka Itana and Mr Sawan Tili to relinquish or surrender the title to have allotment subdivided to allow for two allotments for both parties to be registered and transferred to individual purchasers.
- [2.21] On 28 July 2003, the then acting Managing Director, Mr Walter Kapy wrote to Dennis Lawyers, lawyers for Mr Sawan Tili about the transfer of the property. Mr Kapy was of the view that the whole transaction was a mistake within the meaning of Section 33 (1) (c) of the *Land Registration Act* 1989 and the State Lease could be recalled and admitted as an administrative error by NHC. Mr Kapy proposed for Mr Sawan Tili to pay a sum of K17, 008.23 being the amount paid by the tenant purchaser, Mr Allan Ugup to date. He further proposed that Mr Ugup would be notified of this arrangement and that another property would be arranged for him to continue to participate in the purchase through mortgage installment.
- [2.22] On 29 July 2003, lawyers for Mr Sawan Tili, Dennis Lawyers wrote to the then MD for NHC to settle the transaction being the sum of K17, 008.23 as proposed by the then acting Managing Director. On the same day, a Bank of South Pacific cheque for a sum of K17, 008.23 was made to NHC. The NHC then receipted the cheque payment by Mr Sawan Tili on 30 July 2003.
- [2.23] On 28 January 2005, Mr Sawan Tili ‘**mortgages**’ the property to Bank of South Pacific Limited.
- [2.24] On 21 May 2007, Mr Allan Ugup, in his letter to the then Managing Director of the NHC gave a brief background of his commencement as a tenant of Unit 17 and the existing agreement to sell through mortgage under GSOS and up till the third party purchaser’s attempts to evict him from the duplex property. Despite the purported landlord, Mr Sawan Tili’s desperate attempts on several occasions to forcefully evict him from the property, Mr Allan Ugup continued to reside in Unit 17 of the property.
- [2.25] On 28 March 2008, the NHC ceased Mr Allan Ugup’s fortnightly deductions to his purchasing Account No: H40565. According to the Accounts Reconciliation Statement, the fortnightly deductions towards the mortgage installment payment was commenced on 21 July 1996 and was to run for 10 years and cease on 19 July 2006 upon completion of the mortgage selling price of K28, 095.83. However, the fortnightly deductions

continued until the NHC ceased on 22 April 2008 which resulted in an over deduction of K4, 291.71.

- [2.26] On 02 September 2008, Mr Allan Ugup claimed that the fortnightly deduction continued until pay period ending 24 April 2008, an over deduction of K4, 655.11 which is yet to be refunded to him by NHC. He denied having received the K17, 008.23 from the NHC, the amount that was paid to the NHC by Mr Sawan Tili.
- [2.27] On 04 September 2008, the NHC provided print out of respective purchasing Accounts Reconciliation Statements. According to the reconciliation statement, Account no: H40853 for Mr Raka Itana, the installment payment commenced on 15 August 1996 and was supposed to have ceased on 11 August 2006 but the installment payments continued and the Balance Sheet shows a refundable balance of K109.84. Mr Allan Ugup's Account No: H40565, the installment payment commenced on 21 July 1996 and was to have ceased on 19 July 2006 but payments continued until pay period ending 22 April 2008. The Balance Sheet shows that there were over deductions of K4, 291.71 yet to be refunded to Mr Ugup.
- [2.28] On 18 September 2008, the Director for Land Administration Division of the DLPP, Mr Daniel Katakumb in his reference letter on the conflict over the property confirmed that the property comprised of two (2) flats sharing the same building, where Mr Itana occupied Flat 16 and Mr Ugup occupied Flat 17 and both purchased the respective flats through the Mortgage deduction. He stated in paragraph three (3) that:

*“Mr Itana claiming to own both the land and the property secured the title through fraudulent dealings hence got it transferred to Mr Tili Sawan with out the knowledge of Mr Ugup who is now forced to vacate the premises. Mr Ugup, as far as I am concern has the same rights and privileges as Mr Itana, however, any dealings over such land and the properties thereon in the absence of the Strata Titles Law is extremely difficult.”*

Mr Katakumb stated that the DLPP is currently investigating the matter with a view to assist solve this problem and warned all parties in dispute including Mr Sawan Tili and his relatives to refrain from either moving closer to this property, Flat No.17 or confront the current occupant until a decision is made based on the investigation.

## **EVIDENCE BY MR RAGA KAVANA**

- [2.29] On 10 April, 2008, at about 10:35 am, Mr Raga Kavana told the Commission when interviewed that he is the Registrar of Titles from the Lands and Physical Planning Department and is responsible for all matters pertaining to registration of State land titles and that his office administers the *Lands Registration Act* (Chapter No. 191). He was not the Registrar at the time of the transaction but the instruments of transfer were signed by the former Deputy Registrar, Mr Tore Tisai.
- [2.30] Mr Raga Kavana told the Commission that the NHC lodged an application to register the improvements as resident State Lease and was registered under NHC and gazetted as Volume 25 Folio 133. He said, once the title is registered under NHC and issued, it becomes the NHC property as a lease holder and NHC can deal with it. However, NHC did not disclose in their lodgment that the improvement on the land was a duplex property.

- [2.31] Mr Raga Kavana told the Commission that if NHC knowing very well that it was a duplex property, occupied by two tenants and were purchasing through installments under an agreement, the NHC as a lessee should have surrendered its original title and applied for the sub division of the property and subsequent issuance of two different titles in order to facilitate for the two tenants under new descriptions. In this case, NHC failed to do that, so it was not the problem of the Registrar or the DLPP, it was the NHC who created the problem by misleading the Registrar of Titles office and the DLPP into such land transactions.
- [2.32] Recalling the event which led to the sale and transfer of titles, Mr Raga Kavana, told the Commission that the NHC transferred the title to Mr Raka Itana, a tenant of Unit 16 of the duplex property and was then sold and transferred to a third party Mr Sawan Tili. He revealed that such transactions can be facilitated within a day as long as registration requirements are met and the documents lodged are in order for the transfer of title.
- [2.33] Mr Raga Kavana admitted that he could not undo a title; once it is registered it becomes indefeasible title. He said the Registrar can only undo, if the title is issued on commission of error or fraud, in most cases it must address the issue in Court. In this case if we compare it, it was a Residential Lease, the Registrar accepted the transfer from NHC to Mr Raka Itana and then from Mr Raka Itana to Mr Sawan Tili believing that the description of the property was correct. He further stated that the NHC and Mr Raka Itana should have come clear with the description of the property and admit that they have misled the Registrar and Mr Sawan Tili and consequently deprive the right of Mr Allan Ugup in these transactions.

### **EVIDENCE BY MR KENNETH BRADLEY COOKE**

- [2.34] On 01 May 2008, Mr Kenneth Cooke told the Commission that he is the Coordinator for the Conveyance Division of the NHC and is responsible for sale and conveyance of NHC properties under various government policies on sale of houses and properties schemes.
- [2.35] Mr Kenneth Cooke told the Commission that NHC has initiated many schemes for the purpose of disposition of NHC properties; one such scheme is the Government Sell Off Scheme (GSOS) intended to sell single detached residential houses to current sitting tenants especially public servants. He said that NHC Management approved the inclusion of duplexes on the condition that the subdivision is done and separate titles are issued to both parties under new description upon completion or settlement of the purchase. The duplex property at Section 119 Allotment 8 comes under GSOS.
- [2.36] According to Mr Kenneth Cooke the Property Management Division of the NHC issues **‘instruction’** documents which contains descriptions of the improvement, land and sale price to the Conveyance Officer for GSOS. The **‘purchasing’** documents are then prepared by Conveyance Division and conveyance process eventuates for the sale and transfer of title. Though, he could not locate the file, he admits that under GSOS, his division only facilitates title transfers on single detached houses but at the time when the instruction came there was no specific description hence based on assumption that the property was a single detached house, Conveyance Division went ahead with sale and title transfer.

[2.37] Mr Kenneth Cooke told the Commission that GSOS was a mortgage scheme, and the two tenants were both approved applicants who were buying the property through installment. The other tenant settled his balance first and then the Property Management issued instructions to Conveyance Division to proceed with the documentation of the sale and title transfer as a single detached house. However, he admitted that there was an oversight by Property Management. Despite the existing purchasing agreement with Mr. Ugup for the purchase of duplex property the property was not sub divided and registered under separate titles. He further admitted that the whole transaction was an honest man made error.

[2.38] Mr Cooke told the Commission that if the NHC had been aware that there was an existing purchasing agreement between the two parties who are occupying the units of that duplex flat then they would have stopped the whole transaction. He said that the title is reversible by taking the matter back to the Lands Department with an identification of the commission of errors by the NHC so as to surrender the default title.

### **EVIDENCE BY MR KEILENI TOEA**

[2.39] On 01 May 2008, at about 11:45 am, Mr Keileni Toea told the Commission in an interview that he is the General Manager of the Property Management Division of the NHC responsible for all the management of NHC properties and assets throughout the country which includes acquisition, disposition and revenue raising and policy decision on all matters dealing with and administering of properties. At the time of the transactions on the property, he was then a Property Manager for Momase Region therefore, he was not aware of the entire dealings.

[2.40] Mr Keileni Toea told the Commission that both tenants of the duplex property were eligible and approved purchasers and the option was to subdivide the property with new description once approved by the Physical Planning Board and separate titles were to be issued to respective tenants.

[2.41] Mr Keileni Toea admitted that if there was an agreement in place, then there is a breach of that agreement because the other party, Mr Allan Ugup was a party to the purchasing agreement for the other unit of the duplex property which was under one title. He stated that once the title is offloaded from NHC to a purchaser, NHC no longer have interest and he thinks that the NHC made a mistake therefore, he was adamant that NHC can retrieve the title through a court proceeding so that the other person's interest can be accommodated.

He further told the Commission that the mistake was created by NHC so NHC should assist the aggrieved party. If NHC knew very well that there was another interest in there, they should have refused that and place an urgent Caveat on the property for the title not to be transferred until the interest is accommodated.

### **EVIDENCE BY MR BUGAVE GABINA**

[2.42] On 01 May 2008, at about 12:00 pm, Mr Bugave Gabina told the Commission when interviewed that he is the Manager for NHC properties in the National Capital District and Central Province. He is responsible for any dealings with regard to disposition of properties through different properties sales schemes, collecting of rents, development of new properties and general administration of properties. At the time of this

transaction he was not the Manager therefore, has no knowledge of the entire transactions. His office is responsible for the issuance of instructions for the sale of properties and the Conveyance Division executes sale and transfer documents.

- [2.43] Mr Bugave Gabina told the Commission that the duplex property was offered for sale under the GSOS and both tenants had purchasing agreement with the NHC and were paying through fortnightly installments to their purchasing account with NHC. Mr Raka Itana must have settled his balance and obtained title for the whole property without the knowledge of the other sitting tenant.
- [2.44] Mr Bugave Gabina admitted that the NHC failed to place a caveat on the property from title transfer because the other tenant Mr Allan Ugup was still making his payment. He also admitted that the NHC has breached the existing purchasing agreement and that was an honest human error. He further admitted that if NHC was aware of the duplex property and the purchasing agreement between the two tenants and the NHC, the title transfer should have been stopped until both parties settled their purchasing accounts.
- [2.45] When reiterating the administrative procedures for such issues, Mr Bugave Gabina stated that once the balance of the purchasing accounts were settled the duplex property would have been subdivided and given new descriptions so that separate titles would have been issued to both tenants but that did not happen. Therefore, he stated that the NHC should write to Mr Sawan Tili to surrender the title because NHC still have an interest on Unit 17 where the tenant was still paying so that normal process of application for subdivision would proceed with new descriptions and separate leases to be granted to Mr Allan Ugup and Mr Sawan Tili.

Mr Bugave Gabina told the Commission that this can be done administratively but if Mr Sawan Tili refuses to surrender the title then the NHC will assist Mr Allan Ugup to seek appropriate remedies in Court.

## **EVIDENCE BY MS MADELINE PAULISBO**

- [2.46] On 01 May 2008, at about 12:45 pm, Ms Madeline Paulisbo told the Commission when interviewed that she was one of the former Manager for properties in the National Capital District and Central Province but was not the manager at the time of the transaction on the alleged property. She is now the Senior Housing Officer.
- [2.47] Ms Madeline Paulisbo told the Commission that the GSOS was purposely put in place to sell houses to public servants who are current tenants and it was meant to be given at an economical price where the maximum value done by the Valuer General was K50,000.00 and the two methods of payment was a one off full payment and another by installment purchase. This duplex property falls under this policy (GSOS) where the two tenants have separately entered into purchasing agreements and were paying through fortnightly installments.
- [2.48] Ms Madeline Paulisbo admitted that the duplex property was transferred to the tenant purchaser, Mr Raka Itana upon full settlement of the sale balance which the Conveyance Division facilitated based on the instruction from the Property Management Division. She also admitted that the Property Management Division failed to give proper description of the property and disclosure of the existing purchasing agreements

between the tenants to the Conveyance Division which only facilitated the sale and transfer of title. She further admitted that there was no due diligence which resulted in this mistake and that was a human error committed by NHC.

[2.49] Ms Madeline Paulisbo told the Commission that the title was already transferred and the third party is the leaseholder of the entire property so the title is indefeasible. However, NHC may admit its human error and negotiate with Lands Department and the current title holder for the surrender of title so that the property can be subdivided, new description to be provided for both allotments and separate titles issued to the purchaser, Mr Sawan Tili and the tenant, Mr Allan Ugup.

## **EVIDENCE BY MR ALLAN UGUP**

[2.50] On 29 August 2008, at around 11 am, Mr Allan Ugup told the Commission that he is currently an employee of the Transport Department and the sitting tenant of Unit 17 since November 1981 and is the aggrieved party in this matter.

[2.51] Mr Allan Ugup admitted having accepted the offer from the NHC for the purchase of Unit 17 under the GSOS and entered into an agreement to purchase through Mortgage and the property was subsequently gazetted for sale in Gazette Number 45 dated 06 June 1996. The installments were paid through fortnightly deductions for a period of ten (10) years to pay up the Mortgage selling price.

[2.52] Mr Allan Ugup denied signing any Contract of Sale or Transfer Instruments as he was advised by NHC that conveyance documents would be prepared and signed upon completion of the mortgage selling price through fortnightly installments.

[2.53] Mr Allan Ugup denied having been informed or notified or having any knowledge prior to the transaction conspired between Mr Raka Itana, NHC and Mr Sawan Tili. He was only aware after the transactions were completed and he was advised by the purported owner, Mr Sawan Tili to either vacate or pay rentals to him.

[2.54] Mr Allan Ugup denied having received K17,008.32 that was paid into NHC account by Mr Sawan Tili to offset the amount that was paid up to date by Mr Ugup under the agreement to purchase through mortgage installment.

[2.55] Mr Allan Ugup admitted having received Notice of Cessations of Installment Payments which effectively ceased any fortnightly deductions to NHC under the Agreement to purchase through mortgage as of 21 July 1998. On the contrary, he claimed that the installment deductions was fully settled in June 2006 but continued until payday ending 22 April 2008 and an over deduction of K4, 655.11 is yet to be refunded or reimbursed to him by NHC.

[2.56] Mr Allan Ugup told the Commission that he did not sign a Contract of Sale and Transfer Instruments which should have legitimized his title to Unit 17 of the property though the payment for the mortgage selling price was actually completed in June 2006.

## EVIDENCE BY MS ELISABETH BOWADA

[2.57] On 23 October 2008, at around 13:40 pm, Ms Elisabeth Bowada one of the Senior Legal Officers of the NHC was interviewed at her office. When asked how the GSOS model was applied in the disposition of NHC houses, she made the following statements:

*“There was no such policy as GSOS. Single detached houses were given away under rental purchase, speculative purchase and outright purchase arrangements. All these administrative arrangements are done to sell off single detached houses at the Conveyance Division. Mr Itana after completed his purchase price, the NHC facilitated the sale and subsequently transferred the title to him. He then transferred the title to Mr Tili. NHC should have revoked the title, subdivide the property, issue separate titles before entering into such transactions and transfer of title. The NHC failed to do that at the first place. The NHC through the Legal Division is now trying to assist the tenants by recalling the title and subdivide the property and give separate titles.”*

[2.58] When asked about the indefeasibility of the title as the title was already transferred to Mr Tili and cannot be recalled and subdivided unless there is fraud but then it has to go before the National Court for determination; Ms Bowada agreed and admitted that the other tenant Mr Raka Itana and NHC had made a mistake.

[2.59] After explaining the Legislative Model for the Sale of Dwelling to sitting tenants provided under the *NHC Act*, Ms Bowada was asked whether the Legislative Model under the *NHC Act* was complied with and whether the GSOS policy or other policy for the sale of NHC houses were consistent with the Legislative Model. Ms Bowada replied:

*“I don’t think so. All conveyance on the sale of houses are done at the Conveyance Division without the legal division’s knowledge therefore, have no knowledge of how Conveyance Division did on this property. Now we placed a lawyer in the Conveyance Division to provide legal assistance, we had none before.”*

[2.60] After explaining the arrangements for sale of the duplex to the two tenants, Ms Bowada was asked whether the sale of duplex property through mortgage deductions arrangement was consistent with the Legislative Model and whether there was in fact a mortgage. It was further brought to her attention that there was no mortgage. Ms Bowada replied:

*“No, I don’t think so. There was no mortgage as you have said.”*

[2.61] The following statement was then put to her during the interview; *“so there was no subdivision of the property, no Contract of Sale, no mortgage, no transfer of title though the fortnightly installments or deductions were continued. The title was still with NHC so NHC could do anything with the property because the tenants did not hold valid title.”*

Ms Mowada confirmed: *“Yes, I agree.”*

**COMMENTS**

The Ombudsman Commission investigation discovered that NHC failed to properly coordinate the sale of duplex property at Section 119, Allotment 8 at Saraga Street, Boroko NCD. It was revealed that separate arrangements were made between NHC and the two tenants to purchase the units they have been occupying. This resulted in confusion and conflict which prompted one of the tenants Mr Allan Ugup to complain to Ombudsman Commission. Our recommendations should be viewed as immediate measures to settle this situation and also extend to address similar cases of NHC properties sold under similar uncoordinated manner.



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### **3. LEGISLATIVE MODEL FOR SALE OF DWELLING**

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This Chapter deals with the Legislative Model for the Sale of Dwellings under Part IV Division 2 of the *National Housing Corporation Act* and NHC Practice for the Sale of Dwellings by Installment.

#### **[3.1] INTRODUCTION**

The National Housing Corporation is established under the *National Housing Corporation Act* 1990. As a corporate entity of the government generally responsible for the provision of houses to the eligible persons and approved applicants it may acquire, hold and dispose of properties. This discretionary power of NHC to sell a dwelling or a property is provided under Section 37 of the *Act*. Part IV Division 2 of the *Act* provides the Legislative Model and the conditions for the Sale of Dwelling.

It is a commonly accepted standard or norm that all properties or improvement attached to land must have a title or ownership over the land for one to transfer a legal title or deal with it in any way. The general understanding is that almost all the NHC houses are located on State land by virtue of a Certificate Authorizing Occupancy (CAO). That effectively means that the legal title to the Land property on which NHC houses are located belong to the State which comes under the responsibility of a different State agency, the Department of Lands and Physical Planning. For National Housing Corporation to deal with its properties on the State land, the NHC has to comply with all legislative requirements of dealing with lands. It is therefore imperative to discuss the Legislative Model on how the Corporation's property (house) on State land should be disposed of or offered for sale in light of relevant provisions in the *Land Act* 1996, *Land Registration Act* 1981 and *Frauds and Limitations Act* 1988 alongside the *National Housing Corporation Act* 1990.

#### **[3.2] OBTAIN STATE LEASE (CERTIFICATE OF TITLE) OVER THE PROPERTY**

If the Corporation decides to offer a single detached property for sale which is under CAO, it must surrender its occupational right for a lease title. Firstly, it must obtain a State Lease (Certificate of Title) over the property from the DLPP by going through the legislative requirements under *Land Act* 1996 and *Land Registration Act*. Acting upon application or request from the Corporation, the DLPP surveys the property; give descriptions of the property with Folio, Volume, Sections and Allotments. That description of property is then written on the Certificate of Title once it is registered as a State Lease. Pursuant to Section 113 of the *Lands Act* 1996, the Minister for Lands then grants the State Lease over improved Government Land to the NHC by way of gazettal notice in the National Gazette.

If the NHC decides to sell flats or duplex properties to different tenants which are under one title, the NHC must surrender the State Lease (Certificate of Title) for subdivision of land. Once the surrender application is registered by the Registrar the estate of NHC under one title

is extinguished. The NHC must apply to the Minister for Lands for approval to subdivide the land and subsequent issuance of new leases as provided under Section 130 of the *Land Act* 1996. The property can then be surveyed by the Surveyor General's office, sub divided and given new descriptions; Folio, Volume, Allotments and Sections. Based on these new descriptions, new leases shall be granted over each of the sub divided portions of the land.

The NHC must hold the State Lease title (Certificate of Title) over different types of residential properties; apartments, single detached houses, duplexes and flats free from any other rights and interests. This will allow for the property to be correctly described in the transfer of title. Also the purchaser would appreciate that the property they think they are buying is the one described in the documents so that the purchaser holds a valid title. The NHC with new separate titles can then facilitate the sale and transfer of title of each Unit or Flat to respective tenants or purchasers according to the model of Sale of Dwelling provided under Part IV Division 2 of the *NHC Act* 1990 as discussed below.

### **[3.3] SALE OF PROPERTY**

The Corporation may exercise its discretion to sell a dwelling using the Legislative Model provided under Part IV Division 2 of the *NHC Act*. Section 38 of the *NHC Act* provides options to purchase after a Tenancy Agreement has been in force for two years between the Corporation and a tenant. The Corporation may, in its discretion, offer to persons specified under subsection (1) the tenant and his or her specified relatives, an option to purchase the dwelling the subject of the agreement at a purchase price specified in the option.

### **[3.4] CONTRACT OF SALE**

Section 38 (4) of the *NHC Act* requires a Contract of Sale for the Sale of a Dwelling. The Contract may provide for the outright purchase; or for the payment of the purchase price by installments; or for the payment of the purchase price to be secured by mortgage. That means that a Contract of Sale is a legislative requirement that must be signed at the beginning of the process of sale to bind parties, the vendor (NHC) and the purchaser.

The residential property includes land and improvement therefore a Contract of Sale must be evidenced in writing. Section 2 of the *Frauds and Limitations Act* 1988 provides that land transactions must be evidenced in writing which means that no interest in land can be created or disposed of except by writing signed by the person creating or disposing of the interest. There must be a Contract of Sale to create an interest or disposition of land as provided under Section 4 of the *Frauds and Limitations Act* 1988.

If the NHC decides to sell the property through an outright purchase then the vendor and the purchaser exchange title and the cheque payment for the purchase price. The process of sale completes when the ownership title is transferred to the purchaser and registered. The process of sale under Purchase by installments and purchase secured by mortgage are both subject to mortgage. A Contract of Sale and Transfer of Title happens at the beginning of the process which constitute legal obligation for both parties. Upon settlement of the purchase price or the balance of the purchase price the mortgage is discharged and registered.

#### **a) Outright Purchase**

Where a Contract of Sale provides for the outright purchase of the residential property the NHC as the proprietor or owner transfers the lease title to the Purchaser in exchange for the

full settlement of the purchase price by the purchaser. The two parties exchange contract documents and execute the Contract of Sale. Then the Vendor (NHC) ensures that the transfer of title document is duly executed, stamped and endorsed with Statutory Approval as provided under Section 128 of the *Land Act* 1996 where this is applicable.

At settlement the Vendor delivers to the Purchaser the State Lease and a stamped transfer of title document and the Purchaser provides full payment of the purchase price. Subsequently, the title is registered under the new owners' name at the Lands Registration office and issued with a Certificate of Title.

#### **b) Purchase by Installment**

Section 43 of the *NHC Act* states that where a Contract of Sale under Division 2 provides for the payment of purchase price or the balance of the purchase price by installments, subdivision B applies. Subdivision B refers to purchase through mortgage. Section 44 of the *Act* states that a purchaser shall enter into a mortgage over the property in the prescribed form created in favor of the Corporation to secure the purchase price or the balance. If the purchaser chooses to purchase the property by installments the purchase price shall be secured by mortgage.

Sections 43, 44 and 47 of the *NHC Act* operates together to require the NHC to operate the installment process in the manner described above. The Contract of Sale, Transfer of Title and Mortgage documents are executed at the same time in the beginning of the process of purchasing a dwelling by installment purchase. Section 47 requires the transfer of title in consideration of the signing of the mortgage. The Certificate of Title is registered under the purchaser's name. The mortgage is then registered on the Certificate of Title. The mortgage creates rights and interests over the property which prevents the Purchaser from dealing with the property without the consent of the mortgage holder.

The Purchaser then makes installment payments to the Corporation by way of fortnightly deductions or methods, an amount and period of mortgage installment as approved by the Corporation. If the Purchaser failed to repay the loan, the Corporation can act under the mortgage to take possession of the property.

Once the mortgage debt is settled or paid by the Purchaser, an instrument of discharge of mortgage is executed and registered. The mortgage is then effectively removed from the Certificate of Title. The Purchaser holds the title free from any other rights and interests (encumbrances) over the State Lease title.

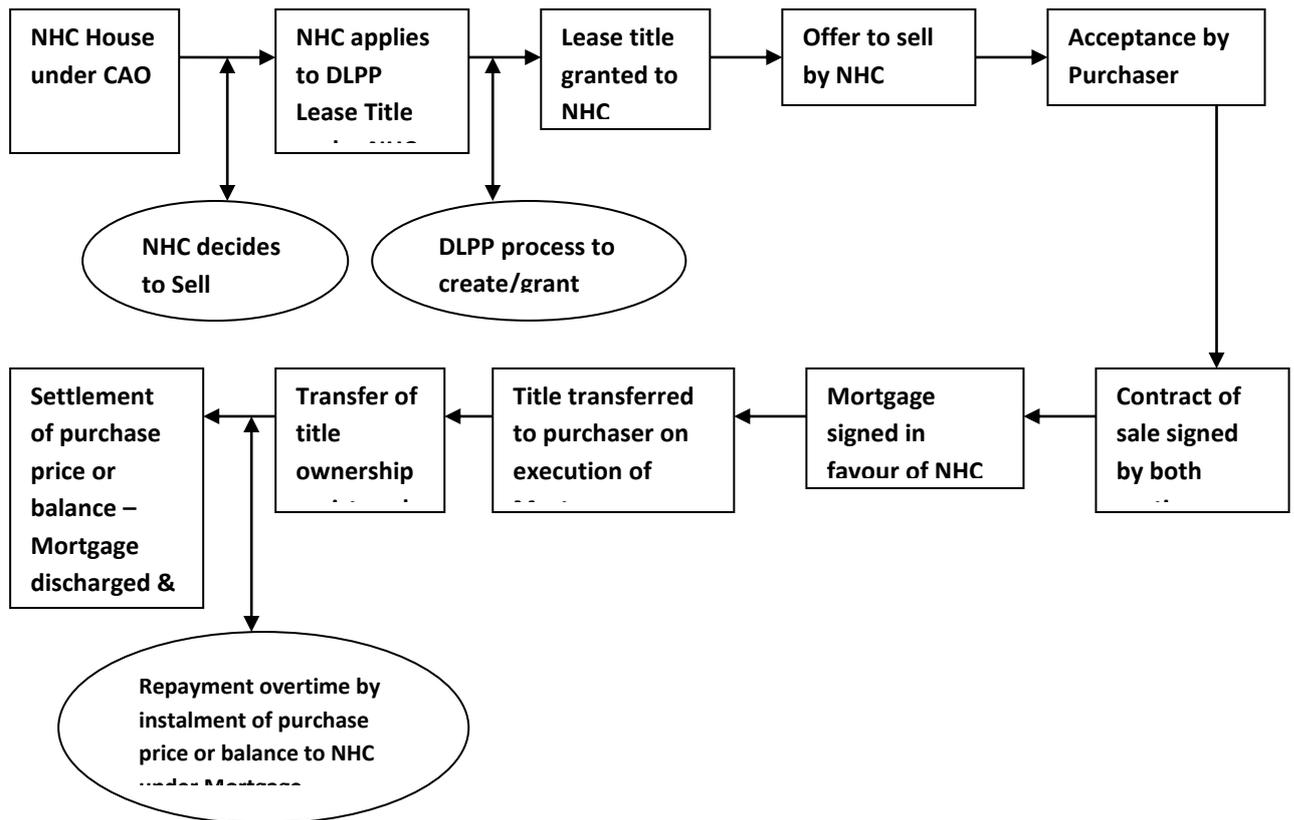
#### **c) Purchase price secured by Mortgage**

According to Section 38 (4) (c) of *NHC Act*, a Contract of Sale may provide for the payment of purchase price to be secured by mortgage, in the prescribed form, over the property in respect of which the advance is made; or by any other security approved by the Corporation. The process for the payment of purchase price or the balance secured by mortgage is similar to purchase by installment as discussed above.

### [3.5] TWO DIAGRAMS ILLUSTRATE SALE OF DWELLING

The two diagrams below illustrate the Legislative Model for the Sale of Dwelling through Mortgage Purchase and Installment Purchase of dwelling under the *NHC Act* and the Corporation's practice for Sale of Dwelling.

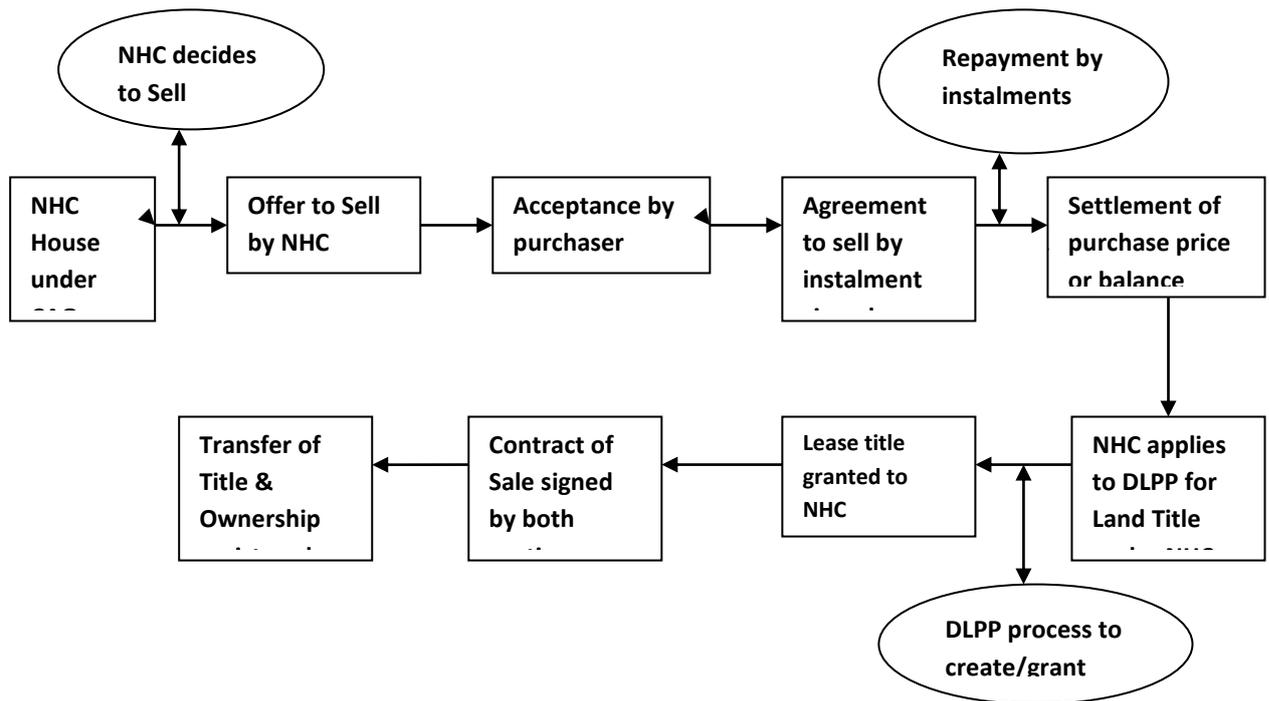
#### [1] LEGISLATIVE MODEL FOR THE SALE OF DWELLINGS UNDER PARTIV DIVISION 2, NHC ACT



**NOTE:** 1.Process before NHC decides to sell – NHC house under CAO – NHC applies to DLPP Lease granted to NHC.

2.Process before settlement – NHC offer to sell dwelling & purchaser accepts – contract of sale & mortgage signed in favour of NHC – Title transferred to purchaser & title ownership registered subject to mortgage.

**[2] NHC PRACTICE FOR THE SALE OF DWELLING BY INSTALMENTS**



**NOTE:** NHC offers dwelling to tenant while it is still under CAO. A tenant accepts & agrees to purchase. Tenant signs an agreement to repay mortgage by instalment in favour of the NHC. NHC commences deduction for instalment payments from tenant’s salary. Once tenant has paid the purchase price or the balance, the NHC cease further deductions and applies to DLPP for the State Lease. NHC then sign a Contract of Sale with the purchaser and transfer ownership title to the purchaser and registered

NHC offer to sell without a title or lease – Tenant/purchaser accepts & enter into agreement to purchase by instalment - upon settlement of purchase price or balance by instalment NHC obtain title or lease from DLPP – execution of Contract of Sale and transfer of ownership Title to the purchaser and registered.

The NHC does not have a legal title over land and the purchaser is buying a

**COMMENTS**

From this Ombudsman Commission investigation, the Legislative Model for Sale of Dwelling was not fully complied with. Also the NHC practice model for Sale of Dwelling by installments has not been complied with. NHC failed to sign a Contract of Sale with respective purchasers. Also there was no mortgage over the duplex property and titles were not transferred to each Purchaser before commencement of Mortgage Installment Payment.



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## 4. FINDINGS

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In this Chapter the Ombudsman Commission sets out its opinion on the findings based on the facts through material documents and personal interviews with appropriate government officers of the NHC and DLPP. Relevant laws are applied to the facts where necessary as reasons for the finding.

### [4.1] FINDING N<sup>o</sup>1

In the opinion of the Ombudsman Commission, it appears that the National Housing Corporation did not follow or comply with the Legislative Model for the Sale of Dwelling under Part IV Division 2 of the *National Housing Corporation Act 1990*.

#### Reasons

- The National Housing Corporation is a corporate entity of the government generally responsible for the provision of dwelling or houses for tenancy. The NHC may also exercise its discretion to sell a dwelling to eligible persons, approved applicants and such other persons specified under the *NHC Act* in compliance with the same *Act*.
- The Corporation's current practice for the sale of a dwelling by installment to eligible persons or approved applicants as in the case of the complainant, Mr Allan Ugup appears to be inconsistent with the legislative model for Sale of Dwelling in the *NHC Act* under Part IV Division 2.
- The Commission finds that the legislative requirement for a Contract of Sale and Mortgage documents to be signed (executed) in the beginning of the process of sale of a dwelling and subsequent transfer of title was not followed or complied with. This finding is based on facts and the Legislative requirements in the *NHC Act*, the relevant provisions are Sections 38 (4), 43, 44, 46 and 47 of the *NHC Act*.
- The Commission finds that other relevant provisions of the *Frauds and Limitations Act*, *Land Act* and *Land Registration Act* are not followed or complied with as the Sale of Dwelling includes land property which belongs to the State. These are elaborated further in our findings below.

#### Reference

The reasons or explanations relevant to this opinion are set out in Chapter 3 (the Legislative Model for Sale of Dwelling).

#### [4.1.1] FINDING N°1.1

In the opinion of the Ombudsman Commission, it appears that the National Housing Corporation failed to sign a Contract of Sale with respective purchasers as required under Section 38 (4) of the *National Housing Corporation Act 1990*.

#### Reasons

- The NHC was the original proprietor of the duplex property and leaseholder of the State Lease of the property at Section 119, Lot 8 at Saraga Street, Boroko, NCD. Mr Ugup and Mr Itana were tenants under a Tenancy Agreement and occupied separate Units for more than two (2) years.
- The NHC exercised its discretion to sell the property under Section 37 (1) and made an offer to both tenants the option to purchase according to Section 38 (1) of the *NHC Act*. This should have happened after the duplex property was subdivided with two new separate descriptions.
- Section 37 of the *NHC Act* gives the Corporation discretionary powers to sell a dwelling. It states;

*“Subject to this Division, the Corporation may sell a dwelling vested in it to—*

- (a) an eligible person; or*
- (b) an approved applicant; or*
- (c) a person who exercises the option offered to him under Section 38(1).”*

- Section 38 (1) of the *NHC Act* provides for the Corporation to offer to certain persons an option to purchase the dwelling according to conditions imposed by Division 2 of Part IV. It states;

*“(1) After a tenancy agreement has been in force for two years between the Corporation and a tenant, the Corporation may, in its discretion, offer to—*

- (a) the tenant; or*
- (b) the spouse, widow or widower of the tenant; or*
- (c) the tenant and his spouse as joint tenants; or*
- (d) the tenant and his next of kin,*  
*an option to purchase the dwelling the subject of the agreement at a purchase price specified in the option, subject to the conditions imposed by this Division.”*

- Section 38 of the *NHC Act* provides options to purchase after a Tenancy Agreement has been in force for two years between the Corporation and a tenant. The Corporation may, in its discretion, offer to persons specified under subsection (1) an option to purchase under a Contract of Sale according to subsection (4) which states;

*“(4) A contract of sale under this section may provide—*

- (a) for the outright purchase; or*

- (b) *for the payment of the purchase price by installments; or*
- (c) *for the payment of the purchase price to be secured—*
  - (i) *by mortgage, in the prescribed form, over the property in respect of which the advance is made; or*
  - (ii) *by any other security approved by the Corporation.”*

- The duplex residential property includes land and improvement therefore; a Contract of Sale is a legislative requirement. Disposition or sale of the duplex property could have taken place in two stages – the contract, conferring rights, and the conveyance, when the NHC (vendor) transfer and vests in the purchaser the legal title to the respective Units of the duplex property.
- Mr Ugup accepted the offer by NHC to purchase Unit 17 of the duplex property and had entered into a mortgage installment arrangement which was gazetted in the National Gazette. Mr Ugup did commence installment payments to his purchasing account with the NHC through fortnightly salary deductions without a valid Contract of Sale as provided under Section 38 (4) of the *NHC Act*.
- The Contract of Sale was to have been signed at the beginning of the process of sale of dwelling which would have created legal obligation for both parties to perform. Section 43 of the *NHC Act* provides for the contract of sale to happen before the process of the purchase of a dwelling by installments. It states;

*“Where a contract of sale under this Division provides for the payment of the purchase price or the balance of the purchase price by installments, this Subdivision applies.”*

- Section 2 of the *Frauds and Limitations Act* 1988 provides that Land transactions must be or be evidenced in writing which means that no interest in land can be created or disposed of except by writing signed by the person creating or disposing of the interest. There must be a Contract of Sale to create an interest or disposition of land as provided under Section 4 of the *Frauds and Limitations Act* 1988 which states;

*“No action shall be brought upon a contract for the sale or other disposition of land or an interest in land unless the contract, or some note or memorandum of the contract, upon which the action is brought, is in writing signed—*

- (a) *by the person against whom the action is brought; or*
- (b) *by an agent of that person lawfully authorized in writing for the purpose.”*

- A Contract of Sale was a legislative requirement. However, it appears that there was no Contract of Sale to facilitate sale of respective units either through purchase by installment or purchase price secured by mortgage. The NHC appears to have not complied with a statutory requirement to have a Contract of Sale whereby the respective purchasers would have agreed to purchase the property according to Section 38 (4) (a) or (b) or (c) of the *NHC Act* 1990.

## Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.1-2.12] [2.14- 2.15] [2.16] [2.24] [2.30] [2.51] [2.52] [2.54] [2.56] [2.59] and [2.61].

### [4.2.2] FINDING N<sup>o</sup>1.2

In the opinion of the Ombudsman Commission, it appears that there was no mortgage over the respective Units of the duplex property as required under Section 38 (4) (b) (c) and Section 44 of the *National Housing Corporation Act 1990*.

## Reasons

- The NHC offered to sell Unit 17 of the duplex property to Mr Ugup and he accepted the offer and subsequently effected salary deductions towards the purchase of the property purportedly by way of a mortgage installment. This was gazetted for sale under one gazettal notice. Mr Ugup was participating in the mortgage installment purchase whose fortnightly deduction was continuing at the time of the purported sale and transfer of title over the whole property to Mr Raka Itana.
- Section 38 (4) of the *NHC Act* provides that a Contract of Sale may provide for different methods for the payment of the purchase price. It states;

*“A contract of sale under this section may provide—*

- (a) for the outright purchase; or*
- (b) for the payment of the purchase price by installments; or*
- (c) for the payment of the purchase price to be secured—*
  - (i) by mortgage, in the prescribed form, over the property in respect of which the advance is made; or...*”

- The procedure for purchasing a dwelling through mortgage is provided under Sections 43-46 Subdivision B of the *NHC Act* for the payment of the purchase price or the balance of the purchase price by installments.
- Section 43 of the *NHC Act* provides for the purchase of a dwelling by installments. It states;

*“Where a contract of sale under this Division provides for the payment of the purchase price or the balance of the purchase price by installments, this Subdivision applies.”*

- Section 44 of the *NHC Act* provides the mandatory (legal) requirement for a purchaser to enter into mortgage over the property if payment is to be by installment. It states;

*“A purchaser shall enter into a mortgage over the property in the prescribed form created in favor of the Corporation to secure the purchase price or the balance of the purchase price.”*

- The Commission finds that both tenants signed a purported Mortgage Installment Form for the payment of the purchase price through installments. They were to have purchased the respective Units of the duplex property through mortgage as provided under Subdivision B, Sections 43, 44, 45 and 46 of the *NHC Act*.
- The respective tenants were paying the mortgage selling price through fortnightly installments without a valid mortgage. There was no legal mortgage because the title of the property which includes land remained with NHC and there was no subdivision with two separate descriptions. There was no Contract of Sale and subsequent transfer of title to respective tenants at the beginning of the process of sale. This would enable the purchasers to have legal title over the respective dwelling before they secure the purchase price by mortgage.
- It is evident that the purchasers under mortgage installment arrangements did not have any security, their rights and interests were not protected. They stand to lose whenever the NHC decides to sell the property to a third party.

## Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.1-2.10] [2.14- 2.15] [2.25] [2.36-2.37] [2.43] [2.60] and [2.61].

### [4.1.3] FINDING N<sup>o</sup>1.3

In the opinion of the Ombudsman Commission, the National Housing Corporation failed to transfer the property (title) to each purchaser before the commencement of the Mortgage Installment Payment.

## Reasons

- Both tenant purchasers, Mr Ugup and Mr Itana were purchasing separate Units through a purported mortgage installment without a legal title over the property. There was no transfer of title to the purchasers subject to the mortgage as required by the *NHC Act*.
- Section 47 of the *NHC Act* provides for the transfer of title over the property. It states;

*“Subject to Section 46, the Corporation shall, in consideration of the execution of the mortgage by the purchaser, and at the expense of the purchaser, transfer the property to the purchaser, subject to the mortgage.”*

- This provision makes it mandatory for the NHC to transfer the property to the purchaser in consideration of the execution of the mortgage by the purchaser. This would enable the purchaser to secure the property to participate in the purchase by installment or secure balance of the purchase price which would have constituted a valid mortgage.

- The respective purchasers with valid title would hand over the title to the NHC to secure the payment of purchase price by mortgage installment. Once the purchase price or the balance is paid the purchaser may execute a discharge of mortgage and register. This would effectively remove the mortgage from the Certificate of Title. The Purchaser then holds the title free from any other rights and interests over the property.
- The Commission finds that the NHC failed to facilitate the transfer of the property to the respective purchasers after an execution (signing) of the Contract of Sale and in consideration of the execution of the mortgage.

## Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.7-2.10] [2.43] and [2.61].

### [4.2] FINDING N<sup>o</sup>2

In the opinion of the Ombudsman Commission, it appears that the National Housing Corporation failed to surrender the State Lease for its subdivision for new separate description and issuance of two separate lease titles to respective tenants before the Sale.

## Reasons

- The Minister for DLPP in his declaration of land and grant of State Leases of improved Government Land to the National Housing Corporation under Part X1 of the *Land Act* 1996 Gazettal Number G154-29 November 2001 included in its schedule the land property Section 119 Allotment 08 at Saraga Street, Boroko, NCD. The Minister's exercise of powers in accordance with Sections 111 and 113 of the *Land Act* vests in the NHC the estate and interests in the State Lease to wholly or partly deal with the property land.
- The NHC is the proprietor of the duplex property located on Allotment 8, Section 119, under one State Lease Volume 25 Folio 133, at Saraga Street, Boroko, NCD. The duplex property comprised of two Units, Unit 1 gazetted for sale to Mr Raka Itana and Unit 2 gazetted for sale to Mr Allan Ugup under one Gazettal No. G45 dated 6 June 1996. The Units were to have been subdivided with two new Allotments given and should have read Allotments 16 and 17 respectively. Both tenants were eligible and approved applicants. They were participating in the purchase of separate Units purportedly under a Mortgage Installment Arrangement.
- The Property Management Division of the NHC did not conduct due diligence prior to the issuance of the instruction to the Conveyance Division to facilitate the sale and transfer of title documentations. Consequently the Conveyance Division and the Registrar of Titles were not aware of the proper description of the property.
- In their evidence before the Ombudsman Commission, Mr Cooke and Mr Gabina said that the GSOS policy covers sale of single detached houses. However, the NHC Management approved duplexes on the condition that subdivisions are done and

separate titles are issued to respective parties under new description. Such was the arrangement for the duplex property.

- According to the Registrar of Titles, the NHC as a legal lessee had the responsibility to surrender the title, subdivide the property which was under one State Lease, give new descriptions to the Units, allocate each to the respective tenants and then advise the Registrar for issuance of two separate titles.
- The NHC as the Lessee could have surrendered the title over the land for the issuance of new leases over the developed portions of the land in its own name. Once the surrender application is registered by the Registrar, the estate of NHC is extinguished by means of Section 38 of the *Land Registration Act*.
- Section 130 of Part XVIII of the *Land Act 1996* provides the procedures for the Subdivision of State Leases. Section 130 states:

(1) *A lessee may apply to the Minister for approval to subdivide the land included in his lease.*

(2) *An application under Subsection (1) shall—*

(a) *be written; and*

(b) *be accompanied by a plan showing the manner in which it is proposed to subdivide the land; and*

(c) *where any part of the land is within a physical planning area, be accompanied by planning permission for the subdivision under the Physical Planning Act 1989.*

(3) *The Minister may—*

(a) *approve an application under Subsection (1); or*

(b) *refuse the application but, where the application is accompanied by planning permission for the subdivision under the Physical Planning Act 1989, shall not refuse the application for any physical planning reason.*

(4) *The Minister shall notify the lessee of his decision in writing and, if he has approved the application, he shall specify in the notification—*

(a) *any reservations, covenants, conditions and provisions that he thinks are necessary to be included in each lease of the land if it is subdivided; and*

(b) *the fees and deposits to be paid by the lessee in respect of the grant of new leases for the subdivided portions of the land.*

(5) *If the lessee—*

- (a) *has paid all rent due under the lease; and*
- (b) *accepts the reservations, covenants, conditions and provisions specified in the notification; and*
- (c) *has paid the fees and deposits in respect of the grant of the new leases,  
he may surrender his lease, and in that case he shall be granted a new lease over each of the subdivided portions of the land.*
- (6) *A surrender of a lease under Subsection (5)—*
  - (a) *shall be made within 30 days or within such further time as the Minister allows, after the date of the notification of the approval of the subdivision; and*
  - (b) *has effect from the date of commencement of the new leases.”*

- The NHC did not comply with the procedures set out under Section 130 for the subdivision of the property with new descriptions and granting of separate leases and subsequent registration of each title to the two tenant purchasers.
- The NHC failed to surrender its original title as provided under Section 38 of the *Land Registration Act*, and subdivide the property for separate Allotments. Thereafter, the Registrar of Titles would have been notified of the variations or alterations within the meaning of Sections 37. Subsequently, the NHC would apply to the Registrar to have separate lease registered by means of Section 40 (1) of the *Land Registration Act*.
- Once the Volume and Folio numbers are entered, separate Certificate of Titles are registered by the Registrar of Titles according to Section 10 of the *Land Registration Act*. Only then the NHC obtain valid Certificate of Title and hold absolutely free from any other rights and interests (encumbrances) as a registered proprietor under Section 33 (1) of the *Land Registration Act*. This would allow for the property to be correctly described in the transfer of title.
- The Corporation would then offer to respective tenants for sale of each Unit under the new descriptions. Upon acceptance of the offer by the purchasers the NHC would facilitate the sale and transfer of title of each unit to respective purchasers according to the model of sale of dwelling provided under Part IV Division 1 of the *NHC Act 1990*.
- Notwithstanding the mortgage installment purchase arrangements existed between the NHC and the two tenant purchasers for the separate Units, the NHC sold the whole property to one Tenant, Mr Itana. The NHC failed to surrender its title for subdivision and sell each Unit to respective tenants under new descriptions.
- The Commission finds that the NHC failed to comply with the above legal and procedural requirements by not surrendering its original title for subdivision with new descriptions and issuance of separate titles prior to its exercise of discretion to sell the duplex property to separate tenant purchasers.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.11- 2.12] [2.20] [2.31] [2.35] [2.40] [2.45] [2.49] [2.57] and [2.61].

### [4.3] FINDING N<sup>o</sup>3

In the opinion of the Ombudsman Commission, it appears that the National Housing Corporation does not have a Government Sell Off Scheme (GSOS) policy.

## Reasons

- The officers of the NHC who were interviewed revealed that NHC has initiated many schemes for the purposes of disposition of NHC houses. One of them is the GSOS which is intended to sell single detached residential houses to current sitting tenants, especially public servants.
- The Commission has made several attempts by way of verbal and written requests to NHC through its officers to provide a copy of the GSOS policy document but was unsuccessful. The Commission therefore issued a summons by virtue of its powers under Section 18 (3) of the *Organic Law on the Ombudsman Commission*. Even then, the Commission was continuously advised that the NHC could not locate a copy of the GSOS policy. In fact there was no policy document provided to substantiate that the GSOS policy in fact exists and is operational.
- On the contrary, Ms Elisabeth Bowada, a Senior Legal Officer with the NHC revealed that there was no such policy as GSOS and that single detached houses were given away under rental purchase, speculative purchase and outright purchase arrangements. All these administrative arrangements were done at the Property Management Division and the Conveyance Division to facilitate the sale of single detached houses to eligible or approved persons.
- The Commission infers from the facts that there was no GSOS policy. From our investigation it was revealed that the Property Management Division and the Conveyance Division have been disposing of NHC houses or dwelling without a valid policy consistent with the legislative model under Part IV Division 2 of the *NHC Act* as discussed in finding number one (1).

## Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.35] [2.47] and [2.57].

### **[4.3.1] FINDING N°3.1**

In the opinion of the Ombudsman Commission, it appears that the NHC wrongly collected the K17, 008.23 from Mr Sawan Tili being for the amount paid by Mr Allan Ugup through installment payment for Unit 17 of the duplex property.

#### **Reasons**

- The then Acting Managing Director for NHC, Mr Walter Kapy, admitted that there was serious administrative failures in the entire transactions. There was wrong description of the property as it was not a single detached house but a duplex dwelling. Having realized that he proposed to the third party Mr Sawan Tili to pay up the total sum that was paid by Mr Allan Ugup the tenant purchaser for Unit 17 of the duplex property.
- Mr Sawan Tili paid the prescribed amount of K17, 008.23 to NHC after one (1) year six (6) months from the time of sale and transfer of title from Mr Raka Itana to Mr Sawan Tili.
- The K17, 008.23 paid into the NHC account was intended to settle the amount paid for under the purported mortgage installment arrangement by the tenant purchaser, Mr Ugup to date. However, the confusion here is whether the payment was for the NHC to repay or refund the amount to Mr Ugup or for NHC to arrange an alternate dwelling for him to continue to participate in the installment purchase or to settle the dispute between the NHC and the third party purchaser, Mr Tili.
- The Commission infers from the facts and evidence that the K17, 008.23 was an attempt to settle dispute between the NHC and the third party purchaser some time after the sale and transfer of title had been concluded.
- The Commission finds that Mr Kapy's proposal to pay the said amount was made well after the sale and transfer of title was completed. The title was indefeasible and Mr Tili had no obligation to pay under any arrangement between the parties. Therefore, the NHC wrongly collected the K17, 008.23.

#### **Reference**

The facts and reasons relevant to this opinion are set out in paragraphs [2.21- 2.22].

### **[4.3.2] FINDING N°3.2**

In the opinion of the Ombudsman Commission, it appears that the NHC failed to provide alternate arrangements for Mr Allan Ugup to continue to participate in the purchase of a dwelling.

#### **Reasons**

- The then Acting Managing Director for NHC, Mr Walter Kapy proposed that Mr Ugup would be notified about this arrangement and another property would be arranged for him to continue to participate in the purchase.
- Mr Ugup was still making installment payments through fortnightly deductions even after the NHC transferred the title over the whole duplex property to Mr Itana and from Mr Itana to Mr Tili. The NHC did not take any appropriate steps to address grievances of a tenant purchaser. To date Mr Allan Ugup is still residing in Unit 17 of the duplex property. The dispute between, Mr Ugup, Mr Tili and the NHC over the transactions is on going.
- There were no alternate arrangements made as proposed by Mr Kapy for Mr Ugup to continue to participate in the purchase of another NHC property. Therefore, the NHC failed to settle this dispute and to provide alternate arrangements.
- The Commission infers from the facts that the transactions were done to the benefit of NHC and the third party purchaser and to the detriment of the tenant purchaser, Mr Ugup.

#### **Reference**

The facts and reasons relevant to this opinion are set out in paragraphs [2.10] [2.21] [2.22] and [2.24].

### **[4.3.3] FINDING N°3.3**

In the opinion of the Ombudsman Commission, it appears that the NHC failed to refund the over deduction amount of K4, 291.71 to Mr Allan Ugup and failed to manage and maintain proper accounting systems.

#### **Reasons**

- According to the purchasing account reconciliation statement, the NHC continued to collect installment payment from Mr Ugup. The fortnightly deductions ceased well after the cessation date thereby NHC made over deductions on Mr Ugup's purchasing account and even after the purported sale and transfer of title to Mr Itana.

- According to Mr Allan Ugup's Account No: H40565, the installment payment commenced on 21 July 1996 and was to have ceased on 19 July 2006 but payments continued until pay period ending 22 April 2008. The balance sheet shows that there were over deductions of K4, 291.71 yet to be refunded to Mr Ugup.
- On several occasions, Mr Ugup followed up with the NHC accounts for refunds but without success. The NHC failed to refund the over deducted amount to Mr Ugup.
- The Commission infers from this investigation that there is no proper management of accounting system and bank accounts of various commercial activities. It was established that there are no different coding systems for self accounting to cater for different moneys that are generated or raised either through rentals or disposition or sale of dwelling under different policy schemes.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.25- 2.27] and [2.53- 2.55].

### [4.3.4] FINDING N°3.4

In the opinion of the Ombudsman Commission, it appears that the NHC failed to manage and maintain proper property records.

## Reasons

- The then Acting Managing Director, for NHC Mr Walter Kapy was of the view that the whole transaction was a mistake within the meaning of Section 33 (1) (c) of the *Land Registration Act*. He admitted that there was a commission of administrative error by NHC and he therefore suggested the recall of the State Lease which did not materialise.
- According to the Registrar of Titles, Mr Raga Kavana, the NHC failed to disclose the arrangement in place between the two tenants and the NHC over the property and also failed to give proper description of the property as a duplex property.
- In separate interviews, Mr Cooke, Mr Gabina, Ms Paulisbo and Ms Bowada of the NHC admitted that the Property Division failed to give proper description of the property and disclosure of the existing purchase arrangements between the tenants to the Conveyance Division which only facilitated the sale and transfer of title. They further admitted that there was no due diligence which resulted in this mistake and that was a human error committed by NHC.
- The title of the duplex property was transferred based on assumption that the property was a single detached residence with one sitting tenant. This can be seen as a serious defective assumption without proper search on the NHC property records which resulted in an improper description of the property.

- From our investigation, it was noted that there are no proper administrative mechanisms to coordinate between the Property Management and the Conveyance Division in regard to issuance and facilitation of sale and transfer of properties (houses). In particular the NHC does not have and maintain proper description of the NHC properties (houses). If it does then disposition of houses have been done without due diligence.
- The Commission infers from this investigation that the NHC generally lacks in the proper management and accountabilities of NHC properties. It was noted that there is an administrative defect in the areas of management and record keeping of all NHC properties.

## **Reference**

The facts and reasons relevant to this opinion are set out in the paragraphs [2.20- 2.21] [2.30 – 2.31] [2.36 – 2.37] [2.44 - 2.45] and [2.48].



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## 5. RECOMMENDATIONS

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### [5.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation is to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective.

The Commission is expressly authorised to form such opinions by Section 22(2) of the *Organic Law on the Ombudsman Commission*.

If, after making its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorised to make recommendations. Such recommendations are made under Section 22(2) of the *Organic Law on the Ombudsman Commission*.

Section 22(2) OLOC:

**If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should –**

- (a) consider the matter further; or**
- (b) take certain specific action; or**
- (c) modify or cancel any administrative act; or**
- (d) alter any regulation or ruling; or**
- (e) explain more fully any administrative act; or**
- (f) do any other thing,**

**the Commission shall report its opinion and the reasons for its opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.**

In this chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the report.

Each recommendation is set out as follows:

- The nature of the recommendation is stated.
- The recipients (i.e. the persons to whom the recommendations are directed) are identified.
- The main reason for making the recommendation, are stated.

**[5.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS**

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

**[5.3] RECIPIENTS OF RECOMMENDATIONS**

When we make recommendations we are obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this Chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

**[5.4] RESPONSIBLE MINISTERS**

Section 148 of the *Constitution* provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

**[5.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS**

<b>Service, bodies or persons being asked to do things</b>	<b>Responsible Minister</b>
Acting Managing Director for National Housing Corporation	Minister for National Housing Corporation

## [5.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of “recommendations” does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Ombudsman Commission in writing within 30 days after the days of the service of the report, of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

**If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.**

Accordingly, there is a *duty* placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the *Constitution* and the *Organic Law on the Ombudsman Commission*.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the *Constitution*.

## [5.7] RECOMMENDATIONS

### **Recommendation N<sup>o</sup>1**

The Ombudsman Commission recommends that the acting Managing Director for NHC;

(a) ensure compliance with the Legislative Model for Sale of Dwelling,

(b) extends the scope of review to include all tenants who are likely to be affected for non-compliance with the Legislative Model for Sale of Dwelling. This recommendation would address Ombudsman Commission’s findings N<sup>o</sup> 1, 1.1, 1.2, 1.3 & 2.

### **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

### **Reasons**

- NHC failed to survey and sub-divide the property at Section 119, Allotment 8 at Saraga Street between Mr Allan Ugup and Mr Raka Itana.

- It also failed to issue separate Certificate of Title over the duplex property to the two. This failure by NHC gave rise to the conflict and misunderstanding with the two purchasers.
- The scenario could be faced by other tenants/purchasers of NHC properties (duplex or single detached houses). The lessons learnt could address similar situations.

The acting Managing Director for NHC must;

- identify all land which has been part of State Lease granted by DLPP with NHC properties.
  - carry out survey of these lands and subdivide all duplex properties.
  - issue Certificate of Title over the property it decides to sell to all tenants/purchasers to prove legal ownership of the property. The Certificate of Title would settle all potential conflicts over ownership of the properties as it is a legal document proving ownership of the property under Contract of Sale Agreement.

In brief NHC must carry out the following processes;

- *Working out which land has been part of the program that has been granted Lease title by DLPP*
- *Survey and Subdivide*
- *Offer for Sale by NHC*
- *Acceptance by Tenants(Purchaser)*
- *Contract for Sale- Issue separate Certificate of Title over the property*
- *Mortgage and transfer of title*
- *Repayment (Mortgage Installments Repayment)*

## **Recommendation N°2**

The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation immediately put in place a policy to deal with sale of single detached house and duplex properties respectively.

## **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

## **Reasons**

- NHC has been disposing off properties without any Government Sell Off Scheme policy or any other policy consistent with the Legislative Model under Part IV Division 2 of the NHC Act.

- Single detached houses were given away under rental purchase, speculative purchase and outright purchase arrangements.
- Ombudsman Commission's attempt during investigation to obtain GSOS Policy from NHC was unsuccessful.

### **Recommendation N°3**

The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation address the issue of wrong collection of sum K17, 008.23 from Mr Sawan Tili forthwith.

### **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

### **Reasons**

- Mr Sawan Tili paid K17, 008.23 to NHC well after the time of sale and transfer of title was completed and had no obligation to make any payment to NHC. Therefore NHC wrongly collected money from Sawan Tili.

### **Recommendation N°4**

The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation provide an alternate arrangement for Mr Allan Ugup to continue to participate in the purchase of a dwelling.

### **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

### **Reasons**

- The acting MD for NHC proposed that an arrangement will be made for Mr Ugup to still participate in the purchase.
- However there was no alternate arrangement made by NHC when he was still paying NHC fortnightly deductions.

### **Recommendation N°5**

The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation address the issue of overpayment of K4, 291.71 by Mr Allan Ugup.

#### **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

#### **Reasons**

- Mr Allan Ugup installment payment was supposed to cease on 19 July 2006 but continued until 22 April 2008 indicating an over deduction of K4, 291.71.

### **Recommendation N°6**

The Ombudsman Commission recommends that the acting Managing Director for National Housing Corporation maintain proper accounting records systems.

#### **Recipients**

- Minister for National Housing Corporation
- Acting Managing Director for National Housing Corporation
- Acting General Manager Properties National Housing Corporation

#### **Reasons**

- NHC generally lacks in the proper management and accountabilities of NHC properties. There is an administrative defect in the areas of management and record keeping of all NHC properties.



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## 6. CONCLUSION

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Good and desirable governance of public institutions, as well as the nation is dependent upon good and sound management and decisions being made by those placed in responsible positions. Good public officials and managers understand their roles and responsibilities and perform their duties within the ambit of the law that governs their conduct. Public officials who are empowered by law to make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws.

Public officials must exercise due diligence, honesty and dedication in the work they are entrusted with. Inconsistency in decision making or non compliance with relevant laws creates doubt in the minds of the public that the decision maker has been influenced by outside sources and forces not conducive to good governance and accountability. Professional negligence by public officials must be dealt with seriously.

Some characteristics of good governance necessary to eliminate bad administrative practices include honesty, diligence, consistency, competency, compliance with established laws and procedures, and standing up to political interference.

This report highlights irregularities in the processes followed in the sale of duplex property at Section 119, Allotment 8 Saraga Street Boroko, NCD which found that; the NHC did not comply with the Legislative Model for Sale of Dwellings as set out in the *NHC Act* and the Acts governing National Housing Corporation when selling off its Properties under any government sell-off schemes. The investigation found that;

- The sale of the unit appeared to be inconsistent with the Legislative Model for Sale of Dwelling in the *NHC Act* under Part IV Division 2.
- Failure to execute a Contract of Sale and Mortgage in the initial arrangement with Mr Allan Ugup.
- Non compliance with the *Land Registration Act*.
- Non compliance with *Frauds and Limitation Act*.
- Non compliance with the *National Housing Corporation Act*.
- Failure by National Housing Corporation to transfer title to purchasers before the commencement of the mortgage payments. ( Non-compliance with the *NHC Act* Section 47)
- Failure to surrender State Leases to the Department of Lands for subdivision.
- Absence of a Government Sell Off Scheme (GSOS) policy.

- Alleged illegal collection of K17, 008 from Sawan Tili, the amount paid by Mr Allan Ugup.
- Failure to properly account for monies paid and monies owed to purchasers of the property.
- Failure to maintain proper accounting records regarding the unit.

The National Housing Corporation has failed to live up to the expectation of the people and State in complying with the processes and procedures and the Acts governing the operation of the Corporation.

The Management of National Housing Corporation are to take note of the findings and recommendations made in this Report and make special effort to correct the mistakes for the good of the Corporation and the people of Papua New Guinea.

The leaders to whom the Ombudsman Commission directs its recommendation are asked to carefully consider the recommendations and implement them.

<p>.....          CHRONOX MANEK, LLB, LLM, OL  <u>CHIEF OMBUDSMAN</u></p>	<p>.....          JOHN NERO, BAC, MBA  <u>OMBUDSMAN</u></p>	<p>.....          PHOEBE SANGETARI, LLB, LLM  <u>OMBUDSMAN</u></p>
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**PORT MORESBY**

**19 April 2011**



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## 7. RELEVANT LAWS

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This Chapter contains the laws that were examined to verify the legality of the matter:

### [7.1] CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

#### National Goals & Directive Principals – Goal 2 - Equality & Participation

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our Country.

We accordingly call for –

**means to be provided to ensure that any citizen can exercise his personal creativity and enterprise in pursuit of fulfillment that is consistent with the common good, and for no citizen to be deprived of this opportunity. (G.2 (8))**

Section 219 of the *Constitution* lists the functions of the Ombudsman Commission. The first of these functions is:

**(a) to investigate, on its own initiative or on complaint made by a person affected, any conduct on the part of-**

**any governmental body or an officer or employee of any such body**

**specified by or under an Organic Law in the exercise of a power or function vested in it or him by law in cases when the conduct is or may be wrong, taking into account amongst other things, the National Goals and Directive Principles.**

#### STATUTES RELEVANT TO THIS INVESTIGATION

The following *Acts* contains several sections relevant to this particular investigation.

### [7.2] LANDS ACT 1996 (No. 45 of 1996)

#### PART XI.—GRANT OF STATE LEASES OF IMPROVED GOVERNMENT LAND TO THE NATIONAL HOUSING CORPORATION.

##### 111. Declaration of land by Minister.

**The Minister may, by notice in the National Gazette, declare Government improved residential land to be land to which this Part applies.**

##### 113. Minister may grant lease.

**The Minister may, in respect of land to which this Part applies, grant a lease to the National Housing Corporation on such conditions as he thinks proper.**

**PART XIV.—SURRENDER OF STATE LEASE.**

**121. Surrender of State Lease.**

- (1) A lessee may, with the written consent of the Minister, surrender his lease or any part of his lease.
- (2) For the purposes of this section, the grant of an application for a State lease shall be deemed to be the grant of the lease.

**PART XVIII.—SUBDIVISION OF STATE LEASES.**

**130. Approval of Subdivision.**

- (1) A lessee may apply to the Minister for approval to subdivide the land included in his lease.
- (2) An application under Subsection (1) shall—
  - (a) be written; and
  - (b) be accompanied by a plan showing the manner in which it is proposed to subdivide the land; and
  - (c) where any part of the land is within a physical planning area, be accompanied by planning permission for the subdivision under the Physical Planning Act 1989.
- (3) The Minister may—
  - (a) approve an application under Subsection (1); and
  - (b) refuse the application but, where the application is accompanied by planning permission for the subdivision under the Physical Planning Act 1989, shall not refuse the application for any physical planning reason.
- (4) The Minister shall notify the lessee of his decision in writing and, if he has approved the application, he shall specify in the notification—
  - (a) any reservations, covenants, conditions and provisions that he thinks are necessary to be included in each lease of the land if it is subdivided; and
  - (b) the fees and deposits to be paid by the lessee in respect of the grant of new leases for the subdivided portions of the land.
- (5) If the lessee—
  - (a) has paid all rent due under the lease; and
  - (b) accepts the reservations, covenants, conditions and provisions specified in the notification; and
  - (c) has paid the fees and deposits in respect of the grant of the new leases, he may surrender his lease, and in that case he shall be granted a new lease over each of the subdivided portions of the land.
- (6) A surrender of a lease under Subsection (5)—
  - (a) shall be made within 30 days or within such further time as the Minister allows, after the date of the notification of the approval of the subdivision; and
  - (b) has effect from the date of commencement of the new leases.

**[7.3] LAND REGISTRATION ACT (Chapter 191)**

**1. Interpretation**

"dealing" means a disposition of an estate or interest otherwise than by way of transmission and includes a transfer, lease, surrender, mortgage, charge, discharge, easement and similar interest, and nomination of trustees;

"document" means any writing relating to land whether of a formal nature or otherwise and includes a will, register, map or plan;

"encumbrance" includes all prior estates, interests, rights, claims and demands which can or may be had, made or set up in, to, on, or in respect of, land;

"instrument" includes a certificate of title and a document relating to a dealing;

"mortgage" means a charge on land created merely for securing a debt;

"register", in relation to a matter affecting an estate or interest, means—

(a) the entry of the matter in the Register on the relevant folio or instrument as the nature of the estate or interest requires; and

(b) the endorsement of the matter on the instrument of title to the estate or interest;

"State lease" means a lease granted by the State and includes a lease granted or continued in operation under the Land Act;

"transaction" means a dealing or transmission;

"transfer" means the passing of an estate or interest in land whether for valuable consideration or otherwise;

#### 10. Registration of certificates of title.

(1) A certificate of title is registered under and for the purposes of this Act as soon as it has been—

(a) marked with the volume and folio in which it is entered in the Register; and

(b) signed, sealed and dated,  
by the Registrar.

(2) One duplicate of a certificate of title shall, on registration, be delivered by the Registrar to the person entitled to it.

#### 33. Protection of registered proprietor.

(1) The registered proprietor of an estate or interest holds it absolutely free from all encumbrances except—

(a) in the case of fraud; and

(b) the encumbrances notified by entry or memorial on the relevant folio of the Register;  
and

(c) the estate or interest of a proprietor claiming the same land under a prior instrument of title; and

(d) in case of the omission or misdescription of any right-of-way or other easement created in or existing on the same land; and

(e) in case of the wrong description of the land or of its boundaries; and

(f) as to a tenancy from year to year or for a term not exceeding three years created either before or after the issue of the instrument of title of the registered proprietor;  
and

(g) as provided in Section 28; and

(h) a lease, licence or other authority granted by the Head of State or a Minister and in respect of which no provision for registration is made; and

(i) any unpaid rates, taxes, or other money which, without reference to registration under this Act, are expressly declared by a law to be a charge on land in favour of the State or of a department or officer of the State or of a public corporate body.

#### 37. Alteration or variation.

(1) Where—

(a) the purpose of a State lease is varied under Section 40(1) of the Land Act; or

(b) the covenants or conditions of a State lease are altered in any way under Section 40(2) of that Act,

The lessor and lessee may execute an instrument in the prescribed form notifying the Registrar of the variation or alteration.

(2) The Registrar shall enter the terms of any variation or alteration, referred to in Subsection (1), in the Register of State Leases.

(3) On the making of an entry under Subsection (2), the terms of the State lease shall be varied or altered accordingly.

**38. Surrender of State lease.**

(1) In this section, "surrender" includes a partial surrender.

(2) Subject to this section, where a State lease has been surrendered—

- (a) by an instrument in the approved form; or
  - (b) subject to Subsection (3), by endorsement on the State lease or its counterpart; or
  - (c) subject to Subsection (5), by operation of law,
- an application may be made to the Registrar for registration under Subsection (5) in relation to that State lease.

(3) The endorsement made under Subsection (2) shall be—

- (a) expressed in the word "surrendered" with the date of the surrender; and
- (b) signed by the lessee and by the lessor as evidence of acceptance of the surrender; and
- (c) attested in accordance with Section 19.

(4) An application under Subsection (2)(c) shall be accompanied by satisfactory evidence of facts amounting to a surrender.

(5) Where an application is made under Subsection (2), the Registrar shall register the surrender.

(6) Where registration is effected under Subsection (5), the estate of the lessee is extinguished.

(7) The production of—

- (a) a State lease or counterpart endorsed in accordance with Subsection (3); or
  - (b) an instrument executed in accordance with the approved form,
- is sufficient evidence that the State lease has been surrendered.

(8) A State lease subject to a mortgage or charge shall not be surrendered without the consent of the mortgagee or chargee, as the case may be.

**PART V.—TRANSFER OF LAND.**

**42. Requirements for transfer.**

(1) Where land is intended to be transferred, the proprietor shall execute a transfer in the approved form.

(2) The consideration for a transfer of land shall be specified in the transfer.

(3) Where the consideration is not an amount of money the approved form of transfer shall be amended to state concisely the nature of the consideration.

(4) A person who executes a transfer of land which does not specify the correct consideration for that transfer is guilty of an offence.  
Penalty: A fine not exceeding K200.00.

(5) A transfer of land shall be lodged for registration as a single original document.

(6) Subject to Sections 13 and 162, on completion of registration the Registrar shall—

- (a) in the case of a transfer which relates to the whole of the land in a certificate of title—issue to the transferee the duplicate of the certificate of title lodged with the transfer; and
- (b) in the case of a transfer which relates to a part of the land in a certificate of title—re-issue to the transferor his duplicate of the certificate of title cancelled as to the part transferred and issue in respect of the transferee a new certificate of title in his own name as to the part transferred.

**55. Transfer of lease.**

- (1) A registered lease may be transferred by instrument in the approved form.
- (2) The consideration for the transfer of a lease shall be specified in the transfer.
- (3) Where the consideration is not an amount of money the prescribed form of transfer shall be amended to state concisely the nature of the consideration.
- (4) On registration of a transfer of a lease—
  - (a) the estate of the transferor, as specified in the transfer, with all rights, powers and privileges belonging to that estate passes to and vests in the transferee; and
  - (b) the transferee becomes subject to and liable for the same requirements and liabilities to which he would have been subject and liable if he had been named originally in the lease as the lessee.
- (5) The rights, powers and privileges passing to the transferee by virtue of Subsection (4) include—
  - (a) the right to sue on the lease the subject of the transfer; and
  - (b) all interest in and right to recover a debt, sum of money or damages under the lease.
- (6) The operation of Subsection (5)(b) is not affected by reason only that the right of recovery is a chose in action.
- (7) This section does not prevent a court of competent jurisdiction giving effect to a trust affecting the debt, sum of money or damages referred to in Subsection (5)(b) where the transferee is a trustee for any other person.

**56. Surrender of lease.**

- (1) In this section, "surrender" includes partial surrender.
- (2) Subject to this section, where a lease has been surrendered—
  - (a) by an instrument in the approved form; or
  - (b) subject to Subsection (3), by endorsement on the lease or its counterpart; or
  - (c) subject to Subsection (5), by operation of law,
 an application may be made to the Registrar for an entry under Subsection (5) in relation to that lease.
- (3) The endorsement under Subsection (2) shall be—
  - (a) expressed in the word "surrendered" with the date of the surrender; and
  - (b) signed by the lessee and by the lessor as evidence of acceptance of the surrender; and
  - (c) attested in accordance with Section 19.
- (4) An application under Subsection (2)(c) shall be accompanied by satisfactory evidence of facts amounting to a surrender.
- (5) Where an application is made under Subsection (2) the Registrar shall register the surrender.

- (6) When registration is effected under Subsection (5), the estate of the lessee is extinguished.
- (7) The production of—
  - (a) a lease or its counterpart endorsed in accordance with Subsection (3); or
  - (b) an instrument executed in accordance with the prescribed form, is sufficient evidence that the lease has been surrendered.
- (8) A lease subject to a mortgage or charge shall not be surrendered without the consent of the mortgagee or chargee, as the case may be.

**PART VIII.—CAVEATS.**

**82. Entitlement to lodge caveat.**

Subject to Section 92, a person claiming an estate or interest may, by a caveat lodged in accordance with the requirements of this Part, forbid—

- (a) the registration of instruments affecting that estate or interest; or
- (b) the amendment of a certificate of title under Section 153.

**[7.4] FRAUDS AND LIMITATIONS ACT 1988**

**PART II.—TRANSACTIONS THAT MUST BE, OR BE EVIDENCED, IN WRITING.**

**Division 1.—Land Transactions.**

**2. Creation, etc., of interest in land.**

- (1) Subject to Subsection (2) and Section 5—
  - (a) no interest in land can be created or disposed of except—
    - (i) by writing signed—
      - (a) by the person creating or disposing of the interest; or
      - (b) by that person's agent lawfully authorized in writing for the purpose; or
    - (ii) by operation of law; or
    - (iii) by will; and
  - (b) a declaration of trust respecting any land or interest in land must be manifested and proved—
    - (i) by some writing signed by a person lawfully able to declare such trust; or
    - (ii) by that person's will; and
  - (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be—
    - (i) in writing signed—
      - (a) by the person disposing of the equitable interest or the trust; or
      - (b) by that person's agent lawfully authorized in writing for the purpose; or
    - (ii) by will.
- (2) Nothing contained in Subsection (1) shall be construed as affecting the creation or operation of resulting, implied or constructive trusts, and that subsection shall be read and construed accordingly.

**3. Effect where interest in land created by parole.**

- (1) Subject to Subsection (2) and Section 5, where—
  - (a) an interest in land is created by parole; and
  - (b) the creation of that interest is not in accordance with Section 2(1)(a)(i), that interest shall, notwithstanding any consideration having been given in respect of it, have the force and effect of an interest at will only.
- (2) Nothing contained in Subsection (1) shall be construed as affecting the creation, by parole, of a lease that—

- (a) takes effect in possession for a term not exceeding three years; and
- (b) is at the best rent that can reasonably be obtained without taking a fine, and that subsection shall be read and construed accordingly.

4. Contracts for the sale of land, etc.

No action shall be brought upon a contract for the sale or other disposition of land or an interest in land unless the contract, or some note or memorandum of the contract, upon which the action is brought is in writing signed—

- (a) by the person against whom the action is brought; or
- (b) by an agent of that person lawfully authorized in writing for the purpose.

## **[7.5] NATIONAL HOUSING CORPORATION ACT 1990**

28. General functions of the Corporation.

- (1) Subject to this Act, the functions of the Corporation are—
  - (a) to improve housing conditions; and
  - (b) to provide adequate and suitable housing for letting to eligible persons; and
  - (c) to sell houses to eligible persons; and
  - (d) to make advances to eligible persons and approved applicants to enable them to become the owners of their own homes; and
  - (e) to develop physically residential land by way of providing adequate services for human settlements; and;
  - (f) to provide adequate and suitable housing by way of sale or lease to approved applicants; and
- (4) In the exercise and performance of its functions, the Corporation may dispose of residential land at a price below its market value but having regard to the costs incurred and financial resources available for its continued operation.

Division 2.—Sale of Dwellings, etc.  
Subdivision A.—General.

37. Sale of dwellings.

Subject to this Division, the Corporation may sell a dwelling vested in it to—

- (a) an eligible person; or
- (b) an approved applicant; or
- (c) a person who exercises the option offered to him under Section 38(1).

38. Options to purchase.

- (1) After a tenancy agreement has been in force for two years between the Corporation and a tenant, the Corporation may, in its discretion, offer to—
  - (a) the tenant; or
  - (b) the spouse, widow or widower of the tenant; or
  - (c) the tenant and his spouse as joint tenants; or
  - (d) the tenant and his next of kin,
 an option to purchase the dwelling the subject of the agreement at a purchase price specified in the option, subject to the conditions imposed by this Division.
- (2) Where a tenant, under Division 1, of a dwelling becomes a purchaser under this section, either along or jointly with his spouse, he is entitled—
  - (a) as from the date on which his tenancy of the dwelling commenced; or
  - (b) if he has been a tenant of the Corporation in more than one dwelling without interruption and the Corporation so approves—from the date of first occupation of an earlier dwelling, and subject to any terms specified in the option, to be credited in reduction of the sale price of the dwelling with an amount equal to that part of

the economic rent that represents the repayment of the amount of the capital cost included in the amortization allowance in accordance with Section Sch.2.4.

- (3) Where a tenant has not been credited with an amount in accordance with Subsection (2) and his spouse, widow or widower becomes a purchaser under this section, the spouse, widow or widower is entitled to be credited with the same allowance under Subsection (2) as the tenant would have been entitled to if he had purchased the dwelling.
- (4) A contract of sale under this section may provide—
  - (a) for the outright purchase; or
  - (b) for the payment of the purchase price by installments; or
  - (c) for the payment of the purchase price to be secured—
    - (i) by mortgage, in the prescribed form, over the property in respect of which the advance is made; or
    - (ii) by any other security approved by the Corporation.

**Subdivision B.—Purchase through Mortgage.**

**43. Purchase by installments.**

Where a contract of sale under this Division provides for the payment of the purchase price or the balance of the purchase price by installments, this Subdivision applies.

**44. Mortgage.**

A purchaser shall enter into a mortgage over the property in the prescribed form created in favor of the Corporation to secure the purchase price or the balance of the purchase price.

**46. Appropriation of mortgage installments.**

The Corporation shall appropriate from the amount paid towards mortgage installments—

- (a) an amount to cover interest on the amount of the purchase price outstanding from time to time; and
- (b) an amount, not exceeding an amount equal to the prescribed percentage of the amount of the purchase price outstanding, on account of administrative expenses; and
- (c) an amount equal to the total of the amounts (if any) expended by the Corporation on rates, taxes, insurance, maintenance and any other outgoings in respect of the property, and shall appropriate the remainder of the amount towards the purchase price.

**47. Transfer.**

Subject to Section 46, the Corporation shall, in consideration of the execution of the mortgage by the purchaser, and at the expense of the purchaser, transfer the property to the purchaser, subject to the mortgage.

