



# Can persons with disabilities own land?

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## Key Terms:

**Title deed:** a document that proves absolute ownership of land.

**Adverse possession:** Adverse Possession sometimes known as squatter right connotes a situation where a person takes illegal, continuous and uninterrupted possession of a land for a period of 12 years, asserts right over the land and the owner of the land neglects to claim title of the land against such persons.

**Caution:** A notice in the form of a register entered, barring any land transactions of a specified nature regarding the land in which notice is entered, from being conducted without the knowledge of the person who gave the notice.

## Introduction

Every person including persons with disabilities have a right to acquire and own property such as land, of any description in any part of Kenya. It is a constitutional right guaranteed under Article 40 which can only be limited except by law and only to the extent that the limitation is reasonable and justifiable in a democratic society based on human dignity and equality.

Pursuant to the above mentioned, this article seeks to further disability rights by educating persons with disabilities and the society on disability rights.

## How can one acquire land?

There are different ways one can acquire land being through purchase, a gift, donation, adverse possession and succession/inheritance. Emphasis should be put on different procedures to be followed in each case on how to obtain title which ultimately confers indefeasible title/ ownership of land. Notably for one to inherit land, succession proceedings must be filed in court bestowing power on an administrator/executor of the deceased estate to apportion the land amongst the beneficiaries in equal shares; who will thereafter obtain title deed to that effect. This simply means transferring land title deed from the deceased to a beneficiary.

Despite the different ways of land acquisition, the law provides a standard procedure for obtaining land title which applies in all circumstances.

### **PROCEDURE FOR OBTAINING TITLE DEED**

1. Buyer conducts an official search on the title deed at the land registry ownership and obtains a search certificate;
2. Either the seller or buyer drafts a sale agreement. To do this, sought the guidance of a lawyer;
3. Seller obtains Rate Clearance Certificate from the National Land Commission;
4. Buyer obtains Rent Clearance Certificate from the county office where the land is located;
5. Seller obtains consent from the Land Control Board if the land is an agricultural land or National Land Commission;
6. Seller obtains Spousal Consent;
7. Seller obtains other relevant consents;
8. Obtain land transfer documents;
9. Lodge the transfer for registration and obtain valuation to ascertain the amount to be paid as stamp duty;
10. Buyer pays stamp duty indicated on the valuation report;
11. Lodge the stamped transfer documents for registration at the land registry in the county where the land is located;
12. Issuance of title deed;
13. Seller pays capital gains tax.

### **Importance of a conducting a search**

- a) To establish the legal owner of the land;
- b) To establish cautions put on title deeds due to disputes on the land or pending court matters regarding the land;
- c) To establish whether the title deed has been used as security for a loan advanced by a credit facility or financial institution like a bank.

### **Key Takeaways:**

1. The process of transferring land title deed from one person to another often takes not more than 90 days.
2. The search takes 3 days and costs Ksh.500/=. The document required to conduct a search include a copies of your ID, KRA Certificate and land title deed.
3. There are no costs related to obtaining a Rent Clearance Certificate. It takes 20 days.
4. It costs Kshs.10, 000/= to obtain a Rate Clearance Certificate.
5. Consent from the National Land Commission costs Kshs.1000/= and takes 2 weeks.
6. Valuation of land is done by the government valuer.
7. The process of land registration after lodging the transfer documents takes 2 weeks.
8. The capital gains tax is 5% of the net profit gained by the seller from selling the land.