A CONCEPTUAL FRAMEWORK FOR CONVEYANCING PROCESSES
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ABSTRACT
Land is an asset and still remains a valuable factor of production even in the modern era of knowledge economy. In many parts of the world, land is a limited resource, hence, in most countries, custodianship and ownership of land and landed properties tend to be generally guarded through meticulous capturing, recording and storage of appropriate data and information. A legislative provision for the transfer of custodianship and/or ownership requires the involvement of different role players in the conveyancing processes that culminate in the registration of land and associated immovable property. In some countries, the conveyancing processes tend to be complex and cumbersome. Thus the proposition in this paper is that complex and cumbersome conveyancing processes and systems affect business activities that often involve the acquisition and/or transfer of custodianship or ownership rights to land and immovable property. The paper provides a conceptual framework for conveyancing processes based on a content-based review of land and immovable property registration systems in several countries.

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1 INTRODUCTION

Conveyancing is the legal transfer of property from one owner to another. Ownership is mostly in the form of a real right, although limited real rights may also exist in the form of servitudes or other rights in property, e.g. a creditor’s right against the owner or registered leases (Van der Walt and Pienaar [1]). From a pedagogical viewpoint, conveyancing involves business processes traditionally designed to transfer land and/or associated landed property from one owner to another. In civil society, and in general, ownership is defined in terms of legal right, hence conveyancing is perceived as a legal convention. The reality is that the actual transactions and activities that result in the transfer of ownership are derived from specialised business processes of the various private firms and public agencies (role players) that are involved in conveyancing.

Processes exist regardless of the functional structure of the organisation. Processes may also encompass sub-processes that may be endogenous (i.e. internal within an organisation) or exogenous (i.e. linking to processes in other organisations). The first improvement step is to analyse a process end-to-end so as to understand the interrelationships and value potential (Heckl & Moormann [2]).

The modern era of globalisation and a knowledge economy features very high levels of competition, thus, innovative processes that improve business efficiencies (for example, reduce costs concurrently with increasing revenues) rapidly prevail. Conveyancing processes broadly include:

- valuation of property (e.g., by actuarial scientists, quantity surveyors, real estate agents, etc.),
- financing activities (e.g., by banks, financial institutions, etc.),
- contracts (e.g., by attorneys, notaries, and conveyancers),
- statutory registration (e.g., by municipal and local government agencies, internal revenue services, etc.); and of course, and
- custodians and owners (sellers and buyers).

The above implies that conveyancing processes involve the various types of business organisations identified (in parentheses above) as role players.

Acknowledging that conveyancing processes link different role players, many countries have developed systems (either manual or electronic) for capturing, recording, transfer and storage of property related data and information arising out of the transactions and interactions between the activities of the respective business organisations involved. Inefficiencies within respective role player sub processes can readily make the conveyancing processes cumbersome by creating bottlenecks and further complicate the processing times of the interlinking manual or electronic systems. The purpose of this paper is therefore to develop a conceptual framework for conveyancing using international best practices in a supply chain end-to-end setting.

2 LITERATURE OVERVIEW

An operation is composed of processes designed to add value by transforming inputs into outputs (Pycraft [3]). Davenport [4] defines processes as a structured and measured set of activities designed to produce specific outputs for a particular consumer or market. Organisations pay particular attention to the design and management of their internal processes with successful practices becoming part of the business processes. Lampert, Stock and Ellram [5] proposed that all firms within a supply chain must overcome their own functional silos and adopt a process approach in order to successfully implement supply
chain management. We are therefore in agreement with Hammer and Champy [6] who viewed processes as sets of activities with the logical internal/external relationship that they result in a product or service demanded by a customer. The process therefore starts and ends with the customer.

All organisations encounter process timing problems (for example, unplanned down-time, expensive rescheduling actions, and staff shuffling), which, often times results in customers waiting, and late delivery of a service or good. On-time and turnaround time are desirable clichés that delight customers (Slack [7]). Proponents of total quality management principles generally argue that the concept of ‘leaness’ may be applied to deliver a product on-time and reduce service turnaround times (Trent [8]).

Hammer & Champy [6] introduced the concept of reengineering as a fundamental rethinking and radical redesign of business processes to achieve dramatic improvements in critical, contemporary measures of performance, such as cost, quality, productivity and competitiveness. Instead of redesigning, some organisations merely computerise the manual processes and hence continue to follow the original logic, thus gaining no real improvement (Guha, Kettinger and Teng [9]). An important redesign would involve the substitution of sequential activities with simultaneous activities in order to reduce the turnaround time in processes.

3 RESEARCH PROBLEM AND METHOD

This continuation of existing logic while automating, seems particularly evident in most conveyancing processes, including the South African conveyancing processes. Each type of role player involved in the conveyancing processes reengineered their own internal sub processes. More often than not, the reengineering is not undertaken in conjunction with other stakeholders, thus increasing the complexity of the conveyancing processes and the full supply chain. From a customer viewpoint (i.e. buyers and sellers), on-time and turnaround times are measured across all the sub processes that result in the successful transfer and registration of custodianship or ownership. Real value is added by removing unnecessary activities and aligning the entire chain of conveyancing processes. This may be easier said than done because it could imply that some of the various types of organisations would need to align certain aspects of their corporate goals and strategies with the reengineering effort. Extrapolating from Malerba [10], from the viewpoint of sectoral innovation it may not be as far-fetched for the role players to work together to remove bottlenecks that adversely influence the conveyancing processes.

This discourse is based on a review of available literature on international conveyancing processes and systems, as well as interviews with key stakeholders from a selection of international conveyancing systems. The narrative responses of the interviewees are summarised in the paper in order to present a conceptual framework for South African conveyancing using a supply chain management approach.

4 REVIEW OF CONVEYANCING PROCESSES IN FIVE CASE STUDY COUNTRIES

In this section, we describe very briefly, the conveyancing processes in Barbados, The Netherlands, Australia, Taiwan and South Africa. Some of the case study countries demonstrate conveyancing processes which can be regarded as innovative with regard to land administration and transfer.

4.1 The conveyancing processes in Barbados

It seems that landed property in Barbados largely exists in unregistered system of titles, although there are some districts where titles have been registered. This follows from direct telephonic interview with Hathiramani [11] and Savitri [12]. They indicate that it would be advisable to use a local attorney-at-law when purchasing real estate in Barbados, so that the title can be properly investigated and other requirements properly dealt with. Tribal areas
in Barbados present challenges, especially where land has been distributed in terms of family arrangements, which in fact are still regarded as communal properties. In terms of title registration, Barbados seems to have successfully migrated from an entirely manual system to a partly computerised conveyancing system (Barnes [13]). The land administration system in Barbados is designed to a large extent for middle and upper income groups. The rising problem of *squatting* (occupation of land without the express permission and without the completion of any formal application to acquire rights), together with large unregistered areas, makes Barbados an interesting case study.

There are currently two systems of recording or registration of landed property in Barbados. These are the “common-law system”, and the “registration system”. Under the common law system, a title must be traced from owner to owner as far back as what is called “a good root of title” (usually a conveyance) which has to be *at least* 20 years old. A seller must be in possession of all the original title deeds from the date of the root to the date of the new transaction.

The registration system does not include deeds but rather, a simple certificate of title or charge, which contains all the information about the property. Land for which title has been registered, a disposition is effected by a transfer, lease or other prescribed form in accordance with the relevant legislation (Gittens [14]). The title is backed by government; this means that Barbados follows a *positive system* of registration. The Land Register typically contains a brief description and plan of the land as well as the existing certificate of charge/title.

The conveyancing process in Barbados is summarised as illustrated in Figure 1.

Figure 1: An illustration of conveyancing processes in Barbados

### 4.2 The conveyancing processes in The Netherlands

In The Netherlands, the land registration and the cadastre, i.e., a system of maps and diagrams, are combined into one organisation. The Civil Code in the Netherlands provides for a closed system of real rights. The Netherlands operates on a *negative system* since the government does not guarantee the accuracy of the title register. The Land Register was computerised in 1999 and paper documents are scanned on receipt. The paper pre 1999 was scanned onto a microfilm and may be transferred into a digital format on request. The electronic recording of deeds started in 2005. Electronic copies and an advanced electronic signature are delivered together. The Registrar maintains a supervisory role and the
conveyancer remains responsible for drafting and submitting the deed, as well as signing of the deed on behalf of the seller, buyer and other role players. The transaction is recorded in a national register as opposed to previous duplications in regional registers as well. Electronic dispatches are received a day earlier than paper documents and payment can be effected a day earlier - the same legal certainty exists as with the paper documents (Louwman [15]).

A key feature of the conveyancing processes in The Netherlands is the significant role of the notary public in linking the other types of role players (West [16]). The Netherlands makes use of electronic cadastral registers referred to as the Automated Cadastral Registers (AKR). Maps are kept in a survey and mapping information system (LKI). These two systems are appropriately interfaced, especially to coordinate updating of the relevant data and information (Wakker, van der Molen, and Lemmen [17]). An understanding of the conveyancing processes in The Netherlands is articulated as illustrated in Figure 2.

![Figure 2: An illustration of the conveyancing processes in the Netherlands](image)

4.3 The conveyancing processes in Australia

According to Garoupa et al[18] the Torrens system introduced in Victoria, South Australia in 1862 is a method of recording and registering land ownership and interests on a single title document. As the land titles register contains all the information of ownership, it is not necessary to prove ownership and other titles by other longer documents such as the title deeds. Countries that use the Torrens system include Australia, New Zealand, Ireland, Malaysia, Singapore, Iran, Canada, Madagascar, England and Wales. The Torrens title system works on the following three principles:

i. The maintenance of a public register of titles and interests on land

ii. The assurance that, once registered, a title or interest cannot be defeated

iii. The guarantee of a compensation fund in the event of a fraudulent or erroneous registration

Although each state in Australia has its own land registration practices and procedures, however, all states have adopted the Torrens system for land title registration. Essentially, the title is changed from seller to buyer at the Deeds Registry while the title document is
kept with the bank until the loan is fully repaid by the buyer. In Australia, the state guarantees the accuracy of the state deeds register which means that Australia has a positive land registration system. The unique feature of the conveyancing processes in Australia is that a buyer/seller or “information broker” may buy a self-conveyancing kit. This means that conveyancing does not require formal qualifications or certification per se. A summary of the conveyancing processes in Australia is illustrated in Figure 3.

![Diagram of conveyancing processes in Australia](image)

Figure 3: An illustrate of conveyancing processes in Australia

### 4.4 The conveyancing processes in Taiwan:

In Taiwan, the role players involved in the conveyancing process include buyer, seller, estate agent, bank, *tisu* and land office. Uniquely, a *tisu* is a not a qualified attorney but a person certified by the local government to assist the buyer, and focuses on drafting contracts between

- buyer and seller
- bank and buyer

as well as the preparation of mortgage documents, property documents and transaction documents. The Taiwanese conveyancing process is illustrated in Figure 4.
4.5 The conveyancing processes in South Africa

The South African Land registration system shows aspects of both a positive and a negative land system (Ramwell, Brink, West [19]). Although the SA Deeds Office does not guarantee the correctness of a title (negative system), third parties do rely on the accuracy of the legal position of real rights registered with regard to immovable property. The land register is linked to a cadastral which is an aspect of a positive land system. Parties and role players in a typical conveyancing process generally include estate agents, sellers, buyers, conveyancers, financial institutions, government agencies such as the Deeds Office Registry, Internal Revenue Service (IRS), local and municipal authorities.

In some cases, the transactions that are included in a single property exchange may involve several different attorney firms, each of whom represents the respective role players, and all of whom will be required to lodge their respective documents at the Deeds Office Registry. Where more than one property is involved (e.g. in the case of developments where all units are registered at the same time), the transactions may be linked to even more role players; hence, it is not uncommon for the entire conveyancing process to comprise of more than one hundred transactions before completion of the property exchange. The process tends to be exacerbated where the transactions involve manual interlinks and information transfer loops between the various role players. Even automated processes are not immune to risks that may arise, for example, from data inaccuracies and asynchronous time delays.
4.6 Comparative summary of conveyancing processes in the selected countries

For brevity, based on the different processes followed by the countries included in this study, the following processes are identified:

**Table 1: Summary of the conveyancing processes in different countries**

<table>
<thead>
<tr>
<th>Step</th>
<th>Barbados</th>
<th>The Netherlands</th>
<th>Australia</th>
<th>Taiwan</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale agreement completed and signed</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>10% deposit paid by buyer</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Full purchase price is paid to notary</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Buyer pays a third of the purchase price at the bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Buyer pays estate agent and tisu fees into separate savings account</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Buyer applies to financial institution for a loan</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bank requests property valuation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Investigation of title by attorneys</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
5 CONCEPTUAL FRAMEWORK FOR CONVEYANCING PROCESSES

Using the information gleaned from the literature and interview respondents for the countries that formed part of this study, the following procedures appear common to all the countries’ conveyancing processes. These procedures can therefore comprise the basic elements of a framework for conveyancing processes in an international context. The framework is illustrated in the table below.

Table 2: Conceptual model for conveyancing processes

<table>
<thead>
<tr>
<th>Conceptual international framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale agreement completed and signed</td>
</tr>
<tr>
<td>10% deposit paid by buyer</td>
</tr>
<tr>
<td>Buyer applies to financial institution for a loan</td>
</tr>
<tr>
<td>Bank requests property valuation</td>
</tr>
<tr>
<td>Investigation of title by conveyancers</td>
</tr>
<tr>
<td>Buyer pays transaction tax as soon as bank approves loan</td>
</tr>
</tbody>
</table>
Conveyance prepared by notary/ tisu/ conveyancer

Buyer and seller signs deed

Buyer pays another third of property price

Payment of purchase price

Land Office does final checks

Conveyance recorded at Land Office & provides evidence of the record

Buyer starts to repay loan

It is clear from the literature that many countries follow different approaches. Some processes may be more complex and may take much longer in some countries than in others. The common steps identified should be the basic steps that seemingly would need to be present in a basic conveyancing end-to-end process. Some foreign multinational corporations need to acquire immovable property for their investments in other countries. According to a newspaper article (re: Financial Times, 15 November 2012 [20]), Massmart’s intention to open more branches in Nigeria may be delayed by cumbersome landed property transfer processes. In fact, the article surmises that “…when an organisation requires landed property infrastructure and facilities as complimentary assets, it is not far-fetched that cumbersome processes of landed property acquisition may adversely influence the supply chain and business operations”.

It is important that South Africa incorporates international best practices in conveyancing to minimise challenges that may adversely affect foreign investment opportunities. Land is a valuable and oftentimes, ownership tends to meticulously contested. Transfer of ownership requires processes that should be uncomplicated and less cumbersome. Business organisations in all industrial sectors, whether public or private, depend significantly on landed properties, thus, it is in this regard that this paper incorporates an international perspective to provide a framework for conveyancing processes.

6 REFERENCES


