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Corporate Governance in the Real Estate Sector in Ghana: A Legal and Institutional Analysis

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ABSTRACT
This article examines the legal and institutional architecture of corporate governance in Ghana's real estate sector, situating the sector's rapid growth within the framework established principally by the Companies Act 2019 (Act 992) and the Land Act 2020 (Act 1036). Using doctrinal analysis of statute, regulatory codes, and case law, the article evaluates the mechanisms through which real estate companies are directed, controlled and held accountable: board composition, directors' fiduciary duties, shareholder oversight, and land-title diligence. It argues that governance failures in the sector are rarely attributable to gaps in the law; rather, they arise where a "family company" model of ownership and management is permitted to override the statutory separation of functions between the board, the members in general meeting, and the officers of the company. Drawing on judicial authority from Ghana and England, together with an account of recent practice failures in the sector, the article demonstrates that robust governance is not a regulatory burden but a precondition for investor confidence, access to capital, and market stability. It concludes with practical recommendations for developers, boards, and regulators.

Keywords: Corporate Governance, Real Estate, Companies Act 2019 (Act 992), Land Act 2020 (Act 1036), Fiduciary Duties, Ghana.

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Introduction

Corporate governance is, at its core, concerned with a single question: how is a company directed, controlled, and held to account?[2] In Ghana's real estate sector, that question has taken on particular urgency. The sector has grown rapidly over the past two decades, driven by urbanisation, diaspora investment, and an expanding middle class, yet its governance culture has not always kept pace with its commercial ambition. A significant proportion of real estate businesses in Ghana remain, in substance if not in form, "family companies" in which a single individual combines the roles of managing director, chief financial officer, and head of sales. This concentration of authority sits uneasily with the separation of functions that the Companies Act 2019 (Act 992) contemplates between the board of directors, the members in general meeting, and the officers of the company.

This article argues that the statutory and regulatory architecture governing corporate governance in the Ghanaian real estate sector — principally Act 992, the Land Act 2020 (Act 1036), the Rent Act 1963 (Act 220), and the Securities Industry Act 2016 (Act 929) — is, in most material respects, adequate to the task. What is frequently absent is not law but compliance: independent board oversight, disclosure of related-party land transactions, and title due diligence before land is acquired. The article proceeds in four movements. Part II defines corporate governance and its purpose in the real estate context. Part III surveys the legal and regulatory framework, and Parts IV and V set out the core principles

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[2]See generally OECD, G20/OECD Principles of Corporate Governance (OECD Publishing 2015) 9, describing corporate governance as involving 'a set of relationships between a company's management, its board, its shareholders and other stakeholders' that provides the structure through which company objectives are set and performance is monitored.[3]Samuel Tengey, Leadership Stripped Bare (2018) 56. [4]Companies Act 2019 (Act 992). [5]Land Act 2020 (Act 1036). [6]Rent Act 1963 (Act 220).[7]Securities Industry Act 2016 (Act 929). The Commission's sector-specific expectations for listed entities are further elaborated in the Securities and Exchange Commission (Ghana), Corporate Governance Code for Listed Companies 2020, which took effect on 7 October 2021.

of good governance and the benefits, recurring failures, and root causes of poor governance. Parts VI and VII examine, in turn, the statutory distribution of corporate power and directors' fiduciary duties, particularly as they bear on land transactions. Part VIII illustrates these failures with reference to recent sector practice, and Part IX surveys Ghanaian judicial authority on good faith and title diligence in real property dealings. Part X concludes with recommendations.

The Concept and Purpose of Corporate Governance

A. Defining Corporate Governance

Corporate governance is the system of rules, practices, and processes by which a corporate body is directed and controlled. It is concerned with balancing the interests of a company's many stakeholders — shareholders, management, employees, financiers, government, and the community — and with providing the structural framework within which a company pursues its objectives. A company's board of directors is the primary institutional actor through which governance operates: it is the board, and not any individual officer, that is accountable to shareholders for the direction of the company. Poor governance — an absence of transparency, unchecked individual authority, or the absence of accountability mechanisms — degrades a company's reliability and, over time, its financial health; good governance, conversely, is what allows outside investors to extend trust, and capital, to a company they do not themselves control.

B. The Purpose of Corporate Governance in the Real Estate Economy

Applied to the real estate economy, the purpose of corporate governance is to facilitate effective, entrepreneurial, and prudent management capable of delivering the long-term success of real estate enterprises. Shareholders appoint directors and auditors and satisfy themselves that an appropriate governance structure is in place; the board, in turn, sets the company's values and strategic direction a function distinct from the day-to-day operational management exercised by full-time executives. As Tengey observes, leadership at the corporate level is "*a core mandate to corporate achievement*", referring to the manner in which persons placed in positions of authority provide direction for the organization direction that may demonstrate responsibility, accountability, transparency, and foresight, leading to organisational prosperity, or their absence, leading to organisational failure.[3]

The Legal and Regulatory Framework

Corporate governance in the Ghanaian real estate sector is shaped by a cluster of statutes and regulatory bodies, each addressing a different facet of the sector's operation. First, the *Companies Act 2019* (Act 992) [4] governs directors' duties, board structure, shareholder rights, and audit requirements for all property-holding companies. Second, because land is the basic and indispensable raw material of the industry, the *Land Act 2020* (Act 1036) [5] regulates land acquisition, the prohibition of multiple sales, registration, and stool, skin, and family land dealings. Third, because the sector's operations extend to leasing as well as outright sale, the *Rent Act 1963* (Act 220) [6] governs landlord-tenant relations and rent control. Fourth, the Ghana Real Estate Developers Association ('GREDA'), a self-regulatory body operating under its own constitution, sets standards of conduct for its members. Fifth, the Securities and Exchange Commission, established under the Securities Industry Act 2016 (Act 929),[7] governs real estate investment trusts (REITs) and listed property companies. Sixth, the Lands Commission, established under the *Lands Commission Act 2008* (Act 767),[8] oversees public land, registration, and transparency in land administration.

The Core Principles of Good Corporate Governance

Four principles recur across the literature and regulatory codes on corporate governance, and each has particular resonance in the real estate context.[9]

Fairness. Fairness refers to equal treatment: all shareholders should receive equal consideration in proportion to whatever shareholding they hold, regardless of the size of their stake or their proximity to management.

Accountability. Corporate accountability refers to the obligation and responsibility of the board and management to give an explanation or reason for the company's actions and conduct — to shareholders in the first instance, and to regulators and the public where the company's activities affect them.

Responsibility. The board of directors is given authority to act on behalf of the company and must accept full responsibility for the powers it is given and the authority it exercises. It is responsible for overseeing the management of the company's business and affairs, appointing the chief executive, and monitoring performance, and it is accountable to shareholders for the manner in which it has discharged these responsibilities.

Transparency. Stakeholders should be informed about the company's activities, its future plans, and the risks involved in its business strategies. In the real estate context, this extends to disclosure of the company's land holdings, the status of title to those holdings, and any interest a director holds, directly or indirectly, in land the company proposes to acquire.

The Case for Governance: Benefits, Recurring Issues, and Root Causes

A. Benefits of Good Corporate Governance

Companies that apply the core principles of good corporate governance tend to outperform their peers and are better able to attract investors, whose support can help finance further growth. Strong corporate governance maintains investors' confidence; it is, in a material sense, what allows a company to raise capital more cheaply than a company whose governance is opaque or unreliable. Firms that embed these principles into their working culture position themselves for sustained corporate success, and it is on this basis — rather than as an act of regulatory compliance alone — that companies grow.

[8]Lands Commission Act 2008 (Act 767), enacted pursuant to art 258 of the Constitution of the Republic of Ghana 1992. Note that this instrument is frequently, but incorrectly, cited in practitioner literature as the 'Land Commission Act 2016'; the correct short title and year are as given here.[9]cf OECD (n 1) ch I–II, from which these four principles are commonly distilled in practitioner and regulatory literature. [10]Companies Act 2019 (Act 992) s 144.[11]Companies Act 2019 (Act 992) s 191 (exercise of powers of directors).[12]Companies Act 2019 (Act 992) s 189 (limitations on the powers of directors) and ss 199–205 (civil liability, derivative and representative actions).

B. Recurring Governance Issues in the Real Estate Sector

Across the sector, a recurring set of issues surfaces repeatedly: conflicts of interest, particularly where a director or a director's associate stands to profit from a transaction with the company; weak board oversight of management decisions; failures of accountability, where no individual or body can meaningfully be called to answer for a decision; a lack of transparency toward shareholders, lenders, and purchasers; and, in the more serious cases, outright violations of professional and ethical standards.

C. Root Causes of Governance Failure

Where corporate governance fails, or proves unsustainable, the underlying causes are, with some consistency, poor ethical leadership, a lack of personal and institutional integrity, mismanagement, fraud, corruption, and outright violation of governance rules. These are also, unsurprisingly, the principal contributors to corporate insolvency and financial failure in the sector.

The Distribution and Exercise of Corporate Power under the Companies Act 2019

a. Distribution of Power: Section 144

By virtue of section 144 of Act 992, a company acts through three organs: (a) the board of directors; (b) the members in general meeting; and (c) the officers or agents appointed by the members in general meeting or by the board.[10] The remainder of this Part considers each organ in turn, before Part VII examines in greater detail the fiduciary constraints that attach to the board's exercise of power.

b. The Board of Directors

The business of a company is managed by its board of directors, who may exercise every power of the company that has not, by Act 992 or by the company's constitution, been reserved to the members.[11] The board's responsibilities include setting the company's strategic aims, providing the leadership to put those aims into effect, supervising the management of the business, and reporting to shareholders on its stewardship. It follows that the board — not any single director, however senior is responsible for the company's policies, its human resource development, its risk management, and its financial statements.

c. Limitations on the Powers of the Board

The board is not bound to obey the directions or instructions of the members in general meeting in the ordinary exercise of its management powers. The members' recourse, where they consider the board to have acted improperly, is more limited and more structured: they may act where the directors are disqualified or where there is a deadlock; they may institute legal proceedings in the name of the company against the board where the board itself has failed to act; they may ratify or confirm actions taken by the board; and they may make recommendations to the board.[12]

d. The Officers of a Company

The officers of a company typically comprise the chairperson, other non-executive directors, the managing director, employees, and the company secretary. As the following Part demonstrates, the conflation of these distinct roles in a single individual — rather than any deficiency in the statute itself is the most common source of governance failure among Ghanaian real estate developers.

Board Composition, Directors' Fiduciary Duties, and Land Transactions

A. The "Family Company" Problem and the Case for Independent Directors

A recurring structural problem among Ghanaian real estate firms is the prevalence of the "family company" model, in which a single person holds the position of managing director while also, in substance, discharging the finance and sales functions. For good corporate governance practice to prevail, the Securities and Exchange Commission's *Corporate Governance Code for Listed Companies 2020* requires listed companies to maintain a majority of non-executive directors, with at least two independent non-executive directors, and requires that the role of managing director be kept separate from that of board chair.[13] While these requirements bind listed companies as a matter of law, they represent a governance benchmark that closely held real estate developers would be prudent to adopt voluntarily, particularly where they seek institutional finance or intend eventually to list.

B. Fiduciary Duties, Conflicts of Interest, and Disclosure

Sections 189 to 195 of Act 992 impose a structured set of fiduciary constraints on directors that bear directly on land transactions. Section 190 imposes an explicit fiduciary duty: a director stands in a fiduciary relationship to the company and must act in good faith, in what the director believes to be the best interests of the company, and must avoid conflicts of interest.[14]

A developer cannot, consistently with this duty, use company funds to acquire land and register title to that land in his or her own name; such conduct breaches the director's duty of good faith under section 190, and, depending on the manner in which the power to acquire land was exercised, may also breach the limitations on directors' powers under section 189. Courts may be expected to scrutinise such transactions closely, on the basis that any power exercised by a director must be exercised in good faith and for the purposes for which it was conferred.[15]

Section 192 addresses conflicts of duty and interest directly: a director is strictly prohibited from entering into transactions in which the director's personal interest conflicts with the company's interest, save with the informed consent of the company.[16] Selling personal property to the company at an inflated value is a classic instance of such a conflict. Section 195, in turn, imposes a duty of disclosure: a director who has an interest likely to create a conflict — for example, an intention to sell land to the company — must fully disclose the nature and extent of that interest, including the price originally paid for the land, to the board.[17] Failure to make that disclosure renders the transaction liable to be set aside, and directors who breach these duties face civil liability, including an order for damages or for rescission of the sale.[18]

[13]Securities and Exchange Commission (Ghana), Corporate Governance Code for Listed Companies 2020, principle on board composition and structure. Although the Code applies formally only to listed entities, its standards are increasingly treated as best practice for closely held real estate companies seeking institutional finance.[14]Companies Act 2019 (Act 992) s 190.[15]Companies Act 2019 (Act 992) ss 189–191.[16]Companies Act 2019 (Act 992) s 192. [17]Companies Act 2019 (Act 992) s 195 (disclosure of interest by directors); see also s 194 (contracts in which directors are interested), which qualifies the circumstances in which a director may contract with the company notwithstanding s 192. [18]Companies Act 2019 (Act 992) s 199 (civil liabilities for breach of duty).[19]Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218 (HL).

C. Judicial Foundations: Erlanger and the Ghanaian Reception of Fiduciary Principle

The principle that a person who stands in a position of trust toward a company must not profit from an undisclosed conflict of interest has deep roots in English company law. In the leading case of *Erlanger v New Sombrero Phosphate Co*, the House of Lords held that the promoters of a company, having purchased an island for phosphate mining at £55,000 and sold it to the company they had promoted for £110,000 without disclosing their profit to an independent board, stood in a fiduciary relationship to the company and were liable to have the transaction set aside for want of disclosure.[19] The principle established in *Erlanger* — that self-dealing by a person in a position of trust is permissible only where it is fully disclosed to, and sanctioned by, an independent body — is precisely the principle codified in sections 192 and 195 of Act 992.

Ghanaian courts have long applied cognate proper-plaintiff and shareholder-standing principles derived from *Foss v Harbottle*,[20] under which it is, as a general rule, the company itself — acting through its board or, in appropriate cases, through a derivative or representative action — rather than an individual shareholder, that is the proper party to sue for a wrong done to the company. In *Appenteng v Bank of West Africa Ltd*, shareholders of a company sued a bank directly for loss allegedly caused by negligent financial advice given to the company; the High Court, applying *Foss v Harbottle*, held that the shareholders lacked standing to sue in their own right, a decision affirmed on appeal.[21] While that case did not itself concern a real estate transaction, it illustrates a point of continuing relevance to real estate governance: Act 992's derivative and representative action provisions now give minority shareholders in a family-controlled developer a structured route to challenge self-dealing by a controlling director-shareholder, where previously the common law proper-plaintiff rule might have barred them outright.

D. Title Diligence under the Land Act 2020

Beyond the internal governance of the company, directors of a real estate business owe a distinct due-diligence obligation in respect of the land the company acquires. The Land Act 2020 penalises the unlawful occupation or sale of public land and empowers the Lands Commission to act on behalf of the State in respect of such land.[22] A board that exercises proper diligence will verify the root of title before committing company funds to a land purchase, and will be alert to the risk of acquiring land that is state-owned, subject to an existing lease, or the subject of pending litigation. Multiple sale of the same parcel, "landguardism", and unclear stool or family land records are well-documented traps in the Ghanaian land market; companies that do not conduct title searches before purchase is those most likely to lose projects, deposits, or both.

Governance Failures in Practice

a. Red Flags for Ghanaian Developers

Practice and commentary on the sector point to a consistent set of warning signs that a real estate developer's governance is inadequate: selling land or units without a registered title; a single individual signing all company documents with no board oversight; cash payments made without receipt; reliance on informal, unlicensed "site security" in place of proper security arrangements; and the absence of an annual general meeting for twelve months or more. None of these, individually, is conclusive of wrongdoing, but their presence, particularly in combination, should prompt heightened scrutiny from investors, lenders, and prospective purchasers alike.

b. Illustration: The SuCasa Properties Experience

The experience of SuCasa Properties, a Ghanaian residential developer that expanded rapidly from around 2018 onward on the strength of an off-plan sales model, illustrates several of the governance risks discussed above, while also underscoring the importance of distinguishing verified fact from allegation. From 2023 onward, groups of buyers — including a significant number resident abroad — publicly accused the company of taking substantial deposits for off-plan units without escrow protection and failing to deliver within the promised timeframe, and pursued both individual and class claims for breach of contract and recovery of funds.[23] The company has consistently denied insolvency or wrongdoing, attributing delays to macroeconomic conditions — in particular currency depreciation and inflation — and to defaults by some purchasers on their own payment obligations, and it has pointed to phased delivery at its flagship project as evidence of continued performance.[24] Whatever the ultimate resolution of the underlying disputes, the episode illustrates a structural governance risk that recurs across the sector: the absence of a legal requirement that off-plan deposits be held in escrow, separate from a developer's general working capital, leaves purchasers exposed to exactly the commingling-of-funds risk that robust corporate governance — in particular, a board-approved treasury policy separating project accounts from company accounts — is designed to prevent.

Judicial Trends: Good Faith and Title Diligence in Ghanaian Real Estate Litigation

Ghanaian courts have, across a run of recent decisions, articulated a consistent expectation: that a party dealing in land — whether as purchaser, developer, or lender realising security — must exercise genuine diligence before asserting good faith or bona fide purchaser status. Four decisions illustrate the point.

Nana Yaw Owusu & Others v Hydraform Estates Ltd.[25] The respondents had purchased land relying on a default High Court judgment and an indenture from the vendor stool; the appellant asserted an earlier title through a lease predating that judgment. On further appeal, the Supreme Court held that the Court of Appeal had erred in upholding the respondents' plea of bona fide purchaser status without prudent searches, set aside the possession order made in their favour, and affirmed the dismissal of the appellant's own counterclaim for failure to prove root of title. Neither party, in the result, succeeded in proving title. The decision stands for the proposition that a plea of bona fide purchaser cannot be sustained without evidence of genuine, prudent title searches undertaken before purchase — a proposition of direct relevance to the due-diligence obligations discussed in Part VII(D) above.

[21]Appenteng v Bank of West Africa Ltd [1961] GLR 196 (HC); affirmed Bank of West Africa Ltd v Appenteng [1972] 1 GLR 153 (CA). Act 992 has since narrowed the practical reach of the proper-plaintiff rule considerably through its derivative and representative action provisions: see ss 200–205.[22]Land Act 2020 (Act 1036) s 236 (unlawful occupation or sale of public land) and ss 237–242 (compulsory acquisition procedure). [23]See eg 'Sucasa Properties accused of breach of contract' The Business & Financial Times (Accra, 18 September 2024). [24]See eg 'Sucasa Properties debunks bankruptcy claims' The Business & Financial Times (Accra, 25 September 2025). [25]Nana Yaw Owusu & Others v Hydraform Estates Ltd, Civil Appeal No J4/62/2013, [2014] GHASC 150 (Supreme Court, 26 March 2014).

Prince of Peace Academy & Rosina Quaye v Unibank Ghana Ltd, Dela Akpey and Ideal College.[26] The plaintiffs sought to invalidate a mortgagee's auction sale of their property, alleging that the sale had been conducted in bad faith and was procedurally irregular. The High Court held that, while a transaction proven to have been conducted in bad faith may be set aside, the burden of proving bad faith lies squarely on the party alleging it; vague assertions do not suffice, and where a transaction complies with standard statutory procedure — such as public notice of auction — the presumption of regularity will prevail over an unsubstantiated claim of bad faith.

Deeper Christian Life Ministry v Landline Properties (Gh) Ltd.[27] In proceedings arising from an alleged failure to disclose adverse claims over a property, the High Court considered the vendor's conduct in the context of the duty of good faith owed to a purchaser. The decision is illustrative of the broader judicial willingness, discussed throughout this Part, to scrutinise non-disclosure in property transactions; a pinpoint citation and fuller statement of the holding should be verified against the official report before reliance is placed on the specific relief said to have been granted.

Randi Lartey & Others v Yaw Aboah Djin and Justiny Co Ltd.[28] Both parties claimed the disputed property through the same original grantor. The Supreme Court rejected the appellants' plea of bona fide purchaser status, holding that a party who fails to conduct proper physical and statutory searches at the Lands Commission — or who ignores a physical occupant on the land — cannot rely on a bare paper title to establish good faith. A rushed or incomplete title investigation, the Court held, cannot cleanse what is, in substance, a bad-faith transaction.

Read together, these decisions reinforce the governance point made throughout this article: Ghanaian courts do not treat registration or possession of paper title as, by itself, sufficient to establish good faith. They expect the kind of prudent, board-sanctioned due diligence that Part VII(D) identifies as a core governance obligation of a real estate company's directors, and a developer that skips this step exposes itself to the same litigation risk as an individual purchaser who does the same.

Conclusion and Recommendations

Corporate governance in Ghana's real estate sector rests on an adequate legal foundation. The Companies Act 2019 imposes clear fiduciary duties, structured conflict-of-interest rules, and a workable distribution of corporate power between board, members, and officers; the Land Act 2020 and the Lands Commission Act 2008 provide the tools — registration, disclosure, and a mechanism for challenging unlawful dealings in public land — necessary to protect the integrity of title. What the sector lacks, on the evidence surveyed in this article, is not law but compliance culture. Directors must be law-abiding, complying with all applicable law, in particular Act 992; they must understand their company's mission and capacity, rather than allow personal ambition to substitute for institutional strategy. Corporate governance in the sector will succeed where directors commit to core virtues — prioritising purpose over expedience, listening to professional advice, including that of the company secretary, remaining accountable and objective, avoiding conflicts of interest, cultivating professional diligence, attending to the quality of their disclosures, maintaining a genuine communication culture with shareholders and purchasers alike, declining to exceed their authority, and meeting their obligations on time.

On the basis of the analysis above, four recommendations follow. First, real estate companies that are not currently listed should nonetheless adopt, as a matter of voluntary best practice, the SEC's board-composition standards — in particular, a majority of non-executive directors and a genuine separation between the managing director and board chair roles. Second, boards should adopt, and enforce, a written related-party transaction policy requiring disclosure under section 195 of Act 992 before any director, or an associate of a director, sells or leases land to the company. Third, boards should mandate independent title searches at the Lands Commission before authorising any land acquisition, and should treat the absence of such a search as a governance failure in itself, independent of whether the underlying title later proves defective. Fourth, and finally, regulators and industry bodies such as GREDA should consider whether off-plan deposit protection — in particular, mandatory escrow arrangements of the kind already common in other jurisdictions — ought to be adopted as a binding standard for the sector, rather than left to individual developers' discretion.

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