

# **NICHOLSON PHILLIPS**

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### **MY ISLAND IN THE SUN**

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The first in a two part article on land acquisition, development and disposal in Jamaica for Jamaicans residing overseas.

Real property is commonly viewed as the most enduring form of investment a person can make. Treated very differently in law from personality (i.e., other forms of property such as cars and washing machines), the acquisition, ownership and disposal of land can present problems for the unwary. The situation is worsened when the land you own is many thousands of miles away and is governed by a system of laws with which you are unfamiliar and an administrative and legal culture which offers less efficiency than one is accustomed. It is often the case that less care is taken and more is taken for granted with such

Investments when propriety would suggest that it be the other way around. Some will leave investment decisions to inexperienced (sometimes even dishonest) family members, at times with disastrous financial consequences. Even when a local attorney is instructed, poor communication, varying degrees of competence and unmet expectations can result in dissatisfaction. This article attempts to answer some questions which are frequently asked, and others which are rarely asked, but should be.

#### **1. I own land in Jamaica which I would like to sell. How much will it cost?**

Certain duties and fees are payable on the disposal of land. Transfer Tax is payable at the rate of 7.5% of the market value of the land, stamp duty at around 5.5% and a fee of around 0.5% on the registration of the transfer of ownership. These latter two fees are usually shared equally between the seller and the purchaser.

In addition there are attorneys fees, (which vary from firm to firm) from around 2.5% to as much as 5% of the consideration, plus a charge of around J\$20,000.00 to J\$40,000.00 for preparing the agreements and around J\$3,000.00 to J\$8,000.00 for preparing letters of possession and a notice to the property tax office. Again, these latter two fees tend to be shared between the seller and purchaser. The attorneys' fees are subject to General Consumption Tax at the current rate of 15%.

Don't necessarily assume that cheaper attorneys will give as good a service as more expensive ones or indeed that expensive attorneys are the best. You would do better relying on recommendation and

experience as your guide quality of service than rates.

**2. I live overseas and own property in Jamaica. I would like to leave this property to my daughter in Jamaica, how do I go about it?**

You may leave the property by your existing will. You do not need to prepare a separate Jamaican will. Simply ensure that your Jamaican property is clearly identified and that's all the formality that's needed. When you eventually pass away, your lawyer will send the will to a Jamaican attorney who will deal with transferring the legal title of your property to your daughter.

**3. I have heard that death duties are payable when, someone who owns land in Jamaica dies. Is this true?**

Yes (and other assets too such as shares and debentures in Jamaican firms). The amount of duty depends upon the net market value of the land and is payable on the value of the deceased person's share. As an example, if your late father's land is worth J\$600,000.00, the duty will be approximately J\$84,500.00. On the other hand if property, jointly-owned with your wife, is worth J\$5 million the duty payable on her half share when she passes away will be approximately, J\$369,500.00 You should seek advice early since duty is payable within 12 months of the death. After that time, interest on the overdue duties accrues at the rate of 6% per annum.

The duty cannot be avoided, (although there are exemptions you should ask your attorney about) and the property cannot be legally transferred to anyone else, whether by gift or sale until the duties are paid. Penalty and interest continue to accrue until the duties are paid. Therefore, it is an obligation best dealt with earlier rather than later.

Sometimes a seller simply does not have the funds to pay the duty until the land is sold. Of course this can be a catch twenty-two, since the land cannot be sold until the duty is paid. Speak with your attorney - he or she may be able to arrange to have some of the purchase monies advanced if you plan to sell, or suggest some other arrangement on your behalf.

It should be said that death duties are better anticipated prior to death than by dealing with afterwards. Speak to your attorney about estate planning.

**4. I have been hearing stories of Jamaican attorneys making off with clients' funds and sometimes even their land. How can I protect myself from this happening to me?**

This is an extremely unfortunate state of affairs. When horror stories like these travel to the ears of overseas landowners, it certainly does little to inspire confidence in Jamaican lawyers. That's the bad news. The good news is that not all Jamaican lawyers are dishonest, of course. So how do you avoid the dishonest ones? Attorneys-at-law who are licensed to practice in Jamaica will have been issued a certificate by the Council of Legal Education, which is renewable annually. Accordingly, you can either ask to see a prospective attorney's practicing certificate or, more discretely, contact the Council directly (78 Harbour Street, Kingston tel 922 2319 fax 924 91 90) and ask the Council to confirm that the attorney you propose to use is currently licensed to practice. That's a first step, it won't ensure that he or she is honest necessarily, but some dishonest ones have been disbarred recently and you are much less likely to instruct someone who describes him or herself as an attorney who is in fact not!

The best thing you can do however, is go by recommendation. Either ask your home lawyer if he or she can recommend someone, or take the personal recommendation of someone you trust who has completed a transaction with an attorney in Jamaica and is satisfied. Try to obtain your recommendation from someone living in Jamaica or experienced in the Jamaican marketplace - many of the unscrupulous attorneys are suspected to be so long before they are actually caught up with - so a check with the local grapevine will do no harm.

Finally, ask questions of your proposed lawyer - they should be willing to answer your non-legal questions to your reasonable satisfaction questions such as likely length of time, approximate costs and so on. Ask about fees and get quotations for your proposed transaction in writing.

One final thing, once you've chosen your attorney, if you find yourself asking repeatedly for a report on your transaction without results, move quickly. Complain directly to the attorney, or if its a firm the senior partner, and if you get no satisfaction, report the attorney concerned to the General Legal Council and instruct another attorney. Situations rarely improve with the passage of time and in some cases, time only allows the errant attorney to sink him or herself further and further into debt, making restitution to you (and usually others!) even harder, if not impossible.

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