

## MY ISLAND IN THE SUN

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

### **5. I have been advised to pay for the services of a surveyor. What can I expect the surveyor to do for me?**

Surveys in Jamaica are advisable and/or necessary in the following circumstances: when you (a) are purchasing property in a scheme; (b) are unsure of the boundaries of your lot; (c) are purchasing with the assistance of a mortgage; (d) propose to sub-divide the land you already own; (e) propose to build on your land in short whenever you require information about the scope and nature of the land either for acquisition, development or financing purposes.

The most commonly commissioned survey is the identification survey, which essentially identifies the land legally and by way of its boundaries and indicates breaches of restrictive covenants. It will tell you nothing of the appropriateness of the land for your proposed construction however, for that you need a topographical or contour survey.

Location surveys are advisable when you need to know exact boundaries for construction, or to build a wall or excavate near a boundary; or to solve encroachment problems; or replace dislodged or removed boundary pegs.

Please note that if you are acquiring land, do go along with a commissioned land surveyor (recommended to you) or send a representative that knows the precise location of the land being surveyed. My firm was recently instructed by someone who was in possession of a survey in respect of one lot of land, but who had in fact mistakenly built his house on another. The result is that he has built on land not belonging to him and will have to remove it!

This is one of the perils of being absent when transactions are being conducted on your behalf. You are strongly advised to visit the island at least at the beginning of the purchase and be present when the survey is conducted even if you leave the remainder of the transaction for others to complete.

### **6. I have heard of a development in a part of Jamaica where I would like to live when I retire, or use as a holiday home. I am very interested, what should I do?**

Development can present problems, sometimes because developers require the funds up-front to commence the development, but then may run out of funds to complete the development, leaving a purchaser without his or her money and without a property. At best you will find yourself waiting an undue length of time for construction to be completed. At worst, you could find yourself in a line up of unsecured creditors each clamouring the attention of an insolvent developer's liquidator. There are statutory safeguards, but these won't assist where developers are unregistered or have contracted out of certain provisions. Other problems include unpredictable escalation costs which can add unanticipated costs to your acquisition, unexplained delays in construction and a host of other things.

You should consult an attorney immediately, and certainly before you hand over any sums on account or sign an agreement. An informed attorney will be able to inform you of any tax advantageous ways of acquiring your apartment or house in a scheme and advise you on your liability to pay or ability to charge interest amongst other things.

## **7 I Plan to sell my land. Should I use a real estate agent (or realtor) or not?**

Again, provided that one is recommended to you, go ahead and use a realtor. Ensure that your realtor is registered and licenced by the Real Estate Board (8 Dominica Drive, Kingston 5 tel 926 9748 fax 926 0010) and that you know.

in advance the amount his or her fees and when they will be payable. A realtor will charge you anything from 3-6% of the sale price of the property (plus GCT), which will usually be payable upon completion of the transaction.

A word of warning. If you contract with a realtor to sell your property and enter into a contract with a potential buyer as a result of an introduction by that realtor and for some reason you choose to back out of the deal, you may still be liable to pay the realtor his or her commission!

## **8. I hear that Jamaican attorneys are expensive, is this true?**

Certainly Jamaican Attorneys appear to be more expensive than you may be accustomed to. Professionals generally cost more in Jamaica than their counterparts in England, Canada and the USA. Whatever the reason for this I know that it does not always pay to try and cut attorneys' costs by either doing a transaction yourself or getting a relative to do it. Jamaica has not progressed yet, to using standardised contracts, and accordingly, each contract has to be individually negotiated by the attorneys acting for both parties. It has to be said that only an attorney practicing in the field is likely to know what provisions are relevant and appropriate to the events which tend to be occurring in the market at the time of the proposed transaction. My view, is that you should budget for the fees and bite the bullet. In most cases the peace of mind is well worth paying for.

## **9. I know roughly the value of the property I am selling, what's the point of getting a valuation?**

Valuing land is not a precise science and is better undertaken by someone experienced at factoring in the many variables that can affect land values - factors such as location, supply and demand, availability and cost of finance and general market considerations. A competent valuer (valuers are also required to be registered by the Real Estate Board) will also pick up when additions or improvements have been made to a property. This may be important to know, since it may have been done prior to your acquisition, in breach of a restrictive covenant, and will almost certainly affect a potential buyer, especially one who will require a mortgage.

It also takes the guess work Out of the matter, giving either party peace of mind that they are not overbuying or underselling. Further, it may come in useful if the Commissioner of Stamp Duties decides to assess the value of the property for transfer tax and stamp duty.

## **10. How long will my sale take?**

This depends on whether the purchaser has cash or is buying with a mortgage. Usually if it is an assisted acquisition, it will require from around 90 to 150 days to complete. A cash purchase can complete in as little as 4-6 weeks. Note: completion in Jamaica means title being registered in the buyer's name, not necessarily when the purchase monies and documents of title are exchanged. And, if a mortgage is involved, the mortgage company will not pay out until the mortgage company's interest is registered on the title. So, when your transaction is proceeding you should factor in an additional 3-6 weeks (approximately) for registration, and ensure that your completion date will readily accommodate that time frame, otherwise you may find yourself paying interest for late completion if you are a buyer, and sitting on your hands waiting for your monies if you are selling.

I have found that completion dates are rarely adhered to in Jamaica - and certainly not with the degree of precision you may be accustomed to. Sometimes this is due to the agencies involved, such as the mortgage companies or the Office of the Registrar of Titles, who simply do not facilitate timely transactions. If time is of the essence to you, then tell your attorney. He or she will draft in provisions which, although cannot ensure that the buyers complete on time, will render the buyers liable to compensate you if they don't.

Lorna Phillips LL.B., LL.M, Solicitor, migrated from England to her parents' country Jamaica, in 1994 where she

practices as an attorney-at law. She is a commercial law partner in a New Kingston law firm and a part time lecturer at the University of the West Indies.

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