

Conveyancing and The Law of Real Property

The questions may be asked what is Conveyancing and why is it attached to the Law of Real Property.

When dealing with the Law of Real Property there are two fundamental points which must be understood---

- (i) You acquire knowledge of the rights and liabilities attached to the interests of the owner in the land and
- (ii) The foundation of the Rules of Conveyancing.

It is not easy to distinguish accurately between Real Property and Conveyancing. It is said that Real Property deals with the rights and liabilities of land owners. Conveyancing on the other hand is the art of creating and transferring rights in land and thus the Rules of Conveyancing and the Law of Real Property cannot be distinguished as separate subjects though related closely but should be distinguished as two parts of one subject of land law.

The Conveyancing and Law of Property Act enacted in The Bahamas in 1909 followed the English Act which was enacted for the purpose of simplifying and improving the practice of Conveyancing. The provisions of Section 2 of this Act specifically provide for the construction of Conveyances, Mortgages and other Instruments, all of which are defined therein and provision is also made for amending in various particulars of the Law of Property as required. This Act has been amended over the years to accommodate changes which have resulted in the development of the sale and conveyance of land in The Bahamas.

The Law of Real Property has been deeply marked by the course of its history from the use and disposition of the manor land and tenements to the present-day conveyance of the freehold ownership in fee simple to a Purchaser. Today all purchasers of land in the Bahamas acquire a fee simple freehold ownership in the land which is the highest tenancy which can be acquired; the ultimate owner of all Bahamian land being the Crown.

It must be stressed that when an attorney in his capacity as a Conveyancer receives instructions to act on behalf of a client who is purchasing land i.e. real estate; it is a fundamental rule that the attorney understands the Conveyancing and Law of

Property Rules and his first act must be to undertake an investigation into the title of the Vendor's property. This search which must be conducted in the Register of Deeds and should involve a period of time of thirty years or longer in the case where the date of the Vendor's Deed is older than thirty years.

The Cause List search is undertaken in the Supreme Court Registry and the purpose of which is to ascertain whether there are any liens pending against the Vendor in the Supreme Court Register. If there are pending liens, they must be settled by the Vendor before he is able to sell the property.

The original documents of title must be produced by the Vendor and delivered to the attorney for review. If the Vendor is unable to produce the same and the attorney has found the title to be good and marketable, then the Vendor must sign and swear an Affidavit of Loss in respect of such lost or misplaced documents to support such good and marketable title.

Once it is ascertained the attorney approves the Vendor's title as good and marketable, the attorney must sign a Report on Title to the effect and proceed with the preparation of the requisite type of Conveyance in favour of the Purchaser which will be required to complete the matter.

Unless and until the attorney is able to produce a good and marketable title in respect of the Vendor's ownership of the land, he cannot approve title and the sale of the land cannot be completed.

It should be the ultimate duty of a Purchaser to insist that his attorney discuss the results of his Search Reports and review the documents of title with him to ensure that the Vendor has produced a good and marketable title in respect of the property which he is purchasing.

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