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MAGCO LEGAL LESSONS NO. 36

LEGAL TOPIC: CONVEYANCES ON SALE

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According to the **Black's Law Dictionary (6th ed.)**, a conveyance refers to the transfer of title to land from one person, or class of persons, to another by Deed. Conveyancing is defined therein as the act of performing the various functions relating to the transfer of real property.

In this article, we will examine the conveyancing process for the sale of land, particularly the three main stages of a transaction:

- I. The Pre-Contract Stage;
- II. The Contract Stage: and
- III. The Conveyance Stage.

This article will be focused on the Common Law System or unregistered system of conveyancing, particularly as it relates to the **Conveyancing and Law of Property Act Chap 56:01 of the Laws of Trinidad and Tobago** (hereinafter referred to as "the CLPA").

I. The Pre-Contract Stage

When a person is desirous of purchasing real property from another, there are certain enquiries that they must make from the property owner. It should be noted however that any statements made by a vendor to a purchaser during their negotiations generally cannot be held against the vendor: **Hill v. Harris (1965) 2 QB 601**. The rule of *Caveat Emptor*, that is “let the buyer beware”, applies and a purchaser would assume the risk of the property not being what the vendor expressed it to be. Therefore, the purchaser must make their independent enquiries in respect of the property, and most importantly the Purchaser should retain the services of their own Attorney to guide and advise them through the process; all of this which would also be discussed hereunder.

The important information and documents the purchaser should obtain from the vendor are as follows:

1. The purchaser should obtain a copy of the deed by which the vendor obtained their title to the property. The deed would verify whether the vendor owns the property, and it would contain a description of the same which would be useful to the purchaser, as discussed hereunder.
2. The purchaser should ask the vendor whether the property is or was subject to a mortgage and if yes, the purchaser should obtain the mortgage deed and a deed of release if any;
3. The purchaser should enquire whether the vendor obtained Town and Country Planning approvals in respect of the property, to ensure that the purchaser can utilise the property for the purpose that they intend to use it for;
4. The purchaser should ask the vendor for an up-to-date WASA Clearance Certificate and an up-to-date Land and Building Tax Receipt for the property. The purchaser should also obtain a Certificate of Assessment from the District Revenue Office to verify whether the vendor is registered with the Warden’s Office as the owner of the property and to identify any WASA liens in respect to the same; and

5. The purchaser should request from the vendor permission to conduct a site visit on the property. The purpose of this would be to allow the purchaser to ascertain the physical condition of the property, its boundaries, and any defects to the same. The purchaser should also assess the means of access to the property, whether there are any adverse possessors or squatters on the same, any negatives in the area such as the crime levels in the surrounding areas, and the proximity of the property to city areas, schools, grocery stores, and the easy availability and accessibility to public utilities.
6. The Purchaser should also request and if not available, should commission a Survey Report to determine the actual physical location and boundaries of the property and whether there are any encroachments and/or incursions or trespasses occurring in respect of the property.

Once the purchaser's Attorney has made all of the above enquiries and the Purchaser is desirous of proceeding with purchasing the property, the next step is the preparation of an agreement for sale. An agreement for sale must be in writing and signed by at least the vendor so that it can be enforceable under **s.4 of the CLPA**, which basically repeats the similar wording from the old Statute of Frauds, and provides as follows:

“(1) No action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, **is in writing, and signed by the party to be charged** or by some other person thereunto by him lawfully authorised.”

The essential contents of an agreement for the sale of land are as follows:

1. Preparation Certificate: This is a certificate that would be signed by the Attorney-at-Law who prepared the agreement.
2. Commencement Date: The agreement should specify the date on which it commences or takes effect.

3. Names and Descriptions of the Parties: The parties to the transaction must be identified by their names and addresses, and the capacities in which they are entering the agreement must be specified.
4. Description of the Property: The agreement must sufficiently identify the property and contain a description of the same which is usually inserted in the schedule therein. Usually, the description of the property is obtained from the vendor's title document.
5. Seising Clause: This identifies the estate and interest that the vendor has in respect of the property, or in other words, it sets out how they became the owner and seised in possession of the same.
6. Consideration: The agreement must indicate that the vendor intends to sell the property to the purchaser and that the purchaser intends to buy the same at an agreed price which is the "Purchase Consideration". The purchase price of the property would also be included as well as the deposit to be paid. Deposits are usually 10% of the purchase price and do not exceed this unless there are special circumstances that warrant its increase (**Worker's Trust and Merchant Bank v. Dojap Investments Limited (1993) 2 All ER 370**). The deposit is necessary as it demonstrates the Purchaser's good faith and earnest money and that the purchaser is serious about purchasing the property, or in other words, according to the Court in **Soper v. Arnold (1889) 14 AC 429**, "it is a guarantee that the purchaser means business"; because as we all know "Money Talks...."
7. Completion Clause: This clause will specify the time in which the sale is to be completed or the date by which it is to be completed. The time for the completion of the sale is usually ninety (90) days and that date is known as the "Completion Date"..
8. Warranty of Title Clause: This clause should stipulate that the vendor would deliver up the property with vacant possession (**Cook v. Taylor (1942) Ch. 349**),

that the vendor has good and marketable title to the property and that it will be sold free from encumbrances (**Mungalsingh v. Juman 2015 UKPC 38**).

9. A Stakeholder Clause: The agreement for sale may specify that the deposit would be paid to a stakeholder and held by the same until the completion of the sale, should the parties agree to this.
10. Default Clause: This clause will specify the remedies that would be available to the parties should there be a breach of the agreement by either of them, namely:
 - a. If the purchaser fails to complete the sale, the vendor can seek damages for breach of contract, specific performance to compel the purchaser to complete, or the purchaser would be forced to forfeit the deposit;
 - b. Should the vendor fail to have good and marketable title through no fault of his own, the purchaser can recover the deposit in addition to interest and expenses for the preparation of the agreement;
 - c. Should the vendor fail to have good and marketable title due to his own fault, the purchaser can recover their deposit and sue for damages for loss of bargain; and
 - d. If the vendor fails to complete the sale, the purchaser can seek specific performance of the agreement to compel the purchaser to complete the sale or recover the deposit and sue for damages for loss of bargain.
11. Schedule: This will contain a description of the property, particularly its location and a physical description of it, inclusive of its size, boundaries, access points, restrictions and easements.
12. Testimonium and Attestation Clause: It would be stipulated that the parties agree to the terms of the agreement, which they will then sign thereunder. The agreement should also be witnessed by a third party and by an Attorney-at-Law.

II. The Contract Stage

After the agreement for sale has been executed, the parties must complete the sale within the time specified for completion in the agreement. During this time, there are completion documents that must be acquired by the purchaser's Attorney-at-Law, a title search must be conducted on the property, and the Deed of Conveyance must be prepared. We will now examine these steps and outline what they entail.

Completion Documents

Before a sale is completed, numerous completion documents must be acquired and each serves an important purpose. These documents are as follows:

1. Identification of the Parties: This is required to confirm the identities of the parties. It would be preferable if the parties' National Identification Cards and their Passports be obtained. Alternatively, the parties may provide their Driver's Permits or Birth Certificates.
2. Trinidad and Tobago Electricity Commission Bills: The parties should provide their bills that are not older than three (3) months so that their respective addresses can be confirmed.
3. Water and Sewerage Authority (WASA) Clearance Certificate: Unpaid WASA bills act as charges on properties, which vests the Government of Trinidad and Tobago with a priority for lien and/or Power of Sale over the same, so that's why it is always critical to obtain a WASA Certificate of Clearance before proceeding to buy any property. In other words, any outstanding WASA bills can create an encumbrance on the property. The WASA Clearance Certificate should be obtained from the vendor and it would verify that there are no such charges.
4. Up-to-Date Land and Building Tax Receipt: Similar to the encumbrance created over property by an unpaid WASA bill, any unpaid Land and Building Taxes vests the Government with the ability to impose liens and priority for Power of Sale over the property. As such, to determine that the property is not encumbered

before purchase, an up-to-date Land and Building Tax Receipt should be obtained from the vendor and this will show that the said Tax has been paid.

The requirement for the above two documents was highlighted by the Court in **Mungalsingh v. Juman 2015 UKPC 38 [20]**, wherein it was stated as follows:

“Accordingly, it is understandable why a buyer of property would wish to be sure that neither water rates nor land tax were owing in respect of that property before he completes his purchase.”

5. Vesting Deed: This should be obtained to derive the instrument or medium by which the vendor has derived their interest in the property. This would contain a description of the property that the purchaser’s Attorney-at-Law may utilise to request a title search on the property, which is discussed hereunder.
6. Deed of Release: Mortgages create encumbrances over properties. If the property was subject to a mortgage, the vendor must provide a deed of release which indicates that the mortgage was paid off and the Equity of Redemption was effected by the return of the Legal Title to the Vendor.
7. Redemption Statement and Settlement Letter: If the property is subject to a mortgage that has not been paid off, a redemption statement and settlement letter ought to be obtained from the Mortgagee, which would typically be the Financial Institution which provided the Mortgage. These would be requested from the mortgagee and would demonstrate the rate of the mortgage, the excess of the security, and the portion of the purchase price to be paid to the Mortgagee to satisfy the Mortgagor’s outstanding financial obligations to the Mortgagor and then the balance (if any) would typically be paid to the Vendor.
8. Receipt of Attorney’s Fees: This is required for the preparation of the deed and the stamping of the same.

9. Subdivision Plans: If the property is part of a larger parcel of land, the vendor would be required to provide the subdivision plans in respect of the same along with the approvals from the Town and Country Planning Division showing their approval for the sub-division. The Purchaser's Attorney should also request a copy of the Cadastral showing the overall sub-division of the development and also the individual "Portion Plan" being the Survey Plan showing the individual Lot or Parcel which the Purchaser is purchasing and the boundaries and size thereof.

10. Valuation of the Property: This would be required for the payment of Stamp Duties and may also be required by a Mortgagee to assess the qualification criteria for the grant of a Mortgage.

Title Search

A vendor can demonstrate that he has a good and marketable title if he can compel the conveyance of his entire interest in the property (**Elliot v. Pierson [1948] Ch. 452**). A vendor must demonstrate that he has a good and marketable title to the property on the date of the completion of the conveyance rather than on the date the agreement for sale was made (**Re Atkinson and Horsell's Contract (1912) 1 Ch 1**). In other words, during the typical ninety (90) day closing period, the Vendor is allowed to take steps to perfect his Title even if it wasn't perfect at the time of entering into the Contract of Sale of same.

In order to determine whether a vendor has good and marketable title to the property being sold, a title search would have to be conducted on the property. The purchaser's Attorney-at-Law would request the title search usually from an Independent Title Search Clerk, in order to determine the validity of the "Root of Title" and the "Chain of Title". This title document is referred to as the "abstract of title." These principles were expressed in **Chaitlal v. Ramlal (2003) 62 WIR 449 [24]** as follows:

"...it seems that he thought that the vendor would be under a duty to provide the purchaser with information as to his title deeds, at any rate for the first two or three months after the date of the contract. Ibrahim JA said that what happened in practice was that the vendor supplied the purchaser with 'information that evidences his

acquisition of the land in question' and that the purchaser's attorney used that information as a starting point to search the title. In their lordships' view the practice there stated must be taken to represent an obligation imposed by law on the vendor. It is inconceivable that the law, at any rate in the first instance, would relieve the vendor of all responsibility for doing what he could to satisfy the purchaser as to his title.”

In conducting the said search, a root of title would have to be ascertained. In **Ralph B. Murray v. Hendrickson Biggart HCA No. T101 of 1998 [9]**, the Court defined a root of title as, “a document purporting to deal with the entire legal estate in the property and not depending upon any previous instrument for its validity and containing nothing to throw any suspicion on the title of the disposing parties.”

The Court also identified prime examples of documents which may provide a good root of title, namely:

- a) A legal mortgage;
- b) A conveyance on sale; and
- c) A specific devise in a Will followed by the relevant Deed of Assent.

A legal mortgage can be a prime indicator of a good root of title because it is unlikely that a mortgagee would grant a mortgage over a property unless title searches are conducted on the same and those searches reveal that the mortgagor has a good and marketable title, to the satisfaction of the Mortgagee. A conveyance on sale is considered the second-best indicator since it is likely that a purchaser would have conducted title searches on a property to determine that it had a good Root of Title before purchasing the same. The third indicator, being a specific devise in a Will, indicates that the property was gifted to a specific person, but this does not show that searches on title were conducted or that there is a good Root of Title.

Once it is determined that the vendor has good and marketable title to the property, the purchaser’s Attorney-at-Law would then prepare a Deed of Conveyance for the conveyance of the property from the vendor to the purchaser. The deed of Conveyance

would contain some similar clauses as would be in the agreement for sale inclusive of the preparation certificate, date of creation, names and description of parties, a description of the property, a seising clause, the consideration, an attestation clause, and a schedule. The Deed of Conveyance must also contain a clause that specifies that the vendor transfers the property to the purchaser, and this is referred to as the habendum. An example of this is as follows: *“the vendor hereby conveys unto the purchaser all the said lands and hereditaments described in the schedule hereto to hold the same unto and to the use of the purchaser in fee simple free from encumbrances.”* The Deed of Conveyance would also outline the covenants, easements and rights of way (if any), that the property is subject to or entitled to.

III. The Conveyance Stage

After the deed of sale is prepared and the parties have reviewed the same, the said deed may be executed by them. The execution of the deed must be witnessed by a third party and an Attorney-at-Law. The said third party is usually the clerk of the Attorney-at-Law for the purchaser. Further, the purchaser must pay the purchase price of the property to the vendor, and this is normally done by a certified cheque.

Following this, the purchaser’s Attorney-at-Law will prepare an affidavit of due execution that would be deposed to by the third party who witnessed the execution of the deed. This document and the deed would then be commissioned by having it witnessed and signed and stamped by a Commissioner of Affidavits, which is necessary for the registration of the Deed of Conveyance. Further, the purchaser must pay stamp duty (where applicable) to the Inland Revenue Division pursuant to the **Stamp Duty Act Chap. 76:01 of the Laws of Trinidad and Tobago**. The stamp duty would be calculated based on the value of the property and so, a Valuation Report for the property ought to be submitted with the Deed of Conveyance to the Inland Revenue Division.

Finally, the deed should be registered at the Land Registry, Registrar General’s Department of the Ministry of the Attorney General and Legal Affairs, pursuant to the **Registration of Deeds Act Chap. 19:06 of the Laws of Trinidad and Tobago**.

Conclusion

Indeed, the process for the sale of land is a lengthy one, but it is essential that all the necessary steps be followed to ensure that the process is properly executed. Parties to every conveyancing transaction are strongly urged to seek independent legal advice in respect of the transaction and the requirements for same and it is therefore imperative that each party should seek the services of their own Attorney to guide them through the process, so as to avoid pitfalls and punishment which can come from trying to do these transactions without retaining your own Attorney, or by relying on the other party's Attorney as your Legal Counsel; so as to save the money of paying an Attorney's Fee. Usually such scenarios can result in short-term gain and long-term pain. Please do not attempt the conveyance and/or purchase of a Property without the services, guidance and counsel of your own Attorney as that is a risky endeavour fraught with many dangers and pitfalls.

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