Buying And Selling Land

Advice To Buyers



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Before you agree to buy any immovable property (i.e. land with or without a house and/or other buildings on it) you should:

1. **Get the property valued by an independent valuer**, so that you know whether the property is worth what the seller is asking for it.
2. **Ask to see the document of title to the property** (the transport if the land is unregistered; the certificate of title if the land is registered' or the lease if that's what you're buying) so that you can make sure that:
   (a) the property is owned by the seller (or the person who has authorised the seller to sell for her/him under a duly registered power of attorney. See Section Number 15 on Powers of Attorney);
   (b) the property described is the property you want to buy (you may need to look at the plan mentioned in the description of the property);
   (c) you will be buying full ownership of the property and not just a share in it (unless that's what you want); and
   (d) the property is not subject to any mortgage or other charge or lease that you have not been told about.

3. **Inspect the property** so that:
   (a) You can see for yourself what you will be buying; and
   (b) You can see whether anything the seller has told you about it is true, for example that no one is living in it.

The Agreement Of Sale

An agreement of sale should be in writing and should contain the following terms:

Parties – The names and addresses of the seller and buyer.

Property – The description of the property taken from the transport, certificate of title or lease.

Price – It is usual for the buyer to pay 10% of the price as a deposit on the signing of the agreement and the balance on completion (i.e. the passing of transport, title or lease). It is not advisable to pay all of the purchase price before completion, but you may agree to pay more than 10% if you are getting early possession.

Possession – When the buyer will get possession (usually on completion) and whether it will be vacant possession (vacant possession means that the property is free from tenants or other occupants).

Expenses – It is usual for the seller and buyer to share the expenses equally. The expenses comprise registrar's fees, duty, lawyers' fees and swearing fees. Apart from the last item and the lawyer's fees for preparing the agreement of sale, the amount to be paid is based upon the value of the property accepted by the Registrar of Deeds. (An affidavit of valuation of the property may have to be filed to ensure that duty is paid on the full market value of the property.) The higher the value, the greater the expense. A buyer and/or seller can ask to be shown how the amount she/he is asked to pay has been calculated.

Rates and Taxes – These are usually paid by the seller up to the date of completion.

Rents – If the property is rented rents are usually received by the seller up to the date of completion.

Performance – It is usual for time to be of the essence of the agreement so that if one of the parties fails to keep her/his end of the bargain within the time fixed the other can straightaway treat the agreement as at an end and take legal action.

Completion – A time limit (usually 3 or 4 months) is fixed for the completion of the purchase.

It is advisable to have a lawyer prepare the agreement of sale. One lawyer can act for both parties (but should not act for either if a dispute arises) or they can go to different lawyers.

If the agreement of sale is not in writing one party will not be able to enforce it against the other unless either there is some written evidence of it signed by the person to be sued (e.g. letters), or there has been part performance of the agreement by the party suing. Legal advice will be needed on this.

After The Agreement Has Been Signed

The necessary documents are prepared by the lawyer(s) and filed at the Deeds Registry. The Registrar's fees and duty are paid at the time of filing.

If the land is under the transport system the sale must be advertised in the Official Gazette. If no one opposes the sale within 13 days after advertisement the transport or lease can be passed in the Transport Court (a special court of the High Court which is usually presided over by the Registrar of Deeds). Both parties or their attorneys will have to attend Transport Court to sign the transport or lease. The new document of title can be collected from the Deeds Registry about 3 weeks later.

If the land is registered land under the Land Registration System there is no advertisement. The Transfer is merely registered at the Land Registry and the new document called a Certificate of Title may be collected about 3 weeks later.

Compliance certificates must be obtained by the seller or lessor and lodged at the Deeds Registry or Land Registry before the transport or lease can be passed or the Transfer registered. These are (1) from the local authority confirming that rates and taxes have been paid and (2) from the Internal Revenue Department confirming that the seller does not owe any taxes.

If The Buyer Or Seller Won't Complete The Agreement

If the buyer won't go through with the purchase the seller can forfeit the deposit and sue for damages for breach of contract if she/he will still be out of pocket (if, for example, she/he can't sell the property for as good a price as the buyer agreed to pay).

If the seller won't go through with the sale the buyer can sue for **specific performance** of the agreement. This is a judgment ordering the seller to pass title and authorizing the Registrar of Deeds to do so if necessary.

Mortgages

Many people cannot afford to buy land with all their own money and so get a loan for all or part of the price with the land as security for payment. In other words they mortgage the property. The mortgage may be given by the seller but it is usually given by a company in the business of lending money on mortgages.

The procedures for passing transport or a mortgage are very similar to the procedures for passing transport and title described above.

If the mortgagor ("i.e. the buyer /debtor) falls behind with payment of the mortgage installments the mortgager (i.e. the creditor) can sue and get judgment for the full balance due, have the property sold at execution (i.e. by the court) and be paid out of the proceeds of sale. This is known as a foreclosure.