

## **PROTECT YOURS INTERESTS WHEN COMMITTING TO THE PURCHASE OF PROPERTY IN THE BAHAMAS**

Two weeks ago a snugly built church on the Charles W. Saunders Highway was bulldozed by Arawak Homes Ltd. after receiving a court ruling confirming ownership of the property to the well known development company. In no time the building was demolished, the remains of which have become a focal point of frustration amongst the religious factions and its followers in New Providence. While some church leaders call the church demolition an event that marked the “darkest day” in the history of the church in The Bahamas [http://www.tribune242.com/09172009\\_pastorsofprayer\\_features\\_pg26](http://www.tribune242.com/09172009_pastorsofprayer_features_pg26), others fear that at more churches in our nation’s capital face possible demolition for occupying property that they do not legally own <http://www.jonesbahamas.com/news/45/ARTICLE/20527/2009-09-17.html>, and now the prominent Bahamas Christian Council have now called for an end to land manipulation indicating that “every possible effort must be made to avoid any re-occurrence of this most unfortunate event” <http://www.jonesbahamas.com/news/45/ARTICLE/20508/2009-09-15.html>.

Although the event is as common as a blue moon, calling the church demolition as the darkest day of the history of the church holds embellishing overtones; the real issue arising from this unfortunate occurrence involves the means in which fraudulent activities within real estate acquisitions can be eliminated from our island once and for all. As the saying goes, “Piracy may have expelled from The Bahamas, but the pirates never left...” Certainly the concept of land acquisition and ownership in the Bahamas is mentioned hand in hand with deception.

The event has highlighted the urgent need for the introduction of land registration procedures which would assist in confirming the legal ownership of property in the Bahamas. It not only brings forth the issue concerning liability within our legal profession, but also the conduct of legal professional during the dispute resolution process. On the surface it seems that attempts at negotiating the settlement of legal ownership of the property had broken down, and therefore the negotiation process should be reviewed. In similar cases, the amount pertaining to the settlement of the land ownership disputes would equate to the value of the land prior to the construction of the building structure, but such negotiations would not put a community based building structure at risk of being demolished.

The regulations proposed within the country’s arbitration bill may greatly assist the settlement of disputes of this nature. We propose that the planned arbitration legislation should also be exercised hand in hand with country’s real estate disputes and quieting title actions. If there is one aggravation that the citizens of our precious islands suffer from, it is the wearisome state of our judicial system. Thus it is our hope that the arbitration legislation will hold dynamic characteristics which will bring back the public confidence within our judiciary.

While we wait for our prayers of legislative changes to manifest and the church’s pastor weighs his legal options [http://www.tribune242.com/searchresults/09162009\\_canaanchurch\\_news\\_pg1](http://www.tribune242.com/searchresults/09162009_canaanchurch_news_pg1) (we believe that any further action by him will only result in monies wasted), there are ways of protecting one of the most important investments in your lifetime. This calls for the property title search on the property for sale and a cause list search on the current owner of the property.

In briefly discussing both search procedures, a property title search is used to determine an unbroken chain of ownership of land for the advised length of time of 30 years. A property search can also determine easements, covenants, and other hereditaments which may be present on the property including possible judgment and security liens brought on by banks and other lending facilities. A cause list search will determine whether the former or current owners of the property are subject to any judgments or orders by the judicial courts of The Bahamas. In case of the property's previous owners, judgments and/or court orders may affect the property should the judgment/ court order be imposed during the time the owner had legal possession of the property. Should the property be sold while under a court judgment/ order it may render the property unmarketable, and should deter any legal professional from advising on its purchase. In addition, uncertainties found during the title search and cause list search are often remedied by discovery of a recorded affidavit or a court document filed within the Supreme Court registry.

Other ways of avoiding disasters with property transactions include the following:

- Property sold at a significantly decreased value:

Particularly during these times of a troubled economy, land owners may reduce their asking price for property. On the other hand dishonest individuals are known to claim to own the property and request a 'quick sale' on the property without allowing you to undertake the necessary investigations to confirm the ownership of the property. As the current law does not make it mandatory for vendors to produce evidence of proper title, it is absolutely necessary for the purchaser to conduct a title and cause list search in order to confirm that the property fit for sale, in order to avoid these problems.

- Suspicious deeds/ documents for the property:

Hand written conveyance deeds, one page sales agreements, production of power of attorney documents and other non-traditional documents claiming to hand over possession of property are signs of irregular land transactions and should be approached with caution. At this point the potential purchaser should seek the involvement of an attorney before taking any further steps within the transaction.

- Property known to be inherited by its current/ previous owner:

It is a common occurrence for property to be possessed through inheritance; however the beneficiary must undertake the necessary procedures in order to legally possess the property such as probate actions and/ or the administration of the estate of the previous owner. Should there be no evidence that the alleged land owner has not undergone these procedures, we would advise that the purchaser refrain from taking any further steps in the transaction without the advice of an attorney.

- Property sold within areas known for having unmarketable title:

Unfortunately the subdivision in which the former church was located held a notorious reputation as a problematic area of unmarketable parcels of land. As other

subdivisions holding the same reputation exists, it is advised that such areas are approached with caution, and it is absolutely important that a detailed property title search is conducted in order to assist your decision. In normal cases, an attorney/search clerk will advise the potential purchaser of the repute of the subdivision and depending on their findings, will provide a detailed explanation of their discovery.

- Property located in Subdivisions in which no approval was granted:

The laws of the Bahamas Government indicate the requirement for approval prior to the establishment of subdivisions, and therefore it is important that the purchaser is made aware of the grant prior to committing to the purchase of any lot of land within these areas.

- Property sold by individuals with financial difficulties:

If it is known that the current vendor of the property has struck bad luck with his creditors, it is certain that they will seek court judgments on the vendor, and therefore placing a lien on his assets, including legally owned property in his possession. A cause list will determine whether any legal action has been taken against the vendor, and will therefore assist a purchaser's judgment in pursuing the purchase of the property for sale.

- Property known to be adversely possessed:

Purchasers should also be aware of property which has claimed to be 'squatted on' or adversely possessed land. In these cases a purchaser should look out for a certificate of title from the Supreme Court, as adversely possessed property are subject to quieting title actions by the vendor. A grant of a certificate of title will serve as proof that the property is fit for sale.

- Property located in close proximity of crown land/ public industrial areas:

Be aware of these parcels of land as crown land and public industrial areas are owned by the Bahamas government and are often granted long term leases to an applicant. In this case it is important to investigate the title of the property prior to committing to the purchase.

- Property known to be/ in close proximity to generation property:

Frequently applied to large acreages of land and beach front properties in the family island, such property is reserved by the Bahamas government for family whose ancestors originate from those particular areas. Oftentimes it is difficult or impossible to show evidence that the property is fit for sale, and in most cases, vendors will often give an account of the family history in order to sanctify his rightful ownership to the property. As advised in the paragraphs above, seek the assistance of a commercial

attorney, particularly one familiar with the area in which the property is located and request a title search. Such folktales and family history do not constitute proof of ownership and should be approached with caution.