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TITLE INSURANCE

There has been a lot of talk these days about title insurance policies in Jamaica. While this concept is new to Jamaica it is standard in most states of the United States of America where title insurance policies are taken out against financial loss from defects in title to real property and from the invalidity or unenforceability of mortgage liens.

As I understand it, there is a very good reason why title insurance is standard in many states. Most states have a system of document recording in which no governmental official makes any determination of who owns the title or whether the instruments transferring it are valid.

Consequently, if a person acquires an interest in land whether by purchasing same or by a mortgage there is the risk that there may be competing claims to these interests which at the time of acquisition are unknown. These competing interests include liens and encumbrances on the title. There may also be no right of access to the land.

Title insurance, therefore, gives the person acquiring the interest insurance coverage in relation to the state of the title.

To purchasers, it provides coverage in the event of defects, liens and encumbrances in the title except those excluded by the policy. The owner's policy also covers losses where there is no right of access to the land and where the title is unmarketable.

To a lender providing a mortgage, there is coverage under the insurance policy in the event that the borrower does not have good title to the property, the title is subject to defects, liens or encumbrances or is unmarketable. The lender policy also provides coverage where there is no right of access to the land.

In Jamaica there are two systems of land ownership. Registered title and unregistered title. Registered title pertains to land that is registered under the Registration of Titles Act with a Certificate of Title issued to the owner, while unregistered title pertains to land which is not so registered and there is no Certificate of Title.

In contrast to the American situation, Section 68 of the Registration of Titles Act provides that:

"...Every certificate of title issued under any provisions herein...shall be conclusive evidence that the person named in such certificate as the proprietor or having any estate or interest inthe land [and] is...possessed of such estate or interest..."

Section 71 of the Registration of Titles Act goes further to provide that:

"Except in the case of fraud, no person contracting or dealing with or taking or proposing to take or transfer from the proprietor of any registered land, lease, mortgage or charge shall be required or in any manner concerned to enquire or ascertain the circumstances under... which such proprietor was registered."

In other words, the Government of Jamaica guarantees the Certificate of Title. Regardless of the nature of the interest in the land, once the interest is recorded on the Certificate of Title no further assurances are required.

Unregistered land is an entirely different story. Interests in unregistered land are usually transferred or created by deed of conveyance. As there is no certificate of title, on each conveyance the vendor would have to satisfy a prudent purchaser that he possesses a good root of title going back as far as 40 years or more. This is often tedious and difficult and not all interests in the land may be captured. These issues usually pose difficulties for persons who wish to dispose of or create interests in unregistered land.

Title insurance may, therefore, prove quite useful to the owners of unregistered land. In the alternative, owners of unregistered land may wish to consider bringing their land under the operation of the Registration of Title Act to enjoy the protection it offers.

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