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ATTORNEYS AT LAW

REAL ESTATE IN THE CAYMAN ISLANDS

INTRODUCTION

The Cayman Islands has been a popular tourist, recreation and business destination for many years. Beautiful beaches, spectacular dive sites, high quality modern hotels and tropical weather combine to attract the tourists in large numbers year after year. The availability of technology and services, fair and modern regulation of business activities, and the absence of direct taxation have also helped make the Cayman Islands one of the largest financial and business centres in the world. Given these factors, it is not surprising that the Cayman Islands also has an active real estate market. This article provides a brief overview of the legal and practical aspects of buying and selling real estate in the Cayman Islands. However, it is not intended to deal exhaustively with all aspects of the subject and proper legal advice should always be obtained before entering in to any real estate transaction.

THE LAND REGISTRY SYSTEM

As an overseas territory of the United Kingdom, the Cayman Islands enjoys a political stability which may not be present in other locations in the Caribbean. To protect ownership interests in land, there is a Land Registry System maintained by the Government of the Cayman Islands and governed by the provisions of the Registered Land Law (2004 Revision) (the "Law").

The Law creates a Land Register which contains a record for each parcel of land in the Cayman Islands, indicating ownership interests, mortgages and charges against the land, easements and restrictions, and other legal and equitable interests in land. Thus, a search of the Land Registry pertaining to a particular parcel will reveal the necessary information to allow a buyer or mortgagee to enter into a transaction with respect to that parcel. When a purchaser enters into a contract to buy property the risk of an intervening interest being registered can be eliminated by filing what is commonly known as a "Search and Stay". This essentially "freezes" the title and prevents any other interests from being registered against the parcel during the priority period until it is transferred to the purchaser. In this way, the purchaser can be certain he or she will obtain the property encumbered only by interests they were aware of at the time of entering into the transaction.

Once a person is registered as the proprietor of a parcel of land, that ownership is absolute and protected by the Law. In the event an error is made by the Registrar in registration of a transfer or any other interest, any person who suffers a loss as a result of such an error is entitled to be indemnified by the Government of the Cayman Islands. The result is a Land Registry System that provides owners, lenders and others with full and complete protection of their proper interests and rights in land.

Another feature of the Land Registry System is the ability to obtain a registered and secure leasehold interest in land. Any parcel of land or portion thereof can be dealt with by way of a lease, and leases can be registered on the system as other interests are, protecting both landlord and tenant.



STRATA TITLES REGISTRATION LAW (1996 REVISION) (“STRL”)

Many properties in the Cayman Islands are multiple unit complexes divided into individually owned condominium or “strata” units. The STRL is the statute that governs the registration of "strata plans" and creates strata, or condominium, corporations similar to those in existence in many other jurisdictions. A strata plan consists of two elements being the individual units with separate titles, and the grounds, common areas, amenities (pools, tennis courts, etc.), collectively known as the “common property”. The strata corporation holds the title to and manages the common property. Maintenance fees are collected from the individual unit owners and applied to maintaining all of the common property. The individual unit owners hold title to their units in the same way as the owner of any other parcel of land, and the Land Register maintains the same type of records for these strata units.

STAMP DUTY

Although there are no income or property taxes levied in the Cayman Islands, one of the ways that revenue is generated by the government is by the imposition of stamp duty on the transfer of land. For property on Grand Cayman, where almost all the population of the Cayman Islands resides, there were historically two different rates of stamp duty with a 9% rate applicable to property in the popular Seven Mile Beach area and parts of George Town and a 7.5% rate for the rest of the island. In 2001 those rates were both reduced to 5% as is explained below, but very recent measures announced by government will increase the duty, although not quite to the previous levels, effective July 1, 2006.

The Cayman Islands enjoyed a brisk and expanding real estate market for many years prior to 2001 but that market was adversely affected by world economic conditions, by concerns over air travel and, most recently, by the effects of Hurricane Ivan in 2004. In an effort to stimulate activity the Cayman Islands government in 2001 announced a reduction in the stamp duty payable on real estate transfers to 5% throughout Grand Cayman. Given some of the very high property values in Grand Cayman, this can amount to a significant saving on some properties, and can make even the lower value transactions more attractive to purchasers. Although the reduction was originally to be a one year programme, expiring in November of 2002, the government extended the concession on several occasions and the 5% rate is the current law.

During 2005 and into 2006 the market gathered momentum with sales and new construction rising to levels unseen in recent years, if ever, and in its recent budget the Cayman Islands government, having publicly stated the need to raise new revenues, has announced changes to the stamp duty rates. Although full details are not available at the time of writing, the major changes will see stamp duty revert to a two tier system with the rate throughout most of the island rising to 6% and the rate in the Seven Mile Beach and George Town areas rising to 7.5%. **All changes are effective July 1, 2006.**

There are also duty concessions available for Caymanians and in particular first time Caymanian property buyers. More details of these programmes will be posted when the full text of the legislation is available.

While the new rates come into effect July 1, it is possible to take advantage of the currently lower rates even if a purchaser does not wish to close on and take possession of the property immediately, or if a purchase is being made pre-construction. A buyer who enters into an agreement of purchase and sale prior to July 1 is permitted under the law to present that agreement for stamping and pay the duty immediately, and when the actual transfer occurs at a later date no further duty would be payable.

REAL ESTATE MARKETING



There are a number of real estate agents operating in the Cayman Islands. Most of them are members of an association called the Cayman Islands Real Estate Board Association ("CIREBA"). While there is no legislation governing the activities of real estate agents, CIREBA has rules and regulations governing its members' activities. The rules contain a complaints and discipline process which is available to members of the public aggrieved by the actions of a realtor. Many of the agents are affiliated with the familiar international real estate firms.

Currently, activity in the real estate market is extremely brisk. Old developments are being repaired and rebuilt after Hurricane Ivan, and new development is proceeding at a pace not seen for many years. Investor confidence seems high, and this is being reflected in increasing prices. Many industry experts expect this buoyancy to continue for some time.

LEGAL SERVICES

Legal advice should always be obtained prior to entering into any property transaction. A lawyer will ensure that all necessary searches are conducted, all documents are prepared and executed properly according to the Law, and that at the time of completion the interests of the client will be fully protected. In the case of purchases of condominiums it is vital that a purchaser is fully aware of all liabilities they will be assuming in relation to the strata corporation, including commitments to major capital expenditure or repairs. Without proper attention to such details, a buyer or seller could be faced with unexpected and potentially disastrous results. An intervening and unexpected interest may appear on a buyer's title, seriously affecting the value of the real estate, or worse, a buyer may hand over the purchase price and receive a transfer that is improperly drafted or executed. Similarly, purchasers of condominiums may be exposed to liabilities to the strata corporation of which they were unaware.

Completion generally occurs on an agreed possession date, and involves exchanging the Transfer of Land, and discharge of the seller's mortgage, if any, for the balance of the purchase price. For the purchaser, retaining a lawyer will help ensure that they will obtain a Transfer that will properly convey ownership of the property. For the seller, the lawyer can assist in verifying that the purchaser has satisfied any contractual conditions and that any necessary mortgage discharge has been obtained and held in escrow for the bank pending completion. The lawyer will also prepare all the necessary transfer documents and ensure that the funds are properly paid to the vendor on completion.

Charles Adams Ritchie & Duckworth has an experienced conveyancing department and aims to provide a responsive service at competitive fee rates.

This article is intended to provide a limited overview of the subject matter and is not a substitute for proper legal advice in relation to a particular transaction or proposal.