



ISSUES IN OWNERSHIP OF REAL ESTATE

JAMAICA

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1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, fee simple absolute property ownership is permitted and indeed is the main form of property ownership in Jamaica. Two different systems of land ownership and conveyancing are used in Jamaica – the common law system and the State Registration of Titles system.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Under the registration of titles system an Instrument of Transfer is used to convey ownership of real estate under the Registration of Titles Act. Under the common law system, a Deed of Conveyance is used to convey ownership to a purchaser and what is conveyed is an equitable interest in land.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The Common Law System

This system is governed by the Record Office Act, the Record of Deeds, Wills and Letter Patent Act and the Conveyancing Act. A Deed of Conveyance is recorded at the Island's Record Office, and must be so recorded within three months of its execution, otherwise it will be void and of no effect against all other bonafide purchasers for valuable consideration who shall duly prove and record their deeds within the time prescribed by the Act from the dates of their respective deeds. The Deed of Conveyance must also be signed sealed and delivered. If this is not done it will not pass title to a purchaser.

All persons interested in making searches in the Record Office can and shall be at liberty to search and examine the Public Records, and the registers and the indices in the office, and to take abstracts or other short notes of any matters in them, and to inspect in the presence of some person belonging to the office any original registered deed or writing to which reference is obtained in such searches. However a prudent purchaser must satisfy himself by an exhaustive scrutiny of all deeds wills and other documents by which the property has been devised or mortgaged over a lengthy period of time. It is therefore advised that this search be conducted by an attorney-at-law.

The State Registration of Titles System

The system of registered conveyancing is used to record ownership of registered land in Jamaica. No transaction is effective until it has been entered on the official record kept by the Registrar of Titles. The essential feature of this system is that in the absence of fraud, no person contracting or dealing with any registered land shall be bound to enquire into the circumstances in which the proprietor or any previous owner was registered. Nor is such person to be affected by notice, actual or implied, except where a caveat is lodged.

The purpose of the registration of titles system is to allow for registration of legal interests only. Equitable interests cannot be registered, but they may be protected by lodging a caveat.

Three principles exist under the system of land registration:

1. The Mirror Principle – which involves the proposition that the register book of titles is a mirror that reflects accurately and completely and beyond all arguments the current facts peculiar to a persons proprietorship.
2. The Curtain Principle – which involves the proposition that the register is the sole source of information regarding proprietorship trusts and equities and anyone searching the title need not concern themselves with interests that lie behind this curtain.
3. The Insurance Principle – If, through human error, anyone suffers consequential loss, he must be put in the same position as far as money can do it as he would have been had the reflection been a true one.

The most common method of searching ownership of real property under this system is to conduct a title search. Persons dealing with an owner of registered title should conduct a title search at the Land Titles Division of the National Land Agency to verify the ownership of

the title and any encumbrances and as such protects against improper dealing before completion of any sale or loan.

A title search may be conducted by anyone but is normally conducted by an attorney or the attorney's titles office clerk.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

The State guarantees title under the Registration of Titles Act. This is not so when dealing with the common law system of recording as this system merely records an instrument for what it is worth.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of entities used are local limited liability companies incorporated under the Companies Act 2004 and overseas companies registered under the Companies Act.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no specific REIT statute in Jamaica although it is possible to have a private REIT, (i.e. shares not offered publicly, with fewer than 20 members etc.) but that would not really achieve the purpose of REITs, and you still would have the tax hurdles as there are no special tax exemptions available to REITs and no such legislation has been proposed.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In Jamaica the Stamp Duty Act and the Transfer Tax Act deal with duties levied on sellers and buyers upon direct transfer of real estate.

The Stamp Duty Act provides for the imposition of an ad valorem charge on documents including agreements for sale of land and instruments transferring rights over land. It also contains provisions dealing with exemptions from paying this duty. Stamp duty is payable on the consideration expressed in the agreement or instrument.

Stamp Duty ranges from nominal fixed fees on simple agreements to a maximum of 5.5% of the stated consideration for conveyances of real property. It is common practice for this amount to be agreed to be split between the purchaser and the vendor of real estate.

Transfer Tax is a capital gains tax. Transfer Tax is payable on the market value of the property by the Vendor or Transferor and applies to transfers by way of sale, gifts, exchange, surrender, lease, release, order of the court, and compulsory acquisitions. The transfer Tax Act also contains provisions dealing with exemptions, reliefs, and refunds. Transfer tax of

7.5% is payable by the vendor/transferor on the fair market value of all land and beneficial interests in property transferred in Jamaica.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

Stamp Duty of 1% and Transfer tax of 7.5% is payable on all transfers of shares in local companies, except listed companies. Stamp Duty is paid on the consideration paid for the shares and is usually shared by vendor and purchaser. Transfer tax is paid on the market value (regardless of stated consideration) and is to be paid by the vendor. The market value of the shares depends on the value of the company, which in turn is affected by the real estate that it may own. These taxes apply even where the company that owns the real estate is not a Jamaican company.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There are no “local” regulations or taxes all are national. There are no political subdivisions in this jurisdiction and therefore no variations of real estate law.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.