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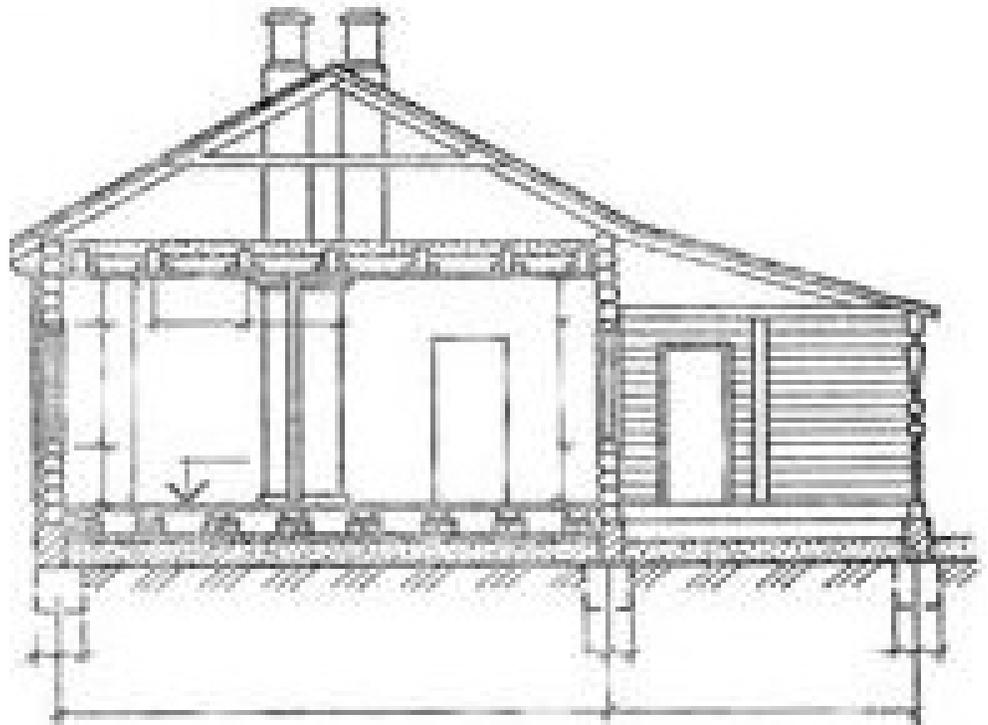
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NEWS**

KEY CONSIDERATIONS....

Residential and Commercial Investing

Real Estate



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EDITOR'S NOTE



“Stay Hungry. Stay Foolish” was a quote that the late Steve Jobs borrowed from a 1970’s publication, the “Whole Earth Catalog”, and used in his Stanford 2005 Commencement Address as

he challenged the students to chase their full potential and follow their passion.

This same quote seems like an applicable summary for this issue as we challenge you to go beyond residential investing and explore the depth and breadth of commercial real estate investing to see if the pros outweigh the cons as it

relates to your investment needs.

The challenge is to stay hungry - to push yourself, to stretch, to grow. It is a challenge to stay foolish - to never be afraid to explore new frontiers and recognise that in order to learn and to be successful you need to ask questions and ask for advice. [SLW](#)

Real Estate 101

Conversations with Faron Lawrence, CEO, SKN Homes

YFN: When we talk about real estate one word always takes priority - location. Why is this? How should a buyer put into context the issue of location when purchasing a property (land or building)?



Faron Lawrence:

Location is always key. When you think about the place you are going to live, you want to know that it is in a neighbourhood where the value of the property is going to increase rather than

decrease. You want to ensure that it is a place that is in close proximity to essential utilities and services - fire, police, hospital, waste disposal, water supply, electricity, telephone, etc.

You want to consider the proximity of the property from your place of work or from the town to facilitate shopping and other activities. You also want to consider whether it is down in a valley

where it is hot or on a hill where there is a nice breeze. You should consider issues like noise hazards and the forecast of likely changes to the surrounding areas which may affect the future valuation of the property. All these factors go into determining the market value of a property. You don't want to invest in a property where the future market value is likely to decrease or you cannot get a good return on investment (ROI) if you decide

to sell it. So no matter how you slice it, location is key. Just as location is key to you so it is for the next person considering buying your property. So in terms of saleability, location is also key.

YFN: With that in mind, it is not just about securing the cheapest price.

Faron Lawrence: Absolutely! You have to consider the cost of the property relative to its value. I often explain to persons that in many cases what you can sell a property for has very little to do with what it costs to build. For example, you can build a property in a downtrodden area for five hundred thousand but when you go to sell it nobody will pay more than one hundred thousand to two hundred thousand dollars because the location is not one that commands that kind of value. Whereas, you can build a small building on a hill overlooking the ocean costing one hundred thousand and find a buyer who would be willing to pay one million for it. That is the power of location.

YFN: Do location considerations apply equally to residential and commercial property?

Faron Lawrence: Very much so. A lot of businesses depend on bringing items in from abroad. A location with close proximity to the port or road layouts that allow for easy transportation of items will be more valuable than one that is far from the port or where the roads are narrow and not easily passable by containers.

Additionally, if a business depends on the public accessing it for services and many of the clients do not have vehicles, then the business' proximity along the bus route also influences the location appeal and value. Hence location is equally important across the board whether it is residential or commercial.

YFN: From your experience what type of real estate project is easiest to finance - commercial, residential or a hybrid?

Faron Lawrence: From my experience, financing in

St. Kitts Nevis tends to be equally accessible for whatever purpose, be it commercial or residential. The key is the issue of viability. What risk is associated with the financing? That is the lending institution's primary concern. Risk is risk. So if you are an individual seeking to build a home, you have a steady income, the property has good value - so the loan to value (i.e. *the result of dividing the loan encumbering the property by the value of the property*) is good; you have been in a steady job for a while, and you can show that you have adequate income to service the debt, then you most probably will be able to access the required financing.

In a commercial real estate investment, similar issues apply. Lenders are concerned about the following as it relates to the project:

1. The potential net operating income. *i.e. gross potential income less vacancy factor and operating expenses.*
2. The potential debt service coverage *i.e. the result of dividing net operating*

income by the loan payment.

3. The potential occupancy rate.
4. Length of potential leases.
5. Prospective tenants.

If the bank assesses the loan to value as good; the developer/owner can provide proper financial statements and demonstrate that the property will generate a positive cash flow to service the principal and interest payments. And, if he has the necessary equity input to demonstrate a strong commitment to the project, he should be able to access the required financing.

In terms of accessing finance, it is largely dependent on how prepared you are and how sound your project is. It is really about you demonstrating that you have made a good informed decision as to the viability of the project.

What the lending institution wants is for the client to be able to repay the loan without any headaches, for the client or for the lending institution.

FICTITIOUS CASH FLOW IN A COMMERCIAL REAL ESTATE SCENARIO		
POTENTIAL GROSS RENTAL INCOME*		12,000
Less Vacancy Factor**		(2,000)
EFFECTIVE GROSS RENTAL INCOME		10,000
Less Operating Expenses:		(1,770)
Maintenance and Repairs	120	
Insurance	700	
Property Taxes	600	
Management Fees	150	
Other Fees	100	
Replacement Reserve	<u>100</u>	
NET OPERATING INCOME		8,230
Less Debt Service	6,000	
Less Distribution to owner/investor	<u>1,000</u>	(7,000)
PRE TAX CASH FLOW		1,230
Less taxes (e.g. income tax)		(300)
AFTER TAX NET INCOME		930
*Rent collected as though fully occupied		
**Rent not collected due to vacancy. Assume 2 months vacancy per year		

Risk is risk. It is for this reason why lenders conduct risk assessments for each lending proposal to determine whether or not they will provide the financing.

YFN: What are some of the preparatory steps that persons need to focus on before seeking financing for a project?

Faron Lawrence: First you have to be prepared in terms of cash flow. Ask yourself, 'where is the money going to come from to repay the loan'? If you are looking to build, ask 'what is my income'? You have to first work out the

maths for yourself. You have to determine, for example, that a loan at 6% for 20 years will cost \$2,200 per month and then you have to go and find the evidence to prove to the bank that you have the ability to support this debt and still maintain your current lifestyle. It is essential that you do a self-analysis related to your income and expenses. It is for this reason why it is important when you get paid to send your entire pay check to the bank and then take out what you want from the bank. This allows the bank to have first-hand information on your

income and source of income and the best record about your income and expenses.

Then you have to look at the property itself. The bank would not want you to pay thirty thousand for a property which only values fifteen thousand. You as the client would not want that either. So do the necessary footwork. Get a valuator to provide a valuation of the property. The valuation may cost \$500 - \$1000 but it is money well spent and that is part of the necessary preparation.

Look at the property you are buying. What do you know about it? Are you purchasing a property via a deed or certificate of title? If it is land, how difficult or expensive it is to build on the land? Is the land rocky so you have to be paying for the use of a jack hammer to prepare the land? Does the land have a big slope which will require spending a lot of money to just prepare the land to build on it or do you have to include a basement which cannot be

accommodated in the budget? One has to consider all of these factors.

YFN: Doesn't a sloping land allow for greater flexibility in building?

Faron Lawrence: Yes, but it comes down to the budget. Sloping land can allow for an apartment underneath and if this was accommodated in the budget then that is fine. However, if the budget can only accommodate a bungalow and the land requires a basement, then that is a problem. Depending on the terrain or topography of the land it might cost significant sums just to prepare the land for construction.

We know of many cases where persons spend half the available funds preparing the land and as a result the property never gets built. These are the considerations that you have to be aware of so that you are well prepared. The key is to be fully prepared and demonstrate that degree of preparedness to the bank. Let the bank know that you have thought this project through.

If it is a building that you are purchasing you want to know how long it was built. You want to know about the technology, the building materials and methods that were used in the construction. You have to consider whether the building will be able to be upgraded to a smart building and the associated costs. You also need to know about the type of steel that was used in the construction. It is also important that you have access to the architectural plan so that you can see exactly what is in the walls. For example, you need to know if asbestos was used in the construction and the cost to remove it. Clearly, the considerations are more involved in purchasing a property than land.

YFN: What is the average life span of electrical, roofing, plumbing etc.?

Faron Lawrence: I can't give you a specific life span; It depends on the condition and maintenance of the property. I have seen buildings being repaired now which were built 20 years ago and the infrastructure is still sound.

The issue is not one of physical deterioration but rather that of obsolescence. The infrastructure may not fit today's standards. For example, the construction may have used wires that were stapled to the exterior walls. In today's construction practices that is considered unsightly. The transformer or breakers used in the construction might not lend themselves to the appliances in use today. Those are the type of upgrades that may be required, so you would have to assess the costs to update.

Another aspect of preparedness is related to the character side of the loan - who you are? Are you considered someone who honors his financial commitments? This speaks to your financial character. How do you think about money you owe? If you are someone who owes everyone and neglects to pay your creditors, there is no reason for banks to believe that you will be different with them. So you must understand your own background before you approach another lender and

be forthcoming with information on your debts. This speaks to your degree of openness and character.

YFN: What would be your view in relation to alternative commercial real estate financing strategies? Is there scope for nationals to come together and finance real estate projects in part or whole through the pooling of funds?

Faron Lawrence: I happen to believe that this is one of the best ways for persons of limited means to become commercial real estate investors. We know about investment clubs that work all around the world in exactly this manner. Persons come together and set a target to collectively save a sum of money, for example one hundred thousand dollars and then use this as equity to approach a lending institution for additional funds to finance a property of one million. But for this to work, you need to have people who are going to be committed to the goals and objectives of the investment group. Additionally, there must be set goals so that each

party knows exactly what is to be achieved and when it is to be achieved so that everyone is on the same page. It has to be an investment club that is well organised; has rules, regulations, and a proper constitution that all members have to abide by so that persons understand their commitment and responsibilities. Without this, one is courting chaos.

YFN: In light of the economic downturn, how has the real estate market fared in St. Kitts Nevis?

Faron Lawrence: The real estate market is not yet completely back to where it used to be particularly for land sales, house sales and construction outside of the Citizen by Investment Program. However, it has picked up considerably and is clearly on a trajectory to even surpass where it was.

YFN: Beyond residential prospects, what is your final advice to commercial real estate investors or prospective investors as a path to wealth creation?

Faron Lawrence: My advice is

that if you can imagine it you can do it. We need to use our imagination more. It might seem like it is too big of a project for you, but it is not too big if you take it in parts. If you plan it, step by step by step, you will realise that it can be a reality. Do not think 'this is too big for me' or 'this is too complicated for me'. If you can dream it, you have to set out how you will achieve it. Don't dream it and expect to just go and grab it. Dream it and then plan step by step how you are going to achieve it.

Secondly, get advice. I have been in real estate business for quite some time and even when I am looking at a project there is somebody I go to, to see an angle that I have not seen, or to see a pitfall that I may not have seen. You constantly have to depend on people. Don't feel you have to do it on your own; none of us know everything. Some of us like to think that 'I don't want anybody to know my business'. This type of thinking works to our disadvantage. Don't think

you can do it all by yourself. Always seek advice. Find someone who has your interest at heart to see you succeed. Let someone else look at it from a different perspective and seriously consider their advice.

YFN: How do you get to the stage of imagining yourself as a commercial real estate investor?

Faron Lawrence: Part of our problem is that we do not read enough and we do not explore enough. There is nothing that we can do here that is new, that has not been done elsewhere in the world.

The projects I develop and the way I engineer my projects are based on information on projects done in Argentina, Malaysia or elsewhere that I have read. Reading real estate books helps you to imagine within reason. You look at how developers have been able to finance their projects or how they have engineered projects and you learn from them. There is no alternative to you expanding your mind by reading, so instead of picking up a romance or car

book pick up a book on real estate and seek to learn and then use that knowledge to become a smart investor.

YFN: When you talk about real estate books you are not talking about design books.

Faron Lawrence: No. You go online and you search for real estate development projects or residential condominium projects and you see the wealth of information that comes up. Read them.



Faron T. Lawrence owns and operates SKN Homes, a real estate development business. Prior to starting his own business, Faron Lawrence was employed as VP, Finance for the New Haven Investment Corporation in Connecticut USA, and later Manager of Corporate Finance at the Eastern Caribbean Home Mortgage Bank, St. Kitts. Faron Lawrence is also the current Chairman of the St. Kitts Music Festival. He holds a Bachelor's Degree in Economics and an MBA from Connecticut State University.

Beginner's Guide

Real estate



Explore some of the many useful information sites and books on commercial real estate investing.

Check out the free online resources and books at

<http://www.green-ebookshop.net/breakingintowallstreet/>

Real Estate Development Key Terms

If you want to understand real estate development, you need to know the key terms used to describe properties whether you are developing the properties from the ground up or acquiring and renovating them.

<http://samples.breakingintowallstreet.com.s3.amazonaws.com/80-BIWS-RE-Development-Key-Terms.pdf>

Private Real Estate Investment

Data Analysis and Decision Making

Roger J. Brown, PhD
Director of Research
Real Estate and Land Use Institute
San Diego State University
San Diego, California



Amsterdam Boston Heidelberg London New York
Paris San Diego San Francisco Singapore Sydney Tokyo

The Real Estate Development Process

While real estate development models may look complex, the actual concepts are simpler than what you see for normal companies. Real estate development modeling is different because its more granular, happens in months rather than years, and because you start with nothing and generate revenue only when the building is complete.

<http://samples.breakingintowallstreet.com.s3.amazonaws.com/80-BIWS-RE-Development.pdf>

LEGAL BRIEF



The Difference Between A Deed and A Certificate Of Title.

Rhonda A. Nisbett-Browne B.A. LLB. LEC
Henderson Legal Chambers
Barristers At Law, Solicitors & Trademark Agents

A Certificate of Title is a document used in the registered land system of conveyancing which is very modern. This method of land record keeping, allows the government to keep track of all the encumbrances that affect a property by listing these encumbrances on the back of the Certificate. When dealing with the registered system the buyer has only to examine the Certificate of Title to determine what encumbrances affect the land. The buyer would then be said to have constructive notice. With the modern system of land registration, the title is indefeasible, that is, the registered

proprietor is deemed to be the owner. The legal title stays with the owner and the beneficial interest is passed on. Once the buyer completes all mortgage or loan payments, this system of land registration simply allow for the removal of whatever caveats or encumbrances from the certificate before it is transferred. The very nature of the registered system where all encumbrances are noted on the back of the certificate of title provides for greater transparency and less error in documenting ownership. This is in essence the main reason for the introduction of this modern system.

This is in contrast to the old time common law system or unregistered deed system where, any legal document that affects the land is recorded in chronological order and made available to the public through deed books and name indexes. The potential buyer must arrange to have the records checked through those

indexes for the given period required by law in the particular jurisdiction. Here the purchaser is entitled to proof of the vendor's title for 60 years, when it is said to have a good root title.

Through the deed system ownership is transferred, that is the beneficial and legal interest by way of an indenture of mortgage. At the end of the loan agreement, the lender does what is called a reconveyance to pass ownership to the purchaser. This is where errors are sometimes made and in fact there are cases when one party name may be inadvertently omitted from the deed when the reconveyance is being executed. This deed system it is said lends itself to greater fraud and error. Notwithstanding once there is a good root title, the deed system gives as good a level of security as the certificate of title.

What You Need To Know Before Signing - The Legal Aspects of Residential and Commercial Mortgages

Interview with Crown Counsel, Francine Foster, Ministry of Legal Affairs, Grenada

YFN: What are the legal considerations in entering a contract for a mortgage?



Francine Foster:

The mortgage document is a contract between the mortgagee

(*lending institution*) and the mortgagor (*borrower*) and so it is imperative for prospective mortgagors to retain the services of a lawyer so they can understand what they are signing on to and consequently the terms that they need to understand.

It is not advisable for persons to just go to the bank or the banks' lawyers and sign. Because many times when this is done and issues arise, persons will often claim that they didn't sign to those things. This is most likely as a result of not having the information in the mortgage documents clearly and



thoroughly explained. The mortgage document is bulky with lots of words and some of the words are not understood by the ordinary man. Some of the legal terms and concepts that one needs to understand relate to the following:

- **Payment terms and the implications** of these in relation to the borrower's commitment.
- **The interest and how it is calculated.** Though this is a more of a mathematical than a legal issue it will affect the borrower.
- **The implications of failing to comply** with the agreement to pay within the specified terms of the agreement.

It is important to recognise that built into a mortgage agreement is the transfer of the borrower's interest in the property wholly and solely to the bank. Inherent in the transfer of this interest is the right given to the bank to

sell the property without the borrower's permission in the event he defaults in complying with the terms of the mortgage. So borrowers and prospective borrowers need to understand that should they default, the bank has the right to exercise their extra judicial power of sale on the property held as security. In Grenada, usually the power of sale can be exercised three (3) months after notice is served on the mortgagee that that mortgagee has defaulted in payment of the mortgage money or a part thereof or there is a breach of some other provision in the mortgage deed

The other thing that the borrower needs to know is that when he has paid off the mortgage he needs to get the property back in his name. Once that property is not in the owner's name it is still not his in reality. He will be unable to do anything with that property if it is still being held by the bank. In order for the property to be transferred back into the name of the owner a reconveyance must be done. This is the actual transferring of the property from the bank back to the owner. Many times persons pay off the bank and sit

down for years without having the property transferred back in their names.

YFN: What is the fee for a reconveyance?

Francine Foster: In Grenada, there is no standard legal fee structure for reconveyances. Fees are usually influenced by several factors including the qualifications or seniority of the legal counsel retained to carry out such service.

YFN: Can the mortgagor prevent the bank from selling the property if he makes part payment to the loan if circumstances temporarily do not allow for full payment as per the mortgage agreement?

Francine Foster: Even though the borrower has made partial payment, this does not absolve the bank from exercising its right to sell. On a contractual basis the money that is due and owing is what causes the bank to activate that right to sell. However, based on what I know, in terms of what happens on the ground, banks usually work with the borrower to see how best they can assist by, for example, considering loan refinancing or other measures to recover the money that is owed

to them in a manner that can be beneficial to all parties.

Usually when banks exercise this right there has been such a large default by the borrower; there is no promise from the mortgagor to repay that money and/or there is no other way of getting their money back. In exercising its power of sale, it must be noted though that the lending agency, the bank, must as far as possible sell the property at its market value. It cannot and ought not to just sell the property for what is owed. In light of the economic environment right now it may take a while for that property to be sold. Once sold the bank will take out what is owed to the bank and the remainder, if any, goes to the borrower.

YFN: Let us say the bank has made a decision to sell the property and has listed it on the market. Should the financial circumstances of the mortgagor change and he is now in a position to pay the loan, can he get the bank to reinstate the loan agreement in an effort to have the property returned to him?

Francine Foster: Yes that can happen. The bank can consider

refinancing and take it off the market. Remember that all the bank is interested in is getting back the monies loaned.

YFN: Mortgage documents typically include a clause that states that at any point in time the bank can ask for payment in full. Can you explain that clause since it seems rather unreasonable and onerous?

Francine Foster: This is usually executed when the borrower is in default. It is called a demand notice. Once the borrower is in the default of any payment or part thereof the entire sum borrowed becomes owed to the bank. Once this happens the bank can demand all the monies owed in full.

The borrower, in entering into a contract with the bank in effect states that in exchange for the bank lending a specified amount of money in exchange for the title of the borrower's property to be held as security, the borrower agrees to repay the sums borrowed in the terms and conditions as agreed to in the mortgage. Once the borrower complies with his end of the bargain and repays all the money borrowed, the bank

then agrees to transfer back to the borrower the title to his property. When the borrower does not honor that simple agreement to pay the specified sums of money in accordance with the specified schedule then the bank can demand all the outstanding loaned funds upfront.

YFN: Can this clause only be triggered by default? What about discovery of other circumstances other than a default?

Francine Foster: Repaying the sums borrowed in the terms agreed to is only one of the conditions of a mortgage deed. It can be considered the main condition, but there are others that the borrower is required to comply with. A breach of any other provision of the mortgage deed can trigger a demand notice from the bank. For example, the borrower is not supposed to allow the property to go into disrepair or do major construction enhancements to the property without the bank's permission. Both disrepair and major enhancements can affect the bank's ability to sell the property if it has to exercise that right of sale to recover monies owed. Additionally, the

borrower is not supposed to sell the property or enter into any other contractual arrangements with a third party without the banks knowledge and consent. Understand that such actions by the borrower may affect the value of the property which is held by the bank as a security for the mortgage hence it would constitute a breach of the agreement and the bank can then demand the loaned sum in full.

YFN: What should a prospective borrower pay particular attention to before signing?

Francine Foster: Before the signing of any mortgage document (deed) a borrower ought to pay special attention to the covenants. Once the borrower complies with the covenants there should not be any issues of disharmony between the borrower and the bank.

YFN: Let us talk about a Title of Certificate vs. Deed.

Francine Foster: In Grenada we do not have Certificate of Title. The land registration system across some of the Caribbean territories is very old and in Grenada we do not have

a modernised land registration system. Certificate of Title applies to the Registered System as opposed to the Unregistered system. Grenada has an Unregistered System. However, when one talks about title of land one is referring to the documents showing a indefeasible interest in the land. This means that a person with an indefeasible title has rights over the land against the whole world: no one may successfully make claim against your title of land and succeed. Such title for it to be good must go back at least 60 years. In contrast, one can be in possession of land but not have title to the land.

In Grenada, the law provides that if you live on a particular portion of land for 12 years in continuous undisturbed possession you can claim possessory title to the land and no one can subsequently demand that you move off that land. You would not have acquired actual title to land but one would have acquired the right to possess the land.

Having title to land, good title, means that you have acquired the land either by purchase, inheritance or by way of a gift.

These are the main ways by which to obtain title to property and title obtained through those means are considered good title when it can be traced to a period of at least 60 years prior to acquisition. For example, his great grandfather bought the property from Mr X and then it was passed to the first born and so on. Every property sale in Grenada is recorded in the land registry. This provides a kind of map to show the chain of possession.

So even if someone has title to the land (good title), and fails to exhibit acts of possession and fails, for twelve years while another person occupies the land, to oppose such possession the holder of the title can lose the right to claim that land. In those circumstances the law gives the person in undisturbed possession of that land the right to possess that land adversely to the title holder. You are said to have adverse possession of the land.

Having adverse possession of the land entitles such a person to execute a document called a statutory declaration. It is not a title document per se but gives the holder of the document the

right to possess against all others. Persons have often taken statutory declarations to the bank as evidence of ownership (title) to land and banks have often refused such a document as having good title. The difficulty with that is that banks are not mindful to accept statutory declarations as good documents evidencing ownership, because the property was not acquired by sale, gift or inheritance. It was acquired by virtue of just being in actual possession of the land. For that reason Statutory Declarations, not being documents of proof of title are rarely used unless they have been in existence for some period of time. A loan application can be denied if the document for security is a Declaration. The acceptance of a statutory declaration by a bank is on a case by case basis.

YFN: What if after paying all the required legal, bank, registrar and other administrative fees the loan contract falls through because the buyer finds out that he is very ill and can no longer go through with the purchase at that point in time or the seller changes his mind. Can any of the fees be recovered?

Francine Foster: The paying of the all the required fees by the pertinent parties is an indication that the contractual relationship between the parties has been sealed and now each party is bound by the term of the contract. If one party fails, for whatever reason to continue with the contract it may be looked at as that party defaulting. If the borrower cannot continue with the contractual arrangement, unless he can prove misrepresentation on the part of the seller, he will forfeit most if not all of the fees paid. In addition to a forfeiture of the fees it may mean that he has to cancel the approved mortgage and there may be some fee attached to cancellation as well.

If the Mortgagee is at fault the borrower may have some recourse to recover all or some of the fees paid by him in the securing of the loan.

YFN: What if the seller is the party who has reneged on the agreement? Is there restitution to the buyer?

Francine Foster: The buyer would have to claim from the seller all monies expended by him and more in the entering

in a contractual relationship with him. The seller ought to put the buyer in a financial position as though he had never entered into the contract. This may mean paying to the buyer all monies paid out in anticipation of securing the portion of land, inclusive of money paid to lawyers and the banks and the Registry. A buyer may also be able to claim compensation for loss incurred for not acquiring the interest in the property, such as lost of investments etc.

YFN: So if the seller was frivolous in revoking the agreement to sell, restitution can go beyond restitution of the fees. It can also focus on the promise and the expectation which would allow the prospective buyer to sue for the opportunity lost?

Francine Foster: Yes.

YFN: In mortgage documents one would often see a vague clause which allows the bank to change at its discretion certain terms be they related to payment, rate of interest etc. without seeking the permission of the borrower. Does the borrower have any recourse if he is unhappy with any significant changes made to the

agreement after having signed?

Francine Foster: Generally the borrower has no recourse to any term he would have signed to after signing. Hence the reason it is imperative that all questions are asked of the bank and the mortgage document is thoroughly explained to the borrower before he signs. By signing a mortgage deed, the buyer is saying that they clearly understand the terms and conditions to this new contractual relationship and they agree to abide by such. A vague clause may result in a borrower being bound by the vagueness of the clause and anything that results as such.

YFN: Should the borrower ask the bank to be more specific before signing?

Francine Foster: The borrower can, but that does not mean that the bank will, because at the end of the day the bank may not even be sure about what changes may be required in the future. Clauses that may be vague as it pertains to market trends and changes may influence the inability of the bank to be more specific on certain issues.

YFN: Can the change be in

relation to the number of years to repay the loan? Let say for example one had a contractual obligation to pay the loan in 15 years, can the bank change this to 10 years even if the borrower has been fully compliant with the terms of the agreement?

Francine Foster: No. The bank cannot make changes to the term of years unilaterally. Such changes must be in consultation with and with the consent of the borrower. Such a clause is generally never vague and a borrower knows upfront the term of years for the repayment of the loaned sum. Bank policy can dictate though changes in interest rate for example.

YFN: If a group of persons decide to purchase a property as part of a group e.g. six persons come together and take a ten year loan to pay a mortgage for a property which is owned by all six persons. After five years, one of the parties to the agreement stops paying and the other five agree to each pay one fifth of the amount due from the sixth person who is in neglect for the duration of the loan. Does that sixth person still have equitable interest in that property?

Francine Foster: That will be dependent on the relationship

and the agreement among the six persons in terms of whether they agreed to pay the sixth person for the five years investment made with interest and the other remaining parties agree to acquire in equal portions the 1/6 interest in the property. Let me just state that it is not advisable to enter into such investments without having a private partnership agreement among all parties. Because once that person name remains on the title document, he owns, on the face of it, an equal interest in that property, even if he does not pay. In Equity however, the person might have lost their interest based on their default and depending on the nature of the relationship between the parties, an application in court may order that the defaulting party hold his portion on trust for the remaining five.

There will be a need to take urgent steps to have the 6th person probably paid off for his interest contributed thus far *(based on the nature of his default)* and have the mortgage deed amended to remove the name of the 6th person from the property documentation. Alternatively, he can convey his

interest in the property to the other five jointly by virtue of a supplemental document.

YFN: Based on what you have said, what advice would you give to a group of persons seeking to pool resources and get into an investment?

Francine Foster: First have an agreement among the parties involved that takes into consideration all the 'what if clauses' and then seek legal counsel to advise on the way forward.

Each party to the agreement should know their respective contribution in financing the investment and, how he would be able to recover his money or the value of his investment should anything happen. Consider also that even if the sixth person gives a verbal agreement to get out of the commitment and something happens and none of the other parties to the loan honor their commitment to pay, the bank will come after all persons including the sixth person who indicated he was out of it. So it is important that the necessary documentation be done to get his name off the loan commitment and ownership

documents.

YFN: What are some of the common property pitfalls that you see persons getting themselves into that end up at the court system?

Francine Foster: The most common property pitfalls that tend to end up in the courts are usually those related to determining interest in property when there are more than one parties to a document and the said document is silent as to how the interest is apportioned. Many times the court has to determine whether the intention of the parties at the time the document was executed was to have a tenancy in common or a joint tenancy.

Another pitfall tends to occur when one party who alleges interest in the property is not named in the document but contributed in some substantial way to the acquisition of the said property. The court has to determine the extent of the interest of the unnamed party to the document. Many times the court might have to make an order for the property to be sold because one party cannot afford to pay off the other for their interest in the property. ■