

Has COVID-19 affected real estate transactions?

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Introduction

On 11 March 2020 the World Health Organisation declared COVID-19 a pandemic and on 15 March 2020 the government confirmed the first case in The Bahamas. Four days later, the government implemented the Emergency Powers (COVID-19) Regulations 2020 (Chapter 34) among other emergency orders which mandated that all non-essential businesses nationwide suspend the provision of operations to the general public from 20 March 2020 until further order.

Restrictions on both domestic and international travel, lockdowns and curfews have been imposed in The Bahamas to restrict movement in an attempt to reduce the spread of COVID-19. While law firms have had to close their physical doors to the general public, real estate and resort development attorneys have embraced new and efficient procedures for closing transactions.

Agreements for sale

On buying or selling a property in The Bahamas, an offer letter will be signed. The offer letter may be signed by both parties and scanned to the real estate agent and each party's attorney. The attorney for the vendor will then draft the agreement for sale in accordance with the terms of the offer letter and the purchaser's attorney will review, amend and approve as required. Once the terms are agreed, both sides will undertake a final review of and sign the agreement for sale.

Given the emergency orders, agreements for sale should be drafted to provide that the parties agree that the scanned and electronic versions of the signed agreement for sale are binding on both parties and will be taken as originals. This ensures that there is a binding agreement in place for the duration of the transaction. Therefore, there is no need for clients to physically attend offices to enter into agreements or for original agreements to be delivered. It is important to engage a competent attorney who can aptly draft (or amend) agreements for sale and advise on these matters to ensure that all eventualities are covered therein.

Title and cause list review

As The Bahamas has an unregistered land system, when acting for a purchaser or lender with respect to the acquisition of, or security over, real property, an attorney must investigate the title to the property to ensure that it is free from all encumbrances. This investigation requires that the attorney searches the Registry of Deeds and Documents, the Supreme Court Civil Registry and the Companies Registry, among others (if necessary), to confirm that title to the property is good and marketable. Due to the emergency orders and the COVID-19 Mitigation Protocols issued by the Office of the Chief Justice of The Bahamas, the Supreme Court Registry, among other public registries, is currently closed to the general public and operating in limited capacity.

Technologically advanced title agencies can conduct electronic searches of the Registry of Deeds and Documents for any title documents relating to the subject property. Therefore, attorneys can review title to confirm that there is a good root and chain of title. However, as the Supreme Court Registry and other registries are not currently accessible electronically, an investigation of title requires a clerk of the relevant registry to conduct a physical search.

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The government recently granted a relaxation on restrictions and allowed the opening of certain businesses; therefore, the relevant registries are expected to open shortly to allow attorneys to carry out a complete investigation of the cause list to ensure that there are no pending judgment debts or orders which may create an equitable charge against a property as per Section 63 of the Supreme Court Act.

Real estate attorneys can adopt contract language which allows for an extension of the normal period for title investigation so that searches can be finalised when the registries reopen.

Regulatory approvals

In order for non-Bahamians to acquire property in The Bahamas, it may be necessary to have certain regulatory approvals from the Investments Board and the exchange control department of the Central Bank in place. While the emergency orders are in effect, the Investments Board and the Central Bank are accepting applications electronically and processing them efficiently. Therefore, there should be no delay in obtaining the relevant regulatory approvals for a transaction. It is important to engage a competent attorney who is well versed in handling regulatory approvals as this is essential to ensure the valid completion of a transaction.

Closing transactions

Transactions that have completed the title review stage can still be closed.

Reputable courier companies are operational (having received exemptions pursuant to the emergency orders), so deeds can be printed and couriered to clients outside The Bahamas for their execution. Once documents have been duly executed, notarised and apostilled (if necessary), the original deeds can be couriered back in order to effectuate the closing of the transaction.

Funds can also be received and sent by wire transfer; therefore, buyers can wire deposits, the balance of the purchase price and closing costs to their attorney and the proceeds of a sale can be wired to the seller in order to complete the transaction. It is vital to engage a competent attorney to ensure that the required documents are duly executed. This is important to ensure that title legally passes from the seller to the purchaser. In addition, a reputable firm should be used to ensure that funds sent by wire transfer are done so in a timely manner in order to efficiently close transactions.

Post-closing

The Department of Inland Revenue, which is responsible for accepting the payment of value added tax on the transfer of real property and for real property taxes, and the Registrar General's Office, which is responsible for accepting the lodging of documents for recording in the Registry of Records, are operating on a limited basis. However, due to the ongoing relaxation of the emergency orders, these government offices may soon be allowed to return to full operation.

Relaxation of rules

Many financial institutions and businesses have adapted their procedures due to the emergency orders to make it easier to do business. As such, while the emergency orders are in effect, some financial institutions are allowing clients to complete due diligence documents electronically and are accepting copies of documents, with the originals to be delivered to the bank once the emergency orders allow. Therefore, it is still possible to arrange financing through financial institutions, if necessary.

Impact on future of real estate transactions

Given the worldwide impact of COVID-19, purchasers and vendors may be hesitant to engage in real estate transactions and investors may initially be reluctant to invest in property which they are unlikely to have access to until The Bahamian borders reopen for international travel. However, The Bahamas' thriving market for second homeowners is likely to resume its predominant place in the Caribbean market. Fortunately, the emergency orders have caused businesses and firms to adapt and handle transactions more innovatively, which will greatly improve the ease of doing business in The Bahamas in the future.

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