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FEATURE

Due Diligence is Crucial in when Buying Real Estate

Part 1

Buying a property is quite a strenuous exercise – whether it is a residential home or a commercial property. For any buyer, purchasing a real estate is always high risk. You must do your due diligence when buying property after all you will want the experience to be positive and rewarding.

Due diligence requires a detailed examination of all documents, including title documents, property valuation certificate, current zoning by municipal council, and any other information provided by the seller. Many buyers rely on the information given by the sellers of the property, however, you should independently verify any such information. This reduces the risk.

But this is not always the case despite engaging a lawyer. A glaring example is of Nilesh Prasad, a foreign investor. He invested around \$385,000 into a property in the western division for commercial purpose with the intention to add value to the country's thriving tourism sector.

Nilesh saw the advertisement published in the newspaper which clearly stated “holiday apartment, 9 units- 1 bedroom each”. It was this advertisement that created interest in Nilesh to buy the property in a most sought after area in Nadi.

Nilesh engaged a top law firm in Fiji to settle the deal as he could not travel to Fiji because of his work commitment. He entered into a Sales and Purchase Agreement with the seller on 28 March 2013.

All looked good until such time when Nilesh began executing his plan to turn the property into a motel. The biggest blow to his dream project was when he received a letter from the Municipal Council stating that the property in question was zoned as Residential B. The approval was granted by Nadi Town Council for residential flats. The seller had previously applied for change in use from residential flats to a motel which was refused by the Department of Town and Country Planning.

Refusal was based on the objection made by the residents over the idea of having a motel in a residential area. The Department of Town and Country Planning clearly stated that, “the motel had a detrimental impact on the residential character of these surrounding residential areas. Thus, the property should be used for residential purposes and not for tourism purposes”.

Nilesh was dismayed as he could not turn this property into a motel despite buying a property which was zoned as “Commercial B”.

A frustrated Nilesh filed a complaint with the Council. Nilesh told the Council he was misled by the seller into purchasing the property under the premise that it was zoned as “Commercial B”.

The zoning, subdivision and land use matters are often overlooked in the conveyance process, which is an important aspect of due diligence.

The Council also raised queries with the Professional Valuations Limited (PVL). The valuation company indicated to the Council that in their first report, they had stated the property as “Commercial B” but on 22 September 2011, PVL notified the seller that the property was zoned as “Residential”. The valuer had also asked the seller to disregard their earlier report.

The valuer’s amended report to the seller, the letter from the Department of Town and Country Planning pointed the needle of suspicion towards the seller having prior knowledge of the property being “Residential B” but continued to misrepresent in the Sales and Purchase Agreement, that the property was “Commercial B”.

This is a breach of section 79 (1) (b) of the Commerce Commission Decree 2010 as outlined:

False or misleading representation and other misleading or offensive conduct in relation to land
79. - (1) A person shall not, in trade or commerce, in connexion with the sale or grant, or the possible sale or grant, of an interest in land or in connexion with the promotion by any means of the sale or grant of an interest in land –

(b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or

The Council also wrote to the two law firms that facilitated the transaction on behalf of the buyer and the seller. Next week, we look at lawyer’s role in performing due diligence.