

PROJECT CLOSE-OUT

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1. EXECUTIVE SUMMARY

Improvement in the efficiency of the process by which physical development projects are implemented is a vital part of Jamaica's strategy for growth and social development. Improvement is particularly important, since a significant part of demand for houses, apartments, and offices is now driven by overseas Jamaicans. These persons, who are accustomed to efficient closeout in their country of residence in thirty days or less, have the option of purchasing real estate in Florida and elsewhere and are intolerant not only of inefficiency in construction but also of the several months required to produce or transfer titles or to receive services, such as street lighting and road repairs.

Efficient closeout requires detailed attention to the entire development process, rather than to its individual components, such as the reform of the operations of the office of the Registrar of Titles, although each component is important. Title Registration, for example, involves several players, including the Developer and his agents, who must obtain a Certificate of Completion from the Parish Council. Then, the Vendor's Attorneys, subsequent to obtaining Registered Title, will seek mortgage proceeds, which may take several more months, due to a necessary, but time consuming process involving; the Stamp Office, Vendor's Attorney and Lender's Attorney, who all are far removed from the pressure experienced by the Developer, who may be made bankrupt through accumulated interest by the time funds have been disbursed.

However, it is possible, with proper industry planning, to reduce the time taken to closeout from many months to weeks, and there-by save an industry, whose products are now costing at least 15% (not including the costs of transfer and stamping) more than they should, due to inefficiency in administration of project closeout.

2. THE IMPORTANCE OF EFFICIENT CLOSEOUT

- Real Estate development is a process of modifying land and making other Improvements to real property in ways which are beneficial to society, and profitable to the Real Estate Developer. This process is controlled in Jamaica by : The Real Estate (Dealers and Developers) Act 1987, and Regulations, 1988 and 1989: and by the Housing Act, (1969) for properties owned by GOJ or facilitated by that Act.
- Efficient close out of a project is of paramount importance because :-
 1. At physical completion, the developer's expenditure is at a maximum. Consequently, any delay is most costly, and may transform profit into loss.
 2. The Real Estate Act requires evidence as represented by Parish Council's Certificate of Completion, and the Housing Act requires an Engineer's certificate of Completion, as evidence that the project has been implemented in accordance with prescribed physical standards.

3. Without efficient close out of infrastructure and handover to the Parish Council the developer may be responsible to maintain the project indefinitely.
4. The Registrar of Titles requires evidence that, in addition to the Certificate of Completion, the subdivision or Strata complies with all legal standards with regard to: ownership of the parent Title, and legal covenants or impediments thereto, the proper fit, as determined by surveys, of the subdivided areas and of the sub-division in relation to all other areas and that the rights and obligations of purchasers and developers as evidenced by a registered Agreement for Sale and signed Transfer are not met.
5. The Mortgage Institutions - National Housing Trust, Building Societies, Banks and Credit Unions will seek to protect their members funds, which will be invested in the long term, through loans provided to purchasers.
6. The purchasers need to be assured as to
 - (a) the quality of their purchase and also to be protected (b) from the costs arising from unnecessary delay

Zealous pursuit of (a) by administrators and lawmakers should, therefore, be accompanied by consideration of (b) Delay can lead to either the developer bearing the cost and going out of business, or, the purchaser bearing the cost through escalation, consistent with the Sales Agreement. Both parties suffer, in Jamaica, due to excessive delay.

3. REGISTERED SPLINTER TITLE

The process of modifying land in a way that is satisfactory to the Developer and Society commences with a concept of a need and ways that it might be filled : (Houses, Apartment, Offices etc.) It expresses itself, initially, in a physical plan, then a plan of operations and thereafter a feasibility study indicating, ultimately, the expected returns from the proposed investment. The process will be successful only if all of the requirements at 1-6 in the Proceeding section are satisfied within the expected time frame.

- The Registered Parent Title, free of encumbrance, is the starting point of any development. Numerous examples exist of projects which have been stalled because the developer invests equity prematurely or a naïve lending institution advances funds in the absence of: complete title search, including the registered plan of the parent title, and review of all covenants. The consequence for the developer of incomplete inspection of the parent title can be bankruptcy, since the splinter titles may never be issued..
- The sub-division plan must meet the requirements set under the Real Estate Act or the Housing Act. The Acts require approval by : - National Environmental Protection Agency, National Work Agency, National Water Commission, the Parish Council and the Ministry of Water & Housing among others.

The route to splinter Title involves the following steps:

- 1.Preparation of a sub-division plan
- 2.Review of that plan by statutory agencies and receipt of their approval.
- 3.Submitting the approved sub-division plan to Survey Department and

obtaining an Examination Number.

4.Preparation of detailed designs

5.Financing the proposed works through an institution such as JMB or NHT – with due regard to all costs including: on site and off site works, design, management, statutory expenses, legal fees and expenses and profit.

6.Implementing the works, using suitably qualified professionals and monitoring their performance to ensure that the standards set in the plan and which are required by: the Parish Council, the NWC, NWA, etc. are met or exceeded.

7.Obtaining a Certificate of Completion from the Parish Council or Ministry of Water and Housing as required.

8.Submitting the following, through an Attorney, to the Registrar of Titles:-

- Parent Title – surrendered for splintering.
- Sub-Division Plan bearing Examination Number from the Survey Department.
- Certificate of Completion

9. The Registrar will then issue a Deposited Plan Number and will initiate a process of ; physical checks through the Survey Department and legal checks regarding encumbrances or covenants on the parent title, proposed covenants on the splinter etc: at the end of which a Registered Title may be issued..

4. MORTGAGE PROCEEDS

Physical completion of the project, whether in total or in phases, and the production of Registered Titles represents the first part of the Development equation. The second part, which must move in parallel with the first, is marketing. As soon as there is an approved sub-division, and all the statutory planning requirements under the Act have been met, sale, preferably in phases, must commence, and must lead to Agreements for Sale executed and duly stamped. Sales Agreements are the basis upon which purchasers can access mortgage funds from lending agencies: - NHT, Building Societies, Banks, Credit Union, after providing satisfactory evidence of their ability to repay loans

If successful, the application process will result in a mortgage commitment to the purchaser to lend a specified sum upon registration of a mortgage, and also to an undertaking by the lending institution to remit the sum to the Vendor's Attorney in exchange for a mortgage registered upon the splinter title. The Vendor's Attorney will only undertake to send the Title to the Lender when the splinter title has been produced.

It is at this point that marketing and physical aspects development meet since:

1. The registered title must be transferred from the Vendor to Purchaser, who both sign the Transfer and have their signatures witnessed and sent to the Vendor's Attorney.
2. The Transfer needs to be registered at the Stamp Office and returned to the Attorney.
3. The splinter Title will then be sent to the Lender's Attorney for mortgage registration. .

4. The Lender's Attorney then sends the Title to the Stamp Office for the registration of the mortgage.
5. Upon the registration of the mortgage. Funds are disbursed to the Developers Attorney.

THIS PROCESS FROM PRESENTATION OF A SPLINTER TITLE BY THE REGISTRAR'S OFFICE UP TO RECEIPT OF PROCEEDS BY THE DEVELOPER HAS BEEN KNOWN TO TAKE FROM SIX MONTHS TO TWO YEARS, IN SOME CASES WHERE THERE HAVE BEEN NO TECHNICAL ISSUES NOR ISSUES WITH PURCHASERS CREDENTIALS. IT IS A MAJOR ISSUE IN DEVELOPMENT AND MUST BE ADDRESSED. IT IS IMPERATIVE THAT, IN AN INTERNATIONALLY COMPETITIVE ENVIRONMENT, A STANDARD BE SET FOR ALL TITLE REGISTRATION AND ALL SUBSEQUENT TRANSFERS AND PAYMENT OF MORTGAGE PROCEEDS. IN OTHER COUNTRIES OUTSIDE OF JAMAICA, THIS PROCESS OF CLOSING MAY TAKE THIRTY DAYS OR LESS IT REQUIRES AN ACT OF WILL BY THE DEVELOPERS ASSOCIATION. THE GOVERNMENT OF JAMAICA AND THE LENDING INSTITUTIONS TO REDUCE THE EXCESSIVE TIME. THIS CONFERENCE SHOULD BE A CATALYST FOR THAT CHANGE.

5. THE DEVELOPMENT PROCESS

This outline of the development process is intended to guide developers, many of whom employ an intuitive rather than methodical approach to development and therefore cannot close out, with disastrous consequences for their profit margins.

PRELIMINARY

- Conduct market survey - to ascertain effective demand that is - who wants to buy what product, at what price, at which location.

It is consumer demand that gives value to land. Intrinsically land is valueless. For example, Highway 2000 by giving speedy access to Kingston and Mandeville has fundamentally transformed land value along the corridor between Kingston and Mandeville.

EVALUATE AND ACQUIRE LAND

- Beyond its location the potential of land development is dependent upon:-
 - Ownership - free of encumbrance or covenants
 - Zoning - is it zoned for housing or for agriculture or is there Bauxite. If fit, what density?
 - Physical characteristic - slopes, soil conditions, especially rock content or swamp, drainage
 - Environmental conditions - underlying aquifer, run off for sewage etc.
 - Potential for developing services - water, light, sewage, street lights, garbage collection.
- Undertake Feasibility Studies - to bring together: prospective revenue, development costs, inclusive of costs of handover to Parish Councils for maintenance, Streets Lights, Garbage Collection, and to NWC if applicable.

- Initiate discussion with prospective Lenders to confirm intent.

PHYSICAL PLANNING

Prepare preliminary and detailed design using qualified professionals to move the project from concept through preliminary and detailed plans leading to ; Survey Department Examination Number for the sub-division, as a basis for Titling; Agency approvals, Parish Council, NWA, NWC, and MWH where applicable.

FINANCING

Prepare and present project with complete documentation demonstrating feasibility to Lender(s) and thereby obtain approval. Remember mandatory equity which is usually at 30% and need for land to be free of encumbrance.

PHYSICAL CONSTRUCTION

Undertake pre-contract and post contract procedures to execute project, making sure to involve NWC, Parish Council representatives to undertake tests at appropriate stages. This sets the stage for smooth **HANDOVER** upon completion. Develop in phases wherever possible.

TITLING

Make sure that

- Parent Title - clean }
- Approved pre-checked plan }
- Completion Certificate from Parish Council } are all in place. Use to good advantage the ability under Housing Act to obtain Titles prior to physical completion. However, no deviation of physical construction from the pre-checked plan is allowed. On this basis, Registered Titles may be issued.

SALES

Commence sale in phases, as soon as project is approved and funded, guided by result of prior market analysis. Sales will be completed only after Registered Titles are in place and work is physically completed thereby giving mortgage institution security for loan disbursement.

HANDOVER

To Parish Council, NWC, MWH, and to Purchaser is now possible because, the authorities may be given registered titles to road and public spaces for which requisite budgeting would have be established by written agreement prior to project commencement. Purchasers may safely be given letters of possession.

CHARTS & SCHEDULES

Microsoft Project and other project management software provide powerful tools for planning and control of projects.