



DO YOU NEED A LAWYER?

A man walks into a bookstore. "Where's the self-help section?" he asks the clerk. She shrugs and replies, "If I tell you, won't that defeat the purpose?" —Anonymous

Funny and strange as it may be, there are questions we ask ourselves at times and wonder, questions like, ...*Who invented the first coffee cup and how did they get their inspiration? OR What makes people think they need to drink coffee from a coffee cup and water from a glass? OR where are coffee cups made, and why not somewhere else?* In almost every real estate transaction in Tanzania, one is faced with the same question always. "Is it necessary for me to hire a real estate lawyer?" The answer is both simple and complex.

The complexity is subject to the type of transaction you are to be involved in. Questions that most tell you if you need a lawyer or not are for example, Is the property you are about to buy has some structural defects? Is the property a commercial one? Does the area that the property is located in is subjected to floods or near the road? Do you know the owner of the property? Are you the heir or executor of a property whose owner is now deceased? Do you have a background on mortgages and liens? Do you want a transaction to go smoothly? If you have answered yes to at least half of these questions then you strongly need a lawyer.

Hiring a real estate lawyer when needed is a smart choice. Their mission is to negotiate to make this transaction *come together* in a peaceful manner that is fair and amenable to both sides. You see, the Sale agreement is the single most important document in the transaction. Although standard printed forms are useful, a lawyer is helpful in explaining the form and making changes and additions to reflect the buyer's and the seller's desires. There are many issues that may need to be addressed in the Sale agreement; for example what are the legal consequences if the sale does not take place, and what happens to the down payment? This question raises related questions: Will the down payment be held in escrow by a lawyer in accordance with appropriately worded escrow instructions? How is payment to be made? Is the sale appropriately conditioned upon the buyer obtaining financing?

Well some would argue that the process is straight forward for the Ministry has made sure of that by provision of the law and forms, well yes I agree especially if it's a very small transaction which can also be BIG. Why do I say so? Well there are legal issues that arise during the process that are not mentioned in the land forms. For example a house you want to buy could have an adjacent house that has a tenant whom you want to vacate so that you take full possession after the purchase but he doesn't want to leave even though his rent and time are due. A lawyer can help.



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Again, it is important to remember that printed contract forms are generally inadequate to incorporate the real understanding of the buyer and seller without significant changes. In addition, there are many kinds of mortgages that may be available. Mortgage loan commitments and mortgage loan documents are complex. Lawyers can review and explain the importance of these various documents.

If you're buying a property, your lawyer will:

- Help you understand the purchase contract, including how you will take title to the property.
- Identify any title defects and determine course of action to clear any title defects.
- Review covenants, easements, liens, etc. recorded against the property.
- Prepare and record all necessary legal documents.
- Clarify the terms of the mortgage and work with your bank, if necessary, to modify them.
- Scrutinize the adjustments, including taxes owed and paid.
- Ensure that you receive a valid recorded deed subject only to the encumbrances you have accepted.

If you're selling a property, your lawyer will:

- Prepare the purchase and sale agreement, including negotiating its terms.
- Prepare the deed and power of attorney if necessary.
- Deal with title issues as they arise and help correct them.
- Arrange for transfer of security deposits.
- Ensure that the mortgage is paid and satisfaction issued.

Perhaps the most important reason to be represented by an attorney is conflicting interests of the parties. Throughout the process, the buyer's and seller's interests can be at odds with each other, and even with those of professionals involved in the sale such as real estate agents. The respective lawyers for the buyer and seller will serve only their own clients' best interests. Seeking the advice of a lawyer is a very good idea from the time you decide to sell or to buy a home until the actual sale or purchase.

Lawyers in Tanzania normally charge by the hour or flat fees for specific services, such as preparing real estate documents or at a percentage as prescribed by the advocate remuneration rules with regards to the whole real estate transaction. Hiring the right lawyer, early in the home-buying process, can actually save you time, risk and most



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importantly, save you money. A home sale/purchase is one of the largest financial transactions a Tanzanian will ever make, and it pays to ensure it is done right and that all of legal rights and protections are adhered to.

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