

ENSURE AVAILABILITY OF STATUORY APPROVALS IN SUBDIVISION SCHEMES BEFORE PURCHASE

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I always wonder how many purchasers get to mind the “invisible bumps” as they place deposits for properties advertised through neat subdivision layouts to be found in newspaper pages and the offices of some property agents. I am sure most of us have seen them. In fact, some shrewd dealers even emboss “sold out” over some of the plot numbers to create the impression of scarcity and entice quick sales. This plays on our psychology, making one get the impression that the scheme is good and all plots would soon be taken up unless one expedited deposits.

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I have met some crooked agents who simply get anyone who can sketch out some good looking subdivision layouts and, with nothing else, put them on walls to entice buyers. Then they proceed to collect deposits without minding future consequences. I have met some who do the layout themselves. With pen and paper, they sketch out plots for quick sale. To fool buyers about survey, they get some quack surveyors to pace distances on site and erect “beacons”. So they will easily have your plot pointed out to you on site and advise you to develop at your pace. But that’s as far as it can ever go. No titles ever follow.

When I pose questions regarding approvals by the local authority and the commissioner of lands, they casually dismiss the concern with refrains that the beneficiaries will mind that themselves.

But this has serious consequences. First, if such plots do not conform to planning standards and permissible zonal sizes, local authorities and consequently the Commissioner of Lands will never accord approval. Therefore, infrastructure like roads, power and water may be difficult to seek. Moreover, if such properties attract annual rates, these continue to accumulate against the head title annually. In a number of schemes, this has escalated to colossal amounts, goading local authorities to invoke their statutory power of sale. Unfortunately, such crooked dealers do not shelve such burdens since they may be long gone or even dead by the time such developments ensue. This puts plot owners in difficult dilemma. There are people who have been unsuccessfully pursuing the Nairobi City Council for titles in situations such as these for years. Yet they have expensive developments on site. The affected continue to suffer in silence. Incidents of this nature are to be found in some schemes off Thika, Kangundo and Mombasa Roads among others.

Yet there are other owners or dealers who intentionally collude with authorized public agencies to obtain necessary approvals knowing quite well that they hold suspect or contested titles. These include people holding titles to grabbed land. And since the titles they hold look as good as any at face value, this group dupes buyers quite easily once they display such titles and present approved plans. Unfortunately, where such original titles are contested, it will be difficult for such owners or agents to confer good sub-titles to buyers. Unfortunately for buyers, the truth may not dawn until they commence physical developments whence the legitimate owners or public agencies appear and stop them.

In cases like these, recovery of such deposits becomes a nightmare since such owners or agents tend to be a lot more powerful and better resourced. Incidents of this nature will be found on properties irregularly derived from forest reserves and other public institutions. And since most Kenyans may not know the specific locations, falling victim can be easy.

One would be advised to do some basic checks when confronted with property offers from the nice looking subdivision schemes. First, to beat dealers who wish to pretend to have genuine plots on offer while they haven't sought due approvals, insist on evidence that this is available. If you do not find such approvals endorsed on the displayed subdivision scheme plans, ask for irrefutable evidence and verify independently. Where you find them endorsed, take note of the parcel or land reference number and make efforts to check with the relevant local authority and commissioner of lands office. You could also look for a reliable and registered professional to

help you do so.

The authenticity of the survey can be easily confirmed by seeking to know the responsible licensed surveyor. The names and contacts of all licensed surveyors and their assistants recognized to undertake such title surveys locally can be easily confirmed with the Director of Surveys or through the Ministry of Lands website www.ardhi.go.ke. This will help to confirm, as a basic, that one is subscribing to a duly approved subdivision layout and an authorized survey.

Confirming issues relating to suspect and contentious titles can be harder because, in our current circumstances on the matter, searches may not help. But with good enquiries, one can get to know titles derived off former military, game park or forest reserves. One of the easy checks is to get a surveyor to point out the site location then make quick site enquiries from people with local knowledge. Since a lot of such contentious sites have been in the public domain over the years, neighbours will easily help with history.

But since a majority of these plots relate to forest reserves around Nairobi, Mt Kenya and the Rift Valley, it is easy to verify with the nearest Kenya Forest Service (KFS) office or their headquarters. And much as claims by KFS may also be subject to legal challenge, why would a buyer want to have their hard earned money bogged down in endless legal suits? It is unlikely that the military, KWS, KFS or other gazetted state agencies will allow one to develop such land as they watch. It's advisable to put the money elsewhere.

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