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# Real Estate

ST Kitts and Nevis

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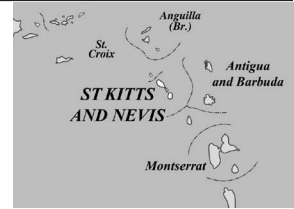
# ST KITTS AND NEVIS

## Law and Practice

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## Contents

<b>1. General</b>	p.4	<b>4. Planning and Zoning</b>	p.7
1.1 Main Sources of Law	p.4	4.1 Legislative and Government Controls Applicable to Strategic Planning and Zoning	p.7
1.2 Main Market Trends and Deals	p.4	4.2 Legislative and Government Controls Applicable to Design, Appearance and Method of Construction	p.8
1.3 Impact of Disruptive Technologies	p.4	4.3 Regulatory Authorities	p.8
1.4 Proposals for Reform	p.4	4.4 Obtaining Entitlements to Develop a New Project	p.8
<b>2. Sale and Purchase</b>	p.4	4.5 Right of Appeal Against an Authority's Decision	p.8
2.1 Categories of Property Rights	p.4	4.6 Agreements with Local or Government Authorities	p.8
2.2 Laws Applicable to Transfer of Title	p.5	4.7 Enforcement of Restrictions on Development and Designated Use	p.8
2.3 Effecting Lawful and Proper Transfer of Title	p.5	<b>5. Investment Vehicles</b>	p.8
2.4 Real Estate Due Diligence	p.5	5.1 Types of Entities Available to Investors to Hold Real Estate Assets	p.8
2.5 Typical Representations and Warranties	p.5	5.2 Main Features of the Constitution of Each Type of Entity	p.8
2.6 Important Areas of Law for Investors	p.5	5.3 Minimum Capital Requirement	p.9
2.7 Soil Pollution or Environmental Contamination	p.5	5.4 Applicable Governance Requirements	p.9
2.8 Permitted Uses of Real Estate Under Zoning or Planning Law	p.6	5.5 Annual Entity Maintenance and Accounting Compliance	p.9
2.9 Condemnation, Expropriation or Compulsory Purchase	p.6	<b>6. Commercial Leases</b>	p.9
2.10 Taxes Applicable to a Transaction	p.6	6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time	p.9
2.11 Legal Restrictions on Foreign Investors	p.6	6.2 Types of Commercial Leases	p.9
<b>3. Real Estate Finance</b>	p.6	6.3 Regulation of Rents or Lease Terms	p.9
3.1 Financing Acquisitions of Commercial Real Estate	p.6	6.4 Typical Terms of a Lease	p.10
3.2 Typical Security Created by Commercial Investors	p.7	6.5 Rent Variation	p.10
3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders	p.7	6.6 Determination of New Rent	p.10
3.4 Taxes or Fees Relating to the Granting and Enforcement of Security	p.7	6.7 Payment of VAT	p.10
3.5 Legal Requirements Before an Entity Can Give Valid Security	p.7	6.8 Costs Payable by Tenant at Start of Lease	p.10
3.6 Formalities When a Borrower Is in Default	p.7	6.9 Payment of Maintenance and Repair of Communal Areas	p.10
3.7 Subordinating Existing Debt to Newly Created Debt	p.7	6.10 Payment of Utilities and Telecommunications	p.10
3.8 Lenders' Liability Under Environmental Laws	p.7		
3.9 Effects of Borrower Becoming Insolvent	p.7		
3.10 Consequences of LIBOR Index Expiry	p.7		

# ST KITTS AND NEVIS CONTENTS

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6.11 Insuring the Real Estate that is Subject to the Lease	p.10
6.12 Restrictions on Use of Real Estate	p.10
6.13 Tenant's Ability to Alter and Improve Real Estate	p.10
6.14 Specific Regulations	p.11
6.15 Effect of Tenant's Insolvency	p.11
6.16 Forms of Security to Protect Against Failure of Tenant to Meet Obligations	p.11
6.17 Right to Occupy After Termination or Expiry of a Lease	p.11
6.18 Right to Assign Leasehold Interest	p.11
6.19 Right to Terminate Lease	p.11
6.20 Registration Requirements	p.11
6.21 Forced Eviction	p.12
6.22 Termination by Third Party	p.12

<b>7. Construction</b>	p.13
7.1 Common Structures Used to Price Construction Projects	p.13
7.2 Assigning Responsibility for the Design and Construction of a Project	p.13
7.3 Management of Construction Risk	p.13
7.4 Management of Schedule-Related Risk	p.14
7.5 Additional Forms of Security to Guarantee a Contractor's Performance	p.14
7.6 Liens or Encumbrances in the Event of Non-payment	p.14
7.7 Requirements Before Use or Inhabitation	p.14
<b>8. Tax</b>	p.14
8.1 VAT	p.14
8.2 Mitigation of Tax Liability	p.14
8.3 Municipal Taxes	p.14
8.4 Income Tax Withholding for Foreign Investors	p.14
8.5 Tax Benefits	p.14

## 1. General

### 1.1 Main Sources of Law

St Christopher and Nevis (St Kitts and Nevis) has two systems of land ownership that operate side by side: the unregistered system (by which one acquires a deed) and the registered system (by which one acquires a Certificate of Title). The relevant pieces of legislation are:

- the Conveyancing and Law of Property Act (unregistered system); and
- the Title by Registration Act (registered system).

The Stamps Act addresses taxes payable in relation to the transfer of real estate. Non-nationals who wish to invest in real estate would be subject to the Aliens Land Holding Regulation Act and require an aliens land holding licence to hold an interest in real estate. For non-national investors, there is also the option of owning land through participation in the Citizenship by Investment Program, which is governed by the Citizenship by Investment Act.

### 1.2 Main Market Trends and Deals

In recent years the main real estate market trend in St Kitts and Nevis has been investments in development projects and real estate sales linked to the Citizenship by Investment Program. This upward trend was noted by Lalaine C. Delmendo, the senior economist for the Global Property Guide, a company that provides information with respect to buying property overseas, in her article entitled “Saint Kitts and Nevis: ever better Citizenship-by-Investment scheme boosts foreign demand”.

### 1.3 Impact of Disruptive Technologies

While real estate investors, developers and lenders have more options with the emergence of blockchain, decentralised finance (DeFi), proptech and other disruptive technologies, these technologies have yet to emerge as a regular alternative in St Kitts and Nevis, and while it has had some impact, the concept of disruptive technologies is still new. In June 2018, a summit was held at the Park Hyatt hotel under the theme with the aim of exploring new cryptocurrency impact investment models, amongst other things. In 2019, the government of St Kitts and Nevis signed a deal with Medici Land Governance, Overstock.com’s blockchain subsidiary, to use blockchain and other technologies to incorporate high-resolution aerial images of the Federation into the Registry of Lands in developing a cadastral survey system. This advancement would undoubtedly improve the functions of real estate agents, investors, developers and lenders. It is expected that more steps will be taken to integrate disruptive technologies in St Kitts and Nevis in future.

### 1.4 Proposals for Reform

The proposed introduction of cadastral survey mapping in St Kitts and Nevis will revolutionise the real estate system in St Kitts and Nevis. At present, any searches in the Registry of Lands are conducted by the name of the property owner so that if the name of the property owner is not known, it can be a tedious process to identify the property owner. With cadastral mapping, the owner of each lot of land will be easily identifiable. The process of completing the cadastral mapping may take some time as a period would need to be allowed for persons to come forward to claim ownership of land in respect of which there is no “paper” owner. There is some prevalence of land ownership without any formal paperwork as property is commonly passed down from generation to generation without the registration of any transfer document.

The digitisation of the Registry of Lands is also in progress and is anticipated to be finalised by 2021. This will create a digital copy of all land titles and deeds in St Kitts and Nevis. Consideration is being given to abandoning paper titles altogether and the development of a system which relies on digital title ownership only.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

Property rights that can be acquired in St Kitts and Nevis include the following.

- Ownership in fee simple, which is an absolute ownership with full rights to deal with and alienate property.
- Life interest, which entitles the holder to occupy the property for his or her lifetime. This type of interest is most often seen in cases where a spouse dies and leaves the surviving spouse with a life interest in property with fee simple to the children when the surviving spouse passes away.
- Self-vesting deed, which is a self-declaration of one’s ownership in property by virtue of long possession. This type of property right can be easily challenged. Consequently, persons with a vesting deed often convert the deed to a Certificate of Title once they have held the Vesting Deed for the requisite number of years.
- Ownership by adverse possession after 12 years of open, undisturbed possession.
- Ownership by long possession after undisturbed possession of property for over 30 years.
- Leasehold interests over three years must be registered.
- Licences.
- Easements.

## 2.2 Laws Applicable to Transfer of Title

The law applicable to the transfer of title in real property is either:

- the Title by Registration Act; or
- the Conveyancing and Law of Property Act.

There are two systems of land registration in St Kitts and Nevis: the registered system by which property is held by a Certificate of Title (COT) or an unregistered system by which property is held by a deed. Which act is applicable would depend on whether the property in question is held by deed or COT. If the property is held by deed, the Conveyancing and Law of Property Act applies. If the property is held by COT, the Title by Registration Act applies.

For lands held by COT, the purchaser pays a fee of 0.2% of the value of the property to the government as an assurance fund payment and the purchaser's title is guaranteed by the government. There is no such guarantee for lands held by deed.

If the purchaser of the property is not a citizen of St Kitts and Nevis, the Aliens Land Holding Regulation Act and/or the Citizenship by Investment Program may apply.

The Stamps Act sets out the stamp duty or taxes payable on the transfer of real property based, for example, on familial relationships, the developmental zone, and whether the land is being transferred by the court or the Housing and Land Development Agency. The stamp duty payable on the transfer would depend on the circumstances of the transfer or, in some instances, the location of the property being transferred.

## 2.3 Effecting Lawful and Proper Transfer of Title

The documents to effect the lawful transfer of property would depend on whether the property is held by COT or deed.

The transfer of property held by deed is effected by registration of a Deed of Indenture.

The transfer of property held by COT is effected by registration of a Memorandum of Transfer. In addition to presenting the executed and stamped MOT for registration, the transferor is required to submit his or her original COT, which is cancelled upon the transfer and a new COT is issued to the new owner.

In each case, the transfer document is to be submitted to the Inland Revenue Department (IRD) for assessment of the taxes due and the taxes paid, after which the IRD stamps the document confirming the payment of the relevant taxes. Once the document is stamped by the IRD, it is presented to the Registry of Titles or the Registry of Deeds (as may be applicable)

for the registration of the transfer and issue of a new COT (if applicable).

Title insurance is not required by law and is not common. The instances in which title insurance is taken on property usually involve a large development project, often by an overseas investor or involving an overseas financier.

## 2.4 Real Estate Due Diligence

Purchasers usually engage the services of a local attorney-at-law, who will conduct due diligence on the property. The typical due diligence usually involves a physical search at the Registry of Lands to confirm whether the property is free from encumbrances (eg, mortgage, caveat, restrictive covenants), and, if not, to identify the encumbrances on the property; confirm that the seller is the registered proprietor of the property with power to transfer an interest in the property; enquire at the IRD to confirm whether all land taxes in relation to the property are paid up; and enquire at the electricity company and water department to confirm whether all the utilities are paid up. A new survey is not usually ordered but at times purchasers request a new survey of the property to confirm the boundaries; a survey and a physical walk-through of the property is almost always done in cases involving large tracts of land earmarked for development purposes.

## 2.5 Typical Representations and Warranties

There are no seller's warranties provided under statute. The buyer's remedies against the seller for misrepresentation are the remedies available to the buyer under common law.

## 2.6 Important Areas of Law for Investors

Typically, a large investor would negotiate and enter into a development agreement with the government that would set out the taxes and concessions applicable to the investor's development. The Hotels Aids Act sets out the general regime applicable to investors in the hotel industry.

## 2.7 Soil Pollution or Environmental Contamination

In St Kitts and Nevis the seller of real estate is to ensure that they comply with the laws of the National Conservation Environmental and Protection Act of St Kitts and Nevis, amongst others, and equally the buyer is responsible for ensuring compliance when the property is transferred. Even if the buyer did not cause the pollution or contamination as the owner of the land, he would be ultimately responsible for same, but he may be able to seek an indemnity against the seller if it can be established that the seller was responsible for the contamination.

## 2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

According to the Development Control and Planning Act (Planning Act) every person seeking to erect, re-erect, remove or alter the structure of a building must make an application to the Department of Physical Planning for permission to do so. A buyer can ascertain the permitted uses of a parcel of real estate under applicable zoning or planning law by contacting the Department of Physical Planning to obtain a copy of the zoning plan, planning scheme and planning regulations relevant to that area. The relevant plan will contain requirements concerning land use, vehicular access, parking, setbacks from boundaries, site coverage, floor area limitations, height limitations, external appearance (in some cases including preferred colours), tree planting. There may also be special planning controls on alterations to buildings of historic interest. Usually, signs and advertising devices are subject to planning controls. A buyer can also source a copy of the COT or deed in respect of the property which would contain the restrictive covenants attached to the land. The general Building Code applicable to St Kitts and Nevis is set out in the seventh schedule to the Planning Act.

The St. Kitts (Planned Community) Act provides for the establishment and registration of planned communities. The purpose of the Act is stated as “to allow and facilitate the creation, development, and operation of one or more planned communities in the St Kitts peninsula resort district and to provide for related matters.” The Act has since been extended to other areas in St Kitts which benefit from the special provisions of the Planned Community Act. The objects of the Act are stated as follows:

- to allow and facilitate the creation, development, and operation of one or more planned communities in St Kitts;
- to provide a mechanism for the registration of title to a parcel of land intended for subdivision and development in a planned community and to provide for positive covenants to run with the title to the land;
- to provide for the regulation of the rights and obligations of the owners of property within a planned community;
- to provide for the creation of a community corporation which will be responsible for the development and management of the amenities within and the infrastructure of the planned community; and
- to facilitate the establishment and enforcement of the obligations of a landowner within the planned community.

## 2.9 Condemnation, Expropriation or Compulsory Purchase

Pursuant to the Constitution of St Christopher and Nevis and the Land Acquisition Act (or the Land Acquisition Ordinance in Nevis), the government has the power to compulsorily acquire land for a public purpose; however, the proprietor of the land is

entitled to compensation. The legislation provides for the establishment of an assessment board comprising one nominee of the proprietor, one nominee of the government and a judge as chairperson.

## 2.10 Taxes Applicable to a Transaction

The seller is required by law to pay 10% stamp duty on the transfer of the land assessed on the value of the property, which is usually the purchase price or the value assessed by the IRD, whichever is greater. There are instances where the seller and the buyer agree to share the stamp duty payable on the transfer but this is completely dependent on agreement between the parties. If a real estate agent is involved, the seller would also pay the real estate commission, which is typically about 6% of the sale price. There are also small fees payable by the purchaser if the property is held by a COT: assurance fund fee – 0.2% of value of the property, registration fee – USD2.70. The purchaser is also usually responsible for all other closing costs; eg, legal fees, surveyor’s fees.

When shares are being transferred, it is also subject to stamp duty, which is a percentage of the value of the shares, as well as to a nominal registration fee. If the main asset of the company is real property, the transfer of shares would attract taxes at the same rate as the transfer of real property.

## 2.11 Legal Restrictions on Foreign Investors

In St Kitts and Nevis a foreign investor is required by law to apply for and obtain an alien land holding licence, which is issued by the government. A foreign investor also has the option of applying for and obtaining citizenship pursuant to the Citizenship by Investment Program, in which case an alien land holding licence will not be required. Otherwise, there are no legal restrictions on non-nationals investing in real estate.

## 3. Real Estate Finance

### 3.1 Financing Acquisitions of Commercial Real Estate

Commercial real estate is generally financed through lending institutions. There are different financing options for the acquisition of large real estate portfolios or companies holding real estate, such as lease to own arrangements or by participating in the Citizenship by Investment Program, where the purchasers finance the development project. If the large tract of land is owned by the government, there is the option of the government partnering with the developer in various ways to develop the real estate.

## 3.2 Typical Security Created by Commercial Investors

The typical security created or entered into by a commercial real estate investor who is borrowing funds to acquire or develop real estate is a mortgage over the property. The mortgage can be legal or equitable. If an equitable mortgage is created, a caveat is usually placed on the property to forbid any further dealings with the property. In addition, the company may pledge its shares to the lending institution and secure a corporate guarantor as additional security.

## 3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

There are no restrictions on granting security over real estate to foreign lenders, nor are there any restrictions on repayments being made to a foreign lender pursuant to the loan agreement between the parties.

## 3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

A stamp duty of 1% of the sum secured is generally payable on the registration of a mortgage. However, the rate is 2% of the sum secured for mortgages taken over land in the South East Peninsula which is designated as a Special Development Area under the Stamps Act.

The main cost of enforcement of the security would be legal fees as a court process is usually involved.

## 3.5 Legal Requirements Before an Entity Can Give Valid Security

There are generally no legal rules or requirements that must be complied with before an entity can give valid security, other than the provision of the usual corporate authorities from the board of directors authorising the proposed transaction.

## 3.6 Formalities When a Borrower Is in Default

The Title by Registration Act sets out a detailed procedure to be followed by a mortgagee when a borrower is in default.

- Service of a formal Notice to Pay Off, in the prescribed form, on the registered proprietor requiring payment within 60 days of the date of service.
- If the registered proprietor fails to pay, the lending institution may seize the land by the bailiff appearing on the premises with an order to seize and shall serve the registered proprietor with an act of seizure in the prescribed form. There is provision for substituted service in circumstances where the whereabouts of the registered proprietor are unknown.
- The lender presents a caveat of seizure in the prescribed form to the Registrar, which the Registrar shall note on the

title. The caveat of seizure prohibits any dealings with the land seized until the caveat is removed or withdrawn.

- If no payment or satisfactory arrangements for payment is/are made within 30 days from the date of seizure, the lender applies to the court to settle the articles of sale, estimate an upset price, fix the day of the sale and the mode of publication of the sale. The application is served on the registered proprietor, who may attend the hearing and make representations accordingly.

The lender would usually obtain a valuation to support its application to estimate the upset price. Further, the sale must be satisfactorily advertised and proof of advertisement must be submitted to the court. If there are no bidders, the auction is postponed. If the auction is not successful, the borrowing entity can apply to the court to reduce the upset price of the property, based on the further appraisal of a valuer.

## 3.7 Subordinating Existing Debt to Newly Created Debt

It is possible for existing secured debt to become subordinated to newly created debt; however, this will depend on the lending institution. It is generally done by an agreement, subject to the lending institution's conditions, which typically include that the collateral on the existing debt is valued high enough to secure the newly created debt. Life insurance policies, large enough to accommodate both debts, are also a usual requirement for individuals.

## 3.8 Lenders' Liability Under Environmental Laws

Generally, a lending institution that merely holds a security over real estate would not be liable for breaches of environmental laws.

## 3.9 Effects of Borrower Becoming Insolvent

No registered security interests created by the borrower in favour of a lender are made void if the borrower becomes insolvent.

## 3.10 Consequences of LIBOR Index Expiry

No information is available in this jurisdiction.

# 4. Planning and Zoning

## 4.1 Legislative and Government Controls Applicable to Strategic Planning and Zoning

The legislative and governmental controls that typically apply to strategic planning and zoning in St Kitts and Nevis are set out in the Development Control and Planning Act (Planning Act), the Nevis Physical Planning and Development Control Ordinance (Planning Ordinance) and the Nevis Zoning Plan



Ordinance. The Condominium Act governs the development of condominiums.

## **4.2 Legislative and Government Controls Applicable to Design, Appearance and Method of Construction**

The Planning Act and Planning Ordinance broadly govern the design, appearance and method of construction of new buildings or refurbishment of an existing building. In addition to requiring that plans be registered with and approved by the Department of Physical Planning (DPP), the DPP also makes regular physical inspection of the construction site to ensure that construction is proceeding according to the approved plans.

Residential and commercial buildings are subject to height restrictions based on the zone in which they are located. Hotels and other buildings on the coast are required to be erected at a minimum specified distance from the high-water mark.

## **4.3 Regulatory Authorities**

The authority that is responsible for regulating the development and designated use of individual parcels of real estate is principally the Department of Physical Planning. If the regulations are not complied with, the DPP may issue a stop order and the offending landowner may be subject to a fine.

## **4.4 Obtaining Entitlements to Develop a New Project**

Applications for approval to develop a major new project or any project under the Citizenship by Investment Program are to be submitted to the St. Kitts Investment Promotion Agency (SKIPA) with the relevant architectural and building plans, topography surveys, environmental impact assessment survey, business plan and other relevant documents. Depending on the nature of the project, its size and location, public consultations are held prior to granting approval. In such cases, third parties are allowed to participate and object, if appropriate. In a recent case, *Anne H. Bass v Department of Physical Planning*, the court confirmed that pursuant to the Nevis Planning Ordinance, members of the public had the right to attend the office of the DPP and inspect the plans and documents submitted in relation to a development in Nevis.

## **4.5 Right of Appeal Against an Authority's Decision**

If an applicant is dissatisfied with the decision of the DPP, the applicant may appeal to the Physical Planning Appeal Tribunal. If the applicant is dissatisfied with the decision of the Tribunal, there is a right of further appeal to the High Court.

## **4.6 Agreements with Local or Government Authorities**

Typically, a developer would enter into a development agreement with the government that would usually make provision for co-operation of the various government departments or authorities. The utilities (electricity, water) are government owned (through a company, in the case of electricity) and the government may make representations in relation to those as well. Separate agreements may be negotiated with suppliers of other utility services (eg, internet, cable) but typically with the assistance of the government by agreement.

## **4.7 Enforcement of Restrictions on Development and Designated Use**

While it is not typically a scheduled procedure, employees of the various regulatory departments (where applicable) would usually visit work sites to check the progress of construction or renovation and whether there are any breaches of the zoning, agricultural, health and environmental laws, amongst others. If there are any breaches, a stop notice may be issued, halting construction. Also, a fine may be imposed on the offending party.

# **5. Investment Vehicles**

## **5.1 Types of Entities Available to Investors to Hold Real Estate Assets**

Investors may hold real estate assets through a local company or a limited partnership. A local limited liability company is most frequently used.

## **5.2 Main Features of the Constitution of Each Type of Entity**

The main features of the constitution of each type of entity used to invest in real estate are as follows.

Any two or more persons, including a body corporate person, may form a limited partnership but at least one person must be a general partner. In a limited partnership the general partner is personally liable for debts and the limited partner has limited liability but cannot participate in the management of a business. The partners of a limited partnership are exempt from all income, capital gains and withholding taxes with respect to the limited partnership if the general partners only transact with persons who are resident outside the Federation. This is the type of ownership structure used for the Park Hyatt project.

A local limited liability company is governed by a board of directors, the members of which may be resident or non-resident. However, there is a requirement that either the secretary or assistant secretary of the company be resident in St Kitts and Nevis. The company must also have a local address as its reg-



istered office. There are several local firms that offer secretarial and registered office services. The shareholders of the company need not be citizens of or resident in St Kitts and Nevis. However, if the shareholders are non-citizens, they would be required to apply for and obtain an alien land holding licence to own the shares in a company whose main asset is real estate. The alien land holding licence application procedure to be a shareholder in a company is simple and relatively inexpensive.

### 5.3 Minimum Capital Requirement

There is no minimum capital requirement.

### 5.4 Applicable Governance Requirements

See the description under 5.2 Main Features of the Constitution of Each Type of Entity.

### 5.5 Annual Entity Maintenance and Accounting Compliance

The annual maintenance cost would depend on the type of entity used. The government fee for the maintenance of a local company in St Kitts or Nevis is approximately USD100.

## 6. Commercial Leases

### 6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

In the Federation of St Christopher and Nevis the law recognises the use of leases to allow a person, company or other organisation to occupy and use real estate for a limited period of time.

All leases are governed by the Conveyancing and Law of Property Act, the Rent Restriction Act and the Recovery of Rent Act.

A “public or commercial building” is defined by the Rent Restriction Act as a building, or part of a building, separately let, or a room separately let, which at the material date was or is used mainly for the public service, or for business, trade or professional purposes, and includes land occupied therewith under the tenancy but does not include a building, part of a building or room when let with agricultural land.

### 6.2 Types of Commercial Leases

In St Kitts and Nevis, there are two standard forms of commercial leases: the fixed-term lease and the ordinary lease (for a periodic tenancy).

A fixed-term lease will automatically terminate at the end of the fixed term stipulated in the lease. There is no requirement to renew the lease or allow a lessee to stay in the premises past the fixed date set out in the lease. This form of lease offers more protection for the lessor, as a lessee may be required to pay for

the entire term outlined in the lease if he or she leaves the premises early. The only option a lessee has to opt out of a fixed-term lease prior to the expiry of the term is if there is a break clause in the lease allowing the lessee to do so, if the landlord forfeits the lease, or if the lease prescribes for early termination upon the occurrence of a specific event; for example, an act of God that causes substantial damage to the property.

An ordinary lease allows the lessee to negotiate to extend the length of the lease, as well as to give notice to vacate the premises early without any additional consequences once the rent up to the time of vacating the premises is paid and all other requirements of the lease were complied with. This form of lease generally offers more protection to the lessee.

### 6.3 Regulation of Rents or Lease Terms

The Rent Restriction Act made provisions for the Governor-General to appoint three fit and proper persons, one of whom shall be a government officer, to be Rent Commissioners for the state, for the purposes of carrying into effect certain provisions of the Act. The Rent Commissioners would then prescribe the standard rent to be applied to any category of lease or building. However, to date, there has been no appointment of Rent Commissioners. Consequently, in practice the rent of any premises is set by agreement between the parties.

The various pieces of legislation governing leases do not specify the length of time that a person can lease the property that they own; however, when a mortgagee of land in possession, as against all prior encumbrances, and as against the mortgagor, leases the mortgaged property, then the lease is governed by Section 37 of the Conveyancing and Law of Property Act, which sets out the number of years a mortgagee can lease the property depending on the type of property being leased.

The Act specifies that an agricultural or occupational lease cannot be rented by a mortgagee for a term exceeding 21 years, a mining lease cannot be rented for a term exceeding 35 years and a building lease cannot be rented for a term exceeding 99 years.

Further, a lease made by a mortgagee must be made to take effect no later than 12 months after the date of the lease.

With respect to the terms of a lease, whereas the statute does not prescribe the form of words to be used when outlining the terms of a lease, the parties to a lease are guided by the statute when setting out its terms.

Other than as set out above, rent and lease terms are freely negotiable.

## 6.4 Typical Terms of a Lease

Although the statute does not prescribe the terms to be used in a lease, there are some terms that can usually be found in a commercial lease.

Typically, the length of a lease of business premises is for a fixed term of years with an option to renew. Rent at a fixed sum is usually payable monthly and default of payment can result in the termination of the tenancy.

Ordinarily, the lessor is responsible for the structural maintenance, insurance and property taxes relating to a commercial lease, and the tenant is responsible for any minor wear and tear that arises during their tenancy. Unless otherwise outlined in the lease, the tenant would also be responsible for paying for the utilities during the tenancy.

It is common for a lease to include provisions concerning whether a tenant can assign the lease or sublet the property and outlining the types of permitted alterations or improvements (if any) and whether or not permission from the landlord is required to do so.

## 6.5 Rent Variation

The level of rent is determined by agreement between the parties. Express provision may be made in the lease for a pre-determined increase in the rent after a stipulated period during the term of the lease.

## 6.6 Determination of New Rent

The Rent Restriction Act makes provision for an application to be made to the Rent Commissioners to set the standard rent for new premises. However, as the Rent Commissioners have not been appointed, the determination of the new rent is in the discretion of the lessor and is usually based on negotiations between the parties.

## 6.7 Payment of VAT

The payment of value added tax (VAT) is prescribed by the Value Added Tax Act, which does not prescribe that VAT is payable on rent per se. However, if the income of the landlord from its rental business is more than the threshold of XCD100,000 per year, which is usually the case with leases of commercial properties, and the landlord is registered to collect VAT, the tenant would be required to pay VAT on the rent. If the tenant is registered to collect VAT, the tenant would be entitled to request a refund of the VAT paid on the rent.

## 6.8 Costs Payable by Tenant at Start of Lease

At the start of a lease the tenant is not usually required to pay any amount other than rent. However, some leases may require that a tenant pay the first and last month's rent and/or a refund-

able deposit to be applied to any damage to the property and/or sums outstanding on service accounts and utilities at the end of the tenancy.

## 6.9 Payment of Maintenance and Repair of Communal Areas

When a person is renting a commercial building with a shared rental space – for example, a shared parking lot or gardens – the maintenance and repair of those spaces would generally be paid by the landlord. However, if the building is on a small lot that is not shared, the tenant would usually be required to maintain and keep in good repair the garden, parking lot and other surroundings associated with the rental property.

## 6.10 Payment of Utilities and Telecommunications

Usually, each tenant is responsible for the utilities and telecommunications charges associated with its tenancy. It is preferable for each tenant to have a separate meter for electricity and the reading provided each month so that the appropriate payment may be made. If the utilities are not separated – for example, water – they may be charged by the landlord at a flat rate per month as agreed by the landlord and the tenant. Typically, for services such as internet and cable, the tenant would set up its own connection and would be directly responsible for the charges to the relevant companies.

## 6.11 Insuring the Real Estate that is Subject to the Lease

The insurance for the real estate subject to a lease is typically paid for by the landlord. It would usually cover structural damage by flood, hurricanes, tornadoes, tsunamis and other natural disasters but it would not usually cover the contents of the building, as that would be for the tenant to insure.

## 6.12 Restrictions on Use of Real Estate

A landlord can include in the lease restrictions on how the tenant uses the real estate. Typically, a lease would indicate that the premises is not to be used for any other purpose than what is set out in the lease.

Further, the premises may be subject to zoning regulations and restrictive covenants attached to the property, with which the tenant would be required to comply.

## 6.13 Tenant's Ability to Alter and Improve Real Estate

The rental agreement would normally outline whether a tenant is permitted to alter or improve the real estate and the extent of such changes.

In order to safeguard against the premises being altered in a way that is not acceptable, the landlord would generally request that the tenant seek permission to make alterations or improvements, and expressly state that the tenant is not allowed to make structural changes, or changes that may change the character of the premises. How alterations and improvements are treated is a matter for negotiation between the parties.

## **6.14 Specific Regulations**

There are no specific regulations or laws that apply to leases of particular categories of real estate. However, there may be legislation that governs the area in which the real estate is located (for example, the St. Kitts (Planned Community) Act) or covenants applicable to a particular piece of real estate that may affect how a tenant may use a rental property.

## **6.15 Effect of Tenant's Insolvency**

If the tenant is insolvent and owes rent, the landlord would be an unsecured creditor entitled to share in the assets of the tenant with other unsecured creditors *pari passu*.

## **6.16 Forms of Security to Protect Against Failure of Tenant to Meet Obligations**

In accordance with the Rent Restriction Act, the landlord is precluded from charging any premium, fine or other additional amount other than rent as a condition to the granting, continuance or renewal of a tenancy. The landlord's only recourse in relation to a breach of a tenant's obligations is to serve notice on the tenant, where the Act so allows, and/or institute legal proceedings against the tenant with respect to any damages arising out of the tenant's failure to meet obligations.

As a practical matter, at the commencement of the tenancy, a landlord can negotiate for and secure first and last month's rent and/or a refundable security deposit.

## **6.17 Right to Occupy After Termination or Expiry of a Lease**

A tenant does not have a right to continue to occupy the rented premises after the expiry or termination of a fixed-term commercial lease.

Tenants can continue to occupy the premises after the expiry of the date set out in an ordinary lease, if they exercise an option to renew the lease, or if they pay for the additional time that they remain in the premises, normally on a month-to-month basis until another agreement is made or the tenant is evicted by the court. If the landlord wants the tenant to leave the premises, the landlord can give the tenant notice to quit and/or apply to the court for recovery of possession of the premises if the tenant does not leave on the date originally agreed, and for the recovery

of the additional rent, also known as mesne profit, for the period the tenant occupied the premises after the expiry of the lease.

## **6.18 Right to Assign Leasehold Interest**

A tenant is permitted to assign its leasehold interest if the terms of the lease permit.

A clause allowing a tenant to sublet or assign a property would normally require the tenant to give notice to the landlord in writing or request the landlord's permission to sublet or assign the property, include a condition that the main tenant ensures that all the terms, obligations and covenants outlined in the lease are complied with by the person to whom the lease is assigned or underlet as well as a term indicating that the act of assigning or subletting does not affect the landlord's right of re-entry or right to forfeit the lease, or serve notice to quit on the tenant for breach of the terms of the lease.

## **6.19 Right to Terminate Lease**

It is standard for a lease to include a clause providing that a tenant may terminate the lease by giving written notice to the landlord. There is no requirement in law for tenants to outline why they are terminating the lease.

A landlord can give the tenant notice to quit if the tenant is in default of paying rent for over 60 days or if the tenant has been in breach of the obligations in the lease for over 30 days or if any of the conditions set out in the Rent Restriction Act for recovery of possession are satisfied.

## **6.20 Registration Requirements**

A lease of three years or more is required by law to be registered in the Registry of Deeds and noted as an incumbrance on the property. Registration is usually undertaken by the landlord. The taxes and fees payable on registration are minimal.

If the lease is executed in St Kitts and Nevis, it must be executed before a witness. If the lease is executed overseas, it must be executed before a notary public.

A written lease would be valid if it satisfies the common law elements governing a lease, namely that the lease identifies the lessor and lessee, identifies the property, is for a finite duration, outlines that rent is paid, allows for exclusive possession by the tenant and is signed by both parties. Additionally, a lease can be made orally; however, this is not normally done as an oral lease is unenforceable and recourse for any breach would only be granted if part performance of the oral lease can be shown, so as to satisfy a court that there was in fact an oral agreement to lease the property.

## 6.21 Forced Eviction

The Rent Restriction Act outlines in detail the circumstances upon which the landlord can forcibly recover possession of the rented premises.

The Act states that the court can make an order evicting the tenant, and granting recovery of possession to the landlord in the following circumstances.

- (a) Some rent lawfully due from the tenant has not been paid for at least 60 days after it has become due.
- (b) Some other obligation of the tenancy (whether expressed or implied) has been broken or not performed and, in the case of non-performance of any such obligation by the tenant, the tenant has been in default for at least 30 days.
- (c) The tenant or any person residing or lodging with him or her or being his or her subtenant has been guilty of conduct that is a nuisance or annoyance to adjacent or adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated or become insanitary owing to acts of waste by, or the neglect or default of, the tenant or any such person and, where such person is a lodger or subtenant, the court is satisfied that the tenant has not, before the making or giving of the notice to quit, taken such steps as he or she ought reasonably to have taken for the removal of the lodger or subtenant.
- (d) The premises, being a dwelling-house or a public or commercial building, is reasonably required by the landlord for:
  - (i) immediate occupation as a residence for himself or herself or for some person wholly dependent on him or her or for any person bona fide residing with him or her, or for any person in his or her whole-time employment;
  - (ii) use by himself or herself for business, trade or professional purposes; or
  - (iii) a combination of the purposes in sub-paragraphs (i) and (ii) above.
- (e) The premises, being building land, is reasonably required by the landlord for:
  - (i) the erection of a building to be used for any of the purposes specified in paragraph (d) of this section;
  - (ii) use by himself or herself for business, trade or professional purposes not involving the erection of a building; or
  - (iii) a combination of such purposes.
- (f) The premises, being a dwelling-house or a public or commercial building, is required for the purpose of being repaired, improved, or rebuilt, and an undertaking is given that the landlord will, immediately after the completion of the repairs, improvements or rebuilding, give the tenant an opportunity for renewing his or her tenancy at such rent as the Rent Commissioners may order.
- (g) The premises is required for public purposes.
- (h) The dwelling-house, or the public or commercial building, or the building erected by the tenant on building land, as the case may be, is required by law to be demolished.
- (i) The tenant has sublet, or parted with the possession of, the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorised by or under the tenancy agreement or lease so to do.
- (j) The tenant of a dwelling-house, or of building land on which the building erected by the tenant is used or is intended to be used mainly as a dwelling, uses the house or building mainly for business, trade or professional purposes without either obtaining the consent of the landlord or being authorised by or under the tenancy agreement or lease so to do.
- (k) In the case of building land, the building erected thereon has been sold under distress for rent.
- (l) The dwelling-house has been let to a tenant in the employment of the landlord on condition that the tenancy shall subsist only during the continuance of such employment, or only until the expiry of a period not exceeding one month after the termination of such employment, and the employment has terminated, or such period has expired, as the case may be.
- (m) The dwelling-house has been let to a tenant in the employment of the landlord in consequence of that employment, and the employment has determined or the landlord has offered the tenant suitable alternative accommodation.

Notwithstanding the aforementioned provisions, a court can make an order forcefully evicting a tenant from the premises if it considers it reasonable to make such an order based on the circumstances of the case.

## 6.22 Termination by Third Party

A lease can effectually be terminated by the government of St Christopher and Nevis or the Nevis Island Administration if the property leased is compulsorily acquired by the government pursuant to the St Kitts and Nevis Land Acquisition Act or the Nevis Land Acquisition Ordinance.

If the Governor General considers that the property should be acquired for a public purpose, he or she may, with the approval of the National Assembly, cause a declaration to that effect to be made by the Secretary to the Cabinet. The declaration will then be published in two ordinary issues of the Gazette (or newspaper, in the case of Nevis) and copies thereof shall be posted on one of the buildings or exhibited at suitable places in the locality in which the property is situated. Upon the second publication, the land shall vest in the Crown.

If any land shall be comprised in a lease for a term of years unexpired and part only of such land shall be acquired compulsorily, the rent payable in respect of the land comprised in such lease may, on the application of the lessor or the lessee to a judge of the High Court, be apportioned between the land acquired and the residue of the land.

After such apportionment, the lessee shall, as to all future accruing rent, be liable to pay only so much of the rent as shall be so apportioned in respect of the residue of the land, and as to the residue of the land, and as against the lessee. The lessor shall have all the same rights and remedies for the recovery of such portion of the rent as previously to such apportionment he or she had for the recovery of the whole rent reserved by such lease. All the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to the residue of the land in the same manner as they would have done if the residue of the land only had been included in the lease.

Where it is shown that the compulsory acquisition of a portion of land comprised in a lease has rendered the residue unsuitable for the purpose for which the land was leased or where in the circumstances the said court considers it just so to do, the court may rescind the lease altogether, and in such case the lessee shall only be liable to pay the rent due at the date of the occurrence of the circumstances on which the rescission order is based.

Where, as the result of such rescission of lease, the lessor or lessee suffers any loss or injury, he or she shall be entitled to compensation by the government.

## 7. Construction

### 7.1 Common Structures Used to Price Construction Projects

The most common methods used to price construction projects are lump sum contracts and unit price contracts.

If there is a lump sum contract, the contractor estimates the total cost of constructing the project and the fixed lump sum price is

included in the contract. Therefore, the owner of the property will only be responsible for paying that amount in accordance with the terms of the contract. With this type of contract, the owner effectively assigns all the risk of completing the project to the contractor, who can in turn request a higher mark-up. However, once the fixed sum is agreed, if the contractor underestimated the cost of the project, the contractor's profit will be reduced. Likewise, if the contractor overestimated the cost of the project, then his or her profit will be increased.

If there is a unit price contract, then the risk of overestimating or underestimating the cost of the project is relinquished since the contractor would give an estimate for the work to be done on each unit or phase of the development, and the owner would be responsible for paying the contractor periodically for the work done on each unit or in advance of the work on each unit. This method is typically used for large projects, as the contractor would have the option of refraining from continuing the remaining unit until the cost of the work done for each unit is paid. Additionally, if, in the development of the various units, an unexpected or unanticipated risk presents itself or if the development of one unit is more challenging than others, then the contractor is able to increase the amount to meet the risk.

### 7.2 Assigning Responsibility for the Design and Construction of a Project

It is standard procedure that a head architect or contractor supervises a development project and allocates tasks to the various persons working on the project. The head contractor operates as a bridge between the owner and the workers. Normally that contractor is also responsible for paying the persons working on the project.

It is the norm for the head contractor to set up an integrated system in which the designers and builders of the project work together to safeguard against making avoidable changes and unnecessary re-evaluations in relation to the project. This system allows for the construction workers to ascertain the information needed to produce a more accurate representation of the design since the designers and construction workers would be working simultaneously.

### 7.3 Management of Construction Risk

The devices most commonly used to manage construction risk on a project are indemnifications and warranties.

An indemnification clause in a construction contract is included to ensure that the general contractor of the project indemnifies the property owner from any harm caused by its workers.

A warranty would be used in a construction contract to specify the course of action to be taken in the event that something goes wrong.

Any construction contract is subject to the provisions of the Limitation Act, which outlines that a party has six years to sue for a breach of contract, or under a contract, which time can be extended when the breach is acknowledged or a promise is made to fulfil the terms of the contract.

## **7.4 Management of Schedule-Related Risk**

The parties to a construction project would typically include a clause that facilitates the management of schedule-related risks. The contract can outline that the developers compensate the owner if the project is not completed on schedule due to the fault of the persons working on the project. The contract can also set out what is considered as a reasonable delay in the schedule or what would happen if the delay in the schedule was due to any unforeseen circumstances. The specific terms would be based on the negotiations of the parties taking into consideration the nature of the project and issues related to the location of the project, amongst other things.

## **7.5 Additional Forms of Security to Guarantee a Contractor's Performance**

An additional form of security common to construction projects is performance bonds. The owner or investor of a construction project would generally require the general contractor to get the other contractors or project managers to sign performance bonds so that they do not lose the value of the work in the event of an unforeseen circumstance that would adversely affect the project, such as the insolvency of the party before the completion of the project.

## **7.6 Liens or Encumbrances in the Event of Non-payment**

A lien or encumbrance is generally seen in unit price contracts. Those contracts generally stipulate that the developer is paid after or in advance of the construction of a unit. If the payment is not forthcoming, the developer can cease working on the next unit or phase until the contracted payment is made. It is possible for an owner, in an effort to prevent delays in the project, to include a term in the contract that the developer continues working, subject to the payment of interest as a penalty for non-payment.

## **7.7 Requirements Before Use or Inhabitation**

There is no set requirement imposed by the law before a development project can be inhabited or used for its intended purpose. It is only subject to approvals and conditions when permission for the development is being sought. Contracts may require the contractor to issue a certificate of occupancy before the project can be inhabited for insurance or other purposes.

## **8. Tax**

### **8.1 VAT**

Value added tax is payable on the sale of goods and services. Therefore, VAT is not paid on the sale or purchase of real estate. However, if the attorney-at-law conducting the transaction is registered for VAT, VAT would be payable on his or her legal fees.

### **8.2 Mitigation of Tax Liability**

In order to mitigate the tax liability on acquisitions of large real estate portfolios, the Stamps Act prescribes a reduced duty or an exemption from paying stamp duty depending on various factors prescribed in the Act. By way of example, transfers made by or on behalf of the Frigate Bay Development Corporation or by or on behalf of the National Housing Corporation are exempt from stamp duty. An investor may apply to the government for concessions in relation to the taxes payable on the development project. Concessions are made with a view to stimulating investment in the local economy.

### **8.3 Municipal Taxes**

In accordance with the Licence on Business and Occupations Act, every person wishing to carry on a business, occupation or trade or practising any profession mentioned in the Schedule of the Act (hereinafter referred to as business activities) is required to apply for a licence prior to carrying out those business activities. The fee to be paid would depend on the type of business activity being carried out as prescribed by the Schedule of the Act.

### **8.4 Income Tax Withholding for Foreign Investors**

There is no personal income tax in St Kitts and Nevis. However, the Income Tax Act imposes a 10% withholding tax if a person resident in the Federation pays to any person who is not resident any income as prescribed by the Act, including rental income and income under a lease or contract.

### **8.5 Tax Benefits**

There are no tax benefits from owning real estate per se.



# ST KITTS AND NEVIS LAW AND PRACTICE

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*Contributed by: Dahlia Joseph Rowe and Emily Prentice-Blackett, Joseph Rowe, Attorneys-at-Law*

**Joseph Rowe, Attorneys-at-Law** is a boutique law firm based in St Kitts and Nevis providing personalised legal and corporate service provider services to clients globally. Real estate purchase, sale and development is one of the firm's primary practice areas. The clientele includes a premier resort on the island of St Kitts during its development and operational phases, and international banks financing a wide range of transactions involving Nevis entities that include property development. The firm also represents a wide range of individuals worldwide

who are desirous of owning a home on the beautiful islands of St Kitts and Nevis. The other primary practice areas include citizenship by investment, ship registration and mortgages, civil and commercial litigation, and estate planning. It is also an authorised service provider for offshore financial services, including international business companies (IBCs), limited liability companies (LLCs), international trusts and multiform foundations.

## Authors



**Dahlia Joseph Rowe** is the managing partner of Joseph Rowe and a national of the island of Grenada, with over 14 years' experience practising law in the Federation of St Kitts and Nevis. Dahlia has successfully managed and represented clients in numerous high-value real estate

transactions. Dahlia currently serves as the president of the St Kitts and Nevis Bar Association and the secretary of the OECS Bar Association. Dahlia is also the treasurer of the Nevis Chapter of the Society of Trust and Estate Practitioners (STEP) and a member of the International Bar Association as well as the Commonwealth Lawyers Association.



**Emily Prentice-Blackett** joined the legal team at Joseph Rowe in January of 2020 after working at a law firm for a number of years where she was involved extensively in civil litigation. Emily has gained valuable experience in the area of real estate development and is knowledgeable about

the regulation and administration of the Department of Physical Planning as well as the contractual relationships between the owners, agents, architects and supervisors of development projects. Prior to pursuing a degree in law, Emily was employed at a real estate firm in St Kitts and Nevis that specialises in valuations and appraisals, project management, and leasing and selling residential and commercial properties.

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