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# INTERNATIONAL LAWYERS NETWORK



**CORDERO & CORDERO ABOGADOS**  
Buying and Selling Real Estate in Costa Rica



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## KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER COSTA RICAN LAW

### General

Real estate law in Costa Rica is governed by the principles established in the Costa Rican Civil Code for acquiring, selling, and disposing of property. The official registration of real property is made through a registry system, which the Real Property Registry of the Costa Rican National Registry administers. This system consists of a deed registration system, which provides for the public registration of legal instruments affecting land.

### Non-Resident Ownership

Property ownership in Costa Rica is an individual right legally protected by our Constitution, which states that no person can be deprived of his or her property unless it is for a necessary public use, in which case it will be compensated. The Constitution grants the same rights to foreign citizens. A natural person or legal entity that has acquired property can dispose of it by selling, renting, encumbering, mortgaging, or using it for any desired purpose as long as it follows the law and the regulations for land use. All individuals or legal entities, whether Costa Rican nationals or foreigners, may purchase, sell, own, and in any way dispose of property that belongs to them.

### Land Use Planning

Local governments, known as Municipalities, govern the use of land in the towns, cities, and rural areas of their jurisdiction. These entities levy and collect real estate ownership taxes, and they pass bylaws and legislation to determine the use that will be allowed for private and public properties. As a consequence, local governments can regulate matters such as the type of construction that can be built, its height, density, and other building requirements. They also issue building and remodeling permits, requiring that interested parties wishing to carry

out any construction comply with the established regulations, including zoning laws and/or regulatory plans. Due to lack of funding, some municipalities have not been able to legislate on subjects such as land use planning and building requirements. In such cases, the Costa Rican Construction Code and the National Institute of Housing and Urban Planning regulations will govern construction. Most Municipalities with regulations on building and construction abide by the standards and regulations contained in the Costa Rican Construction Code, but specific laws, such as those passed by the Municipalities, will prevail over general legislation such as the Construction Code.

### Title Registration

As stated above, title registration in Costa Rica is based on a Registry System. This system applies to the entire territory of Costa Rica, and therefore all properties must be registered in it. The Real Property Registry contains the registration of all real estate properties and those liens or encumbrances that affect them, such as easements, mortgage liens, encumbrances, and any other limitation on property rights. For a property to be sold, it must be duly registered in the Costa Rican Public Registry and possess a registered land map or survey that describes it. Transfers of property and the registration of all kinds of deeds relating to real property must be carried out through a Costa Rican Notary Public, who will draft the deed for the desired property transaction, which will require that all interested parties participate in the granting of the deed. Once the deed has been prepared, reviewed, and signed, the Notary will collect from the parties involved funds to pay all the required duties and taxes and will submit it to the Real Property Registry to have it registered. The Registry has



implemented several changes related to the filing process, allowing online electronic filing and making the process more efficient.

### Taxes on Real Property

The local Municipality collects taxes on the ownership of Real Property with jurisdiction over the area in which the property is located. There is an annual tax of 0.25% of the property value declared before the Municipality, and, in most cases, payment is collected quarterly on a calendar year. Owners are responsible for paying this tax, and noncompliance could result in fines, interest, and possible encumbrances upon the property by the local Municipality, leading to possible foreclosure of the property in severe cases. Also, when transferring real property, the Tax Administration and the Public Registry charge a series of taxes and duties that must be paid to process and register the deed, as follows:

**Transfer Tax:** 1.5% of the highest of: a) fiscal value; b) purchase price.

**Registration Fees:** 0.9% of the highest of: a) fiscal value; b) purchase price.

The indicated taxes and fees represent 2.4% of the property's fiscal value or purchase price (highest of), and they must be paid before the deed is submitted to the Property Registry. Since Notaries are private parties authorized to perform public functions and vested with public faith, their fees are set by the Costa Rican Bar Association in conjunction with the legislative power through specific legislation, which is updated periodically. At this time, Notary fees for the drafting, issuing, and submitting for registration a deed for the sale of a real estate property are set approximately at 1% of the sales price. The notary fees generate a 13% Value Added Tax to be paid by the client.

Transfers of real estate by individuals are not subject to income tax. However, suppose an

individual sells a property directly linked to a lucrative activity carried on by this individual. In that case, the sale proceeds might be considered taxable income. The applicable principle is that the law excludes capital gains from gross income unless the gains are derived from goods or rights that are part of the taxpayer's lucrative activity or when the gains come from ordinary business activity.

The transfer of real estate is not subject to Value Added Tax because it is a transaction subject to the transfer tax (1.5% of the sale price) according to Law No. 6999, Real Estate Transfer Tax Law, of September 3, 1985, and its reforms and the Law No. 7088, Tax Readjustment and Resolution 18th Central American Tariff and Customs Council, of November 30, 1987, and its reforms. Nevertheless, services associated with the transfer of real estate, such as notary fees, brokers fees, etc., are subject to a 13% Value Added Tax.

Some properties are subject to a tax commonly known as the "luxury home tax." Every 3 years, homeowners must perform a luxury home tax valuation or assessment to determine if their house, condominium, or apartment in Costa Rica is subject to the Luxury Home Tax. The Tax Administration would first publish the new valuation parameters and criteria required to calculate this tax at least 45 days before the year end. If the new parameters are not published pursuant to the above set dates, the values and amounts for the previous year will apply. The amount of the tax will depend on the valuation or assessment on the home. The parameters of the tariff may start with 0.25% up to 0.55% of the home value as per the home valuation or assessment.

Starting July 1st, 2019, Costa Rica has new tax rules related to capital gains. Capital gains derived from the disposal of a property are taxed at a 15% tax rate. Owners that became



property owners before July 1st, 2019, have the alternative to pay 2.25% of the sales price instead of 15% on the gain. The Costa Rican Tax Code requires the buyer to withhold, declare, and pay on behalf of a non-domiciled real estate seller 2.5% of the sales price to be used as an estimated tax payment towards any tax liability on the gain realized from the sale. Some Sellers may be eligible for an exemption.

A new chapter regulates capital income taxation and capital gains from Costa Rican sources. It is highly advisable to retain the services of a local tax advisor and/or an accountant to obtain proper professional advice regarding these new rules.

Transfer of ownership of 50% or more of the control of a corporation or a company owning real estate triggers a 1.5% indirect transfer tax. It is important to take into consideration that when and if the company or corporation decides to distribute dividends among its members/shareholders, there will be an additional 15% withholding/dividend tax, on top of any ordinary income tax – if applicable – to be paid by the company or corporation.

### **Shoreline Concessions**

In 1977, Costa Rica passed legislation regulating properties on the Shoreline. The Shoreline is a strip of land measuring two hundred meters wide, starting from the line set by the lowest tide and moving inward two hundred meters. Of those two hundred meters, the first fifty have been declared to be of public domain and therefore cannot be owned by any person or legal entity. Access to that fifty-meter strip is free since it is meant to be for public use. The administration of the remaining strip measuring one hundred and fifty meters wide, also known as the Restricted Area, has been awarded to the local Municipalities, who may grant concessions for its use. These regulations are governed by the Shoreline Zone Act (“Ley Zona Marítimo

Terrestre”), which establishes several conditions and regulations for using concessions granted in the maritime-terrestrial zone. These conditions and regulations are described below.

#### **❖ Requesting a Concession**

Concessions for land use can be requested by those persons who are in valid possession of a property located within the Shoreline Zone or by persons who own properties bordering on the restricted area.

#### **❖ Limitations to Possessing Concessions**

The Shoreline Zone Act establishes that the following persons and corporations cannot be granted concessions in the Shoreline Zone: i- foreigners who have not resided in the country for at least five years; ii- corporations with bearer shares; iii- corporations registered or established abroad; iv- corporations and entities constituted by foreigners; and v- corporations in which foreigners own more than fifty percent of the capital stock.

#### **❖ Regulatory Plans**

To file a concession request, the area in which the concession is located must have an approved and published Municipal Regulatory Plan. However, due to lack of adequate funding in some Municipalities, local regulatory plans have not been issued and concessions cannot be validly granted. In the face of this obstacle, some investors and real estate developers have opted to prepare a regulatory plan on behalf of the Municipality, assuming the costs involved. Municipalities will most likely accept this kind of offer, as long as the regulatory plan complies with the conditions set forth by the Municipality.

#### **❖ Procedure to Register a Concession**

The procedure for a land grant or concession consists mainly of submitting a request before the local Municipality. The request will be





reviewed, and the land will be inspected. If approved, the local Municipality will issue a notice that must be published in the official newspaper, allowing interested parties to manifest their concerns, complaints, or opposition regarding usage rights that may have existed previously. Once this procedure concludes, the Municipality can pass a resolution approving the concession and authorizing the drafting of a contract with the selected beneficiary. The Costa Rican Tourism Board must also approve and sign such a document. After this contract has been signed, a Public Notary must notarize the contract and file it before the Concession Registry of the Costa Rican Public Registry to guarantee that the grant will be protected from potential future claims by third parties.

#### ❖ **Term of the Concession**

Concessions are granted for terms ranging from five to twenty years, but they may be extended for equal time spans if the beneficiary of the concession has complied with the Municipality's requirements and established concession fees have been paid on the required dates.

#### ❖ **Payment of Concession Rights**

At the moment in which the concession is granted, the Municipality will establish an annual cannon (recurring tax obligation) that the beneficiary must pay in order to enjoy the rights granted to him by the Municipality.

#### **Condominium Property**

The Condominium Property Law governs condominium property in Costa Rica.

#### ❖ **Registration of Property in the Condominium Property Regime (System)**

Private property developments may be admitted into the condominium property regime if the owners have complied with the legal requirements established for this special

category of property ownership. The system operates under the principle of one principal property from which filial or branch properties will be derived. Each filial property will be assigned a different registration number in the Real Property Registry, which will always include the letter "F," which stands for "Filial."

#### ❖ **Areas Within the Condominium**

Two types of areas are established in a condominium property. Together, they comprise the total land area of the Condominium: i-Common Areas, which normally are for general use of the condominium owners, but such use may be restricted to only a portion of the owners, depending on numerous variations of the concept and, ii- Private Areas, which belong exclusively to each unit owner, who will have complete domain over the property.

#### ❖ **Rights of the Condominium Owner**

The unit owner is therefore the exclusive owner of his filial property and owner of a proportional right over the general common areas. Such proportional ownership will be determined by the size of the filial ownership as compared to the total land area of the condominium. No owner can be limited in using and enjoying the general common areas, nor may he claim a preemptive right over other owners for having a larger percentage of ownership of the total property.

#### ❖ **Condominium Owners Assembly and Condominium Administration**

The Condominium Owners Assembly is the governing body with maximum authority within any property subject to the condominium property regime. Its members are the owners of the filial or branch properties, and their task is to oversee the general administration of the condominium, including matters such as



budgeting, condominium fees, repairs and maintenance, and other issues of general interest which will be voted on in the assemblies or meetings that will be called. There is also an administrative entity that will be in charge of the administration of the condominium, including the collection of condominium fees, maintenance of the common areas, minor repairs, and the judicial and private representation of the condominium. Such functions may be carried out by a person, or a corporation appointed by the Assembly.

#### ❖ **Condominiums in the Shoreline Zone**

Condominiums may also be constituted in concession areas within the Shoreline Zone. The essential requirement for this kind of condominium is that the respective Municipality must have validly granted the concession and that it has been registered in the Concession Registry for it to be submitted to the Condominium Property regime. Expenses such as the payment of the annual concession fee are distributed amongst the condominium owners, and compliance with the dispositions included in the concession contract and provisions of the Shoreline Zone Act will be the responsibility of the Condominium Administrator, who may carry our actions against condominium owners who in any way violate such dispositions.

#### **The Gulf of Papagayo Tourist Development Project**

##### ❖ **General**

Bahía Culebra was designated as an area of public interest in August 1979. This declaration created a major tourist development project in June 1982, whose stated purpose was to develop an area dedicated exclusively to tourism projects such as hotels, residences, golf courses, marinas, and other major tourism activities. The land is leased to applicants in the legal form of a concession, much like those granted for the

Shoreline Zone described above, but with the special regulations detailed below. This tourist development is known as “Papagayo Gulf Tourist Development” or “Polo Turístico del Golfo de Papagayo.”

##### ❖ **Master Plan**

The project has been developed in strict compliance with the regulations and restrictions of the Master Plan to develop the area. Any new projects or developments must comply with such regulations and restrictions. These vary following the location of the project and the tourist activity to be developed. Investors should consult legal counsel before engaging in any activities in this special area.

##### ❖ **Managing Council for the Project**

A Managing Council to oversee the project was also created in the Papagayo Development Law, under the authority of the Costa Rican Tourism Institute. This council reports directly to the Board of Directors and is in charge of directing, coordinating, administering, and controlling the development of the project. The council has a total of five members, three representing the Tourism Board and two persons from the private sector with experience in tourism, which will be elected by the Board of Directors of the Tourism Institute.

##### ❖ **Term of the Concession**

Concessions may be granted for a minimum term of ten years and a maximum of fifty. These terms can be extended for equal periods as those granted as long as the beneficiary of the concession has complied with the obligations stated in the specific concession contract and the laws and regulations that govern a project.



### ❖ **Procedure to Obtain a Grant, Purchase, Sell or Transfer the Rights to a Concession**

To obtain a grant or concession over lands currently owned by the Costa Rican Tourism Board, interested parties must participate in a public bid, which a technical office reporting to the Board of Directors will review. This review and recommendations will be presented to the Board of Directors of the Tourism Institute, who will have the final word on the approval or denial of the petition. The approval by the Board of Directors is also required when a request is made to transfer totally or partially, establish a lien, or transfer concession rights into a trust.

Concessions already granted to third-party applicants may be validly purchased by new applicants and transferred, either totally or partially, by those legally empowered to do so. The transfer of the rights to a concession must be approved by the Board of Directors of the Costa Rican Tourism Institute and those interested in acquiring the rights to a concession must comply with the regulations stated for the original concession as well as comply with all the applicable requirements. The transfer of rights to a concession is made through a public deed in which the representative of the Tourism Board and the purchaser and seller are present to grant the transfer. This deed is ultimately registered in the Project's Concession Registry, which will be explained in full in the following section.

### ❖ **Registration of a Concession**

As stated above, once the Board of Directors has approved the concession granting, the interested party must register the concession in the Project's Concession Registry. This is a registry that is part of the Concession Registry, an office under the jurisdiction of the Costa Rican Public Registry. In addition to registering new concessions, the Project's Concession

Registry will also register mortgage liens, leases, and transfers of concession rights to trusts.

### ❖ **Financing the Purchase and Development of a Concession**

By creating the Tourism Development Project, all the Costa Rican banking system banks were authorized to grant loans to the owners of concession rights in the Project, accepting as collateral the conceded land itself and any improvements or constructions made upon it. This is an incentive for Financial Institutions to provide loans to develop the project since they have the certainty of having sufficient and authorized collateral and they can also count on the legal rights granted to them by the registration of the lien in the Project's Concession Registry, which is a public record registry.