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Buying and Selling Real Estate in Chile

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER CHILEAN LAW

I. STANDARD FORMS OF AGREEMENTS

- A. Offer to Purchase sets forth Buyer’s offer of price, date for closing, contingencies for inspections, financing etc. and date for signing a formal purchase and sale agreement. Seller may accept or reject. If the seller rejects, rejection is considered a counteroffer if reasons for rejection are informed.
- B. The most usual form of commitment to sell and purchase real estate, notwithstanding the property’s purpose, features of the parties, or other conditions is through a Promise Agreement. The promise agreement must detail the terms and conditions of the purchase as thoroughly as possible, or it may be deemed invalid and unenforceable. This means the promise agreement must at least include:
 - 1. A full description of the property, including address, boundaries, land tax identification number, and number of registration in the competent Real Estate Registrar.
 - 2. The agreed purchase price and its form of payment. If Buyer will pay part or all of the purchase price with a loan from a bank or other financial institutions, Seller usually states that failure to obtain credit by the Buyer is considered a breach of the agreement and not a condition for declaring the agreement void. The parties also usually agree that the purchase price will be paid through bank documents that will be left in the custody of the notary public that authorizes the deed of sale, with instructions to deliver said documents once the property is

registered to the name of the Buyer in the competent Real Estate Registrar, with no encumbrances except those that are unrelated to guarantees provided by the owner (i.e. Co-ownership Bylaws, easements) and those accepted by the Buyer in order to guarantee payment of credits for the purchase (i.e. mortgages, prohibitions to sell).

If the parties agree that the purchase price will be paid in installments, the Seller does not waive its resolatory action and does not grant the Buyer settlement.

- 3. Form of sale and delivery: how the property will be sold: usually *ad corpus*, in its current state which the Buyer declares acknowledging, free of any encumbrances and in general any limitations to ownership. However, for large plots, especially rural real estate, the parties usually agree to review the property’s exact surface through a topographical survey, setting a unitary price per square meter sold, which may produce an adjustment against or for each party regarding the price. For example, if the topographical survey reveals that the property’s actual surface is less than 2% of the property’s surface in its titles, that difference is accepted by the Buyer. If the difference is higher, the Buyer has the right to request a price reduction. This also applies in case the property’s actual surface is more than 2% of the property’s surface in its titles: if the difference is higher, the seller has the right to collect an increased price that



considers the actual surface of the property measured in the survey.

In case the property is part of a condominium, it is sold with the Co-ownership Bylaws that regulate how the condominium is managed. The property must be delivered empty, with no debts of any kind, i.e. land tax, utilities, common expenses, etc.

In the case of rural property, it must be delivered with no workers of any kind, the Seller guaranteeing that the labor contracts of any workers that worked in the property have been terminated.

4. Titles: the sale is usually subject to the condition of having the Buyer's attorneys review the legal titles of the property. If the titles do not conform to law, the condition fails, and the promise agreement becomes void with not liability to any party.

Review of the property's legal titles seeks to verify that:

1. The Seller, either directly or by adding the possession of the property by prior owners, has owned the property for at least 10 consecutive years, since this term is the statute of limitations for acquiring real estate through prescription.
2. The Seller (and prior owners), especially in the case of corporations, were legally entitled to acquire, maintain, and sell the property (i.e., Stock corporations are mandated by Law to authorize, through an extraordinary shareholders

meeting, the sale of real estate if it represents 50% or more of the company's assets).

3. The property is not subject to encumbrances and limitations that may hinder its transfer or its full exploitation and use by the Buyer, due to, for example, leases, seizures, mortgages, prohibitions, mining permits, easements, expropriations, usufructs, environmental conservation rights, co-ownership regulation, etc.
4. There are no technical conditions that may affect the transfer or full exploitation and use of the property by the Buyer, such as farming and forestry subsidies, debts owed to public institutions for land taxes, subsidies, declarations of public utility (which mean part, or all of the property may be subject to future expropriation due to eminent domain), etc. In the case of urban real estate purchased for the construction of any sort of building, both the city and the district's land-use master plans must be reviewed to verify if construction in the property is authorized based on the use of the land included in the master plan.
5. Term and place of execution: the parties agree on a term to sign the purchase agreement, usually based on the time necessary for the Buyer's counsel to review the property's legal titles and, when applicable, to obtain financing for the purchase. They also agree on the



notary public’s office where the deed will be signed. In case the property’s price is paid partially or fully using a loan, the notary public who will authorize the deed is usually appointed by the financial institution that grants the loan.

6. Guarantees: in guarantee of complying with their obligations set forth in the promise agreement (for the Seller providing the legal titles of the property and signing the deed on the agreed date; for the Buyer signing the deed on the agreed date), the parties provide cross-guarantees in the form of banking documents with a sum usually equivalent to 10-20% of the sale price, which may only be collected if the counterparty breaches her contractual obligations.

7. Conflict resolution: any disagreements between the parties, including any disagreements regarding the legality or completeness of the property’s titles, are usually resolved through arbitration, but there is no impediment in having the conflict resolved by the ordinary courts of justice.

C. Promise Agreements may be executed as private documents, or as public deeds. In the case of a public deed, if authorized by the Seller, the Buyer may register the Promise Agreement in the competent Real Estate Registrar, in order to notify third parties that the Seller has formally promised to sell the property. The Seller may also accept, at Buyer’s request, to abstain from offering the property to third parties or encumbering it during the term of the promise agreement; and if authorized by the Seller, this prohibition

may be registered in the competent Real Estate Registrar.

D. Purchase and Sale Agreement usually repeats the terms sets forth in the Promise Agreement. If there is no Promise Agreement, the complete terms of the purchase and sale, which are the same as those described herein, are included in the Purchase and Sale Agreement, except that in this case the Buyer may actually agree to accept the property’s titles without actually reviewing them. In this case, the Seller inserts a clause having the Buyer acknowledge this situation and waiving its actions to sue the Seller for hidden flaws in the property (“*vicios redhibitorios*”).

II. BROKERS

- I. Real estate brokerage is an unregulated activity in Chile, no special qualifications or permits are required to operate as a broker.
- II. Broker collects a commission of 1-2% of the sale price, from both the Seller and the Buyer, unless negotiated otherwise.
- III. Brokerage is not mandatory. It is usually used in the sale of used real estate, although seller can offer directly, and sellers of new residential/commercial/industrial/forestry /agro projects hire established brokerage firms to look for potential buyers, and to preparing bidding processes, usually for large properties with commercial/industrial/forestry/agro potential.

III. BUYER’S INSPECTIONS

A. Inspections are not mandatory, although the Buyer usually performs a visual inspection of the property, just to verify



its state. Technical inspections are not customary, but are usually requested for old properties. The Seller usually imposes a sale “as is” of the property, meaning the Buyer accepts to purchase the property in the state verified during visual inspection. Buyer reviews technical information as part of the legal review necessary to confirm the Seller has been in possession of the property, either by her directly or by adding possessions of prior owners, for at least ten years.

- B. When buying new property, the Buyer usually inspects the property with an architect in order to verify if there are any flaws or construction defects that must be repaired before receiving the property. Additionally, the sale of new property, especially for residential purposes, is subject to Chile’s Consumer Protection Act in all aspects unrelated to construction quality. Therefore, inspection may reveal differences between the conditions offered by the Seller v. the actual conditions of the property, which may configure deceptive advertising and leave the Seller liable for infringing Chile’s Consumer Protection Act.

IV. FORMS OF OWNERSHIP

- A. Residential Property is usually held to an individual’s own name or to the name of a company controlled by the Buyer. Joint ownership is allowed in the percentage determined by the joint purchasers, even if it is not a 50-50% assignment.
- B. Commercial Property is usually held to a commercial real estate (“*inmobiliaria*”) company’s name.
- C. Rural Property is usually held either to an individual’s own name (especially in case

of small plots of at least half a hectare) or to a rural real estate (“*agrícola*”) company’s name.

V. FORMALITIES

- A. Purchase of real estate in Chile is categorized in Chilean law as a solemn agreement. This means that the transfer of ownership does not happen when the parties sign the Purchase and Sale Agreement, but only when two copulative requisites are fulfilled: a) Execution of the Purchase and Sale Agreement through a public deed granted before a notary public, and b) the deed is then registered in the competent Real Estate Registrar.
- B. If any of the parties needs to appear through a proxy, either because they are unable to be physically present on the day of execution, or because any of them is legally incapable (i.e. a minor, or a person that has lost the administration of its patrimony), a power of attorney must be granted by public deed, and said power of attorney must grant all the necessary authorities to the proxy, including agreeing the sale price and form of payment, granting settlements and waiving resolutive actions.

VI. CLOSING COSTS/ADJUSTMENTS

- A. The notary public’s costs for authorizing the Sale and Purchase Agreement are usually borne 50% by each party, although the Seller may try to impose full payment of all costs by the Buyer. Costs of registering the Sale and Purchase Agreement before the competent Real Estate Registrar are borne by the Buyer. The fee paid to the Real Estate Registrar is of 0,002% of the sale price, considering a maximum price ceiling of CH\$ 128.000.000 (USD 205,000 approx.).



- B. Buyer and Seller adjust for land taxes, which must be paid on a quarterly basis. In addition to the foregoing, if the property is commercial property, adjustments are also made for rents, third party operating expenses and common area maintenance expenses.
- C. Land that has been subjected to agricultural purposes may be subject to certain taxes and payments derived from obtaining agricultural/forestry subsidies. Those subsidies must usually be respected by the Buyer, or previously terminated by the Seller. For example, subsidies for irrigation works, make the owner of the property, even after it is sold by the owner who obtained the subsidy, liable for failure to maintain the irrigation works that were paid through the subsidy.
- D. Value added Tax: the sale is subject to VAT if the property is sold fully furnished, or in other specific cases, i.e. in case of a rural property, if the Seller obtained fiscal credit derived from investments in the property.

VII. OTHER CLOSING DOCUMENTS

- A. Condominiums: The Seller will provide the Buyer with a copy of the corresponding Co-ownership Bylaws, in the case of properties that form part of a condominium regulated by Law 19.537 of Real Estate Co-Ownership. The Buyer also usually requires the Seller to provide a certificate, issued by the condominium’s administrator, stating that the Seller does not owe any common expenses for his unit.
- B. Land tax: Real estate subject to land tax may not be transferred if there are land tax payments owed to the Treasury. Therefore, a land tax debt certificate

issued by the Treasury or the Tax Authority showing that there are no outstanding land tax payments is attached to the sale deed.

- C. Utilities: Seller is usually required to prove to the Buyer that all bills for utilities, such as sanitary services, electricity, gas, cable TV/Internet services have been duly paid and no outstanding debts for these services exist. Buyer may request that some of these services, especially telephone and cable TV/Internet services, be terminated before the sale.

VIII. RECORDING REAL ESTATE DOCUMENTS

- A. Since real estate must be transferred by a public deed registered before the competent Real Estate Registrar, copies of the deed are always available firstly in the office of the notary public that legalizes the deed, and then in the competent Judicial Archive.
- B. Regarding the actual registration, the sale deed is registered in the Property Registry of the competent Real Estate Registrar, who may then issue copies of the property’s registration to the Buyer’s name, and a certificate that shows all the liens and encumbrances on the property, including prohibitions, seizures, litigation, easements, usufructs, Co-ownership Bylaws, etc.
- C. Since the recommended form of transferring a property is to settle all obligations that arise from the sale and purchase agreement in the same deed, this must be reconciled with the Seller’s interest of not materially delivering the property until he receives full price payment, and the Buyer’s interest of not delivering the payment of the purchase price until the inscription of the property



to the Buyer's name in the Real Estate Registrar is completed. To leave no obligations pending, the parties agree in the Sale and Purchase Agreement to state that the Seller received payment in that act, and the Buyer received the property in the same act. Then, besides signing the Sale and Purchase Agreement, the parties also sign a separate document with instructions to the notary public that legalizes the deed, with the Buyer providing the notary with the payment documents, which are safeguarded by the notary public. The notary will then, as instructed, hand over the payment documents to the Seller once the notary has verified that the property is registered to the Buyer's name in the competent Real Estate Registrar, and that the only encumbrances that lien the property are those that existed before the sale or those constituted by the Buyer. If the instructions are not completed in a pre-determined period, the notary will return the payment documents to the Buyer, once the Buyer signs a deed annulling the Purchase and Sale Agreement

B. Land tax: Real estate in Chile is subject to a land tax, paid quarterly to the Treasury, and whose value is determined by the fiscal value of the property, which usually is 1/3 of the property's commercial value. Some properties, due to their surface or use are exempt from the land tax. Some properties, due to their state, may be castigated with a higher land tax.

IX. ANNUAL COSTS FOR PROPERTY OWNERSHIP

A. Property Insurance: it is not mandatory, but very common. For condominiums, insurance is contracted for the condominium's common property. When property is purchased through loans by banks or other financial institutions, the lender requires the Buyer to at least contract fire and earthquake insurance. Unemployment insurance for the Buyer who is a natural person is also usually demanded by financial institutions, which may be enforced contractually but is not legally mandatory.