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# INTERNATIONAL LAWYERS NETWORK



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Buying and Selling Real Estate in Ecuador



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## KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ECUADOREAN 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 Promise of Purchase and Sale agreement, which for validity has to be a notary public deed.
- B. Promise of Purchase and Sale Agreement sets forth the complete terms of the purchase and sale.
- C. **Note:** In Ecuador a Promise of Purchase and Sale Agreement may be enforced as a binding contract; better if registered at the City Real Estate Registry.
- D. The costs of Promise of Purchase and Sale Agreements are very low, since the notarial fees are in that case charged on the down payment or even considered as an undetermined sum deed, not on the Purchase price which will be stated afterwards in the final Purchase deed.

### II. BROKERS

- A. All Brokers in Ecuador whether they are working with the Buyer or the Seller represent the Seller unless the Buyer enters into a separate Buyer's Broker or Dual Agency Agreement. Brokers are officially registered, so they are good people. However, it's always important to see if they are affiliated either to the Chambers of Commerce or the Brokers' Local Associations.
- B. Seller usually pays the brokers commission unless negotiated otherwise (not customary).

### III. BUYER'S INSPECTIONS

- A. **Residential:** Prior to Closing, the Buyer performs property inspections including inspection for structural issues, title, and if requested, a plot plan of the premises, especially when the building is relatively new, and plans are available.
- B. **Commercial:** In addition to the inspections performed by residential buyers, commercial buyers also usually obtain a survey, an environmental review, and a use and zoning/permitting analysis which is issued by the corresponding municipality.

### IV. FORMS OF OWNERSHIP

- A. Residential Property is usually held in an individual's own name; some owners prefer the Stock Company kind of "shield". Joint owners may take title as:
  - 1. Tenants in Common (each own 50%);
  - 2. Tenants by the Entirety if the owners are a married couple (they each own the undivided whole of the property).
  - 3. Individual or solo owner.
  - 4. Horizontal Property where each owner owns an apartment or unit and the corresponding portion of the common areas as yards, halls, staircases, pools.
- B. Commercial Property may be held as follows:
  - 1. As the Owners pursuant to the forms set forth in A above.
  - 2. Stock companies



- 3. Limited Partnership
- 4. Other types of businesses incorporations, as personal, limited copartner-ship (less frequent).

V. TAX REGULATIONS

- A. The excise (Alcabala) tax is the highest in Real Estate Purchase-Sale Contracts (only in definitive or final ones; not in Promise of Sales agreements), 2% on the purchase price or on the Official Record of the Real Estate municipal appraisal, whichever is higher. Capital gain tax applies when there is a profit made in the sale, it is 10% of such profit but there are many deductions that have to be made including the real estate annual municipal taxes paid for the property while owned by seller, repairs, maintenance costs; and it is diminished by 5% of tax each year after the second one of having been acquired by seller, until at the 20th year when there will be no capital gain tax. Capital Gain is on the seller's account unless otherwise agreed in the deed.
- B. Regarding income tax, it all depends if the property is a productive estate, as for instance for renting, in which case, either in the form of a stock or other company or as individual property, the income tax level is between 22%-25% of net income. Corporations are subject to a "double tax," once on the corporate level, and again on dividends or distributions to shareholders, which affect directly the stockholders and not the company itself. Companies have more options to deduct general expenses from their income tax filings than individuals.

VI. DISTINGUISHING FEATURES

A. PROPERTIES HELD IN TRUSTS

- 1. Fiduciary relationship between "trustee" and beneficiaries listed on the corresponding trust contract.
- 2. Trustee has no power to deal with the trust property except as specifically directed by beneficiaries – legally an "agent"- for beneficiaries.
- 3. Third parties are entitled to rely on certificates signed by trustees of record.
- 4. Beneficiaries may terminate or amend trust at any time.
- 5. On termination, the trust property is conveyed to beneficiaries.
- 6. Advantages
  - 1. Beneficiaries are undisclosed (privacy).
  - 2. Trust property can be effectively conveyed by assignment of beneficial interests. Useful for intra-family gifts; albeit, there is income taxation on trust level in Ecuador.
- 7. Disadvantages
  - 1. No limited liability for beneficiaries.
  - 2. Deeds excise tax on transfer of beneficial interest.

- B. JOINT PERSONAL TITLES: If title in the name of all the co-owners, all must sign the deed.

Attachments against co-owners individually can affect the title even if referring to an individual obligation or debt.



C. STOCK COMPANIES

Shareholders can be individuals or other companies.

1. Advantages

- 1. Limited liability of shareholders by statute.
- 2. Free transferability of stock.
- 3. No deeds excise tax on sale of stock.

2. Disadvantages

- 1. Double-taxation for corporation.
- 2. Two-thirds or as statutory shareholder vote required to approve sale of all or substantially all assets.
- 3. Dissolution by Superintendence of Companies– but reinstatement possible. Assets can be sold after dissolution during liquidation.

VII. CLOSING COSTS/ADJUSTMENTS

- A. Buyer pays the transfer taxes due at the time of the definitive Purchase-Sale Contract. As stated before, Capital Gain is on seller’s account.

- B. Adjustments are made for rents, buyer has the legal right to file court petition for termination of prior rent contracts.

VIII. OTHER CLOSING DOCUMENTS

Buyer has to obtain a municipal lien certificate from the Town/City where the premises are located stating the current status of real property, taxes payments and balances due. And, if Horizontal Property, a certificate of the Administration on payment of condominium aliquots. If Buyer or Seller are corporations it is necessary to also annex copy of the shareholders’ minutes authorizing the sale if requested by statutes and copy of the document of proof of being the authorized company officer to sign on behalf of the company.

IX. RECORDING REAL ESTATE DOCUMENTS

- A. Title Documents are recorded on a Canton (city) basis in Ecuador. Notary Publics can be from any city, not necessarily from the city where the estate is located.

Recording procedures are very well organized and fast in most cities.

X. ANNUAL COSTS FOR PROPERTY OWNERSHIP

- A. Property Insurance
- B. Real Estate Taxes

(BOTH ITEMS RATHER LOW).