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Buying and Selling Real Estate in Costa Rica

ILN REAL ESTATE GROUP



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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 in any way disposing of property. The official registration of real property is made through a registry system, which is administered by the Real Property Registry of the Costa Rican National Registry. This system consists of a registration deed system, which provides for the public registration of 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 person or legal person that has acquired property can dispose of it in any way by selling, renting, encumbering, mortgaging, or using it for any desired purpose, as long as it is in accordance with the law and the regulations for land use. All physical or legal persons, 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 type of construction comply with the established regulations, including zoning laws. Some Municipalities, due to lack of funding, 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 regulations issued by the National Institute of Housing and Urban Planning will govern construction. Most Municipalities that do have 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 it was 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 sort of limitation on property rights. In order for a property to be sold, it must be duly registered in the Costa Rican Public Registry and possess a registered land map that describes it. Transfers of property as well as the registration of all kinds of deeds relating to real property must be carried out through a Public Notary, 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 pay all the required duties and taxes and will submit it to



the Real Property Registry, in order to have it registered.

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 on a quarterly basis. Owners are responsible for the payment of 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 in order 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 fiscal value or purchase price (highest of) and they must be paid before the deed is submitted to the Property Registry. Since Public Notaries are private parties who are authorized to perform public functions, their fees are set by the Costa Rican Bar, in conjunction with the legislative power through a 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 at 1.25% of the property value.

Transfers of real estate by individuals are not subject to income tax. However, if an individual sells a real estate which is directly linked to a lucrative activity carried on by this individual,

then the proceeds of that sale could be considered as 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 an ordinary activity.

The transfer of real estate is not subject to VAT 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% VAT.

There are also some properties that are subject to a tax commonly known as "luxury home tax". Every 3 years, homeowners must perform a luxury home tax valuation with the purpose to determine if their house, condominium or apartment in Costa Rica is subject or not to the Luxury Home Tax. The Tax Administration should first publish the new valuation parameters 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 of the appraisal done to the home. The parameters of the tariff may start with 0.25% up to 0.55% depending on which parameter the home is value.

Starting July 1st, 2019, Costa Rica has new 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 prior to July 1st, 2019, have the



alternative to pay 2.25% of the purchase price instead of 15% on the gain. There is a whole new chapter that regulates the taxation of capital income and capital gains of Costa Rican source. It is highly advisable to retain the services of a tax advisor and/or an accountant to obtain proper professional advice regarding these new rules.

Taxation is basically the same if ownership of a company (or other entity) owning real estate is transfer. However, 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 1973, Costa Rica passed legislation that regulated the ownership, sale and purchase of properties located on the Shoreline. The Shoreline is a strip of land measuring of 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 physical or legal person. 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 instated for the use of 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 owns 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 more than fifty percent of the capital stock is owned by foreigners. New legislation is currently being discussed in the Costa Rican Congress to eliminate the prohibitions restricting the concession of shoreline areas to foreigners.

❖ Regulatory Plans

In order 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 plan has 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 to be followed 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, and if approved, the local Municipality will issue a notice that must be published in the official newspaper, providing an opportunity for interested parties to manifest the concerns, complaints or opposition regarding usage rights that may have existed previously. Once this procedure concludes, the Municipality will be able to pass a resolution approving the concession and authorizing the drafting of a contract with the selected beneficiary and such document must also be approved and signed by the Costa Rican Tourism Board. 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 canon (recurring tax obligation) that the beneficiary must pay in order to enjoy the rights granted to him by the Municipality.

Condominium Property

Condominium property in Costa Rica is governed by the Condominium Property Law

❖ **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 necessary legal requirements established for this special category of property ownership. The system operates under the principle of one principal or main property from which filial or branch properties will be derived. Each of these filial properties will be assigned a different registration number in the Real Property Registry and the number will always include the letter "F".

❖ **Areas Within the Condominium**

Two types of areas are established in a condominium property, and 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 the use and enjoyment of 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 subjected 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, which 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 either be carried out by a person or by a corporation, as appointed by the Assembly.

❖ **Condominiums in the Shoreline Zone**

Condominiums may also be constituted on concession areas within the Shoreline Zone. The most 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, in order 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 out actions against condominium owners who in any way violate such dispositions.

The Gulf of Papagayo Tourist Development Project

❖ **General**

The area of Bahía Culebra was designated as an area of public interest in August 1979. This declaration allowed the creation of 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 contained in the Master Plan to develop the area. Any new projects or development must comply with such regulations and restrictions. These vary in accordance with the location of the project and the tourist activity to be developed. Investors are advised to 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**

In order 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 will be reviewed by a technical office reporting to the Board of Directors. 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 that have already been 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 granting of the concession, the interested party must register the concession in the Project's Concession Registry. This is a registry, which is part of the Concession Registry, an office under the jurisdiction of the Costa Rican Public Registry. In addition to the registration of 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**

Through the creation of the Tourism Development Project, all the banks belonging to the Costa Rican banking system 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.