

BUYING PROPERTY IN COSTA RICA: DO'S AND DONT'S GUIDE FOR BUYING PROPERTY IN COSTA RICA

HOW TO BUY PROPERTY IN COSTA RICA – COSTA RICA REAL ESTATE LAW – COSTA RICA REAL ESTATE ATTORNEYS – COSTA RICA PROPERTY LAW

– By: Rogelio Navas Rodríguez, Costa Rica Real Estate Attorney – Investing and buying property in Costa Rica should not be an unpleasant experience; instead, it could bring you important returns in appreciation and can even turn into a great source of additional income if, for instance, you rent your property or put it into a rental pool for vacation purposes. Nevertheless, we have seen many cases in which dreams have turned into real nightmares, precisely for doing what should not be done when one buys property in Costa Rica. In Costa Rica there is a very sophisticated Public Register and Cadastral System, where most of the relevant information you need to verify is available; however, not all information you need to be aware of is found there. Additionally, not all property is registered property, so there are other entities where research should be done as well. As follows an explanation of a few steps you should follow to make sure your real estate transaction in Costa Rica is successful:

1) IDENTIFY THE KIND OF PROPERTY YOU ARE BUYING:

There are three main kinds of property you can purchase in Costa Rica: 1) Registered property, 2) Unregistered property and 3) "ZMT" (beachfront) property. As follows an explanation on each category so that you know what to look for and what to expect. – REGISTERED PROPERTY: Most properties in Costa Rica are registered property, identified with a property registration number known as "folio real". If you are buying registered property, the first thing to do is ask for said "folio real" number. It will allow you to verify if the property you are buying is an independent lot or if it is under the condominium regime. It will also allow you to find out who owns the property and, thus, who is entitled to execute binding contracts over it. The "folio real" number will also permits you to verify if the property has any liens, easements or encumbrances affecting it, or if any documents are pending on registration. The cadastral survey number is important as well, but it does not always allow you to

identify the specific piece of real estate you are buying, while the “folio real” number does. When speaking about registered property, it is very important to verify if what you are buying is condominium property. Under Costa Rican law, a condominium is a special kind of property where there are private individual units and common areas. The individual units are owned by each of the condominium owners, and the common areas are jointly and proportionally owned by all such owners. When buying a condominium property, it is very important to verify, among other things, what is the maintenance fee and what it includes; if the unit you are buying owes any such fees, and if the condominium by-laws adapt to your needs.

– UNREGISTERED PROPERTY: There are also properties that are not registered. These properties do not have a “folio real” number, hence, are not found in the Public Register’s database. When you buy unregistered property, you will not obtain a property title, but a possession right. If possession over the property was obtained peacefully by its initial possessor, if it was gained and has been maintained peacefully by the property’s subsequent possessors, and if the chain of possession has been for over 10 years, you might be able to register the property through a judicial procedure called “información posesoria”; however, as indicated above, what you will obtain when you purchase the land will be a possession right only. Although it might be cheaper, buying unregistered property can be considered less safe than buying registered property, as there is no way to know if there is a history of conflict around that property. All you can do, in the end, is verify the existence and legality of the instruments by means of which possession transfers have been documented over the years, trust the seller, interview neighbors, check for old and pending lawsuits in the local Courts and include warranties and contractual provisions allowing you to seek indemnification of loses and damages and legal expenses in the event you have to face an unexpected claim.

– ZMT OR BEACHFRONT PROPERTY: In the case of beachfront properties, most are not privately owned. Most beaches in Costa Rica are considered public assets located within what is known as the “Zona Marítimo Terrestre” or ZMT. ZMT is a 200 meter wide strip of land that goes all along our coast lines, and which is measured from the high-tide line. The first 50 meters are considered public, meaning that anyone can have access to them and cannot be owned by anyone. Concerning the remaining 150

meters, the Government can grant a concession for their use and enjoyment; however, said use and enjoyment are limited and the land will still be property of the Government. It is very important to emphasize that ZMT properties cannot be owned by any private individuals or entities, as they are owned by the State. Also, foreign citizens must know that there are important limitations for them to possess this kind of properties, and that intervention of a highly skilled attorney is necessary to be able to gain control over the concession that was granted by the Government.

2) HIRE AN ATTORNEY: The second step for a successful real estate transaction is hiring your own trusted attorney. Although there are many honest sellers, real estate brokers and developers in Costa Rica, there is also people who will do anything to make a sale, including referring you to their own attorney or to someone who they know will not raise any issues and that will allow the transaction no matter what. To avoid unwanted situations, it is as important to avoid doing things on your own, as to retain an attorney you know will provide proper counseling and that will represent your interests only. Make sure you hire a reputable attorney, someone that inspires you trust and security, who will guide you all the way on the safe side and who is even willing to recommend not buying certain property when it is not in your best interest.

3) DO YOUR OWN DUE DILIGENCE: When you buy property in Costa Rica, although it is not the normal situation to expect, you might run into sellers, brokers or developers who will show you documents, even official ones, showing that the property is in the best condition for being purchased. Do not trust those documents, as they might be showing you only what you are wanted to see. Doing a full research on the property is necessary if you want to play safe. As follows an explanation of the different searches you might need to undertake: – PUBLIC REGISTRY SEARCHES: Checking the property's title at the Public Registry's website is necessary, but not enough. You need to check the property's history to verify if any conflicts have taken place around the property and if there should be any pending claims that might affect you in the future. You also need to verify the property's title to make sure that the

individual or entity selling the property is actually the one entitled to do so, as well as to demand that the right individuals are the ones who execute all instruments and contracts so that they are all binding and effective. The property's "folio real" will also allow you to learn if there are any liens, encumbrances or easements affecting the property. Liens prevent you about the existence of claims whose result may affect the property, while easements and encumbrances warn you about limitations affecting your ability to fully use or enjoy the property. Checking the property's cadastral survey is also a must, as it will allow you to verify if the property depicted in the registered survey is what you are being offered. Through the cadastral survey you can also verify or discard the existence of limitations that are not shown in the property's title or "folio real" and that could affect your possibility of fully enjoying the property or building in certain areas. The cadastral survey may also provide hints on possible overlaps or potential conflicts with neighboring properties. -LOCAL MUNICIPALITY SEARCHES: Prior to the purchase of a property, you also need to check with the local Municipality if any land taxes are owed. You also check with them if certain property adapts to your specific needs. Several municipalities have zoning plans that may or may not allow you to build what you are planning in that specific piece of land you like. Also, certain commercial or industrial activities are not allowed in certain areas. In the case of ZMT or beachfront properties, you have to check with the local Municipality on the validity, effectiveness and ownership of the concession. These verifications also need to be made with ICT (Costa Rican Tourism Institute). – TAX AUTHORITIES (MINISTERIO DE HACIENDA AND TRIBUTACIÓN DIRECTA): If you are buying the shares of a corporation to gain control over a property, it is also important to verify if the company owes any taxes. If said corporation has ever employed any individuals, you may also want to verify or discard the existence of any labor contingencies. Nevertheless, as you will see below, it might be more recommendable in some cases to just use a new corporation to buy the property, rather than keeping the entity of the previous owners. – COURT SEARCHES: When judicial liens or claims that are affecting or have affected the property are identified through the information obtained from the Public Registry, checking the status of said claims or lawsuits might be recommendable in some cases to make sure you do not assume any risks. – OTHER

ENTITIES: When doing your due diligence, you also want to check with the suppliers of electric, water and telephone services (ICE, CNFL and AyA, among others). Important and unexpected charges for overdue bills may be avoided if they are timely identified. In the case of condominium properties, you will also want to check with the condominium's administration if any maintenance fees related with the unit you are buying are owed.

4) CUSTOMIZE YOUR CONTRACTS: All transactions and negotiations are different and there is no such thing as standard instruments or provisions applicable to all real estate deals. Nothing should be considered as covered if it is not expressly stated in the corresponding contract. Make sure you negotiate each term and condition of each instrument you execute, and that all details and specifics of your transaction are covered the way you agreed. If what is stated in a contract is not what you agreed, or if you do not understand clearly what is being stated, discuss again and renegotiate until you are satisfied and clear.

5) USE A NEW CORPORATION: Using a corporation to own a property is always recommendable, as it provides protection against personal obligations or liabilities you may incur in. Up until some time ago, if the corresponding searches showed it was safe, it made sense to buy the shares of an existing corporation to gain control over a property that said company owned, as it saved the buyer the costs resulting from transferring the title of the property. Nevertheless, nowadays transfer taxes have to be paid when the shares of a company change hands with the clear purpose of selling a property that said company owns. Being that the case, it is now much more recommendable to use a new clean corporation to hold a property you are buying. That way you do not assume any contingencies that the old corporation may have. Additionally, changing the company's representation to assume control over the corporation has the same cost as incorporating a new entity. For those reasons, always chose using your own new corporation over keeping an old one that has already been used by someone else important to verify if the company owes any taxes. If said corporation has ever employed any individuals, you may also want to verify or discard the existence of any labor

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6) BEWARE OF TRUSTS: These days, many developers, instead of using their own funds, seek financing from banks, which lend them the necessary funds to bring their projects to reality. In many cases, such credits are secured with trust agreements that allow fast foreclosure in the event the developer fails to pay the bank. If you are buying in a project that is under these circumstances, you need to be aware that the property you are buying may not be legally owned by the developer, but by a trustee. In that case, executing a purchase agreement without the participation of the trustee may leave you unprotected and with a void empty contract. Always make sure that the seller has been expressly authorized by the trustee to sell the property, negotiate and agree on the terms and conditions of the sale and execute the purchase agreement, and that all your rights are recognized by the trustee. Also, if you should identify the existence of different trust agreements, always demand a copy of such agreements to verify their possible implications and how they may affect you. Finally, if you buy your property with a loan that is secured with a security trust instead of a mortgage, your capacity of disposing of the property may be limited in many different ways and you may require previous authorization from the trustee, which is not always easy to obtain. Be sure that said circumstances are acceptable for you, otherwise, ask for other options. If you should



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