

## **An Inside Look at Costa Rica's Unique Real Estate System** *by Roger Petersen\**

The Costa Rican property system isn't as complicated as it might seem at first glance. Here's an explanation from Roger Petersen, a San José-based lawyer who specializes in assisting foreigners with real estate dealings in Costa Rica.

### **Titles and Transfers**

In Costa Rica, property is transferred from seller to buyer by executing a property transfer deed (*escritura*) before a Notary Public. Unlike common-law countries, such as the United States and Canada, where the role of the notary public is limited to authenticating signatures, in Costa Rica a notary public has extensive powers to act on behalf of the state. The notary public must be an attorney, and he or she may draft and interpret legal documents, as well as authenticate and certify their authenticity.

In order to close on the property, the buyer and seller must select a notary/attorney to draft the transfer deed and register the sale in an office known as the National Registry (*Registro Nacional*). All documents are centralized at this location. As such, all deeds executed in the provinces of Costa Rica must be filed in the National Registry. The local custom is that the buyer may select his or her notary/attorney to draft the property transfer deed if the buyer is paying cash for the property. If a portion of the purchase price is financed by the seller, there are generally three alternatives for selecting the notary/attorney:

1. If a large percentage of the purchase price is financed by the seller and a mortgage needs to be drafted to guarantee payment, then the seller may request that his or her notary/attorney draft the transfer deed.
2. If property is purchased with 50% cash and 50% financing, it is common for the buyer's attorney and seller's attorney to jointly draft the transfer deed and mortgage in a single document. This is known as co-notariado.
3. Finally, the buyer may insist that his or her notary/attorney draft the transfer deed and let the seller's notary/attorney draft a separate mortgage instrument. In this case, because the mortgage is being drafted separately, it carries a higher registration fee. The registration fees are discussed below in the section on closing costs.

Property can be purchased in an individual's name, jointly with other persons, or in the name of a corporation. The decision should be based upon your particular situation and after consultation with your attorney.

### **Ensuring a Clear Title**

Costa Rican law requires that all documents relating to an interest and/or title to property be registered in the property section of the National Registry (Article 459-460 of the Civil Code). Most properties have a title registration number known as the *folio real*, and the

records database can be searched with this number or by name index. The National Registry report (*informe registral*) provides detailed information on the property, including the name of the title holder, boundary lines, tax appraisal, liens, mortgages, recorded easements, and other recorded instruments that would affect title.

Since Costa Rica follows the doctrine of “first in time, first in right,” recorded instruments presented to the National Registry are given priority according to the date and time in which they are recorded.

### **Closing Costs**

Closing costs involve three things: Government transfer taxes and registration fees, notary and legal fees, and mortgage costs, if any.

#### **Government transfer tax and registration fees:**

Real Estate Transfer Tax. The government collects a property transfer tax (*Impuesto de Traspaso*) which is equal to 1.5% of the registered value of the property. The National Registry will not record a transfer deed unless the transfer taxes and documentary stamps have been paid.

Documentary Stamps. The government also requires that documentary stamps be affixed to the deed. These stamps include the following: Municipal Stamp (*Timbre Municipal*); Legal Bar Association Stamp (*Timbre del Colegio de Abogados*); Agricultural Stamp (*Timbre Agrario*); National Archives Stamp (*Timbre del Archivo Nacional*); and Fiscal Stamp (*Especie Fiscal*). The National Registry also imposes its own tax of 0.50% on documents presented for recording to the National Registry (*Derechos de Registro*).

#### **Notary fees:**

The notary who drafts the contract for sale, carries out the real estate closing and records the property title transfer is entitled by law to a fee that is based upon a percentage of the value of the transaction. The original decree established a fee equal to 1.5% of the first one million colones of the actual sales price and 1.25% of the balance. The revised decree which was modified in August of 2005 (*Decreto Ejecutivo N° 32493-J*) provides as follows:

- Up to 10 million colones: 2% of the value of the transaction.
- On the Excess of 10 million colones to 15 million colones: 1.5%.
- On the Excess of 15 million colones to 30 million colones: 1.25%.
- On the Excess of 30 million colones: 1%.

Pursuant to the law these fees are the minimum that may be charged by the Notary Public. Any additional services including the drafting of pre-closing agreements, escrow and the like may carry additional fees.

## **Mortgage costs:**

It is customary for the person receiving financing to pay the costs of drafting and registering the mortgage instrument. A mortgage can be created simultaneously at the time of sale by adding a mortgage clause in the transfer deed. Or, a separate mortgage instrument can be drafted. A mortgage document pays registration fees and documentary stamps. The notary public will also charge for drafting and recording the mortgage instrument and that fee is applied according to the same schedule as indicated above.

## **Registration of the Transfer Deed**

Once all the fees have been paid, it is the obligation of the notary public who drafted the transfer deed to ensure that the deed is presented (*anotado*) and registered (*inscrito*) in the Property Section of the National Registry. It is essential to follow up with the notary to ensure registration. Although presentation guarantees your priority (i.e. first in time, first in right), it does not automatically guarantee registration.

The National Registry will not register a transfer deed unless all taxes and registration fees are included. Likewise, any prior instruments that encumber the property (mortgages, liens, judgments, etc.) must be lifted before your transfer deed will be registered.

Once a transfer deed is accepted for registration, the National Registry will return the original document to the notary public that submitted it with all the documentary stamps affixed to it and properly sealed. Assuming there are no defects in the transfer deed, it should be registered by the National Registry within 45 to 60 days after presentation. It is therefore important to follow up with the notary public to ensure registration, otherwise you will run into problems in the future when you decide to resell the property and find out that your sale was not properly registered.

## **Property Taxes and Utilities**

Now that you have your property deed recorded, you should also address your property taxes and utilities on the property.

- **Property tax registration.** Your property deed is recorded in the National Registry. However, you pay your property taxes at your local municipal government office where your property is located. Many buyers assume that the local property tax information will be automatically updated with the recording of the deed in the National Registry. Not so. The buyer should file a copy of the property transfer deed directly with the municipal government office where the property is located to ensure they update those records. The current property tax rate is 0.25% of the recorded tax base of the property per year.
- **Utility bills.** It is also the responsibility of new property owners to transfer utilities to their name. In Costa Rica the government owns the electric, water, telephone

and some of the Internet services. Changes in these accounts requires interaction with the respective agencies. Electricity is handled by the *Compañía Nacional de Fuerza y Luz* (CNFL) or by electric co-ops in rural areas. Telephone and Internet (ADSL) are serviced by the *Instituto Costarricense de Electricidad* (ICE), water by the *Acueductos y Alcantarillados* (AyA) or the local water districts in rural areas. Cable television and broadband Internet are privately owned.

Be sure to address these issues during the property closing to insure that there is no interruption in services. Most banks now offer automated billing for the utilities indicated above.

### **Beachfront Property**

In most cases, beachfront property is untitled because in Costa Rica the ownership and possession of the shoreline is governed by the Maritime Zone Law (*Ley Sobre la Zona Marítimo Terrestre*) which was passed in 1977 and which restricts the possession and ownership of beachfront property. By law the first 200 meters (656 feet) of beachfront starting at the high tide markers is owned by the government. Of the 200 meters, the first 50 meters (164 feet) are deemed public zones (*Zonas Públicas*), and nobody may possess or control that area. In recent years municipal governments began demolishing constructions which were illegally built within the 50-meter public zone. On the remaining 150 meters (492 feet), referred to as the Restricted Zone (*Zona Restringida*), the government—through the local municipality—will lease, by way of concessions, the land to private individuals or corporate entities.

Before conferring the concession, the law mandates that the beach areas have high tide markers in place (*mojones*) and a zoning plan approved (*plan regulador*). In addition, the area to be leased must have a property survey map (*plano catastrado*) approved by the Municipal government. Concessions that have complied with all the legal requirements can be recorded in the National Registry Maritime Concession Department.

The Maritime Zone Law provides restrictions for foreign ownership or possession of beachfront property, so a more in-depth and careful study is always required when considering an investment in beachfront property in Costa Rica.

### **Property with a Corporate Title**

In Costa Rica it has become quite common to title property in the name of a corporation. This in turn has increased the practice of selling the corporate stock of a corporation instead of the property itself to avoid payment of the property transfer taxes.

The decision to accept the transfer of a corporation with the property as opposed to transferring and recording legal title is a choice that the real estate buyer must make after consultation with an attorney. Purchasing a corporation involves additional due diligence because the underlying property title must be checked and so does the incorporation and documentation on the corporate entity that owns it. In Costa Rica there is no centralized

registry of corporate liabilities and therefore no guaranteed method to check for hidden corporate liabilities.

Purchasing from a real estate developer who formed several new corporations to sell lots or condo units would require less due diligence than, say, buying from an individual who has an older corporation. Developers, however, are generally of a higher profile for the revenue department, so request a guarantee that if the sale of stock is deemed a "property transfer" by the revenue department, developers will cover all transfer taxes that could be assessed.

Each case and transaction will differ. As long as you conduct due diligence properly, you will be able to make an informed decision as to the acquisition method that best suits you.

Author of *The Legal Guide to Costa Rica*. This book can be ordered directly at Roger Petersen's website, [www.costaricalaw.com](http://www.costaricalaw.com). He can be reached by phone in Costa Rica at (506)288-2189 ext. 101 and (506) 288-6228 or by e-mail at [rpetersen@costaricalaw.com](mailto:rpetersen@costaricalaw.com).

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