

Learning the Ropes:

A Guide to Understanding How to Buy Real Estate in Costa Rica

Introduction

The acquisition of real estate is one of the most significant investments a person makes during his or her lifetime. It can also be one of the most stressful. In foreign countries such as Costa Rica, the normal stress of the purchasing process can be compounded with other risk factors, such as language barriers and unfamiliarity with local laws and procedures. That said, Americans legally and successfully purchase property in Costa Rica. In fact, Costa Rica offers buyers many types of real estate products including homes, condominiums, time-shares, farms, finished lots and beachfront property. If you are considering real estate investment in Costa Rica, the following guide is designed to help you navigate your way through the real estate buying process. The guide is divided into three main sections covering:

- I. Property Types and Property Rights
- II. Purchase Process:
 - a. Legal vocabulary of property purchase
 - b. Step-by-step through the buying process including costs
- III. Investment Protection: strategies and tools to protect your investment

I. Property Ownership and other common forms of possession

Just like in the US, Canada, and Europe, there are different types of property available to buyers. Understanding the various types that are available for purchase is critical in the evaluation process. This section highlights the property types that can be purchased in Costa Rica and the implications of that type of ownership for the buyer.

a. *Fee Simple*:

- i. The most comprehensive form of property ownership in Costa Rica is *fee simple* ownership. Fortunately for foreigners, the conditions for this type of ownership are the same for Costa Rican nationals as they are for foreigners. The concept of fee simple ownership is the same in Costa Rica as in the US. Basically, fee simple ownership gives the owner of the property the absolute right to materially own the property, use it, enjoy it (i.e. usufruct), sell it, lease it, improve it (i.e. transformation), etc., subject only to conditions outlined in the Costa Rican Laws. Fee simple also means that if the owner is obstructed from enjoying any of his/her rights to the property, he/she has the right to be made whole, in other words, have the property restored in its original condition. Buyers who purchase fee simple title have the most rights under to law to enjoy and use the property as they see fit.

b. *Concessions in the Maritime Zone:*

i. Concession property is more commonly known as beachfront property. In Costa Rica, 95% of beachfront property is considered concession property and is governed by the Maritime Zone Law and other specific regulations including but not limited to special dispositions stated by municipalities and the ICT (Costa Rican Institute of Tourism). These legal dispositions set forth the conditions under which foreigners and local residents can own concession property. A concession in Costa Rica is defined as the right to use and enjoy a specific property located on the maritime zone for a pre-determined period of time. The Estate through the respective municipality grants this right. The first 200-meters measured horizontally from the high tide line defines the boundary of the maritime zone. This zone also includes islands, pinnacles of rock, mangroves, estuaries, small islands and any small natural formation that overcome the level of the ocean. This 200 meter zone is divided into two areas:

1. **Public Area:** The first 50 meters measured horizontally from the high tide line. This zone is not available for ownership of any kind. No kind of development is allowed except for constructions approved by governmental entities.
2. **Restricted/Concession Area:** The next 150 meters. This area is available for Concessions to be granted. A concession is in essence a “lease” on the property granted to the lessee for a specific period of time. Normally the concession period is granted for 20 years. An owner of a concession may build on that concession, subdivide the concession and perform other acts to the property. However, appropriate permits from the local municipality must be obtained.

ii. The only case in which there are limitations is regarding properties located on the maritime zone, whereby the law establishes that foreigners cannot be concessionaires. The only possibility is through a partnership with Costa Ricans being owners of maximum 49% of the shares in a determined corporation or for foreigners residing in Costa Rica for at least five years. Ownership on the maritime zone is limited for Costa Ricans as well, since on these areas’ concessions are the only possibility.

c. *Properties in Condominium:*

i. When US citizens think of Condominiums, they normally think of large apartments or townhouses. In Costa Rica, there is a specific law that in combination with other legal dispositions regulates all conditions required in order to set up a condominium. Each Condominium developments has its own bylaw containing all of the restrictions, limitations and privileges that can be enjoyed by individuals who purchase a property is such development. Ownership of property “in condominium” is fee simple ownership. It is advised that you require the owner of the property to give you a copy of the by-laws to check for architectural guidelines, land use restrictions, and other limitations that may be placed on your property. Most often, developers use

the condominium laws to allow them to build private roads in a development, set architectural guidelines so that a buyer does not construct a four-storey hotel on his property next to a single-family dwelling. For the most part, condominium laws are designed to protect the integrity of a development.

d. *Time Share*:

- i. The right to use a property for certain weeks in the year. In most cases the time-share ownership grants similar rights as implied in the condominium regulation except that in the time-share is limited to certain weeks during the year. In this manner one single unit is subdivided into parts and sold individually. Time-share resorts are not common in Costa Rica.

II. The Purchasing Process

Once a buyer has seen a property of interest, the next step is to understand what the process of acquiring the property may entail. The following are the basic steps that a purchaser follows when buying a property.

Step 1 : Sign a Purchase/Sale Contract with seller

Step 2 : Deposit funds into escrow

Step 3 : Closing - Execution of Transfer Deed, Endorsement of Shares and/or Mortgage Deed and disburse funds

Step 4 : Register new owner with Public Registry

i. *Basic Terminology* - while the purchase process may seem very simple, there are some key ideas with which a buyer should be familiar. The following will acquaint you with the most common vocabulary used in real estate transactions in Costa Rica.

a) Folio Real: This is the “social security” number of properties. It is the unique number assigned to each property to identify it and distinguish it from others. This number is comprised of three parts where the first number indicates the province, the second group of numbers is the number of the property itself and the last group of numbers indicates how many owners the property has or has had. The property that you are buying **MUST** have this number in order for you to obtain clear title.

b) Transfer Deed: (escritura de traspaso): This is the document that contains all of the stipulations regarding the transfer of real estate. This document must be prepared by an attorney who must also be a Public Notary and the deed must be recorded in his/her Notary Book as well as at the Public Registry of Properties in San José. For example, Stewart provides this service, as our underwriters are also attorneys. Further, we guarantee that the deed will be registered the same day or next day after the close to ensure the government recognizes your purchase immediately and no other party can claim before you.

c) Power of Attorney: (Poder): This document authorizes a person to act on behalf of another to perform specific actions such as the purchase of a property. This is especially useful for clients that wish to close on their property without returning to Costa Rica.

d) Survey Plan: (Cadastral Plan): In order to transfer or acquire a property the respective survey must be recorded at the Public Registry with the municipality authorization. The official drawing of the property is validated through an approval process by the Public Registry of Properties as well as by the municipality in which the property is located.

e) Public Notary: Attorney licensed by law to performed legal acts with Public Faith. A public notary is necessary in order to purchase a property. He will be in charge of drafting the respective transfer deed.

f) Representatives: If buyer or seller will not attend the closing personally, an individual with power of attorney to represent either or both parties will be required the day of closing. Whenever buyer, seller or both are corporations, the legal representative shall appear to sign the respective deed and he shall have a legal document to justify his appearance. This document shall be granted before a Public Notary.

g) Recordation of the transfer deed: Upon the signature of the transfer deed the Public Notary shall take the transfer deed to the Public Registry for its recordation. The recordation process has two phases. The first phase, the notary presents the deed to the public registry for its annotation; from this moment the property is protected against any third party interest. After the registry verifies that structurally the deed has been done correctly the second phase of registration begins and the property will be recorded in the name of the new owner.

II. Purchasing Methodologies

1. *Acquiring Properties through direct transfer*: This is the typical purchase process in which one or more physical individuals acquire a property in their personal name.
2. *Acquiring Properties through corporations*: One of the most common practices in Costa Rica is to acquire properties through a new corporation or through an existing corporation that owns the property. The advantage of this system is that the buyer can protect his/her asset anonymously. Further, if a purchaser acquires a property through an existing corporation that already owns the property, there are no transfer taxes and other stamps to pay. This savings is due to the fact that transfer taxes and stamps must be paid anytime that there is a change in the ownership of the property. In acquiring the shares of an existing corporation, technically there is no change in the recorded owner of the property. If a property is acquired through forming a new corporation to buy the property, the transfer taxes and stamps must be paid because the name of the property owner has changed.

III. Fee Structure

- A. Transfer taxes and stamps other charges: In order to record the transfer of the property a 1.5% shall be paid for transfer taxes and an extra 1% for other stamps at the Public Registry.

B. Notary Fees: Notaries are required by law to charge a 1.5% as their legal fees.

C. Corporation: Share Holders & Constitution of the Corporation \$800 - \$1000

Example Purchase Price \$ 100,000

| Items | Percentage | Total U.S. |
|--------------|--------------|-------------------|
| Transfer tax | 1.5% | \$1,500.00 |
| Stamps | 1% | \$1,000.00 |
| Notary Fee | 1.25% | \$1,250.00 |
| Total | 3.75% | \$3,750.00 |

III. Protecting your real estate investment

One of the greatest concerns of foreigners purchasing real estate in a foreign country is in ensuring that the transaction will be executed legally and if the system will insure a lifetime of enjoyment of the property.

The Costa Rican legal system, if followed correctly, does give ample protection to investors, but if the transaction is not executed properly, loss can and does occur.

To guarantee the security of any real estate investment, there are tools that should be present in any real estate transaction.

a. Adequate legal representation and experienced Notary

A notary is an impartial individual in the closing but his/her job as the legal representative of the parties should provide the buyer or the seller with legal advice as to the complete process.

b. Escrow

Most buyers from the US understand Escrow service to include not only the managing of funds for a property purchase, but all of the administrative work required to execute a close. In fact, in states where an attorney is not required for a real estate purchase, the escrow agent becomes the central party responsible for ensuring that all of the documentation is in order before the close. In Costa Rica, escrow is more narrowly defined as a financial service that prevents the manipulation or mishandling of funds prior to closing. The escrow agent is a neutral third party with responsibility for issuing checks and executing payments. This system gives confidence to all interested parties (e.g. attorneys, brokers, seller) that they will receive funds at the closing.

Conclusion

The real estate buying process in Costa Rica need not be intimidating or confusing. By understanding the steps in the process and pitfalls to avoid, a buyer can confidently invest in and enjoy a property.