

INTRODUCTION

Buying real estate is perhaps the single most important investment you'll ever make. It can also be one of the most stressful! Purchasing real estate in a foreign country can seem even more difficult as you struggle with new people, customs and languages. The good news is that hundreds of thousands of Americans, Canadians and Europeans have already successfully purchased property in Costa Rica.

Costa Rica offers buyers many types of real estate options including single family residences, condominiums, time-shares, farms, general lots and beach front property. Whichever property you choose, the following guide will help you navigate your way through the Costa Rica real estate process.



BUYING REAL ESTATE IN *Costa Rica*

THE GUIDE IS DIVIDED INTO 3 MAIN SECTIONS:

- I. Property Types and Property Rights
- II. Purchase Process:
 - a. Legal vocabulary of property purchase
 - b. Methods of Purchase
 - c. Buying process step-by-step
 - d. Fees
- III. Investment Protection: strategies and tools to protect property investment

I. PROPERTY OWNERSHIP AND COMMON FORMS OF POSSESSION

This section highlights the types of property available in Costa Rica and outlines the implications for each type of ownership.

1. *Fee Simple:*

The most comprehensive form of property ownership in Costa Rica is fee simple ownership. Fortunately for foreigners, this type of ownership is the same for Costa Rican

nationals as it is for foreigners. Fee simple ownership gives the owner of the property the absolute right to materially own the property, to use it, enjoy it, sell it, lease it, improve it etc....subject only to the terms of Costa Rican Law. Buyers who purchase fee simple title have the most rights under the law to enjoy and use the property as they see fit.

2. *Concessions in the Maritime Zone:*

Concession property applies to the 95% of beach front property which is not "titled" and is governed by the Maritime Zone Law and other specific regulations including but not limited to special guidelines stated by local municipalities and the ICT (Costa Rican Institute of Tourism). This legal framework sets 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 state, through its respective municipality, grants this right. Note that 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 overcomes the level of the ocean. This 200 meter zone is divided into two areas:

(a) Public Area: The first 50 meters measured horizontally from the high tide marker. This zone is not available for ownership of any kind. No kind of development is allowed except for constructions approved by governmental entities. Further, this area is deemed a public area and any individual wishing to utilize this area for enjoyment has the right to do so. In other words, there are no truly private beaches in Costa Rica.

(b) **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.

(c) **Ownership Limitations:** Unlike fee simple property, foreigners do not have the same rights as citizens when it comes to purchasing concession property. The law establishes that foreigners cannot be majority owners of a concession property. A foreigner can, however, enter into a partnership with a Costa Rican citizen where the ownership is divided 49%/51% between the foreigner and Costa Rican respectively. One exception is if a foreigner has resided in Costa Rica for at least five years, then they may be majority owners of a concession. Both foreigners and Costa Ricans alike are required to purchase all Maritime Zone property through concession.

3. *Properties in Condominium:*

When most Americans think of “condominiums”, they normally think of apartments or town houses. In Costa Rica, however, there is a specific law called “Condominium Law” that provides certain benefits to developers of many different types of properties, including single family residence projects, finished lot projects, condos, etc. This set of laws allows a developer to restrict and regulate certain aspects of the development. Each Condominium development has its own by-laws containing all of

the restrictions, limitations and privileges that can be enjoyed by individuals who purchase a property in such a development. Ownership of property “in condominium” is fee simple ownership, but usually carries with it a few additional restrictions set forth by the developer. 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 and set architectural guidelines. For the most part, condominium laws are designed to protect the integrity of a development and maintain the “look and feel” of the project.

4. *Untitled Property*

There are properties in Costa Rica that are not recorded at the Public Registry of Properties. Families have inhabited some properties of this type for generations while others have never been occupied. In either case, it is possible that someone claims that they “own” the property and may put it up for sale. They may even have fence lines or other boundary markers that separate “their” property from a neighbor’s. Regardless of the time that an inhabitant has lived on the property or to what extent they have demonstrated ownership, unless that property is registered at the Public Registry, there is no official owner. i.e. the title is unclear. It is strongly recommended that this type of property be avoided at all costs because there is no way to prove that the “owner” has the right to transfer the property, or even worse, to clearly demonstrate what the dimensions of the property truly are.

5. *Time Share:*

This option allows an owner the right to use a property for certain weeks of the year. In most cases the time-share ownership grants similar rights as implied in the condominium regulation except that in the time-share it 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 PURCHASE PROCESS

A Basic Terminology – Feeling comfortable with the purchase process starts with an understanding of the most common terminology. While the purchase process may seem very simple, there are some key ideas with which a buyer should be familiar. The following defines the most common vocabulary used in real estate transactions in Costa Rica.

1. *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 other properties. This number is comprised of three parts: the first number indicates the province, the second group of six numbers is the number of the property itself and the last group of numbers indicates how many co-owners the property has. All titled properties MUST have this number in order for clear title to be obtained.

2. *Transfer or Conveyance Deed: (escritura de traspaso):*

This document contains all of the stipulations regarding the transfer of real estate including basic information about the buyer, seller, the property, and any special terms of sale, such as easements or mortgages. An attorney who is also a Public Notary must prepare

this document. The deed must be recorded in his/her Notary Book as well as at the Public Registry of Property. Once the deed has been prepared and signed at the closing, it is the attorney's responsibility to record the deed immediately at the Public Registry. The recording process consists of two phases. In 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 the deed is correct, the second phase of registration begins and the property is recorded in the name of the new owner. Because Costa Rica operates on a "first in time, first in right" system, registering the deed immediately is critical to ensuring that the new buyer's rights to the property are ahead of any other claims by third parties.

A. PUBLIC REGISTRY OF PROPERTIES

1. *Public Notary:*

A Public Notary is an Attorney licensed by law to perform legal acts with Public Faith. All transactions performed by a Notary are recorded in his/her Notary Book. A public notary is necessary in order to purchase a property. Most attorneys in Costa Rica are also Public Notaries.

2. *Power of Attorney: (Poder)*

(a) This document authorizes a person to act on behalf of another to perform specific actions such as the purchase of a property. This tool is especially useful for clients that wish to close on their property without returning to Costa Rica. It is best to sign the power of attorney before leaving the country because the law requires that the power of attorney be signed in the presence of a Costa Rican notary, or a visit to a Costa Rican consulate in the US will be

necessary. One exception to this rule, however, is if the property is being purchased through a corporation. In this case, a signed proxy letter will suffice and there is no need to visit a consulate.

(b) Powers of Attorney come in two forms, general and special. General power of attorney allows a representative to sign on behalf of an individual for multiple transactions and must be recorded at the Public Registry. A specific or special power of attorney allows the representative to sign ONLY for the item specified in the power of attorney contract and under the conditions specified there. It is highly recommended that only a specific power of attorney be granted for property purchases to limit the rights of the representative to sign only for the property in question and nothing else. Additionally, the specific power of attorney does not have to be recorded at the Public Registry, however it should be granted before a public notary.

3. *Survey Plan (Cadastral Department):*

In addition to the Public Registry of Properties, which holds all property deeds, Costa Rica also has a Cadastral Office that holds all of the property surveys. In order to transfer, mortgage or acquire a property, a survey must be recorded at the Public Registry. When dealing with property segregations, a municipality authorization is also required to be inserted on the survey. 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. Because the Public Registry and Cadastral Office are separate entities, it is not uncommon for old property surveys to be on file at

the Cadastral Office. If this is the case, it is recommended that a new survey plan be registered with the Cadastral Office so that there can be no dispute over boundary lines.

B. PURCHASE METHODS

1. *Acquiring Properties through direct transfer:*

A purchase process whereby one or more physical individuals acquire a property in their personal name.

2. *Acquiring Properties through corporations:*

A common practice in Costa Rica is to acquire properties through a new corporation or through an existing corporation that currently owns the property of interest. The process of setting up a corporation is not complicated, but does require a knowledgeable attorney who understands the exact protocols and procedures necessary to properly set up the corporation. The advantage of this system is that it allows a buyer to protect their asset anonymously. Further, if a purchaser acquires a property through an existing corporation that already owns the property, there are no government transfer taxes and stamps to pay. The reason is that transfer taxes and stamps must be paid any time there is a change in the ownership of the property. If a buyer acquires the shares of an existing corporation, technically there is no change in the recorded owner of the property (i.e. the corporation still owns the property). However, 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. The risk for the buyer in acquiring an existing corporation is that the corporation might have

other liabilities and there is no way to verify 100% that the corporation is clean. When buying a Costa Rican corporation, it is important to keep in mind that there are other obligations and responsibilities that must be addressed. Examples include yearly tax declarations (even if the corporation is inactive), payment of income taxes if any, and keeping the legal books of the corporation up to date and in order.

C. THE PURCHASE PROCESS: STEP-BY-STEP

1. The following are the basic steps to follow when buying a property.

Step 1: Sign a Purchase Agreement with seller

Step 2: Deposit funds into escrow

Step 3: Title research performed and Title Commitment issued

(This review is conducted to ensure that the property is free and clear of defects)

Step 4: Closing – Execution of Transfer Deed, Endorsement of Shares and/or Mortgage Deed and disbursement funds to seller.

Step 5: Register new owner with Public Registry

Step 6: Receive official Title or Title Guaranty

D. FEE STRUCTURE

1. Transfer taxes, stamps and other charges:

In order to record the transfer of the property, the government charges 1.5% of the purchase price and an additional 1% is charged for other stamps at the Public Registry.

2. Notary Fees:

Notaries are required by law to charge 1.25% as their legal fees.

3. Survey fees:

If you require or demand a new survey for your property, there are qualified surveyors available to perform this function. Pricing depends on the location and size of the property.

4. Mortgage registration fees:

The government charges .6% of the mortgage value to register the mortgage deed on the property

5. Title Guaranty fees:

Guaranty fees are typically based on a sliding scale depending on the purchase price.

6. Escrow Fees:

Fees are dependent on the escrow provider.

7. Incorporation:

Fees for purchasing a corporation typically run between \$500- \$1000.

III. PROTECTING THE REAL ESTATE INVESTMENT

One of the greatest concerns of purchasing real estate in a foreign country is ensuring that the transaction will be executed legally. The Costa Rican legal system, gives ample protection to investors. However, if the transaction is not executed properly, loss can and does occur.

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

1. Adequate legal representation and experienced Notary:

While a notary's primary duty is to provide Public Faith to a transaction, his/her job is also to act as the legal representative of the buyer, providing legal advice and representation throughout the process.

2. Title Guaranty or Buyer's Attorney

As in the US, the title guaranty serves as a contract by which a third party (Guaranty Company) commits to indemnify losses due to legal situations that could affect the property, minus any exceptions or exclusions from the coverage. This legal document grants the buyer the security and peace of mind that the property has free and clear title to and is protected in the event of defect. The process of issuing a Title Guaranty includes the issuance of a Title Commitment before the closing to allow the buyer time to examine the legal status of the property and evaluate if the property is in proper condition for purchase. The final title guaranty is issued after the close and is based on the title commitment. The Title Guaranty is a new concept in Costa Rica and Latin America in general, but it has already proven to add value to initial real estate purchases, resales and has encouraged transparency and increased liquidity in the real estate process.

The cost for these services can be costly. Many buyers choose instead to work with a reputable attorney that will scrupulously examine the property title and communicate openly and honestly with regard to any title concerns or problems with long-term usage and development on the property. Foreign property buyers in Costa Rica have long relied on reputable attorneys for this service and have transacted tens of thousands of purchases with the help of a reliable, reputable attorney.

3. 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 closing. 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 documentation is in order before the close. In Costa Rica, the escrow agent performs many of the same duties. The primary function is the financial service to prevent manipulation or mishandling of funds prior to closing. The escrow agent is a neutral third party or attorney with responsibility for issuing checks and executing payments. This system gives confidence to all interested parties (e.g. attorneys, brokers, seller, buyer) that funds are protected during the buying process and that all funds will be disbursed appropriately to all parties at closing.

CONCLUSION

The real estate buying process in Costa Rica need not be intimidating or confusing.

By understanding the steps in the process and the pitfalls to avoid, a buyer can invest with confidence and enjoy their property for years to come.

Pura Vida!

Excerpted in part from “Buying Real Estate in Costa Rica” by Heritage Estates.
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