



**GENERAL GUIDELINES
FOR REAL ESTATE
ACQUISITIONS IN
COSTA RICA**



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GENERAL GUIDELINES FOR REAL ESTATE ACQUISITIONS IN COSTA RICA

ABOUT COSTA RICA

With the profile of a democratic and peaceful country, Costa Rica has incredibly beautiful scenery, amazing mountains, rainforests, volcanoes and about 4% of the world's biodiversity. Besides this, in Costa Rica non-residents or foreigners have the same rights as Costa Rican citizens when purchasing real estate and law guarantees such property ownership rights.

Add to these benefits, the fact that land and house prices in this beautiful country are highly affordable in contrast with the U.S. and European prices. Many investors from all over the world find in Costa Rica an excellent alternative to the insecurity of other real estate markets.

PROPERTY REGISTRATION AND LAND TITLE

The Costa Rican Government welcomes foreign investment. There are generally no restrictions for foreign entities or people in acquiring property or conducting business in Costa Rica. The investor is free to enter into local contracts and enjoys the same protection as any national citizen.

When purchasing real estate in Costa Rica, proper registration of the property, and not the deed itself, is of great importance. That is, because even though a person may have an apparently "legal" title to a piece of property under his name, it does not necessarily mean that he is the legal owner. All Costa Rican land is registered at a central depository called the *Registro Público de la Propiedad (Public Registry)*, and it is there that one should begin the title search for a parcel of land. This institution certifies who is the property's owner, as well as all the information related to the parcel: its location, nature, measures, boundaries, plot map, etc.

- **Title check for third party rights**

The title must be checked for any liens or encumbrances, of which the Public Registry keeps scores. It is very important to carry out an effective research of the property, to avoid subsequent problems (such as losing possession of property thought to be legally owned).



Title guaranty services are now available through **Stewart Title Guaranty Company**, based in San Jose. Stewart Title advertises escrow and title guaranty services to protect the consumer throughout the process of acquiring land, and to indemnify him for losses that may be incurred. Stewart Title is a 105-year-old U.S. company based in Houston, Texas, with over 3,500 offices in the U.S. and abroad.

- **Legal Protection of such certificate**

The National Registry maintains records of all rights and interests pertaining to real property. The purpose of the institution is to guarantee the security of registered property rights. The mechanism by which this goal is accomplished is through the dual processes of inscription and publicity. Any title which constitutes, recognizes, modifies, or extinguishes an ownership right, usufruct, use, tenancy ("habitación"), servitude, mortgage, or rental right should be inscribed in the Public Registry. Titles that are not inscribed have no effect against third parties.

- **Deed status of the land**

Property rights differ depending on the kind of title and ownership. Our Constitution grants foreigners the same rights as property owners that nationals have, with few exceptions, one being ownership of beachfront property leases. Others are specially titled property, with transfer restrictions (with encumbrances for example). One can have full property rights, or restricted ones.

In the case of certain beachfront property or other government owned lands, it can be held (not owned) through a concession granted by the government for a maximum period of 20 years. Private property can also be held by lease, by usage agreements, as a squatter, de facto occupant, or occupant with permission from owner without rent payment, as well as in several other ways.

Different statutes regulate property owned and held in different ways. So it is important to discuss it with your attorney.



LEGAL STRUCTURES FOR BUSINESS INTERESTS

1. Types of Legal business organizations

Costa Rican law recognizes the following forms of business organization:

- Anonymous Corporation (*sociedad anónima*);
- Limited liability company (*sociedad de responsabilidad limitada*);
- Liability companies (*sociedad en comandita* and *sociedad colectiva*).

Corporations are the most common entities given their structural flexibility. Incorporation costs include stamp costs plus legal fees. Stamp costs are approximately \$40.

Generally the government will not seek to participate in the ownership or operation of the entity.

Foreign nationals may be shareholders and/or serve as board members or officers. Nevertheless, whenever the company has no legal representative with domicile in the country, a registered agent must be appointed for purposes of receiving notices. There is no requirement to the effect that a national has to participate in any capacity.

Under Costa Rican civil, commercial and administrative laws, corporations are separate legal entities regardless of ownership of stock or other forms of relationship. The so called “corporate veil” is respected. Responsibility or liabilities of a company do not reach its shareholders, parent company or other related entities. The Commerce Code indicates that shareholders obligations are limited to payment of the social capital.

There are no restrictions on capitalization. However, whenever capitalization causes an increase in the capital stock of a company, the resolution to increase the capital stock must be done through a public deed, published in the official Gazette and registered with the Public Registry.



2. Joint Ventures

Joint Ventures are permitted even though there is no specific regulation about them. They are created and regulated through general contracts regulations and usually result in the incorporation of a special purpose company.

STAGES OF A COMMON REAL ESTATE TRANSACTION

1. Identify the property you want to purchase
2. We recommend constituting a corporation, and by means of that corporation, one can sign an “Intent of Purchase Contract”.
3. Once the term established on the intent of purchase contract is over and the down payment has been canceled, the title document (escritura de traspaso) is signed.
4. Final payment has to be cancelled at this time.
5. The title document is send to the Public Registry to be registered.
6. In a one-month term, the parcel is transferred to the new owner, and based on the registration and publicity principles that support the Costa Rican real property rights, the new owner has full government protection.

What **RE&B Attorneys** does since step one:

- a. Perform an efficient research of the property:

The actual parcel should match up with the documents that describe it: the title document that describes how the property is recorded in the *Registro* in words; and the plot map of the property. Any discrepancies within the two legal documents and the land itself must be resolved before purchasing.

- b. There is documentation needed for the closing:

- A copy of the tax receipt (*impuesto territorial*) proving that all taxes and registration fees are paid as of the date of purchase.
- A certificate (*constancia municipal*) issued by the municipal authority of the Municipality where the property is located.



- Sufficient funds to pay all necessary taxes and registration fees, including notary fees.
- Evidence that all prior mortgages, liens and judgments have been lifted.

OVERRIDING GOVERNMENTAL RIGHTS EXISTING ON LAND OR OWNERSHIP

1. Maritime Zone (Zona Marítimo Terrestre)

Costa Rican government owns the first 200 meters of the beachfront area, known as the *Zona Marítimo Terrestre*, or the Maritime Zone, and the Ley sobre la Zona Marítimo Terrestre governs it. The first 50 meters are public beaches on which absolutely no construction may take place or any concession may be granted. The remaining 150 meters may be developed via special "concessions" that are granted by a governing Municipality.

In order for any construction to take place on these 150 meters, the area must be part of a *Plan Regulador*, or a special zoning district created by the *Instituto Costarricense de Turismo* (ICT). In Costa Rica, no private ownership of beachfront property is allowed, but, it should be noted that some privately owned beachfront property does exist, due to the fact it was registered prior to the 1977 Maritime Zone law.

- **Obtaining a concession for developing rights in the maritime zone**

Foreign investors must be in compliance with Articles 31 and 47 of the *Ley Sobre la Zona Marítimo Terrestre*: Article 31 specifies that at least fifty percent of the development capital must be Costa Rican. In addition, Article 47¹ states that foreign investors must have resided in Costa Rica for at least five years.

¹ Article 47. (LZMT)

Concessions will not be granted to:

- Foreigners who have not been residents for five years
- Companies with bearer shares
- Foreign companies based abroad
- A company set up in Costa Rica exclusively for foreigners
- A company with more than fifty percent foreign capital



It is important to mention that, even if a concession is granted, there are no guarantees that the concessions will be renewed or that the price of the concession or the yearly *canon* will be within reason. The fact remains that one is not purchasing property but is simply "leasing" it with absolutely no title.

- **Purchase of Land through Costa Rican Companies**

Costa Rican corporations (S.A.'s) can possess concessions, and foreigners can own Costa Rican corporations, so the problem of residing in the country for at least 5 years, is easily and legally solved. Among the advantages of having companies own the real estate, we can mention the reduction of personal liabilities and taxes as the most outstanding. But also, companies constitute the solution to purchase properties that support restrictions such as the one mentioned above.

Ownership of recordable assets, such as real estate and cars, have become the main purpose of most of the registered companies in the country. Hence this method of "indirect" possession, is the most highly recommended means of managing recordable assets. So, as indicated before, in these cases a corporation is generally created.

Also, it is not mandatory but strongly advisable that investors maintain a bank account in the country. Requisites to open a bank account are usually the same in all banks (they may vary slightly): for companies: certificate of legal capacity (called the 'personería jurídica'), identification certificate (called the 'cédula jurídica'), certified copy of the bylaws of the company, bank and personal recommendations (at least two), copy of water or electric invoice. In case of individuals, just the passport, the said letter recommendations and the copy of the water or electric invoice in Costa Rica. Investors may receive bank loans.

2. Expropriation

In 1995, the *Ley de Expropiación* (Expropriation Law) No. 7495, was signed into law. The new law seems aimed primarily at ensuring that expropriations take place only after full and adequate payment is made, regardless of the nationality of the holder of such property. In addition, while an earlier bill was aimed at making expropriation easier, the new law imposes obligations and restraints on the state and its institutions. A few of the more important provisions of the new law are: (1)



the return of the property within ten years if it is not used for the purpose for which it was intended (LE Art. 16); (2) only one month is granted to the tax office to do an appraisal of the property to be expropriated (LE Art. 21); (3) payment in cash is required unless otherwise agreed upon (LE Art. 47); (4) only six months are allowed to fully complete registration of the property (LE Art. 20); and (5) local and international arbitration are contemplated (LE Art. 27). The possibility of international arbitration could permit cases to be brought before the International Center for the Settlement of Investment Disputes (ICSID).

In sum, it appears that if expropriation of land is to occur in the future, the owner may be in a better position than in the past to receive a prompt and equitable settlement.

3. Encumbrances

- a. Zoning restrictions.** The criteria for entering into either a concession or a management plan are based on the use of soil or zoning, which is determined by the corresponding government authority.

Such authorities will divide real estate into several segments based on the optimum use that each portion of the land is best suited for. Despite this, individuals and companies can request a change of use of a determined portion of land, which must be approved by the corresponding entity.

Some of the steps that need to be taken in complying with zoning regulations and engaging in future development of such property include the following:

1. Preparation of Master Plan. If land is located in the shoreline zone, the master plan must be in accordance with the use of soil standards set forth by the Municipality, and its approval will require the existence of a concession agreement on the shoreline zone land.
2. Preparation and recording of surveys for subdivision of land, both from the mother farm and into branch properties.
3. Approval of Master Plan before Board of Architects and Engineers, Health Ministry and National Urban Development Institute. This approval may require the preparation of an Environmental Impact Study.
4. Enter into Construction Agreement with a contractor. This will include negotiation of agreement and guarantees, inspection of works and other related matters.
5. Preparation and recording of Condominium Declaration and CC & R's. Management, Homeowners' Association, Rental Pool, Fractional Ownership and



other related agreements may be applicable during this stage.

6. Sale of branch properties to end buyers. Based on the desired ownership and tax structures, incorporation of holding companies and other forms of ownership agreements for transfer of title to buyers is permitted.

- b. Ecological Restrictions.** Costa Rica is trying to preserve its natural forests and other resources, therefore, there are several different types of restrictions applicable to property for ecological and conservation purposes. These go from absolute preserves that are public property to non-restricted areas. If your property is in a buffer zone or forestry reserve, most likely you will find these restrictions. No one can own property in National Parks. Limited use is allowed in some of these areas.

In all cases cutting a tree in Costa Rica requires a permit, no matter where it may be. Any use of mineral, spring, or river water must also be by means of a permit granted by the corresponding authorities. Non-compliance with these laws and regulations may entail severe penalties, and in some cases even jail terms. Water rights or concessions are obtained usually from the *Servicio Nacional de Electricidad* and tree-cutting permits from the *Dirección General Forestal*.

- c. Construction Restrictions.** Construction or renovation of buildings may be restricted in several different ways. It is recommended to have the guidance of a Costa Rican civil engineer when one is planning to build, so the construction complies with all the requirements demanded by law.
- d. National Institute of Agricultural Development (IDA) Restrictions.** In Costa Rica, there is an agrarian contract denominated “Land Assignment Contract”. It is a certain term convention by which the National Institute of Agricultural Development grants a parcel (for a price or gratuitous) to a previously qualified person.

The beneficiary is compelled to carry out some obligations during a 15 years period, and that means that the parcel cannot be affected (transmitted to a third person, constitute a mortgage, etc.) throughout this time. These limitations cease when two circumstances simultaneously occur: the 15 years period comes to an end, and the beneficiary has paid the full amount of the assigned parcel.



CLOSING COSTS RELATED TO ANY PROPERTY TRANSACTION

Closing costs. The general custom is for the buyer and seller to share equally in the closing costs. This can be modified by agreement and usually depends upon the particular transaction. Closing costs involve three things: government taxes and fees, notary fee.

Government Transfer Tax and Registration Fees

| Real Estate Transfer Tax | Documentary Stamps | Notary Fees | Stewart Title |
|--|---|--|---|
| The government collects a property transfer tax (<i>Impuesto de Traspaso</i>) which is equal to 1.5% of the registered value of the property. The Public Registry will not record a transfer deed unless the transfer taxes and documentary stamps have been paid. | The government also requires that documentary stamps be attached to the deed. These stamps include the following: Municipal Stamp: (<i>Timbre Municipal</i>); Legal Bar Association Stamp (<i>Timbre del Colegio de Abogados</i>); Agricultural Stamp (<i>Timbre Agrario</i>); National Archives Stamp (<i>Timbre del Archivo Nacional</i>); Fiscal Stamp: (<i>Especie Fiscal</i>). The Public Registry also imposes its own tax of .05% on documents presented for recordation to the Public Registry. (<i>Derechos de Registro</i>) | The Notary that drafted the contract for sale and carried out the closing is entitled by law to a fee equal to 1.5% of the first one million Colones of the actual sales price and 1.25% on the balance. | Title guarantee costs consist of 1% of the purchase price total. This is an optional service but is highly recommended. |



Currency Transfer

The current foreign currency exchange allows free possession and conversion of foreign currency into local currency (the “colon”) and vice versa. The exchange rate is determined by a “managed floating system” in which the Central bank of Costa Rica intervenes in the market to maintain stability.

US dollars are widely available in a broad variety of financial institutions and therefore there are no practical or legal restrictions for payments from Costa Rican entities destined to foreign counterparties.

According to our Income Tax Law, payments remitted abroad, to individuals or corporations, from Costa Rican source income are subject to applicable withholding taxes. The rate varies depending on the payment nature.

There are no reporting requirements. Hard currency can be taken out of the country without restriction.

CONSTRUCTION PERMITS AND DEVELOPMENT PROCEDURES

The law requires that any application for a construction permit be presented by a licensed architect or engineer (Article 83, Law of Constructions, Article II.2 Construction Regulations). It is therefore advisable to contact a reputable, licensed architect or civil engineer to guide you through the construction process.

The involvement of a licensed architect/engineer in a construction project is separated into two phases. Phase 1 is construction plans and permits, and phase 2 is control and execution.

Phase 1. Construction plans and permits.

- Preliminary studies (estudios preliminares): These studies may or may not be required, depending on the scope of the project.
- Preproject design (anteproyecto): drafts of the proposed construction project for review by the client. These drafts should include site planning and preliminary work drawings.
- Construction plans and technical specifications (planos de construcción y especificaciones técnicas): In Costa Rica, a complete set of plans should



include a site plan, distribution plan, elevation and transversal and longitude perspectives, roof design and drainage, design of footings and support beams, structural plans, electrical design, mechanical and sanitary system design, as well as a plan that details all of the interior finishings of the construction.

Phase 2. Control and execution. This stage involves the actual construction and project supervision.

Construction permits. Before you purchase a lot with the intent of building on it, you should conduct some preliminary studies on the property to ensure that there won't be a problem obtaining a building permit. It is imperative to make sure there are no restrictions placed on the lot that could result in the denial of a construction permit.

Requests for construction permits are filed with the Permit Reception Office (Oficina Receptora de Permisos de Construcción), which is a centralized office that houses government representatives from MOPT (Ministerio de Obras Públicas y Transportes-roads), INVU (Instituto Nacional de Vivienda y Urbanismo-housing), ICE (Instituto Costarricense de Electricidad-telephone), AYA (Instituto Costarricense de Acueductos y Alcantarillados-water), SNE (Servicio Nacional de Electricidad-electricity), CFIA (Colegio Federado de Ingenieros y Arquitectos), and the Ministry of Health (Ministerio de Salud).

In addition to the documentation this office will require, you will need to request a building permit from the municipality in which the property is located. By law it is the municipality that is delegated the responsibility to ensure that all constructions comply with building regulations (Article 1, Construction Law). All this process can take 3 to 4 months.



LAW FIRM PROFILE



OUR PROFILE

REAL ESTATE & BUSINESS ATTORNEYS was founded by a group of highly trained lawyers committed in providing legal services of the highest quality to their clients. Our law firm keeps an important international profile as we keep a multinational network with law firms worldwide that allow us to provide our clients with an efficient and integrated service. We particularly keep solid contacts with law firms in the United States, Spain and Latin America.

Our services extend to different areas, primarily focusing on Real State Investment, Industrial and Intellectual Property Law, Corporate Law, Foreign Investment, Tourism and Hotel Resort Development, Customs and International Trade Law, Public Notary, etc.

OUR PRACTICE AREAS

Real Estate Investment

The constant growing of the tourism industry and the attraction that Costa Rica represents as a beautiful destination for living and making business, has motivated **RE&B ATTORNEYS** to offer a very complete service as advisors for local or foreign investors who want to develop any kind of business related to Real State in the country.

We not only give advice regarding the best options for you, but we also provide you with a complementary service in which we take care of all the procedures and details related to the buying and registration of the property and other legal matters as well. We also assist you in any kind of business or development you may want to do afterwards:

- Government permits
- Construction permits
- Project financing
- Others



Corporate Law

Our law firm assists local and foreign investors in all the necessary aspects to operate in Costa Rica. We assist our clients in the preparation and review of investment, joint venture, franchising and related contracts as well as in their corporate structure planning and in mergers and acquisitions.

Likewise, we assist our clients in handling everyday corporate issues, such as keeping and handling the company legal and accounting books, issuing certifications, transfer of shares, issuing powers of attorney, etc.

Hotel and Resort Development

Since several years ago, tourism has represented one of the main sources of income to the country. Entry of tourists to Costa Rica has passed from 435,000 people in 1990 to 1,088,000 persons in the year 2000. During that same period of time, revenues from tourism passed from US\$275 million in 1990 to US\$1,249.800 in the year 2000, an increase of over 400%.

Aware of the increasing importance that this sector represents, **RE&B ATTORNEYS** assists foreign and local investors in all related issues concerning hotel and resort development, including the following:

- Property acquirement procedures
- Design and construction contracts
- Tourism incentives requests to the Costa Rican Tourism Institute (Tourism Declaration and Tourism Contract)
- Time share schemes
- Others

We also provide our legal advisory in areas such as:

- *Intellectual Property*
- *Customs and International Trade Law*



OUR PEOPLE

- *Marco Antonio Fernández*
- *José Andrés Masís*
- *José Alejandro Martínez*
- *Adrián Echeverría*
- *Rodrigo Atmetlla*

OUR LOCATION

Our location in Plaza Roble, one of the most prestigious and modern corporate buildings in San José, allow us all the technological facilities necessary to provide the maximum level of quality in the provision of our services as well as with the relations to our clients. Our address is:

- *Plaza Roble, Edificio El Patio, # FF 1-3, San Rafael de Escazú. San José, Costa Rica*

CONTACT US

| | |
|-----------------|---|
| Address | Plaza Roble, Edificio El Patio, # FF 1-3 San José, Costa Rica. |
| E-mail | info@rebattorneys.com |
| Phone | (506) 201-8012 / (506) 201-8013 |
| Fax | (506) 201-8014 |
| P.O. Box | 1455-1002 San José, Costa Rica |