

## OVERRIDING GOVERNMENTAL RIGHTS EXISTING ON LAND OR OWNERSHIP

When purchasing property in Costa Rica, is very important to always take into account several situations that might affect a piece of land, due to governmental rights that are inherent to certain specific types of property, such as:

### **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 47<sup>1</sup> states that foreign investors must have resided in Costa Rica for at least five years.

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<sup>1</sup> 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 bill. In case of individuals, just the passport, the said letter recommendations and the copy of the water or electric bill 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-year period, and that means that the parcel cannot be affected (transmitted to a third person, constitute a mortgage, etc.) during this time. These limitations cease when two circumstances simultaneously occur: the 15-year period comes to an end, and the beneficiary has paid the full amount of the assigned parcel.



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