



CONDOMINIUMS IN THE MARITIME ZONE

The Maritime Zone.

The Zona Marítimo Terrestre (Maritime Zone) is the area that comprises the first 200 meters from the tide line of the shore towards the territory. In Costa Rica this area is restricted, and cannot be owned individually by anybody, it has a public nature and is administered by the Government. Now, that doesn't mean that if someone wants to develop a Condominium, a Hotel, or any other kind of constructions, it cannot be done, because the law gives the opportunity to request for a concession. The following paragraphs may give you some general information about this regime, including rights and obligations that you submit to when the Government gives you the chance to exploit this zone.

Costa Rica is known as a tropical paradise, which causes tourism to become the strongest economic activity of the country. Most of the income generated by this industry comes from the coastal tourism. Our Constitution establishes that all the beaches are public, which is the main reason why there are not supposed to be any private beaches in our country. Now, it should be noted that in reality, some privately owned beaches appeared to exist. Our Government, aware of this situation, passed the "Ley sobre la Zona Marítimo Terrestre" in the year 1977, which regulates what this zone is, how and who can ask for a concession, and how many years can anyone hold it.

First, it is important to define what is the Maritime Zone. This Law stipulates that the first 50 meters are public beaches on which absolutely no constructions may take place or any concession may be granted. The remaining 150 meters (called restriction area) may be developed through a concession that must be granted by a governing Municipality (local governmental entity).

The "Municipalidad" can allow a "concession of use" in the restriction area, which will last no less than 5 years and no more than 20 years. The concessions will be granted under the principle "first in time first in right", and sometimes the property subject to it must measure at least 500 square meters. The Administration can always deny a petition based on the argument of public convenience, but needs to prove such condition and compensate the concession holder for any improvement made to the property by him. A basic legal requirement for any concession application is that it should be requested by a Costa Rican individual or corporation (in which case at least fifty percent of the social capital must be Costa Rican).



Once you are granted a concession, you must ask for its renewal before it expires. If you allow it to expire, the “Municipalidad” will consider other requestors based on the fact that after the expiration of a concession, a new one must be granted (and the principle first in time first in right must be applied again). If you are not first to come this time, you will not be first served as well, causing you to lose the concession. The reason why this happens is because the Municipality gives you a concession of use, which means that you can enjoy and possess the conceded property, for a certain period of time. But by no means whatsoever a concession grants a right to assume that someone holds an ownership title over these types of lands.

The Concession of Use is a legal figure that brings certain rights as well as certain obligations too. It gives you the right to build, enjoy, use and develop the restriction area without any title, and at the same time it comes with the obligation to pay a canon to the Municipality (which varies between 2% up to 5% of the value of the concession, depending on the exploitation activity), and to always maintain the conceded property the way you promised you would in the petition to obtain it.

The concession can either expire or be cancelled. The article 52 of this particular Law regulates the expiration, while the article 53 establishes several guidelines that give the Municipality some reasons to cancel a concession. The article 52 says that the concession ends when the period of time expires and there is no petition for renewal; when the “holder” of the concession leaves or resigns to it; and when the holder dies and there is no heir. The article 53 explains that a concession can be cancelled if you do not pay the canon, if you break the law or if you do not carry out with the maintenance that you complied to.

Law, in case that the Municipality cancels your concession without any cause, protects you as a grantee. The governmental entity must always pay for all the improvements and buildings that the concession holder made. This principle also applies if the Municipality rejects a renewal request. If the concession is cancelled as a result of any fault caused by the grantee causing him to fail in his obligations as a concession holder, the Municipal authorities can sue the grantee for civil and public liability as well as damages. Now, if the concession holder is forced to pay for any damages, the value of all the improvements and buildings must always be deducted. So, no matter the way you look at it, the grantee will always recover what he invested in any improvement made on the conceded property. If you think about this closely, this fact also constitutes one of the main reasons why it is almost impossible for someone to lose their concession, because it is widely known and assumed that the local governments (Municipalities) do not have the funds to pay for these improvements, and are not in the business of doing so.



There are different concession categories, which depend on the location of the specific property, the activities that might be held on it and the Municipal territorial plans (Plan Regulador). The concession categories are the following:

- Tourism purpose.
- Farming.
- Recreational and Sport activities.
- Residential.
- For commercial, arts and craft.

The canon depends on which type of concession the property has and of course, in the value of the conceded property.

Condos in the Maritime Zone.

A condominium is a status that the law gives to certain home or apartment developments, which fulfill all the specific requirements that the law asks for this type of estate planning regime. The “Ley Reguladora de la Propiedad en Condominio” (law that regulates condos), stipulates these requirements. Any property or concession can become subject of condominium, if the owner in an “Escritura Pública” (public notarized deed) decides to submit his property into this type of regime.

When a piece of land is submitted into a condominium regime, the main property will be divided in small properties which will be ruled by the General Regulations of the particular condo. It will also have a Board of Directors that may be comprised by some of the neighbors, who must call for Owner Assemblies in which the decisions concerning any important matter for the Condominium will be taken. Each condo owner will have a quota fee or installment that will be paid monthly or yearly, depending on what the assembly decides. These fees are basically used for maintenance of the common areas and security guards.

The combination of the “Ley sobre la Zona Marítimo Terrestre” (Maritime Zone Law) and the Ley Reguladora de la Propiedad en Condominio (Condominium Law), allows using the condo regimen in the Maritime Zone. In other words, what this means is that the law allows investors to build this kind of developments in conceded properties, but it is important to always remember that you may not own land in the Maritime Zone, so the condominium will not have co-owners, but co-concession holders.



When the Municipality gives a concession, it means that the concession permit is granted over the complete property. If you want to separate it by units through a condominium regime, each of them must be subject of a new concession that must be approved by the Municipality and the ICT, just like the main concession was. Each authorization is unique and must be approved in every transfer, because of the fact that the law specifies that at least fifty percent of the development capital must be Costa Rican. In addition, Article 47 states that concessions will not be granted to: foreigners who have not been residents for a minimum of five years; companies with bearer shares; foreign companies based abroad, a company set up in Costa Rica exclusively for foreigners, and a company with more than fifty percent foreign capital.

All the conditions of the main concession apply to each condo. This way the Municipality assures itself that the original grantee will guarantee the conditions that he promised in the petition, and will always watch that the kind of maintenance he complied to carry out will be fulfilled. If the main concession falls, the others will fall with it, because they are all together, and depending in one another.



© 2006 Real Estate & Business Attorneys
Plaza Roble, Edificio El Patio; Escazú, San José
Tel. (506) 201-8012 • Fax. (506) 201-8014
Palm Plaza, Local #10; Jacó, Puntarenas
Tel. (506) 643-2243 • Fax. (506) 643-2257
www.rebattorneys.com