

remedy to avoid this kind of risk. The answer is Yes.

LEGAL UPDATE

BY ALLAN GARRO N.

Close the Deal Safely: Priority Reserve

Many deals involving property transactions take place in Costa Rica on a daily basis. Registered properties are sold, mortgaged as guaranty for a loan, or transferred into a Trustee's name based on a previous trust contract, just to name a few examples. However, it seems that in every deal one party gets more nervous than the other, not sleeping well until it becomes possible to confirm the document has been filed in the National Registry successfully. For a better understanding let's look at a couple of examples:

1. Mortgage loan. One person, Person A, decides to request a \$300,000 loan from a money lender, Lender B, offering a clear property title as a guaranty. Lender B hires an attorney to perform the due diligence to verify the property status as well as an appraiser who confirms the value of the property. Once everything checks out, a contract is signed in a notary's protocol book. Person A then receives a certified check from Lender B and signs the mortgage against the property. Once this happens, Lender B might get a little nervous thinking Person A could be a dishonest person and could have previously mortgaged or sold the same property in a different notary's office, in which case whoever files the document first gets priority in the Public Registry. The usual practice is for Lender B to pressure the notary to file the paperwork promptly to ensure the document is first in line, so Lender B can have peace of mind.

2. Property transfer. The same person, Person A, decides to sell a house that has a current market value of \$500,000 to Person B, a retired investor looking to buy a property in Costa Rica to be used as a second home. Person B hires an attorney to perform the necessary title research and an engineer to inspect the construction. Once there is agreement on the sale price and conditions, the closing takes place. Person A gets a check and signs a transfer deed in favor of Person B.

There may now be concern on the part of B that A may have sold or mortgaged the property in a different lawyer's office. Again, whoever files the document first has priority in the registry.

In either case, only Person A would be aware of the dishonest actions and that they would not be discovered until more than one document was presented to the National Registry, thus forcing the creditor or buyer to start a legal nightmare in Court against Person A (and the others involved in the alternate transaction, who are usually victims also.)

This type of scam has happened many times, so it has become the usual practice for the Lender or Buyer to immediately run to the Registry as soon after documents are signed as possible. This is followed by a check on the internet to ensure the documents are shown in the correct order. A logical question is whether or not there is a legal

Article 34 of the Ley Sobre Inscripción de Documentos en el Registro Público – Law about Document Registration at the Public Registry - creates a legal tool named RESERVA DE PRIORIDAD – Priority Reserve - which can be valuable prior to closing any deal involving property. It is basically a document prepared between the parties, before a Public Notary, stating their intention to complete a specific transaction in not more than 30 days. Once signed, the document is sent to the Public Registry where it becomes a notification that the transaction has priority over any other documents that might be filed. In this way, the lender in Example One, or the buyer in Example Two, has nothing to worry about, and the notary doesn't have to run to file documents in the Registry as long as filing is done within 30 days of the granting of the priority reserve.

To file a Priority Request document at the Public Registry costs only 2.000 colones - about US \$4.00 - plus fees charged by the Notary.

If the 30 days of approved priority expire and the parties decide against the transaction, the property owner can request that the annotation be deleted from the property, clearing the title.

However, in some property transactions, particularly property sales, the parties may need longer to prepare the closing, so again the question arises as to whether anything can be done. The answer is YES again. In this case it is best to prepare a purchase agreement, not as a private document, but as a public instrument signed before a Notary, to be sent to the Public Registry as an annotation granting priority over further documents. In this case the Registry will respect the term agreed to by the parties.

Some expats might prefer to buy title insurance to protect their transaction. There are at least two companies that offer this service in Costa Rica. The only downside to using one is the cost; in these times we try save as much as possible. In any case, whichever way is chosen, it is recommended the transaction be completed as safely as possible by hiring qualified professionals and looking for the best tools available within our Legal System.

A SIDE NOTE. On October 1st 2009 the Ley de Impuesto Solidario para el Fortalecimiento de Programas de Vivienda, best known as the Luxury Homes Tax, came into effect. This law basically levies a special tax against properties with a construction value of over \$200,000. It was supposed to remain in effect for only 10 years, however there is a saying that "nothing is more permanent than a temporary tax" and this tax is not an exception. On August 31st 2011, a notification appeared in the Official Gazette stating that an amendment approved by the Costa Rican Congress turned this tax from temporary to permanent. The original fines were outrageous, but the better news is that the same amendment lowers the fines imposed upon those who do not make the required declaration of value and pay the tax. It is, however, important for individuals or corporations owning luxury homes to abide by the provisions of this law to avoid future problems with the Costa Rican revenue department.

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