

Legal Update

by Allan Garro N.

Can Properties in Costa Rica Be Protected from Thefts?

I will start this article with part of an article named Dreams Based On Untitled Land can be a Nightmare, published in the first issue released on January, 2010. "Costa Rica's most valuable asset is its land... however, there are also a number of risks involved in land investments. The existence of organized gangs dedicated to property fraud, with the help of some crooked notaries, is no secret". Unfortunately there are many foreigners with true horror stories behind their property investments; with happy endings in some cases possible only after years of legal fights and headaches.



There are a number of reasons that make fraud possible. Here we describe the main ones:

- **Cadaster disorder.** Costa Rica measures 51.100 square kilometers. However, at the National Cadaster offices the total registered plat maps represent about 20% more than the country's area. There are properties registered with overlapped maps, making it possible to have two different properties including the exact same location. There is a special Department created by the Government that has been working on this problem since 2009 and thanks to an international loan for USD \$70 million the problem should be solved in a few years. It is very important when buying farms or raw land to have a surveyor checking the property prior to any negotiation.

- **Stock transfer.** It is normal to purchase a property by buying the shares of the corporation that owns it. The Buyer receives the shares at closing, and then must amend the company by changing the legal address and appointing a new Board of Directors, among other things. Even though lawyers can check the property and corporation status in the Registry it is very hard to discover the existence of credit documents issued by

company that are not registered but are a liability secured by company assets. We are speaking of documents such as promissory notes, letters of exchange and so on. It is a smart idea to obtain credit reports on the seller as well as to include a sworn statement where the seller declares there are no credit documents outstanding in the purchase agreement.

- **Dishonest Notaries.** This is probably the biggest problem. The country currently has more than 10.000 active Notaries. Most are very correct professionals, but a very small group are dishonest and can create major damage in the Legal System. The problem is that a Notary has the power of transferring a property by simply sending a transfer deed to National Registry. It needs only the notary's signature.

This could be an usual scenario: Subject A is the legitimate owner of a property. Subject B, with the help of a crooked notary, transfers the property into his or her name to later sell it to subject C who buys it in good faith. When A discovers the fraud the only hope is Court, where there can be two possible scenarios:

a) **File a Criminal Accusation.** Criminal Courts have ruled that the property has to be returned to its original owner (Subject A), leaving the door open for Subject C to claim compensation from the government by demonstrating true good faith in the purchase process. The biggest problem is the short statute of limitations in criminal law. The window of opportunity can close before the trial begins.

b) **File a Civil Court lawsuit.** A good thing about this is that the statute of the limitations is much longer. Civil Courts have usually ruled that the party to be protected is Subject C for having acquired the property in good faith based on the Registry's public information,

however Civil Courts have lately ruled in favor of the original proprietor -Subject A- by using some special articles contained on the Civil Code.



Many property owners try to prevent these problems by using some not very effective methods like

placing a big sign saying THIS PROPERTY IS NOT FOR SALE or registering a regular mortgage in favor of a close relative. The problem is that the sign can be removed if the owner does not check the property frequently, or a dishonest notary can have the mortgage deleted in the National Registry.

Another method often used is to request a Voluntary Immobilization of a property according to articles 266 and 292 of the Civil Code. The procedure is simple: The owner appears in front of a Notary and signs an Immobilization request to be submitted to the National Registry. A lien against the property will then appear as a result of this request. On the other hand, an interview with one of the Registry representatives indicates that this is not as safe as one might think. A fraudulent document signed by a notary cancelling the lien could be filed and the Property Registry can't question the public faith granted by law to notaries.

The legal system offers a tool that can be of great help called CEDULAS HIPOTECARIAS or Mortgage Certificates. This is a special type of mortgage that allows a property owner to mortgage the property in his or her own favor, so finding someone else to trust with the mortgage is not necessary. When it is registered, the National Registry will issue the certificate on special security paper similar to bank investment certificates. Once registered it cannot be deleted by any notary unless the original certificate is returned to Registry, so it is secure as long as this document is under the legitimate owner's control.

Another advantage of a mortgage certificate is that they can be legally transferred by endorsement, so banks generally accept them as guaranty for a loan. This can save money in legal fees, as a new mortgage is not necessary. The only costs would be a property appraisal and preparing a private contract with the credit conditions. Once the debt is paid, the bank will endorse back the certificate, allowing it to be reused as security for future loans.

Here are the requirements to register a mortgage certificate:

1. Meet with a Notary with experience in registering these documents.
2. Ensure the property is free of other mortgages.

Mortgage Certificates will be a priority lien against the property. Certificates can replace normal mortgages.

3. Legal costs vary depending on the amount of the loan. They are approximately 1.75% of the loan, including legal fees and registration expenses.

4. Mortgage certificates cannot be registered on properties under concessions from the municipality in the Maritime Terrestrial Zone. The only exceptions are specific properties located in the Papagayo Gulf area, where concession properties can be legally mortgaged by meeting special governmental conditions.

In summary, mortgage certificates have become a great tool for land investments in Costa Rica. They can be like a watchdog to prevent fraud.

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