

Legal Update

by Allan Garro N.

Dreams Based On Untitled Land Can Be A Nightmare

Costa Rica's most valuable asset is its land - a number of people and corporations have found this to be the route to



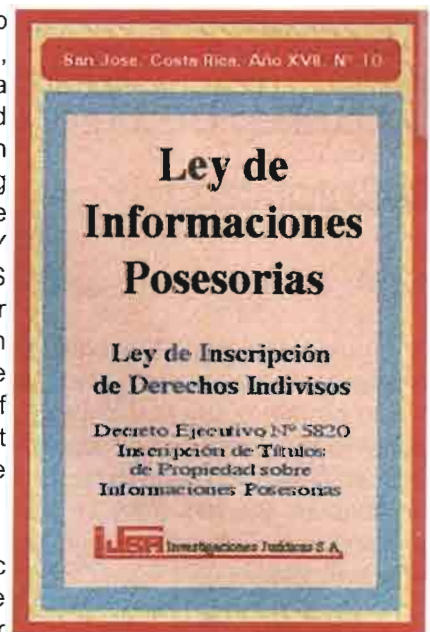
very good profits. There is a wide range of investing options in this field: Houses, apartments, lots, farms, raw land, commercial buildings, and beach land just to name a few. However, there are also a number of risks involved in land investments. The existence of organized gangs dedicated to property fraud, with the help of some crooked notaries, is no secret.

A type of land investment where extreme caution is necessary, even when it appears to be the magic lamp that only needs

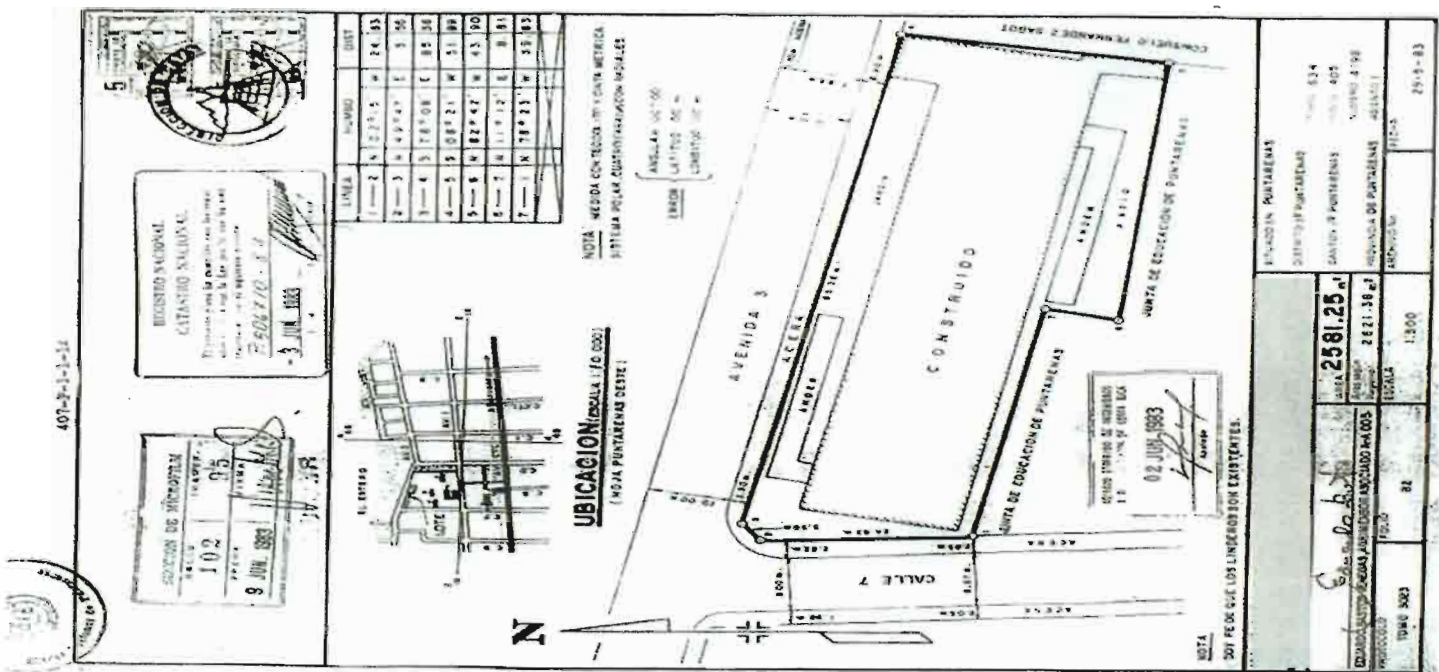
to be rubbed in order to make dreams come true, is untitled land. Costa Rica is still full of untitled properties, especially in rural areas. The existing law that governs the title procedure is the LEY DE INFORMACIONES POSESORIAS or Possession Information Law, in effect since 1941. The attraction of such properties is that the price is often low due to the lack of title.

For decades, the basic procedure to get title was unchanged: appear in front of a judge to declare that possession has been held publicly, peacefully and continuously as the legitimate owner for more than 10 years, show a registered Cadastre Plan, publish an advertisement in the Official Gazette, produce three witnesses to confirm possession and notify the owners of the adjoining properties. Once completed, the judge would deliver an order to the National Registry to provide title to the petitioner. It's legal for a recent buyer to start this procedure as long as a transfer deed from a previous owner who has had possession for ten years, can be provided.

In addition to the previous procedure, these additional steps are required: 1. The Plat Map needs to have a stamp from



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MINAET –environmental Ministry- acknowledging the property is outside any protected area, 2. A soil study must be performed by MAG –Agricultural and Cattle Ministry- in order to prove the land has been used according to its physical characteristics, meaning that if they recommend trees be planted and crops eliminated the process will be frozen until the recommendations are carried out and 3. In case the property has streams, ponds or any water source, AYA will need to see if it's necessary to create an easement over the property to supply water to any nearby town.

There could be more requirements depending upon the petitions received by the Government's Attorney, who has to be part of the process according to law. In fact, even when all requirements are met, the process will still require at least 3 years in Court. It's never "a simple 6 month court matter", as most sellers of untitled land will try to convince a potential buyer. Even once title is granted, the property will have a lien for 3 years, meaning any party who feels they have a claim can fight to have the title voided.

Being victim of a scam is another possibility. Many plat maps showing untitled land have been registered over actual titled properties through a procedure called "traslape" - overlap in English- or plat maps can show inexistent properties with the help of corrupt topographers. With a false plan it is easy to take a potential buyer to any raw land and tell him that this is the land that matches the plat map. The "seller" will offer to "assign" the possession rights to the buyer in order to start the Court Process. You can see that even for honest attorneys it is complicated to perform title research with such informal documents.

The worst scenario takes place when a squatter, or a group of squatters, decide to invade the property while the title approval is still in process. The "owner" will not have title to defend his rights, the only weapons would be to show the judge the mentioned papers and produce witnesses; things that the squatter will likely offer in support of claimed ownership as well. What will likely happen is that the judge

will grant the current person in possession –the squatter- the right to stay on the property until the conflict is decided in a 5-10 year ordinary process, time enough to cause serious damage to any investment plan.

The best motto to adopt is "better cry over the money than cry over the land". If temptation is great, or the opportunity seems to be exceptionally good, some techniques should be adopted: 1. The seller should be obligated to get title in Court before full payment is made. The purchase price can be deposited in Escrow with an honorable person or a Guaranty Trust can be created establishing that the seller will get paid once titled is registered. Remember that due Diligence is very important, especially in hiring a good topographer or engineer who will look for any overlapping plat map or other possible scam. Talk to the owners of adjoining properties and request a note signed by them saying that they have no problem with the untitled land, or the seller's right to it.

Being extremely cautious, preferring titled land, hiring a qualified professional and having lots of patience is a must if one is to avoid a fantasy ending as shattered dreams.

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