

by Allan Garro

## Expropriations Could Affect Expats in Costa Rica

**D**emocratic governments are allowed to take private property in order to use it for a public interest. This can be done through a procedure called Expropriation, or Eminent Domain as it is known in other countries. Expropriation can be defined as *“The power to take private property for public use by a state, municipality or private person or corporation authorized to exercise functions of public character, following the payment of just compensation to the owner of that property.”*

A good example is the latest highway built in Costa Rica, connecting San Jose with Puntarenas, better known as the “Highway 27”, where a corporation was authorized to exercise the function of public character. The Spanish corporation, Autopistas del Sol, obtained the concession to complete that route and charge for its use through toll payment sites located along the way. Because the road design included some private properties, the Government of Costa Rica had to pay compensation to the affected owners.

The initial expropriation procedure is as follows:

a. The Government declares the property for public interest purposes and files an annotation over the property at National Registry.

b. The Government makes an appraisal of the property, which includes the value of the land and all constructions as well as other concessions or commercial rights held by the property.

c. The appraisal is communicated to the owner who can decide to accept it and sign a transfer deed or refuse it, in which case going to Court will be the next step.

In Court the Government has to start an Expropriation Procedure by depositing the amount of the appraisal made by Government, and denied by the property owner, into a secure fund. Next, the Court will appoint an expert to make another appraisal and will order to the property owner to vacate the property within 15 days, to be delivered to the Government. If the appraisal made by the Court Expert is too different than the one made by the Government, a third expert can be appointed to clarify the situation.

Sometimes the Government only intends to take a portion of a property, in which case the remaining part continues under control of the owner. However, if the owner can demonstrate the remaining portion becomes useless by having the portion taken, then the owner can request in Court that the entire property be taken and they be paid for the total, instead of just paying for the portion. If owner wants to keep the remaining portion, but can demonstrate the taking decreased the value of the re-



maintaining part, the Government must pay for such a value decrease.

Another scenario can be when restrictions are set on a property and such restrictions are out of proportion and totally unreasonable. In Costa Rica it is legal to impose certain restrictions on the use of a property. A good example is to leave 2.5 meters from the from property line unused, in order to build sidewalks or to leave even more meters to be reserved for a future expansion of the road. When the restrictions go out of proportion, however, the affected owner can request the expropriation of the part affected.

The Expropriations Act can also be used for the imposition or easements imposed by certain Public Institutions. A good example is when ICE, the Costa Rican electricity company, installs high tension towers inside a property, it creates a legal easement 30-meters wide through the property along the path where the towers and its power lines are located. In these cases ICE is obligated to pay proper compensation to the affected property, based on the rules of the law.

In a specific case held by our office, ICE was obligated to pay: a. For the value of the land, b. For the value of

all trees that were cut to create the easement, c. Legal interest over amounts set for the land and trees and, d. Indexing all amounts. (Indexing means to calculate compensation at present value. For instance, if the ICE took the property in 2012, and compensation was determined in 2015, then all amounts can be indexed to 2015, based on the index created by the Statistics National Centre.)

It is important to be aware of what kinds of restrictions to use of a property are imposed by local authorities because they can affect the property compensation which can be claimed. Also, when a public Institution intends to create an easement to install water pipes, power lines, or other public services, similar compensation is owed too. In all cases, the Government is obligated to pay a “just price” which not only includes the value of the land, but also a number of other aspects depending on each property and its conditions.

**Allan Garro Navarro**

Attorney at Law

[www.garrolaw.com](http://www.garrolaw.com)