

Legal Update

by Allan Garro N.

SURPRISE! A Lien on Your Property.

NATIONAL CADASTRE OFFICE AND PROPERTY REGISTRY FINALLY ACTING AS ONE.

When a person is interested in buying a property in Costa Rica, the two most important items to look at initially are the existence of a registered Plot Map (Plano Catastro) at the National Cadastre Office and to obtain a title certification from the Property Registry. This information is of major importance as the Plot Map represents the physical description of the property (location, size, shape) and the Title Certification discloses the legal status (owners, mortgages, judicial and administrative liens). These will provide the information needed for an in depth study of the property to ensure a safe purchase.

Even with both offices located in the same building in Zapote, they've always worked separately from each other on the registration process. This lack of communication permitted surveyors to register plot maps that together represent about 140% of the national territory! This is one of the main reasons there are so many property conflicts in the country. There are totally different properties registered with the same Plot Map number, or properties registered with overlapping Plot Maps and Plot Maps that are registered over properties that can't be physically located.

It appears that the Authorities finally figured out that this lack of accuracy in property registration is an obstacle to Foreigner Investment and creates a number of conflicts. Two major steps have been taken recently: The first: An amendment to the Law of Creation of the National Registry published on March 10th, 2009 merging the two offices into one named REGISTRO INMOBILIARIO or Real Estate Registry. The second is much more ambitious. It began with the approval of a loan from BID in favor of the Costa Rican Government that will create a national cadastre map using state of the art technology.

In the first case, merging both registries makes it difficult to register inconsistent Plot Maps. There will now have to be a perfect fit between the plot maps and the properties they represent, so when problems such as overlapping or lack of agreement with the master map are encountered the new plot map would be rejected. To facilitate the second case, for more than 2 years the Cadastre Office has been performing studies all over the country to determine which plot maps are correctly registered and which have inconsistencies, then



compiling this information in a central location. Studies have been completed on more than 60% of the territory.

When defects are detected, such as the property showing a location in one district when it is actually in another, or when there are significant differences in size between registry and reality, the Registry places a lien on the property described as "PREVENCIÓN" or Prevention, that will remain there until the owner corrects the defect by first hiring a surveyor to correct the Plot Map, then later appearing in front of a Notary Public to submit the requested correction. A number landowners now have this lien registered against their properties and don't even know it. More liens will be registered against properties as the creation of the national cadastre map advances.

As mentioned, a number of properties already have a PREVENCIÓN lien over the property that will stay there until corrections are registered. However, from June 2009 the Registry decided to change the wording to AVISO CATASTRAL or Cadastre Advertisement, probably because the first one scared owners into showing up to see what was going on. In the case of bigger problems, such as wrong boundaries between properties or double titled properties, owners will be notified that they must solve the conflict by settlement or a judgment from Court.

The most recent decision in the organization of the REAL ESTATE REGISTRY, is to allow a term of only 1 year to register new plot maps for subdivided properties, according to article 71 of the Presidential Decree #34331-J. This means developers or landowners registering plot maps to subdivide property can't wait years before finalizing these subdivisions. Once the plot gets registered, the new title deeds must be prepared within a year or the registered plot maps can be voided.

It's advisable to check the Registry frequently this year, as the PREVENCIÓN or AVISO CATASTRAL lien may suddenly appear on your property. In most cases it will be nothing to worry about, but it will be necessary to hire a qualified professional who understands the process to meet registry requirements. The National Registry has information about all Costa Rican properties on their website at www.registroinmobiliario.go.cr

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