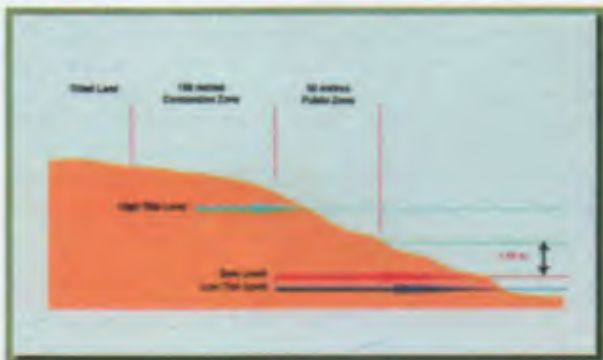


Legal Madness On Beach Zones Is A Never Ending Story

In 1977 a Law named "Ley Sobre la Zona Marítimo Terrestre", or Law about the Maritime Terrestrial Zone, took effect to regulate beach front areas all over the country, as well as other relevant areas such as islands, mangroves and estuaries. The beach areas of Costa Rica have increased a great deal in value in recent years, due largely to their popularity. However, most investors have encountered an endless series of problems due to the lack of clear and uniform rules established by the law and other regulations.

The Maritime Zone consists of a strip of land two hundred meters wide, measured from the high tide line, as well as islands, islets and sea cliffs. This zone in turn is divided into: (a) Public Zone, consisting of a strip fifty meters wide from the high tide line plus islands, islets and sea cliffs (for this reason there are no private beaches in Costa Rica), and (b) a Restricted Area, consisting of the remaining one hundred fifty meters from the Public Zone. Although this area belongs to the Government it can be granted by concession to private parties, allowing most beachfront hotels to operate.



The Restricted area is managed by the Municipality in which it is located. It is important to determine whether or not the Municipality has a master zoning plan within which it is possible to obtain a renewable Concession of between 5 and 20 years. When the Municipality does not have master plan the alternative is to sign a lease for the usual term of 5 years with the Mayor of the Municipality. In both cases an annual tax called "Canon" must be paid to the municipality, pursuant to an appraisal made by the Tax Ministry. This gives

persons or corporations the right to use, but never own, the land.

The law establishes that Concessions cannot be granted: (a) To foreigners who have not been legal residents for at least 5 years, (b) To Foreign Corporations, and (c) To Corporations where foreigners own more than 50% of the capital stock. Also, Concessions can be revoked: 1. When the granted term has expired and extension is not requested in time, 2. When the Concession holder resigns its rights, 3. By the death of a Concessionaire without legitimate heirs, 4. Where the holder has failed to comply with the terms of the concession or other regulations set by law.

So far the above rules seem to be clear and easy to understand. The problems start when there are multiple exceptions to these general rules. To name a few:

- Properties that were legally registered before the above mentioned law, so they are titled property even though they are inside a restricted or public zone. That is why in areas like Jaco, Parrita and others it is easy to find properties that are legally located less than 50 meters from the high tide line. Owners can even sell or mortgage them.
- The Papagayo Gulf Project, located in Liberia and Carrillo, is managed by the Costa Rican Tourism Institute. They have full control of the area, rather than the Municipality. In this zone Tourism Projects have been allowed to mortgage the areas in Concession. The fact that the area belongs to the Government but Concession Holders are allowed to mortgage it is considered by some people as a legal monstrosity.
- Some beaches are not managed by Municipalities but by the Environmental Ministry. These are the beaches located inside National Parks and Protected Areas.
- Areas considered as Main Districts are also excluded from those regulations. That is why is easy to see construction right next to the sea or estuaries in places like Puntarenas, Golfito, Puerto Cortes and others.

To further complicate things, in recent years the

Constitutional Court outlawed the granting of concessions in areas that constitute Natural Heritage. In its judgment, the Court ordered that there should be an inventory of which areas are Natural Heritage. This process has resulted in Concession Holders being notified that part of their Concession is Natural Heritage and therefore their rights are diminished. In some cases areas without any trees or plants or a road access to a Concession, usually composed of gravel only, have been classified as Natural Heritage, which is obviously insane. Municipalities have, in some cases, "ignored" parts of this new classification, knowing that they will need to cancel the Concessions to enforce the new regulations.

For many years Municipalities allowed practices that were considered as legal, such as permitting the owner of a concession to transfer it to another person via a simple assignment of rights, or even permitting the construction of buildings in areas that were part of the Public Zone or right next to mangroves or estuaries. But in recent years the Procuraduria General de la República – the entity that represents the Governmental Attorneys - started forcing Municipalities to apply the law more strictly, which caused beach houses, businesses and hotels to be torn down following summary procedures, especially in the Atlantic region, which is the area with the highest unemployment rate in the country.

This resulted in a series of social movements who even called for a referendum to have various communities in the Southern Caribbean region annexed to Panama, as they felt that the government of Costa Rica had become their enemy. Against this background the government of Laura Chinchilla urged the passage of law 9073, called the Law to Protect the Inhabitants of Special Areas, which went into effect in late 2012, establishing that for a period of two years Public Institutions would stop evicting people and demolishing buildings in the Maritime Terrestrial Zone. That period of time will expire at the end of this year (2014) so bulldozers might appear again in beach zones.

At least people in the Southern Caribbean can breathe easy again, as last April 8th 2014 a Law named "Acknowledgement of Rights for the Inhabitants of South Caribbean" will allow a number of people to legalize their status in certain beach areas. With other beach areas in the country: who knows what will

happen next?. To make the legal mess even bigger, there is another bill awaiting approval called "Coastal Urban Areas Act" which will include other regulations that will contribute to an increase the spider's web.

In Costa Rica the institution that marks the boundaries of the Maritime Terrestrial Zone is the National Geographic Institute. In recent years they have been changing many limits as a result of the emergence of new measurement technologies and Global warming which has caused the water level to rise and therefore the measurement from the high tide line moves markers further back. The truth is that many people may find a limit mark in their living room in the near future, instantly making their construction illegal.

Last June 9th, 2014 Law #9242 appeared on the official Gazette, named "Law to Legalize Illegal Construction in the Maritime Terrestrial Zone", which gives Municipalities the right to allow the existence of construction considered illegal by law, or to suggest modifications to them, or even to order demolition if any danger or environmental damage is caused. Municipalities that do not have a date regulator must approve a plan within two years, which is going to be complicated, especially in small cantons where local governments are usually low funded.

It is clear that since 1977, government after government have only been patching the problem, until it has generated a huge and difficult to understand patch. All logic leads to the conclusion that what is required is a single, new law governing the Maritime Terrestrial Zone with clear and uniform rules, instead of having a legal puzzle that confuses both investors and public officials. But the tendency to approve "patching" laws seems to be the course of least resistance. Will this new government take a different attitude? Only time will tell.

So if you are a potential investor in the beach areas of Costa Rica, be sure to perform very thorough due diligence, hire lawyers, surveyors and other professional that can be of help and... it may also be wise to pray.

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