

Locking Your Property Voluntarily To Avoid Frauds

This article needs to start by mentioning a previous article published in the May- June, 2012 issue of *El Residente* regarding property protection through mortgage certificates and what a great tool they are to avoid being the victim of a property fraud in Costa Rica. Indeed they are a good way to protect real estate investments, but they can be a bit expensive for some expats wanting to invest in a property protection plan that provides a good level of security but that fits the budget. In the last few months we have studied couple of new lower cost tools with great benefits.

The major problem is still the existence of dishonest notaries who are willing to forge documents and signatures in order to perform illegal transfers. In the last 2 months my office has received four different requests to represent victims owning property in the Guanacaste area who live abroad. Raw land without construction and properties registered in a personal name are special targets. It is easy for crooks to track the arrivals and departures of individuals, since all it takes is to pay for a few stamps at the Immigration Offices to get complete travel records.

The first tool was created by the National Registry under the name "Registry Alert". It is possible to subscribe to a service that detects any changes in the registry for a specific property and then sends an alert immediately via both email and text message to the subscriber. However, it is important to understand that this remedy by itself is curative rather than preventive, meaning that once the owner knows of the existence of a fraudulent title transfer a judicial process must be started that will take a few years to be decided, with no real guaranty that the property will be recovered.

The second tool is called Voluntary Immobilization of a property according to articles 266 and 292 of the Civil Code. The procedure is simple: The owner appears before a Notary and signs an immobilization request to be submitted to the National Registry. A lien warning of the situation will then appear as a result of this request. However this method alone is not completely safe. A fraudulent document canceling the lien could be filed and the Property Registry cannot question the public faith granted by law to notaries. In this case the Registry assumes that the legitimate owner decided to cancel the immobilization.

The secret is to make a request for immobilization with two limitations, so that in order to cancel the first limitation the National Registry must wait at least one or two months -at the option of the owner- before canceling the second limitation. This ensures that if a fraudulent document is presented canceling the limitations, only the first one will be erased and at least a month must pass before canceling the second, giving the rightful owner time to request the National Registry to remove the fraudulent document, as well as take other steps necessary to protect the property. Any criminal would prefer to look for a different property without these restrictions.

Another advantage of the immobilization with two limitations is that it prevents a transfer to a third party who could be assumed to be acting in good faith. The biggest problem with a property fraud is that once an illegal transfer has been made into a crooked person's name with the help of a notary, the next step would be to transfer the property into another person's name that may or may not know about the fraud. In that case, the law presumes the third party acquired the property in good faith, which may prevent the legitimate owner from recovering his or her property even though the existence of a fraud is proven.

The best course of action would be to combine the two tools mentioned above: Subscribe to the Registry Alert service as well as to set a Voluntarily Immobilization with Two Limitations over the property. That is the way to turn a curative remedy into a preventive one. If the rightful owner is notified of the existence of a document canceling the first limitation, action can be taken immediately to prevent the second limitation from being erased, thus eliminating the possibility of a fraudulent document being filed, without Court lawsuits, unless the owner decides to go after the crooks who tried to steal the property in the hopes of collecting damages or to put them in prison.

For those wanting to move their property into a corporation but are concerned about paying the new tax on corporations a new structure named Sociedad Civil could be of help on getting more protection at better cost. But that belongs to a future article.

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