

Everything you Need to Know About Buying Property On the Beach in Costa Rica

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In 1977 a Law took effect named Ley Sobre la Zona Marítimo Terrestre or Law about the Maritime Terrestrial Zone, with the purpose of regulating all those areas located in front of the beach all over the country as well as other relevant areas such as islands, mangroves and estuaries. The beach areas of Costa Rica have gained a high value in recent years, due in large part to the attraction they have. However, most investors have encountered an endless series of problems due to the lack of clear and uniform rules established by such law and other regulations.

The Maritime Zone consists of a strip of two hundred meters wide measured from the high tide line as well as the 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 as well as the islands, islets and sea cliffs. For this reason, is that in Costa Rica there are no private beaches, and **B) Restricted Area**, consisting of the remaining one hundred fifty meters after the Public Zone. This would become the area that even though belongs to the Government can be given in concession to private parties, being the door that allows most hotels located beachfront to operate.

The restricted area is managed by the respective Municipality, making important to determine whether the Municipality has a master plan, in which case it is possible to obtain a Concession which may be granted for periods of between 5 to 20 years (renewable). When the Municipality does not have master plan the alternative is to sign a lease for a usual term of 5 years with the Mayor of the Municipality. In both cases an annual tax must be paid named "Canon" to the municipality pursuant to an appraisal made by the Tax Ministry. In this area persons or

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corporations can acquire the right to use but never own the land.

The law establishes that Concessions cannot be granted: **A)** To foreigners that have not been legal residents for at least 5 years, **B)** To Foreign Corporations, **C)** To Corporations where foreigners own more than 50% of the capital stock. Granted Concessions can be revoked: **1)** When the granted term has expired and extension is not requested on time, **2)** When the Concession holder resigns its rights, **3)** By death of the holder of the Concession without having legitimate heirs, **4)** For legitimate denial to renew the contract, because the holder has failed complying with the terms of the contract or the regulations set by law.

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

- Those properties that were legally registered before the mentioned law date of 1977, so they are titled property even though they are inside the restricted zone or even public zone. That is why in areas like Jaco, Parrita, Potrero and others it's easy to find properties that are located less than 50 meters away from the high tide line, being legal and owners can sell or mortgage them, because they are titled.
- The Papagayo Gulf Project located in Liberia and Carrillo is managed by the Costa Rican Tourism Institute that has full control of the area, not any Municipality. In this zone Tourism Projects have even 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 paradox.
- 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 constructions right next to the sea or estuaries on places like Puntarenas, Golfito, Puerto Cortes and others.

To further complicate things, in recent years the Constitutional Court outlawed the granting concessions in areas that constitute as "Natural Heritage". In its judgment the Court ordered that there should be an inventory of which areas are considered Natural Heritage. In recent times this process has caused concession holders to be notified that part of their Concession is Natural Heritage therefore their rights are diminished. In some cases, areas without any trees or plants or the road to access the Concession, usually composed by gravel only have been classified as Natural Heritage, which is obviously insane. Even Municipalities have "ignored" this new classification, knowing that they will need to cancel the Concessions to enforce the new regulations.

For many years Municipalities allowed some practices that were considered as legal, such as permit that the owner of a concession could transfer it to another person via a simple assignment of rights, or even 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 -entity that represents the Governmental Attorneys- started forcing Municipalities

to apply the law in a stricter way, 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 caused a series of social movements calling for a referendum to have various communities in the Southern Caribbean region deciding being 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 the 9073 law called the Law to Protect the Inhabitants of Special Areas, which went into effect in late 2012 and established that for a period of two years Public Institutions would stop actions to evict people and demolition works in the Maritime Terrestrial Zone. In 2016 it was renewed by law 9373 providing another two years, which actually expired July 21st, 2018.

The government does not want – “yet”- the bulldozers appearing again to destroy construction currently being used as hotels or houses in areas that according to their zoning plans should not be there, even though they have existed for decades. For this purpose on the official Gazette of July 19th, 2018 appeared a Law Project number 20,820 that intends to renew this extension for another 36 months until the year 2021. Meanwhile, those constructions owned by thousands of people are at risk again. According to this new law project, this does not prevent the Environmental Ministry to eliminate any illegal constructions that are causing an actual damage to the environment.

At least people in the Southern Caribbean can breathe easy again since last April 8th 2014 a Law named Acknowledgement of Rights for the Inhabitants of South Caribbean number 9223 will allow a number of people to legalize their status on some beach areas, who knows what will happen next?. To make even bigger the legal mess, another law # 9221 called Coastal Urban Areas Act took effect during 2014. It basically allows construction inside the restricted area on beach zones with population of importance to acquire legal status granting concessions.

In Costa Rica the institution to mark the boundaries of the Maritime Terrestrial Zone is the National Geographic Institute. In recent years there have been changing many limits due to causes such as 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 throws as a result that the new markers are deeper. The truth is that many people might have installed a limit mark in his living room in the near future, making the construction illegal from one day to another.

On June 9th, 2014 Law #9242 named Law to Legalize Illegal Constructions on the Maritime Terrestrial Zone took effect, which gives Municipalities the ability to allow the existence of constructions considered illegal, suggest modifications to them or even order the demolition if any danger or environmental damage is caused. Municipalities that do not have a current regulator plan must approve a plan within two years -this expired in 2016 and was not

complied-. Then on March 3rd, 2017 another law #9408 extended the term for Municipalities to four more year to get the plan approved, which is going to be complicated especially on small cantons where such local governments are usually low funded.

It is clear that since 1977, government after government have only been devoted to 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 easy way to go. Honestly, even for legal counselors and Municipality officers is very hard to understand so many spread regulations.

So if you are a potential investor on the beach areas of Costa Rica, be sure to perform very very good due diligence, hire the correct lawyers, surveyors and other professional that can be of help and... it is also wise enough to pray. The legal madness on the beach zone will continue...

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)