Legal Tips for Buying and Selling Real Estate in Costa Rica

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November 29, 2018

Although the real estate market is at a low to medium level due to different factors, such as the the current fiscal crisis in CR, the fact is that land remains (in my opinion) the most valuable asset available. Viewed from another standpoint, right now there are excellent investment opportunities in the real estate market due to lower prices. In addition, many sellers now offer the ability to finance up to 50-70% of the property for terms ranging from five to fifteen years at a competitive interest rates.

See this example of a low priced luxury condo located in Los Sueños Resort and Marina in Costa Rica with owner financing.

Once a buyer has come to a satisfactory agreement with the seller of a property, there are several points that need to be verified by the respective parties. Some examples that can be a good idea are:
1) Review the structure in full with an engineer, architect or property inspector.
2) Verify the boundaries with a topographer
3) Research the title in the National Register and confirm approvals given by various public institutions.
Now it is time to sign a purchase agreement, also called Reciprocal Promise to Buy and Sell and/or "Purchase Option" .

There is an existing tool named "Priority Reserve", a figure that allows parties to file a document against a property in which the intention to award a contract for sale or mortgage is specified, giving it priority over any other document. However, when this legal option is chosen, the document is good for a maximum period of 30 days. Many negotiations require a longer term which is why a Purchase Option is a more flexible tool.

The basic regulations on Purchase Options can be found in articles 1007, 1022, and 1053 through 1058 of Costa Rica's Civil Code. The option contract establishes the terms and obligations of the parties during the option period, as well as stipulating the selling price, the payment method, and the terms for the day of closing. Options are useful for selling other assets, but usually pertain to real estate transactions. There are different ways to have a Purchase Option, giving the parties a choice.

The most common way to make a Purchase Option is a contract awarded by a private document, which has the advantage of maintaining a certain degree of confidentiality among the parties and may be written in any language and still valid. However, it is also possible to award the contract on a public deed before a notary public for the purpose of getting the document annotated over the property in the National Registry, in which case the contract requires to be written in Spanish.

It is also legal to do what is called a Purchase Option between Absent Parties in accordance with Articles 1008, 1009, 1012 and 1013 of the Civil Code, which outline the criteria to enter into contracts, including options between parties. The terms can be written into a document signed by a party in one country and then faxed or scanned and emailed to the other party who also signs it and fax / scans it back. Of course it is subject to proof that both parties signed.

The most common practice is to set the selling price in colons or US dollars, although the price may be fixed in any currency. It is very important to establish who pays the registration fees and transfer tax. In most cases they are paid by the buyer. If not specified, the law says that each side pays half the costs. Each party has to pay its own lawyer, except if the seller provides financing, in which case the seller can choose the lawyer to prepare the closing documents.

Buyer obligations usually include putting up a good faith deposit or earnest money. Such money can be delivered straight to the Seller or be placed in escrow with a third party like an escrow agent. The standard penalty if the Buyer reneg's on the deal is losing the earnest money as damages caused to the Seller, and if the Seller backs out the standard penalty is that the Buyer receives his deposit back, plus an equal amount for damages. Option contracts can specify heavier or lighter penalties at the option of the parties.

Buyers and Sellers should agree on a course of action in case the property does not check out as promised or is more than promised. The latter happens, as more land sometimes is found than negotiated in the sale. If there is no specific agreement in the contract, the law grants the right to decrease or increase the price according to the difference established by a survey of the property performed by a qualified expert. The name of the action is "Quanti Minoris"

In most cases it is advisable for the seller to keep possession of the land until the buyer pays the full price. This is based on the principle that possession is nine tenths of the law in Costa Rica. Surrendering possession before the total price is paid may be risky in case of default of the final payment. An exception to this is when the seller carries financing and a mortgage has been signed in favor of the seller or the property was sold through a trust controlled by the seller. In that case the seller is guaranteed the right to foreclose in case of Buyer's default.

It is important to specify a conflict resolution method. If not stipulated, a dispute must be resolved in court and that takes years. The parties may include mediation and arbitration clauses where they choose the Arbitration Center and the number of arbitrators: usually one or three. In the event of recourse to arbitration, besides attorneys' fees parties must pay the cost of using facilities as well as the fees of the arbitrator(s). In Court parties only need to cover their own attorney's fees.

Another choice is to use a trust contract named Guaranty Trust. It is similar but the assets are held in trust by a Trustee who must follow the terms of the agreement established by the parties. However, tax exemption on assets transferred into a trust was basically eliminated in recent years. This kind of contract is also valid when seller provides financing and the parties do not want to register a mortgage for the balance. A Guaranty Trust instead of a regular mortgage benefits the creditor in case of debtor's default.

The benefit of a Purchase Option is the flexibility in providing protection and giving freedom of negotiation to all parties. The main purpose to have a signed purchase agreement is to establish the obligations of the parties prior to closing and the consequences in case of default. Also, this document can be very helpful to justify money transactions at the bank involving the purchase price. Once all conditions are properly met, the parties can proceed with the closing.