

Be Careful When Buying Untitled Land in Costa Rica

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Costa Rica's most valuable asset is still its own land. A number of persons and corporations have found that land development, lot segregation and construction of buildings and houses are a way to make good profits. There is a wide range of investing options in this field: houses, apartments, lots, farms, raw land, commercial buildings and beach areas just to name a few. However, there are also a number of risks involved in land investments. The existence of organizations dedicated to commit property fraud, with the help of some dishonest notaries, is not a secret. Other persons are dedicated to try invading properties with absent owners, in order to generate squatter rights.

A type of land investment where extreme caution is necessary, even when it appears to be a magic lamp needing only to be rubbed so dreams can come true, is **UNTITLED LAND**. Many untitled properties still exist all around the country, especially in rural areas. The existing law that governs the title generating procedure is the *LEY DE INFORMACIONES POSESORIAS* or Possession Information Act which has been in effect since 1941. The attraction for this type of property is that price is often low due to the lack of a title. The way to obtain legal rights over an untitled property is to have exercised possession in a public and continuous way for more than 10 years.

For decades, the basic procedure to get the title was simple: submit a request in front of a civil or agricultural Court, declaring possession has been held publicly (other people have seen it) , peacefully (no conflicts with any other party) and continuously as the legitimate owner for more than ten years. Also present a registered Plot Map, publish and advertisement in the official Gazette newspaper, produce three witnesses to confirm possession and inform the owners of the adjoining properties. Once completed, the Judge would deliver an order to the Property Land Records Department or *Registro Inmobiliario* to create a title to the petitioner, providing the property with a registration number.

The procedure used to last less than one year to be completed. However, new requirements arise over time, to name a few: **1.** The Plot Map needs to have a stamp from MINAET, the environmental Ministry, acknowledging that the property is outside any protected area, **2.** A soil study must be performed by the Agricultural and Cattle Ministry, to prove the property has been used properly according to its physical characteristics, meaning that if they recommend trees to be planted and crops eliminated the process will not move until the recommendations are carried out and **3.** If the property has streams or water sources AYA needs to inform if the an easement is required to supply water to close populations.

There could be more requirements depending upon the petitions received by the Government's Attorney, who has to be part of the process according to said law. So even when all requirements are met, the process might need at least three years to be complete. It's

never a “simple six month court matter” as most sellers of untitled land will try to convince a potential buyer. Even once the titled is finally created, the property will carry a lien named *Plazo de Convalidacion* or Validation Term for the following three years, meaning any party who feels they have a claim can fight and get the title voided. During the following three years after title creation it can be easily challenged.

Being victim of a scam is another possibility. Plot maps showing untitled land have been registered over actual titled properties through a procedure called “*Traslape*” or Overlap in English. Plot maps can also show inexistent properties with the help of dishonest topographers. With a false or inaccurate registered plot map showing untitled land it’s easy to take a potential buyer to any raw land and inform that is the land that matches the plot map. The “Seller” will offer to “assign the possession rights” to the Buyer so the Court procedure can start right away. You can see that even for honest attorneys it is complicated to perform title research with such informal documents.

The worst scenario takes place when a squatter, or a group of squatters decide to invade the property while the title approval is still in process. The “legitimate owner” will not have a title to defend his or her rights; the only weapons will be to show the judge the mentioned papers and produce witnesses, things that the squatter will likely offer in support of claimed ownership as well. What will likely happen is that the judge will grant the current person in possession -the squatter- the right to stay in the property until the conflict is decided in a 5-10 year ordinary process, time enough to cause serious damages to any investment plan or even to have the real owner fighting for the land.

The best motto to adopt is “better to cry over the money than cry over the land”. If temptation is great, or the opportunity seems to be exceptionally good, some techniques should be adopted:

1. Seller should be obligated to get the title in Court before full payment is made. The purchase price can be deposited in escrow with an escrow agent or similar or a guaranty trust can be created. Remember that due diligence is very important, especially on hiring a good topographer or engineer that can look for any overlapping plot map or other possible scam. Talk to the owners and neighbors of adjoining properties and obtain a note from them stating they have no problems or claims with that piece of land.

Being extremely cautious, preferring titled land without Validation Term liens, hiring qualified legal professionals and having lots of patience is a must if one is to avoid a fantasy becoming shattered dreams.

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 [\[email protected\]](mailto:allan.garro@allanlaw.com)