

How to Protect Yourself Against Property Fraud in Costa Rica

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On the last few days all news media have been informing that a man named Manuel Alvarez, a person original from Spain and long-term resident in California, has been reported as missing in Costa Rica by his family. Apparently, he came into the country after being alerted that some properties he owned here had been transferred illegally by forging his signature; this with help of some crooked persons who might have been helped by dishonest notaries in order to achieve the illegal transfer of the titles using that method. Now the judicial authorities are making several efforts to find this man working together with his family.

As scary as that scenario sounds, the mentioned situation is more usual in the country than anyone would expect. Costa Rica's most valuable asset is its land... however, there are also a number of risks involved in land investments. The existence of organized gangs dedicated to property fraud, with the help of some crooked notaries, is no secret. Unfortunately there are many foreigners with true horror stories behind their property investments; with happy endings in some cases possible only after years of legal fights and headaches. There are a number of reasons that make fraud possible. Here we describe the main ones:

- **Cadaster disorder.** Costa Rica measures 51.100 square kilometers. However, at the National Cadaster offices the total registered plat maps represent more of the country's actual area. There are properties registered with overlapped maps, making it possible to have 2 different properties including the exact same location. That's why it is very important when buying farms or raw land to have a surveyor checking the property prior to any negotiation.
- **Stock transfer.** It is normal to purchase a property by buying the shares of the corporation that owns it. The Buyer receives the shares at closing, and then must amend the company by changing the legal address and appointing a new Board of Directors, among other things. Even though lawyers can check the property and corporation status in the Registry it is very hard to discover the existence of credit documents issued by company that are not registered but are a liability secured by company assets. We are speaking of documents such as promissory notes, letters of exchange and so on. It is a smart idea to obtain credit reports on the seller as well as to include a sworn statement where the seller declares there are no credit documents outstanding in the purchase agreement.
- **Dishonest Notaries.** This is probably the biggest problem. The country currently has more than 10.000 active Notaries. Most are very correct professionals, but a very small group are dishonest and can create major damage in the Legal System. The problem is that a Notary has the power of transferring a property by simply sending a transfer deed to National Registry. It needs only the notary's signature.

This could be an usual scenario: **Subject A** is the legitimate owner of a property. **Subject B**, with the help of a notary, transfers the property into his or her name to later sell it to **subject C** who buys it in good faith. For A there can be 2 possible scenarios: a.) **File a Criminal Accusation**. Criminal Courts have ruled that the property has to be returned to its original owner (Subject A). The biggest problem is the short statute of limitations in criminal law. b). **File a Civil Court lawsuit**. Civil Courts have usually ruled that the party to be protected is **Subject C**, but Civil Courts have lately ruled in favor of the original proprietor **-Subject A-** based on other articles contained on the Civil Code.

Many property owners try to prevent these problems by using some not very effective methods like placing a big sign saying THIS PROPERTY IS NOT FOR SALE or registering a regular mortgage in favor of a close relative. The problem is that the sign can be removed if the owner does not check the property frequently, or a dishonest notary can have the mortgage deleted in the National Registry. The good news is that the legal system offers a tool that can be of great help called CEDULAS HIPOTECARIAS or Mortgage Certificates. This is a special type of mortgage that allows a property owner to mortgage the property in his or her own favor.

When it is registered, the National Registry will issue the certificate on special security paper similar to bank investment certificates. Once registered it cannot be deleted by any notary unless the original certificate is returned to Registry, so it is secure as long as this document is under the legitimate owner's control. Another advantage of a mortgage certificate is that they can be legally transferred by endorsement, so banks generally accept them as guaranty for a loan. This can save money in legal fees, as a new mortgage is not necessary. The only costs would be a property appraisal and preparing a private contract with the credit conditions.

The other tool available is called VOLUNTARY IMMOBILIZATION 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 Real Estate Property Registry. A lien warning the situation will then appear as a result of this request. However, the method alone is not completely safe. A fraudulent document cancelling the lien could be filed and mentioned Registry cannot question the public faith granted to notaries. In this case they assumed that the legitimate owner decided to cancel the immobilization.

The secret then is to make a request for immobilization with two limitations, so that in order to cancel the first limitation the Real Estate Property Registry must wait at least one month -or anytime time desired- before cancelling the second limitation. This ensures that if a fraudulent document is presented cancelling the limitations, only the first one will be erased, giving the rightful owner time to request the removal of the fraudulent document. To take better provisions, the mentioned Registry also offers a tool named REGISTRY ALERT, which can be subscribed by any person, granting that if any document is submitted an email will be sent immediately reporting the situation.

In summary, even though the system to transfer titles of real estate properties can be considered weak in the country, at least there are some tools available to prevent illegal title transfers. Raw land without constructions and properties registered in personal name are

special targets. It is easy for criminal organizations to track arrivals and departure records for individuals. Corporations can suffer this problem also when legal representatives are away. Mortgage Certificates or Double Immobilization have become a good tool available for land investments in Costa Rica. They can be like a watchdog to prevent frauds.

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 [\[email protected\]](#)