

Everything You Need to Know About Property Liens in Costa Rica

news.co.cr/everything-you-need-to-know-about-property-liens-in-costa-rica/81793/

May 19, 2020

ADVERTISE

In Costa Rica, the main asset for most people is still real estate (Property). Productive farms, raw land suitable for development, lots, houses, buildings, tourist buildings and similar are negotiated, developed, transferred, mortgaged, and given in trust on a daily basis. This in turn generates legal conflicts of all kinds: claims for breach of contracts, boundaries, access, unmatching cadaster plans, erroneously located buildings, you name it. **The question to answer is:** In which cases can a judicial lien be imposed on a property? It is important to clarify that not all property claims result in a Judge imposing a lien on real property.

It is important to clarify that not all claims result in a Judge imposing a lien on real property. The first guide to determine when a lien can be obtained is found in article 468 of the Civil Code, which establishes the following:

ARTICLE 468.- The following will be provisionally annotated:

- 1.- Lawsuits on the ownership of real property and any other over the property of real rights or in which the constitution, declaration, modification, or extinction of any real property rights is requested.
- 2.- Lawsuits about cancellation or rectification of registration entries.
- 3.- Lawsuits on the declaration of presumption of death, inability to administer and any other for which it is a question of modifying the civil capacity of the people regarding the free disposal of their property.
- 4.- The orders for garnishment and seizure of real estate.
- 5.- The titles that cannot be definitively registered due to any defect that prevents it. This provisional annotation will be valid for one year and will in fact be canceled if within this term the defect is not remedied.

The 5 points mentioned above can be explained a little better as follows:

1. Refers to lawsuits in which a buyer alleges that entered into a sale contract or reciprocal purchase agreement on part or the total of a real property and that now seller refuses to comply without reason. Also, the case of lawsuits where a creditor alleges that a debtor

transferred a real property in favor of another person only to evade the payment of the debt, being that the transfer was simulated and not real. Another typical example is when there are fences or walls in the wrong place, or overlapped plot maps and it is intended to correct the position of the fence or the cancellation of the wrong plot map.

Note that in the first example mentioned, if the only thing the buyer is asking for is the return of some money paid as earnest money or total sales price, the Judge in charge of the case would not put the lien on the real estate that generated the negotiation, because as indicated, nothing would be modified about title.

2. The second case refers to lawsuits whose objective is to eliminate an entry because it is illegal or because an error was made. For example, a lawsuit to cancel a mortgage alleging that it was paid in full but now creditor refuses to sign releasing the mortgage from the property. Also, if a document was presented in which a property was transferred in the name of five people, but by mistake it was registered in the name of only 3three of them, and now the first three that got title intend to ignore the rights of the other two that were left out.

3. The third point refers to the case of people who disappear for a long time and had real property registered in their name, or to the case of those who have lost their lucidity or mental capacity and are required to appoint a property administrator appointed by the Court.

4. The fourth point covers judicial collection of debts established based on what the law calls “titulos ejecutivos”, which in this case would be promissory notes, letters of exchange, commercial invoices, services invoices or bank checks without funds, to name a few examples. When the debt collection is made based on another type of document that is not considered “titulo ejecutivo”, the collection procedure is the same but the lien will not be imposed until the final resolution is issued in the case.

5. The fifth point covers the specific case of all types of public instruments such as transfer deeds, mortgages, title transfer based on trust contracts and documents in general executed in front of notary public, which are assigned as defective and the correction is not performed within a year, in which case the document can be deleted after that period.

On civil liability lawsuits such as accidents, monetary claims that do not intend to change the title, or simple debt collection without “titulo ejecutivo”, it is not possible to obtain any lien until the matter is resolved. However, the plaintiff could obtain a lien at the outset if they make a security deposit equal to 25% of the claim amount. In the case of a claim in the amount of US \$100,000, if a deposit of US \$25,000 is made, the plaintiff can ask for garnishment on real property and any other type of assets. If in the end plaintiff wins gets the deposit back, but if loses the amount is granted to the defendant as damages suffered.

Some government entities may also request that a Judge imposes a lien on real property. This would be the case of tax collections from the Tax Ministry, collection of municipal taxes and services, or when the Government wants to take property by eminent domain.

Another example would be when the Real Estate Property Registry detects errors in the cadaster plan or plot map of a property, but in that case the lien is imposed directly, without requiring the intervention of any Judge and without having to give prior notice to the owner. It will appear on the public records of the property.

Another scenario in which a lien on real estate could be ordered is in Criminal Courts when there are crimes related to real estate property, such as fraudulent transfer of titles through forgery of signatures or identity theft, creation of mortgages or trust contracts that are false or illegal, usurpations, invasion of government land and other related crimes. In these cases, the initial complaint is filed with a Prosecutor, who can request a Criminal Court to authorize a lien to be imposed on any real property involved, with the purpose to immobilize the title until the case is decided.

In countries like USA and Canada (certain areas) it exists something known as Mechanic Lien. It is a security interest in the title to property for the benefit of those who have supplied labor or materials that improve the property. In Costa Rica that does not exist, normally a Commercial or Services invoice will be requested to be signed as collateral. However, during 2015 the Movable Guarantees Act took effect. Based on that, movable things inside a construction (AC systems, lamps, furniture and similar) could serve as guaranty and in case of no payment the supplier can “foreclosure” those items and take them back. Part of Due Diligence to check those records which are open to public.

The purpose of this article is to explain in what situations a lien over real property could be imposed. Many of the mentioned aspects also apply to registered assets such as vehicles, boats and aircrafts registered in the Public Registry

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 an external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)