

# Property Fraud in Costa Rica Gains Major Steam due to COVID-19

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## ADVERTISE

Coronavirus has created a true health crisis around the world. Most governments do not seem to be clear about the best way to tackle this problem; and the imposition of different types of restrictions on free transit, commerce, and tourism, has been the general rule adopted. These restrictions have a negative effect on the economy, causing the loss of jobs, the disappearance of companies, the closure of businesses and the general impoverishment of many families.

This brings negative effects such as the increase in crime in its different forms and one form that seems to be gathering steam yet again is PROPERTY FRAUD. The existence of organized gangs dedicated to property fraud, with the help of some crooked notaries, is no secret. But this seems to be gaining serious strength again lately. There are extra elements helping to create the perfect storm for it: The border closure that has been in force since March of this year, which in turn prevents many expats with property in Costa Rica from traveling is one major one.

There are foreigners with true property Investment horror stories with happy endings in some cases only possible after years of legal fights, money spending and headaches. Although any type of real estate property may be subject to fraud, those such as raw land, undeveloped lots, farms that do not appear to be in someone's care and those registered in foreigners' personal name are prime targets. It is important to remember that the arrivals/departures of people into Costa Rica are public information that can be consulted/accessed by anyone.

There are a number of reasons that make fraud possible. Here we describe the main ones:

### **1. Cadaster disorder.**

Costa Rica measures 51.100 square kilometers. However, at the National Cadaster offices the total registered plot 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.

For decades and until a few years ago, the Real Estate Department and the Cadaster Department operated separately, so these problems were frequent. Approximately ten years ago, it started a Program called REGULARIZACIÓN Y CATASTRO, with an initial budget of US \$ 70 million. Thus, with state-of-the-art technology, they began to “scan” the country, and on properties showing problems, a Warning or Immobilization lien was imposed, depending on the severity.

Despite the fact that most of the country has already been scanned, there are still pending areas. The way to know this is if when in the study of the title appears the legend Finca Ubicada en Zona Catastrada then that area was already purified, and when the legend does not appear it is still pending, That is why it is especially important when buying farms or raw land to have a surveyor checking the property prior to any negotiation.

## **2. 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 hard to discover the existence of credit documents previously issued that can bring a liability later. We are speaking of documents such as promissory notes, letters of exchange and similar. 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. It might be even better to transfer the title instead of taking a preexisting corporation when the Seller's reputation is not well determined.

## **3. Dishonest Notaries. This is the biggest problem.**

The country currently has approximated 9,000 active Notaries. In Costa Rica to be a Notary it is mandatory to be a Lawyer. Notaries use a book called PROTOCOLO which is where all types of public instruments such as affidavits, last will & testaments, mortgages, civil marriages and transfer of real estate settle. Based on the documents signed in said book, the Notary sends a certified copy signed only by he or she for registration.

Even though most of the Notaries are very correct, a 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 producing a certified transfer deed. It only needs the notary's signature. This way, some of them are tempted to make fraudulent transfers in exchange for a profit, either by forging signatures or simply sending a certified copy of a deed that was never signed by the rightful owner, and which is not recorded in the book called PROTOCOLO.

This seems to be a usual scenario: Subject A is a foreigner and also the legitimate owner of a property. Subject B marks that property as potential target, and finds the title information. Next, subject B checks the arrivals/departures records, if there is someone

taking care of the property and other info. Then B with the help of a notary, transfers the property title into his or her name. Once this is done, B tries to obtain a money loan from a money lender -subject C- offering the property as collateral or tries to sell the property to a Buyer -Subject D – In some cases, subject C and D will act as part of the gang with B to try making appear it was transferred or mortgaged to innocent third parties.

When Subject A finds that was victim of fraud, 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 here is the duration of these type of process, which might end up involving different defendants and defense attorneys. That might cause the process to be delayed several years before it gets decided. Another problem is the short statute of limitations in criminal law. b). File a Civil Court lawsuit. Civil Courts have usually ruled that the parties to be protected are Subjects C and D, but Civil Courts have lately ruled in favor of the original proprietor –Subject A- based on other articles contained on the Civil Code. Basically when elements such as ridiculous selling prices (to pay low transfer taxes, lack of economic power of the Buyer -subject C-, lack of tax records for the money lender -subject D-, previous credit problems for the Buyer and similar clues can lead to nullify the transfer and reinstate the title back to the legitimate owner.

A recent law called FORTALECIMIENTO DE LA SEGURIDAD REGISTRAL INMOBILIARIA # 9602 allows the title to be restored to its rightful owner through a procedure followed before the National Registry directly, without having to go to Court. However, this is possible only if the property remains in the name of Subject B has had no additional transfers or registered mortgages.

What can be done to prevent it?

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 appears 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.

An extra tool offered by the National Registry is called ALERTA REGISTRAL. With this, an annual service can be subscribed with which the property can be monitored at a low cost. In the event of any movement, an email is sent to the owner immediately. What this tool does is notify by email in real time of said movement, so that immediate legal actions can be taken. It does not prevent fraud from occurring. This tool can be acquire on the site [www.rnpdigital.com](http://www.rnpdigital.com)

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. 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 Immobilizations have become a good tool available for land investments in Costa Rica. They can be like a watchdog to prevent frauds.

The economy is going through a very difficult time with no end in sight . This affects all professionals, including Notaries. It also strengthens criminals. The difficulty of coming to the country since last March increases the chances of being a victim of property fraud for non-resident foreigners. It is time to take preventive action, to avoid incurring large fees and years of waiting in court. Or at least time to have your property fenced and hire someone you can trust to clean it and watch it periodically

**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 [\[email protected\]](#)

