

Executive Summary

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Purchase of Real Estate in the Dominican Republic

REAL ESTATE TRANSFERS

In order to carry out real estate transactions in the Dominican Republic, applicable documents must be registered; such is the case when a transfer is made, or when entering any rights over registered properties, such as mortgages, encumbrances, and leasing, among others.

Consequently, every purchase sales contract must be filed before the applicable Deed Registrar, together with the Owners Duplicate Deed Certificate, in order to register the transfer and obtain the new Owners Duplicate Deed Certificate in favor of the purchaser.

Words most frequently used in real estate matters (i.e., Cadastre, etc.) and their meaning.

- a) *Real Estate*: Material good, not movable, which is essentially constituted by land and everything attached to it in a permanent manner, or that is considered as such, or that falls on it and its appurtenances. (Rafael Ciprian. Tratado de Derecho Inmobiliario [Real Estate Treaty]) Examples: land, houses, apartments, etc.
- b) *Mortgage*: Rights in rem destined to guarantee payment of a loan, without dispossession of the encumbered good. (Henri Capitant. Vocabulario Juridico [Legal Terms])
- c) *Cadastral Clearing*: Special procedure to register land without a Deed Certificate.
- d) *Deed Certificate*: Official document issued and guaranteed by the Dominican State which certifies the existence of a right over a real estate property and its ownership.
- e) *Demarcation*: Real estate technical operation that allows the individualization of owner's rights with regards to other co-owners of the same lot or tract of land. (Rafael Ciprian. Tratado de Derecho Inmobiliario)
- f) *Subdivision*: Real estate technical operation that allows fractioning or division of a tract of land which belongs to several persons, in order for each one of the co-owners to individualize the owned portion of land and that that right be supported by a Deed Certificate. (Rafael Ciprian. Tratado de Derecho Inmobiliario)

- g) *Consolidation*: Real estate technical operation through which several adjacent lots belonging to one or more owners become one or more groups of lots. (Rafael Ciprian. Tratado de Derecho Inmobiliario)
- h) *Improvements*: Every construction, crop or cultivation on the land. (Rafael Ciprian. Tratado de Derecho Inmobiliario)
- i) *Condominium*: It is the right by virtue of which several parts of a real estate property with functional independence and direct or indirect access to a thoroughfare, are established as the exclusive property of one or more persons, which in turn are undivided joint owners of the common areas.
- j) *Litigation over registered land*: Disputes over a real estate right, such as property, mortgage, or encumbrance right, as a result of legal deeds originated between the parties after the lot had been registered.
- k) *Cadastre*: Real estate survey and census.

RECOMMENDED WAYS IN WHICH TO ACQUIRE REAL ESTATE IN THE DOMINICAN REPUBLIC. ADVANTAGES AND DISADVANTAGES.

Real estate properties can be acquired in the Dominican Republic in an individual capacity or through a corporation, regardless of nationality or the migrant status of the acquirer.

Real estate purchase by an individual

Advantages

- Advisable in the case of long-term investment and when not interested in assuming corporate procedural expenses.
- More expeditious transfer process before the Deed Registrar.
- The property would be exempted from property taxes if its value is less than RD\$5,000,000.00.

Disadvantages

- The property is exposed to personal demands against its holder or owner.

- The property is subject to the inheritance reserve provided in the Dominican Civil Code establishing that a person that has the use of its properties must leave a certain amount for his children in the case of death for succession purposes.
- Transfer is subject to a tax equivalent to 3% of the amount of the transfer.
- In the event of the owner's death, the property will be subject to a succession tax, which would be calculated based on the total value of the property.
- If the property enjoys the fiscal benefits granted by law 158-01, these would be lost with an eventual resale, or by the owner's death, since only the project and the first purchaser will benefit from these exemptions.

- There is the need to verify if the company is up to date on all its obligations, in particular its fiscal duties.

Documentation required:

- Original or certified copy of the Board of Directors' Minutes for each party that is a company authorizing an individual to sign the purchase sales contract;
- Original Deed Certificate (Owner's Duplicate);
- Sales contract with signatures duly legalized;
- Copy of an identification document of the purchaser if it is an individual, or the national taxpayer registration number if it is a company (even if it is foreign);
- Receipt of transfer tax payment;
- Payment certification or exemption of real estate tax (IPI);
- Certification that the company is up to date on tax payments.

Real estate purchase through a corporation

Advantages

- Facilitates short-term resale, because with a simple sale of shares the property is transferred without the need to change the holder of the Deed Certificate.
- It is useful for equity planning of the owner or holder.
- It protects the property before obligations that could result in personal civil liability, since legally the real estate belongs to a company and not to the company's shareholder.
- Avoids succession legal restrictions, since companies are not subject to inheritance reserve.
- If the transfer is made through an in-kind contribution, that is, by assigning the property to a company in exchange for shares, there is no obligation to pay the transfer tax.
- In the event the property is protected by Law 158-01, the future buyer maintains, during the applicable period, the tax benefits when the shares of the company that owns the property are transferred.

Disadvantages

- The transfer of goods and chattels, such as shares, is subject to a tax equivalent to 2% of the transfer value, when the seller is an individual.
- Companies are subject to the payment of Capital Tax, equivalent to 1% per year of the value of its assets.
- The process of an in-kind contribution is long and complicated.

TERMS FOR DEED ISSUANCE AND REASONS WHY THEY MIGHT NOT BE ISSUED OR DISMISSAL OF A REGISTRATION REQUEST

According to the Deed Registration Regulations, the Deed Registrar must rule within a period of not more than forty-five (45) working days counted as of the date applications are filed before the Deed Registrar, including requests to transfer a property and subsequent issuance of the deed certificate. However, the Registrar is authorized to reject the application if one of the required documents mentioned above does not meet the necessary conditions in form or substance.

TRANSFER TAX

In the case of real estate which is not covered by Tourism Incentive Law 158-01, the present transfer tax amounts to three per cent (3%) of the transaction's amount, taking as base the higher amount that results from the valuation made by the General Directorate of Internal Revenue (DGII) of the property in question and the amount expressed in the contract (market value).

The transfer tax must be paid within a term of six (6) months counted as of the time in which the contract is signed. In the event of non compliance of this term, the transfer operation will be subject to surcharges, interests and penalties.

TAXES ON REGISTRATION OF OTHER REAL ESTATE TRANSACTIONS

In addition, two percent (2%) of the value of any other real estate transaction which are not transfers will have to be paid, such as mortgages and liens, to be entered in the Deed Register, subject to the same term as the transfers filed before the Deed Registrar, under penalty of surcharges, interests and fines.

Mortgage agreements must necessarily be registered in Dominican territory.

REAL ESTATE PROPERTY TAX

In accordance with law 18-88 dated February 1988, modified by Real Estate Property Tax Law 288-04, every year owners must file a statement concerning the properties owned. In this regard, the General Directorate of Internal Revenue will issue a certification and/or a statement indicating the value of the property and payable tax, if applicable; this agency's valuation will be the minimum taxable base accepted to calculate transfer taxes.

All real estate properties whose value, including the land, exceeds RD\$5,000,000.00 are burdened with this tax.

Tax rate

The rate is one per cent (1%) of the amount in excess of RD\$5,000,000.00 of the total value of the real estate. This is an annual tax and must be declared during the first months of the year, the deadline is February 13th. If the property is declared sumptuous or if it is an urban lot, payment of the tax is divided in two quotas which must be paid, the first on March 11th and the second on September 11th.

CAPITAL TAX

In accordance with Tax Reform Law 557-05, every company is responsible for filing an annual statement of the sum total of its assets, including real estate. The company must also pay Capital Tax equivalent to 1% of the sum total of assets. In order for the Deed Registrar to carry out a transfer of a real estate property owned by a company, it is necessary for the General Directorate of Internal Revenue to issue a certification determining that the company is up to date with the payment of its tax obligations.

BENEFITS OF TOURISM INCENTIVE LAW 158-01

Some of the properties sold by tourism resorts benefit from the provisions of Tourism Incentive Law 158-01, whose objective is to stimulate, through a rational process, the development of the tourism

industry in the regions with great potential or that have excellent natural conditions for its tourism development throughout the country.

In accordance with article 2 of the Law, all individuals or companies residing in the country that initiate, promote or invest capital in any of the tourism activities specified in the Law and in the tourism destinations and/or provinces and/or municipalities included in the law may benefit from the incentives granted by it. These activities include the purchase of real estate located in projects covered by the Law: its beneficiaries will enjoy an exemption of 100% applicable to the following:

1. Income tax generated by promoting, implementing or investing capital in the tourism activities specified, and in one of the zones included in the Law;
2. National and municipal taxes collected for using and issuing construction permits and purchase of land or other types of real estate properties, as long as they will be used to develop a specific tourism activity. This include Real Estate Transfer Taxes (sale, in-kind contribution and any other form of real estate transfer), equivalent to 3%, with regards to land and buildings, whether to be part of the project, or to be transferred to investors or buyers.
3. Import and other taxes, such as rates, rights, surcharges, including the Transfer of Industrialized Goods and Services Tax (ITBIS), equivalent to 16%, applicable to equipment, materials, and furniture necessary for the first furnishing and start up operations of the tourism facility in question. This includes all services, materials and equipment to be used in the construction of the facilities.

The tax exemption period applicable to each project, business or tourism company is ten (10) years counted as of the date of issue of CONFOTUR's resolution approving the works.

TYPES OF CERTIFICATIONS THAT MAY BE APPLIED FOR AND APPLICATION PROCESS/ REQUIREMENTS.

- a) Real Estate Legal Status Certification. The real estate legal status certification is the document issued by the Deed Registrar in which its legal status and the term of the Deed Certificate Owner's Duplicate is certified, specifying the entries in force registered in the Complementary Register on the date of issuance, such as mortgages, objections or encumbrances.
- b) Certification of Real Estate Registration. This document is issued by the Deed Registrar and certifies the property has been registered on the date of issuance.

- c) Accessory Real Property Rights Registration Certification. This certification is the documentary evidence that an entry of an accessory real property right, lien, encumbrance and provisional measures has been made in the Deed Register in favor of the holder or beneficiary such as mortgages, rights of way, etc.
 - d) Creditors' Registration Certification. The creditors' registration certification is the document issued by the Deed Register which certifies the real property right, liens, and encumbrances, such as mortgages.
 - e) Priority Reserve Certification. The Priority Reserve Certification is the document issued by the Deed Register in which the legal status of a registered property is certified, pointing out the entries in effect recorded in the Complementary Register, as well as the holder on its issuance date, in order to guarantee the immutability of said status and guarantee a particular legal business preventing entries of any other transaction as long as it is in force.
- E-mail address where you can access laws and regulations related to real estate legislation: <http://www.suprema.gov.do/guiaji/guia.html>
 - Preprinted formats of Deed Certificates, Annotated Records, Priority Reserve Certification, Creditors' Registration Certification, Accessory Registration, etc.
 - Rates to be paid for services (i.e., Duplicate's issue, etc.)

LEGAL SERVICES

The Law firm of Pellerano & Herrera can assist you with all the legal formalities related to the transfer in your name of a real estate property. This includes the research to determine liens and encumbrances on the property, payment of taxes and issue of the new deed certificate in the acquirer's name, as well as any other legal advice that may be needed. A personalized proposal is prepared in each case, as well as a detail of taxes to be paid.



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