How to Buy Real Estate in the Dominican Republic

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Introduction

Real estate transactions in the Dominican Republic are governed by Property Registry Law No. 108-05 and its Regulations, in force since April 4, 2007. Ownership of property is documented by "Certificates of Title" issued by Title Registry Offices.

Steps Involved in a Real Estate Transaction

- Preliminary Steps: Real estate purchases in the Dominican Republic do not usually follow the North American pattern of a written offer tendered by the buyer to the seller, followed by the seller's written acceptance. Instead, after verbal agreement is reached by the buyer and seller on the price, a binding Promise of Sale is prepared by an attorney (solicitor) or notary public which is signed by both parties. (Notaries in the Dominican Republic are required to have a law degree.)

  Because of certain peculiarities of Dominican Real Estate Law, it is recommended that the prospective buyer retain a real estate attorney (solicitor) before signing any documents or making a deposit. Depending on the wishes of the parties, the attorney (solicitor) may proceed with the due diligence first, before preparing the Promise of Sale, or alternatively, prepare the Promise of Sale first, conditioning the purchase to the results of the due diligence to be done in a specified term.

- Promise of Sale: This a formal document, binding on both parties, and signed by them in the presence of a Notary Public. From a practical point of view, it is more important than the Deed of Sale, since it generally contains a complete and detailed description of the entire transaction up to the time when the purchase price has been paid in full and the property is ready to be conveyed to the buyer. A well-drafted Promise of Sale should contain at least the following provisions:

  (a) Full name and particulars of the parties. If the seller is married, the spouse must also sign.
  (b) Legal description of the property to be purchased.
  (c) Purchase price and payment terms.
  (d) Default clause.
  (e) Date of delivery of the property.

(f) Due diligence required or done.
(g) Representations by the seller and remedies in case of misrepresentation.
(h) Obligation by seller of signing the Deed of Sale upon receipt of final payment.

Many attorneys (solicitors) and notaries in the Dominican Republic do not protect the buyer adequately in the Promise of Sale. Among the most common deficiencies are the following:

(a) The buyer is allowed to pay a large percentage of the price of sale without any security or direct interest over the property. In case of misuse of these funds, the buyer's remedies may be limited to suing the seller personally. Many condo buyers in Santo Domingo have suffered through this experience in the last few years. Generally, the developer uses the buyers' funds, along with a bank loan, to finance the construction. The bank collaterizes the loan with a mortgage on the property. If the developer runs into financial difficulties or misappropriates the funds, the bank forecloses and the buyers lose both their money and "their" property.

(b) Payments are not conditioned on the availability of clear title or the adequate progress of construction. Sellers, therefore, may demand payment or place the buyer in default without performing their own basic obligations.

(c) Escrow agents are rarely used. The seller, therefore, has control over the funds as they are paid.

- Deed of Sale ("Contrato de Venta"): This is also a formal document binding on both parties, and signed by them in the presence of a Notary Public. It is used primarily for the purpose of conveying the property from the seller to the buyer.

  In case of a cash purchase, it is simpler and cheaper to go directly from verbal negotiations to the signing of a "Contrato de Venta", instead of taking the preliminary step of signing a Promise of Sale.

- Determination and Payment of Transfer and Registry Taxes: The authenticated Deed of Sale is taken to the nearest Internal Revenue Office where a request is made for the appraisal of the property. The Internal Revenue Office checks if the seller is in compliance with his tax obligations and selects an inspector to do the appraisal. The determination of the amount of taxes to be paid may take a few days or weeks, depending on the availability of the property inspector.

- Filing at the Registry of Title: Once the property has been appraised and taxes paid, the Deed of Sale and the Certificate of Title of the seller are deposited, along with the documentation provided by Internal Revenue, at the Title Registry Office for the jurisdiction where the property is located.

- Certificate of Title: At the Title Registry Office, the sale is recorded and a new Certificate of Title is issued in the name of the buyer. The property belongs to the buyer from the time the sale is recorded at the Registry. The time for the issuance of the new Certificate of Title may vary from a few days to a few months depending on the Title Registry Office where the sale was recorded.

Due Diligence

Many attorneys (solicitors) in the Dominican Republic do not perform the required due diligence on real estate transactions, limiting themselves in many cases to obtaining a certification on the status of the property from the Title Registry Office. It often happens that the real estate agent and/or the seller pressure the buyer into a hurried closing despite the advice of legal counsel.

To start the due diligence, the seller should provide the buyer or the attorney with the following documents:

- Copy of the Certificate of Title to the property.

- Copy of the official survey to the property or plat plan. **Under the new Property Registry Law, the sale of properties without a government-approved plot ("deslinde") cannot be recorded at the Registry, except in the following cases: (1) Sales executed before April 4, 2007, which may be recorded during a two-year period ending on April 4, 2009, and (2) Sales of the entire property executed after April 4, 2007 (sales of portions are not allowed), for just one time.**

- Copy of his or her identification card ("Cédula") or Passport and that of the spouse, if married.

- Copy of the receipt showing the last property tax payment (IPI) or copy of the certificate stating that the property is exempt from property tax, and certification from the Internal Revenue Office showing the seller is current with his or her tax obligations.

  If the seller is a corporation:

  - Copy of the corporate documentation, including bylaws, up-to-date registration at the Mercantile Registry and resolution authorizing the sale.
  - Certification from the Internal Revenue Office showing the corporation is current with its tax obligations, specially Income Tax and Tax on Assets.

  If the property is part of a condominium:

  - Copy of the condominium declaration.
  - Copy of the condominium regulations.
  - Copy of the approved construction plans.
  - Certification from the condominium administration showing the seller is current with his or her condo dues.
  - Copies of the minutes of the last three condominium meetings.

  If the property is a house:

- Copy of the approved construction plans.
- Inventory of furniture, etc.
- Copies of the utilities contracts and receipts showing that the seller is current.

Once the documentation listed above is obtained, the attorney should address every item on the following checklist:

- Title Search: A certification should be obtained from the appropriate Title Registry Office regarding the status of the property, stating who the owner is and whether any mortgages, liens or encumbrances affect it. The buyer should insist that his or her attorney confirm the results of the Registrar's search by investigating the pertinent files at the Title Registry Office.

- Survey: An independent surveyor should verify that the property to be sold coincides with the one shown on the survey presented by the seller except when the property is located in a previously inspected subdivision. Cases have occurred in which a buyer acquires title over a property some distance away from the one he or she believes to be purchasing due to careless work by a previous surveyor or to fraud by the seller. The survey should be checked even when the seller provides a government-approved plat.

- Inspection of Improvements: A qualified builder or architect should examine any improvements to be sold (house, condo) to confirm that the plans presented are correct and that the improvements are in good condition.

- Permits: The attorney should confirm that the property to be purchased may be used for the purposes sought by the buyer. There are many legal restrictions which should be taken into account before purchasing. For example, Law 305 of 1968 establishes a 60-meter "maritime zone" along the entire Dominican coastline, measured from the high tide mark inland, which in effect converts all beaches into public property. No building is allowed within the maritime zone without a special permit from the Executive Branch. Also, in tourist areas, there are building restrictions administered by the Ministry of Tourism.

- Possession: The attorney should check that the seller is in possession of the property. It should be ensured that no squatters' rights of any kind exist. Special precautions should be taken with unfenced properties outside known subdivisions. Fencing them before closing is advisable. If there are tenants on the property, the buyer should be informed that Dominican law is protective of a tenant's rights and that evicting a recalcitrant tenant is time-consuming and expensive.

- Employees: The seller should pay any employees working on the property their legal severance, otherwise the buyer may find himself liable for the payment later.

- Utilities: The attorney or buyer should check that the seller does not have any utility bills pending by enquiring at the appropriate power distributor, water, cable and telephone companies.

Taxes and Expenses on Property Transfers

Taxes must be paid before filing the purchase at the Title Registry Office. Taxes and expenses on the conveyance of real estate are approximately 3.1% of the government-appraised value of the property, as follows:

- 3% Transfer Tax (Law # 288-04)
- Minor expenses such as cost of certified check required to pay taxes to Internal Revenue, sundry stamps and tips at the Registry.

Taxes are paid based on the market value of the property as determined by the tax authorities, not on the price of purchase stated in the deed of sale.

Buyers wishing to lessen the impact of transfer taxes have the option of using a loophole in the law which allows the contribution in kind of property into corporations without paying transfer taxes. For this, cooperation from the seller is essential.

Property Taxes

Properties held in the name of an individual are subject to an annual property tax ("IPI") of 1% of government-appraised value in excess of RD$5,000,000 pesos except for unbuilt lots or farms outside city limits and properties whose owner is 65 years old or older, who has registered it in his or her name for more than 15 years and has no other property.

If the property is held by a corporation, no property tax is due. Instead, the corporation must pay a 1% tax on corporate assets. However, any income tax paid by the corporation will constitute a credit toward the tax on assets, so that if corporate income taxes paid are equal to or higher than the taxes on assets due, the corporation will have no obligation to pay taxes on its assets.

Title Insurance

In the Dominican Republic, as in many Latin American and European countries, the government provides title insurance. The old Land Registry Law established an indemnity fund with which to pay claimants who due, for example, to an error of the Registrar, were deprived of their property. Unfortunately, the funds collected were used by the government for other purposes.

The Property Registry Law in effect since April 4, 2007, has created a new 2% tax on all conveyances in order to establish an indemnity fund. It is also possible to obtain title insurance from private insurers.

Purchase of Real Estate by Foreigners

There are no restrictions on foreigners purchasing real property in the Dominican Republic. Formerly, Decree 2543 of March 22, 1945 and its amendments required that foreigners obtain prior Presidential approval except in certain cases. Decree 21-98 of January 8, 1998 abolished this regulation and established as the only requirement that the Title Registry Offices keep a record, for statistical purposes, of all purchases made by foreigners.

Inheritance of Real Estate by Foreigners

There are no restrictions on foreigners inheriting title to real property in the Dominican Republic. Inheritance taxes have been recently lowered to 3% of the appraised value of the estate. If the beneficiary resides outside the Dominican Republic, inheritance taxes are subject to a 50% surcharge, raising the tax rate to 4.5%.

Inheritance of real estate is governed by Dominican law which provides for "forced heirship": part of the inheritance must go to certain heirs by law. For example, a foreigner with a child must reserve 50% of the estate to that child despite the existence of a will or of the law of his country of residence. To avoid the application of Dominican rules of inheritance to the estate, it is advisable for foreigners to hold real estate indirectly through a holding company.

Real Estate Agents

Real estate agents in the Dominican Republic are not licensed or regulated by the government. There is presently a bill in Congress which may regulate the practice in the near future.