

# Buying / Owning – Rules of the Road

A guide to help find your bearings



## About Titled Property in Costa Rica

Buying and owning property in Costa Rica or any foreign country can be a confusing and intimidating process. The desire to make a good assessment isn't enough. You have to educate yourself along the way to be able to make good decisions in a safe and efficient transaction. Can I just leave everything up to the lawyer? What are my rights as a foreigner? Can squatters invade my land? Is there such a thing as zoning? These and many other questions will be answered in the information provided here. Costa Rica does have a system, although not perfect it works fairly well. Thousands of foreigners have safely invested here. You can be one of them. Unfortunately, many foreigners become so enchanted with the country and the people that they fail to exercise good judgment and common sense, acting on information they don't completely understand. In Costa Rica, you will find similarities to stateside rules but many aspects of the system are different. Take the time to learn the basics! As an educated buyer you will be more confident with less stress. It will also cut down on wasted time looking at properties that don't fit your needs or that are unsuitable for one reason or another. The information here will help you get started.



# Private Property

Article 45 of the Costa Rican Constitution guarantees equal rights and protection of private property be it owned by nationals or foreigners. Foreigners can own property and live in Costa Rica part-time on a tourist visa.

Titled property is defined as all private land adjoining the state owned coastal zone. All titled property has a searchable public record. This public title is called an "escritura publica", meaning public scripture - inscribed in the public record. A simple search in the National Registry will show current ownership and linkage of prior segregations along with any encumbrances like mortgages or liens. Believe it or not there is still a fair amount of land today that is un-registered, without public title, still owned by right of possession. These lands can normally be inscribed (titled) by petitioning the agrarian court after 10 years of unopposed possession.

All titled property must have a corresponding registered survey or "plano" which is also public record. Even un-titled property (possession property) must have a registered "plano". Property surveys are recorded in a different section of the public registry called the "Catastro". An updated survey or "plano catastrado" shows the boundary shape and dimensions, the total area, the location and other useful information including some restrictions such as co-owned government agricultural land (IDA) or if the land falls inside protected areas like forest reserves or areas of natural patrimony. In cases be aware that the corresponding plano may be outdated and may not even reflect updated ownership (or possessor) or other important details as mentioned above. Buying untitled land may have some downstream issues and sometimes it's best to avoid it.

**Possession Land** - or land without a registered titled is referred to as possession property. Transfer of ownership and / or segregations are done through private transactions notarized by a lawyer who's only role is to draw up a bill of sale or "carta de venta". There is no formal verification of ownership nor searchable record of the transaction nor of prior ownership. This obviously does not lend to buying with complete confidence even though it is common practice by locals. Extra due diligence is advised.

What about squatters, should I be concerned about this? The possibility of having an issue exists but only if you're not paying attention. Absentee owners need to have someone keep an eye on their property while they are away. Homesteaders (squatters) could potentially move onto the land, build a shack, plant a few crops and live there unopposed if nobody is around or checking on your place. This custom is rooted in the homestead "precario" law dating back to the 1960's when there was still unclaimed, raw forested land - ironically deemed "unproductive land". The government gave settlers an incentive to make "improvements" and cultivated the land in a peaceful manner, giving them title to the land if they worked it unopposed for 10 years. Obviously these laws are outdated and there is no more abandoned land in need of improvement. In hindsight, this was a very destructive policy which accelerated deforestation. Today, squatters are not a major concern but you should be aware and understand that owning land and leaving it unattended for long periods has a certain risk.



Is there a risk of expropriation? As in most places in the world, laws exist that allow government to expropriate land for national interests, for public works like roads and highways, easements, national parks, ports etc. For the most part this is a non issue. Costa Rica is no longer expropriating land for national parks.

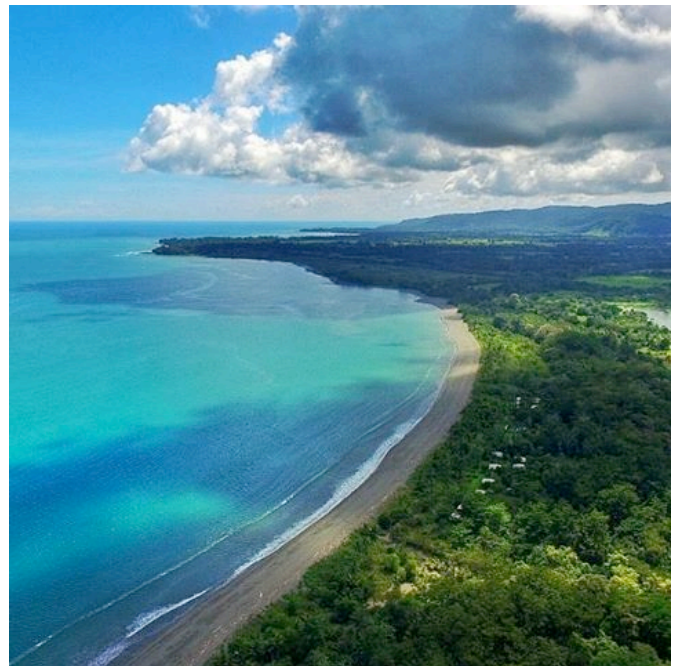
Land Taxes: Collection of land taxes is the job of Municipal governments. The scale for "impuestos territoriales" is based on the updated tax law from 1995 and are now calculated at 0.0025% of the declared value. A \$100,000 property pays about \$250 per year. A bargain!

# Coastal Property - The Real Story

Costa Rica's beach-lands are governed under special circumstances, the corresponding law spelling things out clearly although there is plenty of disinformation spread around that is confusing. Reference - the Maritime Zone Law or "Ley Zona Maritima Terestre 6043", commonly called the concession law which was established in 1977. The intention of the law at the time was in three parts.

1. First, to declare certain sectors of the coastline as having the a high touristic aptitude and at the same time declaring that all beaches are public.
2. Second, to create and adopt zoning for these declared areas with a land use framework or Regulatory Plan or "Plan Regulador"
3. Third, to task the corresponding state institutions with granting development rights to individuals or companies to develop areas destined for specific tourist activities by way of concession contracts.

The land comprising the Maritime Zone is owned by the state and jointly administered by the local Municipality and the National Tourism Institution (ICT) and is defined as the 200 meter strip of land along the coastline measured from the average high tide. This 200 meter zone is comprise of two parts - the first 50 meters from the average high tide is public domain or public zone and cannot be claimed by anyone. The public beaches are for everyone's enjoyment with no exception other than marinas, ports, National Parks and coastal cities. The adjoining 150 meter strip of land is called the restricted zone where third parties can solicit exclusive usage by a simple act of filing out an application at the local Municipality. Approved applicants are granted provisional usage as the recognized "occupant" and eventual "first right" to the concession and to



Platanares Beach, Osa Peninsula



develop the property according to the adopted zoning plan. The law states “first in time is first in right” assuming the applicant meets the requirements. Note that all concession applications country wide were filed, accepted and sorted out many years ago. Your chances of filing and getting recognition today are zero. But imagine a time when much of the coastline was not spoken for and basically free for the taking, the only requirement being to file an application!



Nicoya, Guanacaste

The Guanacaste coast got most of the attention over the past few decades where the wealthy Costa Rican families owned large tracts of land, and where most of the zoning efforts were made to encourage development.

Surprisingly, the majority of Costa Rica's coastline is still un-zoned to this day, lacking an approved Regulatory Plan. Here in the Osa Peninsula there are only four sectors (partially zoned) having an approved Regulatory Plan - Puerto Jimenez, Playa Platanares, Sombrero and Cañaza.

All Regulatory Plans have clearly defined areas zoned for touristic type development, both commercial and residential and areas set aside for green zones, roads, public access, parking, bathrooms or other services.

In the un-zoned and non-concession sectors of coastline countrywide, local Municipalities have had to adopt provisional policy to address the occupation of individuals and subsequent building under the premise that at some point in the future a Regulatory Plan will be implemented. To be sure, these evolving policies have caused plenty of confusion due to lack of clarity and consistency.

Until a section of coastline has an approved Regulatory Plan, usage and development is administered only as an interim policy, the municipal recognition of the occupants / applicants through a provisional usage permit or “permiso de uso”

which is basic recognition of the current occupant – a system merely to organize the inventory of applicants / occupants. At times these usage permits are misleadingly referred to as a lease or a concession but they are not. This provisional occupation status is maintained up until a Regulatory Plan is approved and concessions can be granted. Original applicants must also submit an informal survey but it's important to understand that this does not imply a particular lot or parcel will coincide with the eventual zoning. Depending on Municipal policy this interim occupant may be asked to pay a symbolic occupation tax or "canon" and may also be given permission to make certain improvements to the land and build temporary structures.

Regulatory Plans are implemented and approved by the corresponding local and federal government institutions and must pass an environmental impact review. Once approved. Only then can concessions can be granted. Concessions are contractual agreements inscribed in the National Registry giving the concession holder ownership to the concession (not to the land), along with the right to build / develop and the right to transfer (sell), all of which are clearly spelled out in the contract. Concessions for residential and tourist projects are renewable in perpetuity for periods of a minimum of 5 years and a maximum of 20 years assuming compliance to the terms of the concession contract which basically are to respect the public zone, pay your concession tax and build in accordance to the approved zoning. Stories of 99 year leases are simply not true.

Surprisingly, building along the coastline in areas without approved zoning and concessions is very common although not completely legal. Let's just say that policy and administration of these areas of coastline by Municipal governments has been very informal since the maritime law took affect. Some constructions were built with Municipal authorization and some were not. These scenarios require specialized due diligence and scrutiny if a purchase is being considered.

**Wildlife Refuge** – There is one exception to traditional Municipal administration of the Maritime Zone in coastal sectors that are best suited for conservation management but still allow low impact touristic activities.

Administration in these zones is passed from the Municipality over to MINAE (Ministry of Environment) and managed under a different law – The Wildlife Refuge

Law, where activities and development are proposed and reviewed under special conditions. Passing review, the new Management Plan specific to that sector is adopted which literally becomes the zoning plan. The recognized occupants within the coastal Wildlife Refuge then petition MINAE to obtain a 10 year usage permit and carry out their activities. Building permits are still issued through the local Municipality but must adhere to the adopted Management Plan for the Wildlife Refuge. The land continues to be state owned and the occupants inside the refuge are considered the stewards.



Wildlife Refuge - Carate, Osa Peninsula

## Buying Coastal Property

The procedure to purchase a registered concession for a beach property is somewhat similar to buying private, titled property. The due diligence involves verification of the record in the National Registry to check for any encumbrances and to review the terms and conditions of the concession contract. The yearly concession tax is MUCH higher than for private property, often in the thousands of dollars even for a small hotel.

On the other hand, buying beach property without a registered concession is an informal procedure, essentially a private agreement between two parties to transfer the improvements and the provisional occupation rights. In these cases extra due diligence and expert advice is advised.

The Maritime Zone Law states that Costa Rican citizens or foreigners having at least 5 years of residency can apply in their own name and receive the right to occupy and eventually be granted the concession to Maritime Zone property. All other foreign citizens must apply through a Costa Rican corporation. Assignment of directors for these corporation can be to foreign citizens but ownership (shareholders) must have at minimum of 50% held by a Costa Rican citizen.

Obviously this is not a desirable proposition and the common workaround has always been to issue or transfer the company shares in a private manner, the national portion being endorsed back post sale or held in a formal trust. Share transfers are recorded in the company shareholders book which is usually held by the owners of the corporation or their lawyer.

You will see the initials S.A after most corporate names which stands for “Sociudad Anonima” or Anonymous Society. In the past the S.A. was the most widely used corporate entity because shareholders had certain anonymity and allow for transfer of bearer shares which can be endorsed and handed over in a private manner. A recent law now requires all corporations file a yearly declaration of shareholders and failing to do so will generate some hefty fines. Shareholders are no longer private nor anonymous.

The S.A requires appointment of 4 board members and a resident agent which is usually your lawyer. The alternative to the S.A. is the SRL, a limited liability society framework where only 2 managers are assigned, plus a resident agent.

The most common scenario used to transfer coastline property registered to corporations is to transfer all the shares of the company that holds the rights and then appoint a new board or managers. This is done to maintain continuity of occupancy and registration at the Municipality.

## **Closing and the Process of Settlement**

Ok, so you found the property you want and have negotiated a price with the help of your agent. During this process you will need to engage with a good lawyer. One that speaks your language. So get a solid recommendation before choosing one. All relevant documentation will be in Spanish so make sure your lawyer can provide translations for the pertinent parts so can understand and approve. In Costa Rica all lawyers are notaries and visa-versa.

The lawyer is tasked with the title search that will show any encumbrances, liens, mortgages, land usage certificate, etc. He must also verify that the taxes are paid up to date. It's also important to verify if the land falls within areas that are



affected by environmental restrictions. Your lawyer should request a land use certificate issued by the local Municipality. Other due diligence in the field is where a competent agent comes in. Don't underestimate the importance of a knowledgeable agent that understands local conditions and works with your lawyer to iron out any wrinkles or issues that may affect the property and not public record. Your lawyer will never visit your property so keep that in mind.



The seller will usually consult with their own lawyer on the side and pay any corresponding fees. The buyer's lawyer will execute the deed transfer at closing. If an escrow company is involved closing can be done remotely once the deed transfer is signed.

### **Closing Costs:**

Unless agreed otherwise, it is customary for the buyer and seller to equally share the closing costs.

Fees paid for attorney / notary services are based on a published scale however this can be somewhat negotiable. The cost can vary between a San Jose lawyer and a small town lawyer. It's always good to get a quote before you get started. Additional costs may apply that involves work performed outside a standard transaction.



The following fees apply only to titled property and subsequent recording of the title at the national registry based on the declared value.

- Attorney's fees: 1.25%
- Recording fee: 1.5% for transfer tax
- Documentary Stamps: 0.86% for institutional taxes

### **Escrow services:**

Getting an escrow company involved is now the preferred method to arrange closing due to regulations concerning funds entering the country from foreign sources. Gone are the days when a foreign buyer would send the funds to their lawyer or agent. Sometimes a buyer would open a local bank account and wire the funds to themselves in advance of closing. However these are no longer viable options and to plan a closing around these scenarios you will likely find yourself in a banking rat maze and be forced to start over.

There are competent escrow services here in Costa Rica that will help you and your lawyer set up your escrow account in advance of closing. Escrow will receive the funds and distribute payments to the seller, to pay off mortgages or agent commissions etc. The buyer will need to provide certified documentation to establish the origin of funds such as letters and statements from their bank along with other details before they can open the escrow account. Fortunately the cost for an escrow service is reasonable so there is no reason to do otherwise.

In spite of all the challenges Costa Rica is a friendly and peaceful place. A place where people from all over the world have come to explore and experience the diversity of nature and the magnificent landscape. Many have made it their part time home or have settled here permanently. You can too. So come on in, the water's fine.



Author Jeff Lantz - I enjoy what I do. Connecting people to the land. Something I'm truly passionate about. Helping people coming for all the same reasons I did 30 years ago comes natural. It's not just about buying a property. It's about investing in a whole new lifestyle. So feel free to contact me. I'm happy to help.



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