

Legal Steps to take when buying a property in Dominican Republic

Before entering into any sales contract it's recommended, under the supervision of legal counsel, that the investor conducts a detailed investigation or due diligence of the legal and tax status of the property, in order to detect any annotations, liens, encumbrances and operations that the propriety may have.

This study implies that the owner of the property should give the corresponding Certificate of Title, floor plan properly demarcated (if applicable) or general floor plans of the property and copies of receipts of the payment of taxes and also solicit the Department of Registration of Titles a history of property and its respective Certification Fees and Levies.

The investigation should also include a study of the accuracy of the floor plans and measures the property, as well as urban planning, in order to verify the use that can be given to the property.

Another important aspect is to verify whether there are tenants, settlers and / or any other occupant in the property, and if so, analyze existing contracts and the real possibility of eviction, and if this task can be arduous for the legal overprotection existing in the country in favor of these.

Furthermore, in the case of properties located in the rural area, you have to determine if they are within an environmentally protected area by the Dominican State.

Finally, it is important to note that the country has title insurance companies of American origin, whose policies can be arranged prior to closing of any real estate transaction, in order to protect against monetary losses for claims that can be made against hidden title property, falsification of acts and other events that may directly affect the property.

Once you decide which property you are buying, the process is as follows:

Purchase Agreement (preliminary contract)

The preliminary contract is useful when there aren't enough resources for the immediate payment of the agreed price, or the property subject of acquisition cannot be given immediately. This is a preliminary to the final agreement of the parties and legally, it is considered "it as a sale" once it is established by agreement between the parties "thing being sold and the price."

In this type of contract it is common for the buyer to deliver a sum of money by deposit or signal to ensure the final sales transaction. However, the latter does not materialize by decision of the buyer, such deposits shall be in favor of the seller, in the contrary, by the decision of the seller, the buyer must return twice the amount received by way of deposit or signal (according to the Dominican Civil Code), unless the parties agree otherwise. In the Dominican Republic it is customary to pay between 10% and 20% of the sale price as a deposit.

As it is a promise of sale, the obligations are temporary or provisional so rights resulting from these are often not recorded in the Registry of Deeds, so that the parties are obliged to formalize the purchase by a contract is final.

The Definitive Purchase Agreement can be made without being subject to any condition, in which case it is irrevocable. If the sale is subject to a condition precedent, the effects shall be suspended regarding the pending contract until the verification of a particular event or occurrence, whereas if it is subject to a condition, it has to be verified. If the particular event hasn't materialized, the sale it will be void. Generally, in a contract of sale subject to conditions, the buyer usually pay between 30% and 40% of total

The Purchase Agreement may also be subject to payment terms, so that the total price of the property is not paid immediately. This option may occur several hypotheses regarding the actual transfer of the property:

1. To include a clause stating that the right to ownership of the property is transferred by the seller as it goes by paying the stated price.

2. That the right of ownership is transferred at the time of the agreement between the parties on the thing and the price. However, the seller can always benefit from the “privilege of the unpaid seller” collected in the Civil Code and registrable in the Register of Deeds.

3. The right of ownership is transferred when you complete the full payment of the agreed price.

Contributions of real estate capital companies

The contribution of real estate to the capital of a company presents interesting tax advantages in terms of the transfer taxation, becoming one of the preferred routes for national and foreign investors to purchase a property whom prefer to buy all the shares of the company received by the property contribution.

The nature or kind contribution is the transfer of movable or immovable property and know-how, or techniques of management, marketing or other material, the capital of a joint-stock company or corporation.

To make contributions, the company must hold a general meeting of shareholders at which the contribution in nature is proposed, also a commissioner of contributions is appointed and, if necessary, to approve the increase in authorized capital for the company being able to receive donations. After this meeting, the commissioner shall report contributions, which describe and assess the assets contributed financially. This value shall be greater or equal to the valuation by the Directorate General of Internal Taxes (Tax Administration) of the property contributed, being the highest value of both the one that is going to be taken into account in calculating the tax to be settled.

In a second meeting of shareholders, the aforementioned report of the commissioner of contributions must be approved and also the contribution in nature itself and ordered to be issued for actions in favor of whom contribute the assets.

To complete the process, the formalities required by law shall be fulfilled. So, you must register the documentation at the Chamber of Commerce and the corresponding production and the Directorate General of Internal Taxes (Tax Administration). Being

the contribution of real estate, it must also be done by legal proceedings before the Registry of Deeds of the relevant jurisdiction at the location of the property, in order for the Certificate of Title to be issued in the name of the beneficiary company.

Acquisition of real estate by legal or natural persons

When purchasing a property in the Dominican Republic, as in any other country in the world, one of the most common questions for the applicant is whether it will be more convenient to buy it through a title company or as a personal title of property.

First, it is clear that buying a property through a company or do it directly in a personal capacity doesn't present any difference in terms of the property transfer tax, contrary to what happens when the property is given to a company as a contribution to its capital, whether it is advantageous physically.

With this in mind, it should be noted that individuals who have homes and buildings for commercial activities, including the value of the land on which they are built, of more than five million, adjusted annually for inflation, are subject to the payment of Real Estate Property Tax (IPI-IVSS), whose rate is 1% per annum on the excess value of five million pesos. Therefore, if the value of the property is less than five million pesos it shall be exempt from this annual tax burden.

On the other hand, it would be advisable to buy a property as an individual if the value does not exceed U.S. \$ 300,000.00, due to the costs generated by the establishment and annual maintenance of company, regardless of whether such person is not allowed to depreciate the property annually or make authorized deductions for companies in the income tax, because the value will be adjusted for inflation annually by the Tax Administration.

On the contrary, if the property has a value greater than U.S. \$ 300,000.00 it is convenient acquire it through a commercial company for the following reasons:

- Less taxes are paid by of the tenancy because it benefits from expense deductions allowed by the tax code, and amortization of property, among others, in addition to the IPI-IVSS does not apply to legal persons, but the tax on assets, including

real estate according to their value in the accounting books of the company, to be included in the annual tax return of the company for the purposes of taxation.

- It materializes a separation of assets between the individual and the company that owns the property, so that in case of the assets of the individual is affected, the assets of the company remains intact and vice versa. However, it should be clarified that if the shares of the company are held by the individual, they are always part of their patrimony.
- It will not be affected by the tax implications of heirs in case of death of the owner, if it were a natural person.
- Transfer costs prior of the property are more efficient since the sale of the property can be done indirectly by selling the shares of the company, in which case the stock transfer tax is lower.