

COSTA RICA REAL ESTATE FREQUENTLY ASKED QUESTIONS (FAQs)

Disclaimer: The following questions are a collection of real questions formulated to **GLC** over the years which we believe represent some of the most common questions that individuals interested in **purchasing real estate in Costa Rica** normally have. Our answers **ARE NOT** in any way legal advice, they are just general information provided as a reference so that the general public might obtain a better understanding of the **process of buying property in Costa Rica**. Any unauthorized copying, alteration, distribution, transmission, performance, display or other use of this material is prohibited. As Costa Rican lawyers, we are not allowed by the Costa Rican Bar Association from providing legal advice without the prior existence of a **client/attorney relationship**, in order to obtain legal advice for your specific case we encourage you to seek specialized legal advice.

1. I am interested in purchasing a house in Costa Rica in a Condominium in Guanacaste. I need assistance with the formation of an LLC and with the purchase of land/house.

Answer: Costa Rica has the advantage of having a centralized National Registry where an extremely high percentage of all the properties are properly recorded. In order to **purchase any property in Costa Rica**, it's extremely important to hire the services of a specialized **real estate attorney** and/or law firm so that they can conduct the corresponding Title Search on the property. That Title Search will provide at least the following minimum information:

- Property Number
- Rightful Owner
- The existence of Liens/Encumbrances
- Restrictions
- Mortgages
- Pending Lawsuits or Disputes
- Declared Value of the Property
- Transactional History of the Property and Origins of the land

An experienced Real Estate attorney will be able to review all that information and properly assess the exact status of the land.

In GLC we provide our clients with a written legal opinion as a result of the Title Search which indicates if we advise our client to proceed and purchase the property and/or if certain adjustments are necessary prior to payment.

After the Title Search results positive we proceed to draft the **Property Transfer Public Deed** so that both parties can agree on the exact acquisition terms and conditions. After the execution of the public deed we file a testimony or official copy of the transfer at the National Registry for it to have public effects. Depending on the exact transaction the National Registry should record the changes and issue a new property title in approximately 1 week.

It is also very common for buyers to previously form a local corporation or company, normally due to its simplicity the recommended type of entity is called an SRL (Sociedad de Responsabilidad Limitada). The SRL has been compared to an LLC (Limited Liability Company) in Common Law. The SRL offers all the advantages of the more traditional SA (Sociedad Anónima) of the limited liability, asset protection from personal claims and/or lawsuits plus the fact that an SRL can be entirely managed by a single Manager or Director instead of appointing a full Board of Directors that normally for such transactions is not necessary. Foreigners are allowed to control 100% of the stock with no need for Costa Rican citizens to be part of the company except for the inclusion of a Resident Agent, who is normally the Notary Public that formed the company for the client. The Resident Agent's sole role is to receive legal notices on the absence of the Manager of the company, in that sense the **Resident Agent** does not have any power over the company.

The company formation process is very straightforward and with GLC it's entirely conducted via email and the registration is achieved in a record time of 24-72 hours after filing. The client is not required to visit the country for the initial formation and it's highly advised to form the entity prior to visiting the country so that it can be ready to open a bank account or to purchase the asset.

2. My husband and I hope to purchase a property in Costa Rica which we would like to finalize in the next month. The current owners have an attorney helping them where they live. They are selling it to us for US\$200,000.00. Can you please provide information regarding how this transaction would work? We will be starting a corporation to purchase it and already have a local who lives in the area who has agreed to be on our corporation. Also, is there a way to make payments instead of sending the money in full and if so, what do we need to do to proceed in that direction? Lastly, what would the cost be for your firm to handle the sale of the property?

Answer: All Real Estate Closings in Costa Rica have to be handled by a specialized **Real Estate Law attorney** who has to be a Notary Public.

Having said that, it's customary in such transactions that the Buyer's attorney will handle the transaction in order to protect the interests of his client as he or she will be the paying party. So normally the Buyer will have to pay the legal fees and the registry expenses of the transaction, at times the Seller will hire his attorney in order to supervise the transaction.

The first step in a real estate transaction is to obtain the property number or to have your attorney look for it in the National Registry by conducting a Search with the complete name or identification number of the Seller or the cadastral plan number.

Parallel to the Title Search on the property the client decides with the advice of the attorney if it is convenient to purchase the land under his name or if it is better to form a local company. It is important to clarify that there is no need to have a Costa Rican as part of your corporation that is a Myth. Foreigners are allowed to control 100% of the stock with no need for Costa Rican citizens to be part of the company except for the inclusion of a Resident Agent, who is normally the Notary Public that formed the company for the client. The Resident Agent's sole role is to receive legal notices on the absence of the Manager of the company, in that sense the Resident Agent does not have any power over the company.

The Buyer can assess the option of opening a Corporate Bank Account with his newly formed SRL or SA in Costa Rica so that he or she can wire the funds from his country of origin to the country so that payment for closing can occur. In transactions for significant amounts such procedure might result cumbersome as local banks are hesitant of receiving large sums in new accounts for nonresidents with no history at the bank, such situation is normally solved by using a local registered escrow agent. Contrary to countries like the United States in which attorneys can act as escrow agents, in Costa Rica formal registration is necessary to accept funds from third parties in a bank account.

Using an **Escrow Agent** and in coordination with your attorney you will be able to safely send the funds and their disbursement to the Seller will only take place simultaneously to the signature of the public deed prepared by your attorney confirming that the land has now been transferred under your control.

If the purchase requires financing, a mortgage can be registered in favor of the Seller and that normally implies that for such deals it is the Seller's attorney who directs the transaction and the Buyer's attorney plays a secondary role of supervision and vigilance.

Legal fees for Real Estate Transactions are established at 1.25% approximately of the total cost of the transaction and Registry Expenses account to 2.4% approximately of the total cost of the transaction, so it is safe to say that the total cost of the closing is around 3.65% of the total cost of the transaction.

3. I am looking into buying property in Costa Rica and having a house built on it. Please contact me.

Answer: Part of the Title Search that we conduct at GLC is directed towards the specific existing zoning regulations that apply to the property of our client's interest. It is important to understand what percentage of the land is buildable and what other restrictions could affect the plans of the Buyer prior to purchasing the land. Costa Rica has a centralized **National Registry** in which a very high percentage of the properties are registered and their title is public, our real estate attorneys visit the National Registry in order to study the history of the property so that we can adequately assess its status and provide a written legal opinion about it.

Besides conducting the search at the National Registry it's also mandatory to visit the corresponding Municipality where the property is located to analyze their Regulatory Plan which is supposed to specify the allowed use of each property located in that jurisdiction.

4. I placed a deposit on a villa which was to be completed Aug 2015, but it wasn't and I've been trying to get my deposit back ever since. The developer is telling me its nonrefundable. Is this something your firm can advise me on or help me get my money back?

Answer: GLC has more than 20 years of experience in **Real Estate Law in Costa Rica** including the correct handling of legal claims and disputes that arise in this field. It is important to understand the difference between a contract breach and fraud. The Costa Rican legal system separates Criminal Action from Civil Action, so it is mandatory to evaluate the exact legal nature of the specific case.

If the client can demonstrate that the developer and/or seller deliberately deceived him or her intending to obtain financial gain then the claim can be accepted at the corresponding Prosecutor's Office and then treated like a felony in relation to the Costa Rican Criminal Code which clearly determines which actions and/or omissions can be considered crimes with all their implications including jail time.

However, most **real estate deals in Costa Rica** that go wrong are not considered fraud, they are just a breach of contract in which one of the parties did not honor his or her obligations. If this is the case then the innocent party is entitled to file a civil lawsuit at the

corresponding court to claim damages. GLC highly recommends not signing any Option to Purchase Agreement or putting down a deposit before a specialized real estate attorney can carefully review the scenario of what would happen in a possible breach. It is important to determine the credibility of the developer and to protect your interests in purchasing real estate.

5. I am trying to find out the best practices for the following: We have located property in Costa Rica. Owner is willing to finance. He gave us the following two options to purchase:

- a) By means of a sale option (Promise of Sale) recorded in the Registry, until the interested party cancels the entire amount, then they would perform the corresponding transfer.*
- b) Transfer of real property with mortgage.*

How should I proceed?

Answer: A common practice in Costa Rica is to sign an Option to Buy or Promise of Sale to secure the agreement and normally it establishes a period of 3 months for properties that are built and a longer period of 12-18 months or more for properties being developed. It's possible to record that Option to Buy on the Property Title at the National Registry to inform the public that currently the property holds a legally valid option to purchase to prevent the Seller to sell the property to third parties.

The other and more secure possibility is to transfer the property to the Buyer and simultaneously record a mortgage in favor of the Seller. This is the safest method for the Buyer as now he or she is the rightful owner of the property and at the same time the Seller/Creditor is protected by the guarantee of the mortgage in the event of a default in payment from the Buyer.

6. I want to start an ATV tour business so do I need to get a company setup along with the banking infrastructure required?

Answer: Yes, article 8 of the Costa Rican Commerce Code establishes that for foreigners to be able to conduct business in our territory its necessary for them to be residents for at least 10 years, so the legal way to do it is by incorporating a local company as it is authorized to conduct business in Costa Rica and beyond.

7. Should I put the land purchase under the company or personal?

Answer: The reason why an extremely high percentage of foreign investors in Costa Rica form a local company to buy land is for asset protection purposes. As SRLs and SAs both have limited liability, an asset owned by one of such entities is protected from personal lawsuits and or claims that could arise as consequence of personal liability of the beneficiary. Normally a company would be incorporated exclusively as a holding company with no business active and would be registered as inactive, that way there is no risk coming from the normal circumstances of business enterprises.

If the client decides to use a company for multiple purposes he or she will be expanding the liability of one activity to all the assets owned by such company.

8. My wife and I are looking into purchasing 1/10 fractional ownership of a new villa that is part of a luxury retirement community in Costa Rica. We have the contract and are looking for a Costa Rican lawyer who can examine the contract and give us advice on any issues you might see. We want a lawyer to examine the contract before we purchase the real property. Can you help?

Answer: Costa Rica does not have a specific law for **Fractional Ownership**, that type of ownership is not common among Costa Ricans; however, it has become relatively popular among the expat community and specifically for second homes.

Having said that, it is possible to become a **fractional owner in Costa Rica** for that it's necessary to retain the services of a **specialized real estate attorney** to carefully review the fractional ownership contract and determine its adjustment to the **local Costa Rican real estate laws**.

One important aspect that we highly recommend in order to prevent losing money is to first **hire your real estate attorney** to review the legalities and only after he or she has conducted the necessary title search and due diligence sign any agreements or make any payments.

9. Do you do work in the Municipality of Santa Cruz, Guanacaste?

Answer: GLC's legal team covers ALL Costa Rican territory and especially areas important for foreign investment such as the provinces of Guanacaste and Puntarenas that are the preferred vacation investment destinations important to our clients.

10. Hi, we are looking to buy either a foreclosed property or a typical residential property in Costa Rica. We are not in Costa Rica and plan to make the purchase remotely. Which attorney or attorneys in your firm have professional experience with purchasing foreclosed real estate from a bank? We would require to grant your firm a power of attorney as the plan is to purchase the property under personal name.

Answer: GLC has a specialized **Real Estate Law Division** with more than 20 years of experience in assisting foreign investors in **purchasing land in Costa Rica**. Our services include Title Search, Closings, Appraisals, Development of Residential and Commercial Projects, Foreclosures, Mortgages and Trust Formations among others. To **purchase a property remotely** a Special Power of Attorney granted before a Notary Public will be required, and it must be apostilled to have legal effects in Costa Rica.

11. Hello, we are looking for a Real Estate Attorney. We purchased condos a few years ago and still do not have them? We need to talk to someone in regards to this.

Answer: It is highly recommended to **hire a specialized real estate attorney** before conducting any **real estate business in Costa Rica**. It is also highly recommended to select a lawyer different from the one imposed by your broker in order to prevent a possible conflict of interest in order to obtain an impartial professional opinion on the property. It is also highly recommended to purchase properties from prestigious developers with serious operations and to avoid foreign unexperienced developers in order to reduce the risk of not receiving what you were promised. The main job of your attorney should be to protect your investment and to make sure that there will be a real guarantee to support your investment if there is a breach. When a developer or seller breaches the agreement **Costa Rican law** offers the possibility of filing a lawsuit at the Civil Court to recover your damages, unless fraud can be specifically demonstrated for that case in which you would gain access to Criminal Court.