



Update on Purchasing Property in Panama

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When someone is planning to retire in a tropical paradise like Panama, owning a home, investing in land for reforestation, acquiring a beach-front property are only some of the reasons why it is important to learn the rules regarding real estate in the Republic of Panama.

No matter for what purpose the land is being purchased it is important to learn as much as possible regarding the property, including but not limited to limits and boundaries, its encumbrances, registered value, official blueprints, tax burdens and others.

There are different ways to obtain property in the Republic of Panama. In this article, we will consider the two (2) most common alternatives found by foreigners looking to invest in land in the Republic of Panama. First, we will review the purchase of a titled property, which is applicable to land duly recorded and titled in the Public Registry. Next, we will examine the purchase of a "Right of Possession" and the implications of the same. This last acquisition method is common to land located in historically protected areas, such as the tropical paradises of "Bocas del Toro" in the northernmost province of Bocas del Toro and "Portobelo" located in the Province of Colon, in the Atlantic side of the Isthmus.

Titled Properties

Panama is blessed with one of the most reliable Public Registry systems in the region. The Public Registry Office keeps record of all titled properties in all nine (9) provinces of the Republic of Panama. Information regarding titled properties is readily available through the Public Registry and thus it is fairly simple to undertake a preliminary due diligence on a lot or property.

Persons interested in acquiring titled property must follow these steps in order to successfully undertake and minimize the risk of their transaction.

1. **Perform a complete due diligence of the property:** This procedure includes a complete title search, review of cadastral maps, verification of tax good standing of the land, verification of good standing in utility bills (water and sewage, electricity, telephone, etc.), as well as verification of any other special characteristic, limitation of the property, liens or encumbrances over the property. A professional surveyor should perform a physical inspection with the approved blueprints to verify the map points, measurements and boundaries to avoid future land conflicts.
2. **Prepare a Promise to Purchase Agreement:** This agreement is to secure the property, through a down payment is 10% to 20%, of the total purchase price, generally in order to have enough time to properly execute the due diligence regarding the property, obtain financing and arrange details to complete the transaction. Parties agree on a purchase price, term of the agreement and penalties if one of the parties does not comply with the

contract. This agreement shall be duly recorded in the Public Registry in order to affect third parties and to ensure the property is not sold to another person.

3. **Prepare a Purchase and Sale Agreement:** When the term of the contract is due and the final balance is paid to the seller, it is time to prepare the final sale contract. The seller shall process the Property Transfer Tax and the Capital Gaining Tax, obtain a good standing property certificate as well as a good standing water and sewage certificate. The buyer will pay for notaries and registration expenses of this agreement. It is important to include an indemnification clause in the event of hidden defects of the property.
4. **Ownership of the real estate property:** once the public deed containing such an annotation is duly registered, title transfer has been completed. Generally, payment is not delivered to owner until the proper transfer of ownership is undertaken, while in others, the parties agree to appointing an escrow agent (lawyer or banker) who receives the funds under an escrow agreement which states that payment will be made immediately upon presentation of the deed of transfer of ownership of the property, duly recorded at the Public Registry Office.

These types of investments are the ones that benefit the most from the purchase of title insurance, which is very traditional and popular in the United States of America. Title insurance has been well received in Panama since it provides assurance of the investment on both the land and the improvements to be made on the same.

General Panamanian law allows for both nationals and foreigners to purchase titled property in Panama.

"Possession Rights" Properties

Not all properties in the Republic of Panama are of private domain and are subject to registry in the Public Registry Office. Many beach front properties, islands and real estate located within special tourism zones are owned and managed by the Government and only "possession rights" are granted for a determined period of time over these lands.

Possession rights are basically land use acknowledgments which are essentially recognized based on the occupation and use of a certain area of land, whereby the owner is the Government.

Persons interested in investing in projects located within these restricted areas should be very careful to ensure that the award of the "possession rights" or "limited ownership" be duly granted by the National Agrarian Reform or the Cadastral Office.

1. Title granted by the Agrarian Reform - In the Republic of Panama, since the enactment of the Agrarian Code in 1962, the only authorized authority enable to award "possession rights" or "limited ownership" over agricultural or cattle lands is the National Agrarian Reform of the Ministry of Agriculture. This Code restricts the national and local municipal government authorities to grant "possession rights" or "limited ownership".

In this sense, it is important to verify the following aspects before investing in this type of real estate:

1. That the award of the piece of land is issued by Agrarian Reform of the Ministry of Agriculture.

2. That the award contains a complete description, including area, limits, boundaries, encumbrances, and other important details of the land. A complete blueprint shall be drawn and approved.
3. That the activity to be undertaken by the purchaser is allowed, that is, that the construction or building to be made is acceptable to the national or local municipal government.
4. That the award be extensive for a period of time suitable for the purchaser.
5. That the award, does not consist in properties restricted by the Agrarian Code (Art. 27).

Due to the lack of uniformity regarding the granting entity for “possession rights” it is of utmost importance to review each purchase individually and make recommendations specifically for each land option.

The length of the transaction process for the possession rights transfer will vary and can take up to 2 years, depending on many factors, such as the date of recognition of the possession rights, inspection by the granting entity, among others.

Many land developers in these special areas have undertaken the task of procuring the right of possession title documents and transfer the ownership of the same by means of the sale under a Panamanian corporation and its assets. Special caution should be taken with these transactions as the corporation could have undertaken other businesses besides that related to the property and there is no official registry of the commercial undertakings of the same.

2. Title granted by the Cadastral Office of the Ministry of the Economy - Due to the fact that most land subject to “rights of possession” are located within islands and beachfront property, such as Bocas del Toro, Chiriqui, Portobelo, Veraguas, the government enacted Law No.2 of 2006, whereby administrative concessions and the purchase of islands and coastal territories for tourist investment purposes are regulated through the Ministry of the Economy and the Cadastral Office. This law gives security to foreigners and national investors, because it has extended concession periods from 40, 60 and 90 years, depending on the amount of the investment and also grants the option purchase an island and coastal territories with some restrictions. Also this law will honor previously awarded rights of possession, granted before the promulgation of this law.

Other Alternatives for Purchasing Property in Panama

Purchase of a property by means of the acquisition of a Panamanian corporation which already owns the land is an alternative that may be considered by investors interested in purchasing land, provided that a full due diligence is made on the corporation and the seller makes substantial representations assuming full responsibility for the corporation's previous activities.

If you decide to procure a corporation that owns a property as its only asset, according to Law No. 18 of June 2006, the buyer must retain 5% from the total share sale price and report this to the General Income Directorate as an advance of capital gains tax.

Other methods for the transfer of property are donations or legacies, which follow a completely different procedure, and most likely will not be an alternative for foreign investors looking to invest and/or retire in Panama.

Conclusions

It is important that before purchasing any kind of property in the Republic of Panama, any investor makes sure to follow these simple steps:

1. Perform a complete due diligence of the property, including a complete title search, review of cadastral surveys, verification of good standing tax of the land, verification of good standing on utility bills (water and sewage, electricity, telephone, etc.), as well as verification of any other special characteristic of the property.
2. Enter into a Promise to Purchase Agreement in order to have enough time to properly execute the due diligence regarding the property and corporation. For titled properties, this agreement shall be duly recorded in the Public Registry in order to affect third parties.
3. Enter into a Purchase and Sale Agreement. It is important to include an indemnification clause in the event of hidden defects of the property. Payment should not be made to owner/seller until the proper transfer of ownership or "possession right" is undertaken or when title property is duly transferred into buyers name, for this matter we recommend to use a letter of promise of payment through a local bank.
4. Consider title insurance over the property for the totality of the sum invested. This will ultimately guarantee your investment.
5. If you decide to acquire possession rights make sure to contact us before making any payments, so our lawyers can conduct a due diligence on the land, and recommend you the best course of action.

Now you can find answers to many other questions about buying real estate, immigration, forming a corporation, opening a bank account, retiring & living in Panama and more in our new eBook entitled "**The Ultimate Guide to Investing, Living & Retiring in Panama**" available in this website.

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For more information, please contact

BusinessPanama Group

US & Canada Toll Free 1-866-750-3498

Local Tel +507-223-6788

Email – info@businesspanama.com

www.BusinessPanama.com

