

# 9. Zoning Law

Real estate, its use, distribution, transferability and development are some of the determining factors which must be considered when making an investment in Colombia. This chapter addresses some of the topics concerning zoning law, the main regulations at the national, district and municipal level, and the legal outlook which regulates the field of acquisition of real estate property and construction in the country.

## 9.1 Real Estate Acquisition Process

The acquisition of real estate property in Colombia requires the execution of a sales contract between the seller and the purchaser which has to be converted into a public document by signing the corresponding public deed before a Colombian public notary. The public deed must be registered at the Real Property Register of the jurisdiction where the real estate is located, pursuant to the established legal provisions and with the payment of the applicable fees and taxes.

Prior to the execution of the sales contract certain precautions considered as essential must be taken into account to achieve a proper acquisition of real estate property in Colombia.

### Step 1

Directly obtain, or request from the seller, a recent "Real Property Record" [*certificado de tradicion y libertad*] of the property in question (it is recommended that date of issuance of the certificate should not be over 30 days) to verify the ownership titles of the property and to ensure that the property is free from encumbrances such as mortgages, attachments or leases, and to confirm that the real estate is legally owned by whoever is offering it for sale.

The Real Property Record is obtained from the Real Property Register of the place in which the real property is located. To request it, the number of the property record folio is needed, its address or the number of the identification document of the owner and the payment of the corresponding fee for the issuance of the certificate.

Likewise, it is advisable that the purchaser request a statement of the financial situation of the property with the municipal or district treasury offices of the place where the property is located to ensure that it is free and clear from any taxes due.

### Step 2

Upon verification of the information explained in the previous step, if there are no problems in the ownership of the property, that is, there are no gaps or inconsistencies in the chain of ownership or in tax matters, the sales contract may be completed through the execution of the corresponding public deed, which must be signed before a public notary by the parties, directly or through an attorney. In the latter case, the power of attorney must be notarized, and when the power of attorney is issued from abroad, the notary's signature must be legalized by diplomatic means (chain of authentications) or apostilled, provided that the country in which the power of attorney is executed is a signatory to the Hague Convention.

### Step 3

The sales contract must contain the minimum elements for such contract to have legal existence and validity, mainly the identification of the parties, the identification and individualization of the real estate property, the price, the terms of payment and the terms for delivery.

The following documents, among others, shall be attached to the public deed:

- a. Power of attorney to execute the public deed, if such is the case.
- b. Proof of payment of appreciation fees (this is a document evidencing the payment of the appreciation tax levied by some municipalities); in Bogotá D.C. it is issued by the *Instituto de Desarrollo Urbano* (Institute of Urban Development) (IDU).
- c. Proof of payment of property taxes or photocopy of the receipt or the tax return and payment of the tax year in which the public deed is executed.
- d. If the property is subject to condominium rules and regulations (as in the case of a home in a gated community or an apartment in a building) it is necessary to present proof of payment of fees issued by the condominium

management office; optionally, a duplicate of the public deed may be attached containing the condominium rules and regulations to which the property is subject to.

## Step 4

Notary's fees equal to 0.27 percent of the amount of the transaction must be paid at the notary's office where the public deed will be signed (although there is no fixed rule in this respect, in Bogotá, it is customary for the parties to pay these fees equally between them) as well as 1% of the amount of the transaction as withholding tax if the seller is an individual and not a corporation (although there is no fixed rule in this respect, in Bogotá, it is customary for the payment of the withholding tax to be borne by the seller).

A copy of the sales public deed must be registered at the Office of Registry of Public Instruments, where the registration fee and public charity tax [*"beneficencia"*] must be paid (equal to 0.5% and 1% of the value of the transaction respectively), which are generally paid by the purchaser. The process before the respective Registry Office takes between three business days and one month depending on the city where the transaction is carried out.

## Step 5

Upon registration of a copy of the sales public deed in the Registry Office and once the real property has been delivered to the purchaser, such purchaser becomes the new owner of the property and as such may exercise his corresponding rights.

# 9.2 Zoning Authorities

## 9.2.1 Ministry of the Environment, Housing and Territorial Development

The Ministry of the Environment, Housing and Territorial Development through the Office for Territorial Development is in charge of the territorial development and the framework for urban development regulations. The Ministry coordinates and carries out the follow up to the zoning planning officers or zoning curators aimed at the guidance and support for the adequate implementation of the regulations within the local public administrations.

## 9.2.2 Mayor's Offices

The district and municipal mayors through the planning offices or the corresponding entity shall be responsible for the coordination and the timely drafting of the project for the Territorial Ordering Plan and submit it for consideration to the Government Council.

Additionally, the Mayor's Offices perform control on the regulatory compliance on the part of the zoning curators and hear appeals in any administrative proceedings. The mayor's offices also perform ex post facto controls on the execution of works authorized by the competent authorities or those executed without the corresponding permits.

## 9.2.3 Zoning Curators

The zoning curators are private entities that carry out public functions and are responsible for studying, processing and issuing zoning permits. The zoning curators work in coordination with the Ministry of the Environment, Housing and Territorial Development and with the municipal and district mayor's offices and their planning offices, which in turn perform supervision and control over these entities.

## 9.2.4 Offices of Registry of Public Instruments

They are responsible for maintaining the real property records in a specific district or municipality through the different recordings or cancellations made in the folios of the real estate property records. Among the recordings or cancellations made are those acts, contracts and judicial orders which either modify or limit the ownership or any other right concerning real property.

## 9.3 Building Regulations

### 9.3.1 Territorial Zoning Plan – *Plan de Ordenamiento Territorial – POT* –

The Territorial Zoning Plans (“POT” for the Spanish initials) are acts of the municipal and district public administrations which contain the objectives, guidelines, policies, strategies, goals, programs, actions and regulations adopted to guide and manage the development and physical planning of the territory and the land use of the municipality or district to which they correspond.

Each Plan, Basic Plan or Territorial Zoning Scheme (the name of the plan varies with the size of the population of the municipality or district) has a schedule which defines the actions set forth in the zoning plan, which will be carried out during the period of the corresponding municipal or district administration, as defined in the corresponding development plan of the municipality or district, indicating the programming of the activities, the responsible entities and the funds required.

Additionally, partial plans are instruments through which the provisions of the territorial zoning plans are developed and complemented, but only for specific areas of urban land and for urban expansion, pursuant to the authorizations generated from the general zoning regulations set forth in the POT.

### 9.3.2 Land Use: Zonal Planning Units – *Unidades de Planeamiento Zonal – UPZ* – and Rural Planning Units – *Unidades de Planeamiento Rural – UPR* –

The Territorial Zoning Plans establish units of territorial division at the municipal and district level with the purpose of defining and specifying precisely the planning and use of urban land.

Such divisions have different names which vary according to the zoning plan of each municipality or district. The regulations established in the UPZ have a lower regulatory hierarchy than the Territorial Zoning Plans.

The UPZs (name adopted for Bogotá) seek to respond to the dynamics of the municipality or district and its insertion in the regional context, involving the social actors in the definition of different aspects of zoning and control.

At the rural level, the basic planning instrument is the Rural Planning Unit (name adopted for Bogotá). The UPRs approach the problems associated with natural resources, the handling of activities around urban areas and the protection of the ecology of the specific rural area.

## 9.4 Zoning permits

These are prerequisite authorizations, issued by the zoning planning officer or the competent municipal or district authority to carry out development works, construction, expansion, upgrading, structural reinforcing, modification, demolition of buildings; land segregation, subdivision of plots, and for the intervention and occupations of public space in compliance with the zoning and construction regulations adopted in the territorial zoning plan, in the instruments that develop or supplement it and in the laws and other provisions enacted by the National Government.

### 9.4.1 Procedure for Obtaining a Zoning Permit

The study, processing and granting of development, parceling out, subdivision and construction permits corresponds to the zoning planning offices in those municipalities and districts having such offices. In all other municipalities and districts and in the department Archipelago of San Andrés, Providencia and Santa Catalina this corresponds to the planning offices or the entities substituting them.

The granting of intervention and occupation of the public space permits is the exclusive jurisdiction of the municipal or district planning offices or the entities substituting them.

The application for the zoning permit shall include the following documents, among others:

- a. Copy of the certificate of conveyance and clearance of the property or properties that are the object of the application.
- b. The single national form for permit application duly filled out.
- c. If the applicant is a legal entity, the good standing and authority to represent it must be evidenced through the pertinent legal document.
- d. Duly granted Power of Attorney when acting through an attorney.
- e. Copy of the proof of payment or the property tax return with payment for the previous five (5) years for the property or properties that are the subject of the application.

It must be taken into account that each type of permit requires additional documentation such as architectural drawings and technical studies which are listed in the law.

Once the application permit is presented, it will be filed and numbered consecutively in chronological order of reception, stating for the record the documentation attached to the application. The permit process includes among others, summoning the neighbors surrounding the property that is the object of the application to become parties to the process and defend their rights, as well as the technical and legal review of the application which shall be carried out by the zoning planning officer in charge of the process.

The authority processing the application shall have a maximum term of 45 business days to decide on the permit application, from the date of the legal and proper filing of the application. Upon expiration of such term without any decision, it will be understood that the permit has been granted, provided the application filed is not contrary to the provisions of the territorial zoning plan and the regulations that develop it, but in any case with supporting documentation issued by the corresponding administrative authorities and the pertinent notarial procedures.

If, on the contrary, the entity studying the permit application complies with the legal term, the permit will be issued through an administrative act. However, depending on the magnitude of the project, the term for study of the application may be extended up to one half of the time initially granted, that is, up to twenty two (22) more business days.

## 9.4.2 Validity

The validity of zoning permits is limited depending on the type of permit. Therefore, for development, parceling out and construction permits the maximum duration is 24 months and may be extended for 12 months more, but if the development and construction permits were requested simultaneously, their validity will be 36 months and may be extended for 12 months more.