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EXPORTS TOURISM INVESTMENT COUNTRY BRAND



**Gobierno de
Colombia**

LEGAL GUIDE TO DO BUSINESS IN

COLOMBIA 

2023



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CHAPTER 11

REAL ESTATE

COLOMBIA 

REAL ESTATE

11.1. Overview of acquisition of real estate properties in Colombia

Colombia is one of the countries in the region with the highest investment and execution of real estate projects. This is due to the large rural areas of the country, the growth in the development and acquisition of urban housing and the technological advances in the development of intermediary platforms for the purchase and sale of real estate. Below, we highlight three (3) main matters that should be considered regarding the acquisition of real estate properties in Colombia:

- a. According to the National Constitution, Colombia is a social State governed by the rule of law in which private property is protected and guaranteed.
- b. The applicable regulations to the acquisition of real estate properties are the same for Colombians as for foreigners. There is only one rare exception according to which foreigners cannot acquire real estate properties that are located in border areas and have a vacant origin, that is, that have been transferred by the State to individuals because they do not belong to anyone.
- c. The real estate acquisition process in Colombia is done through a registry system. Therefore, to transfer real estate properties, as well as executing the agreement, this document must be registered before a Public Registry Office, which reviews that the agreement complies with all legal requirements. Note that the ownership of the property is not transferred until the registration process is completed.

11.2. Due Diligence

Before acquiring real estate properties in Colombia, it is advisable to make a legal due diligence, to confirm that: (i) its acquisition does not entail any risk, and (ii) the properties have the conditions

needed. This analysis is divided in two: title search report and land use report.

- **Title Search:** A review of the title deed, of the documents registered in the ownership certificate of the property in the last 10 or 20 years (depending on the scope), and of other documents (that will depend on the property and its intended use) is conducted. As a result of this analysis the following is established: the owner of the property; if the title chain is uninterrupted; and whether or not there are current liens, encumbrances or any other limitation to the use or ownership rights of the property. In other words, if there is any risk associated to the acquisition of the property. Additionally, compliance of tax obligations, as property tax, betterment levy, or increase value of the property tax (plusvalía), is also reviewed.
- **Zoning Report:** It is a review in which the zoning conditions of a property are analyzed. It determines if the needed land use is permitted, and the construction conditions applicable to the property. For this, the following documents are reviewed: (i) Zoning Instrument of the municipality where the property is located; (ii) other zoning regulations instruments such as macro projects (macro-proyectos) and specific zoning plans (planes parciales), if applicable; (iii) the land use opinions issued by the competent authorities; and (iv) the building permits that were granted for the property. With this analysis it is possible

to determine if the location of the property is suitable for the project, and to establish the applicable architectural and structural regulation (which includes maximum indexes, height, insulation, among others).

11.3. Main agreements for the acquisition of real estate properties

The main agreements used in Colombia for the acquisition of real estate properties are: (i) the promise to purchase agreement, the private and preparatory document for the transfer of a property; (ii) the purchase and sale agreement, the public document executed by means of a public deed that must be registered; and (iii) the trust agreement, a recent alternative for the transfer, development, and operation of properties.

There are other agreements used in Colombia, which although they are less used, pursue different purposes, such as easements, bailments, usufructs, or civil trusts.

- a. **Promise of purchase agreement:** It is an agreement by means of which the framework and the necessary conditions for the final transfer are established. Therefore, the rules for the negotiation, the conditions precedent, the place and date where the final agreement will be executed, the guarantees that will be offered between the parties, the commissions that may exist, time and form of payment of the possible final price, among others, are agreed. This agreement is a private document that is not subject to any formality. It is usual

to include in this agreement an advance payment of the price, called “arras” (which is legal mechanism that acts as a sanction for retraction or confirmation of the final purchase and sale agreement). Usually, the delivery of the property is not made with the execution of the promise of purchase agreement.

b. Purchase and Sale Agreement:

It is the agreement by means of which the seller transfers the ownership of the property, and the buyer must pay a price. This agreement must be executed by means of a public deed before a Public Notary and the document must be subsequently registered with the corresponding Public Registry Office; otherwise, the agreement shall not be enforceable against third parties. The Public Notary takes approximately five (5) days to formalize the transfer public deed. Furthermore, Colombian law establishes that the registry process will take a maximum of five (5) business days, except in cases where there are more than ten (10) real estate units, for which an additional term of five (5) more business days is permitted. However, in practice these terms are usually longer.

c. Trust Agreement: The trust agreement has been the most used mechanism in recent decades for the development and acquisition of real estate properties in Colombia. This is since it allows efficiencies in costs and can limit the liability of the contractual parties. In summary, this agreement

constitutes a trust that is handled by a financial entity that is supervised by the Colombian Superintendency of Finance.

Some advantages of the trust agreement are: (i) trusts are not liable for pledges nor for claims of the parties, (ii) in some cases the rights of the trust can be transferred, thus achieving an indirect transfer of properties, without paying notary and registration taxes and through a private document. On the other hand, it should be noted that the trustees (the financial entities) charge for their services.

Furthermore, once the purpose for which the trust was created has been fulfilled, the trust must be closed, extinguished and liquidated. In this case: (i) profits shall be paid to the investors of the project; (ii) the properties shall be returned to the settlors in case the purpose of the trust has been developed and/or returned to those who has acquired it; and (iii) the outstanding debts shall be paid with the trust assets.

The following are the main types of trusts used in the sale and development of properties in Colombia:

i. Administration trust (commonly known as “fiducia de parqueo”): Under this scheme the property is transferred to the trust so that it holds the ownership following the instructions of the settlor.

- ii. **Security trust:** Under this scheme, a property is transferred to the trust for as security for the obligations in favor of third parties, generally referred to as secured creditors. This type of trust can be structured in two ways: (i) security, where the transferred property will be sold to pay debts in case of a default, or (ii) security and source of payments, where the trust receives the cashflows from the operation of the property, and these are used to directly pay the owed debt.
- iii. **Treasury administration trust of real estate projects:** Under this scheme the builder transfers all funds of a real estate project to a trust. Therefore, the trust is used as security for the payments needed for the development of the project. These funds come from by bank loans, sales of the real estate project or own resources.
- iv. **Real estate trust:** Under this scheme, the trust is used for the administration of the resources and assets needed for the development of a real estate project.

11.4. Main agreements for the development and operation of real estate projects

During the development and operation of a real estate project, it is necessary to execute different types of agreements, of which we highlight the construction and the lease agreements.

Construction Agreement: The construction agreement is the agreement in which the conditions to execute the development of the project are agreed. By means of this agreement, the parties agree on the price, means, and stages of the construction. Depending on the form of payment, this contract has the following types:

- i. **Fixed Global Price (precio global fijo):** The contractor receives a fixed sum price as consideration for the services performed.
- ii. **Unit price (precio unitario):** The payment of the service is made according to each work executed and corresponds to the result of multiplying the number of activities executed by the price of each of them.
- iii. **Delegated administration (administración delegada):** The contractor is responsible for the execution of the agreed construction, but at the expense and risk of the developer.

On the other hand, Colombian law establishes the following securities for constructions that are built as a result of a construction agreement: (i) 10 years for any claims to the contractor related to structural failures that may occur and (ii) 1 year for any claim related to the finishes of the construction. This responsibility extends to the developer of the project or the owner of the property, at the time of selling the real estate units to third parties.

Lease Agreement: By means of this agreement the tenancy of the real estate is transferred to a third party for its use. It can be made verbally or in writing,

although normally is made in writing. The only thing required for it to be valid is an understanding on the lease fee and the leased property. In these agreements it is important to regulate: the form of payment, the date and conditions of delivery, the improvements and repairs regulation, the payment of the administration fee (if applicable), the payment of public services, the term, the obligations of the parties and the way in which any dispute will be resolved.

On the other hand, depending on the type of lease there are certain special provisions that must be considered:

- i. **Urban Housing Lease Agreement:** For the lease of urban housing, the price of the fee may not exceed 1% of the commercial value of the property. Furthermore, the lease fee cannot be increased to a value greater than the consumer price index (CPI), an economic index that is calculated by measuring the value of certain products annually.
- ii. **Commercial Establishment Lease Agreement:** The lessee of a commercial establishment has a right of an automatic renewal. According to Colombian law, the lessee who has occupied a property for more than 2 years will have the right to have the lease agreement renewed, except if: (i) the lessee has breached the agreement; (ii) the lessor needs the property for his own room or for an establishment of his own with a different destination or (iii) when the property must be rebuilt, repaired or demolished due

to its state in ruins or for the construction of a new work. For these exceptions, the lessor must give notice to the lessee within a minimum period of 6 months in advance.

The adjustment of the lease fee is not regulated by law; therefore, the parties will be responsible for agreeing on the dates and percentages in which the readjustment will take place. Generally, the increase in the fee is based on the percentage of the Consumer Price Index (CPI) of the year prior to the execution of the lease.

11.5. Urban licenses

For the construction of a real estate project, a prior authorization is required from the competent authority called urban license (licencia urbanística) which, depending on the type in which it is granted, authorizes the use and development of the property. Urban licenses have the following modalities:

- **Urbanization (urbanización):** It is the prior authorization to execute works on properties located on urban and urban expansion areas. By means of this license, public and private spaces, access roads, connection to public services, among others, are created. Furthermore, this license permits the adaptation, and subdivision of the property for future developments, as well, it specifies its land use regulation, buildable area, volumetry and other technical matters for the future licenses granted for the properties.

- **Parcelling (parcelación):** It authorizes the creation of public and private spaces of properties located on rural and suburban areas. By means of this license, the same purpose as the urbanization license (licencia de urbanización) is sought, that is, to condition the property for future developments.
- **Construction (construcción):** By means of this license, the previously approved technical matters are specified and implemented. The construction license can be granted in the following types: of extension, adaptation, modification, restoration, structural reinforcement, demolition, reconstruction, enclosure, and new construction.
- **Subdivision (sudvisión):** It is the prior authorization to divide one or more properties.
- **Intervention of public space (intervención de espacio público):** It is the prior authorization to occupy or intervene public use properties following zoning regulations.

11.6. Special Matters

Due to Colombia's large rural areas and its history, the country has special regulations that seek to control illicit activities related to the acquisition of real estate properties, such as the accumulation of vacant land (baldíos), forced displacement (desplazamiento forzado) and the acquisition of properties financed by terrorism.

a. Vacant land (baldíos): Vacant land are rural properties that have no owner; therefore, they are owned by the Colombian Government. These properties are "inalienable" (that cannot be transferred by individuals) and imprescriptible (that cannot be acquired through squatters' rights). Therefore, it is only the Colombian Government the one that can transfer these properties to certain individuals if they meet the legal requirements. Generally, vacant lands are transferred to low-income rural individuals.

According to Colombian law, a property can be considered vacant land if its titles do not meet certain legal requirements. Additionally, vacant lands are subject to certain limitations, such as the maximum area that a person or entity can own, as well as limitations for their transfer of ownership.

Considering the above, for the acquisition of rural properties we suggest conducting a title search to assess if the properties are or have a vacant land origin, to avoid any sanction, limitation or possible restriction by the Colombian Government.

b. Land restitution: This regulation aims to return the tenure and ownership of real estate properties to the victims of the internal armed conflict who have been dispossessed of their land by violence in Colombia. By means of this regulation, the victims will be able to claim ownership of the properties through a process that has an administrative and, later, a judicial stage where the victim asks the judge for the restitution of the property.

To disprove this claim, a standard of "good faith without negligence" must be proven. This means to have acted under the legitimate belief that the property had a lawful origin and having verified the legal origin of the property through a due diligence process.

Therefore, we suggest conducting a legal study on the properties that are located in areas affected by Colombia's armed conflict, to verify that they are not in a land restitution process, and thus mitigate the risk of losing their ownership.

c. Extinction of Ownership (extinción de dominio): is a judicial process through which the Government can claim the ownership of properties that were illicitly acquired or have been used to develop illicit activities, such as drug trafficking or terrorism.

As a result of this process, the Government can seize or extinguished the right of ownership over the property, both to the persons who have committed the illegal activities and to its subsequent owners. As in the process of land restitution, the owner must prove the standard of "good faith without negligence" to prevent the properties from being claimed by the Government. It is an action of a constitutional, in rem (real) nature – as it pursues the asset regardless of whoever has them –, and does not grants any consideration or compensation for those affected. Additionally, this action is imprescriptible (that has no prescription).

Therefore, we strongly recommend performing a due diligence prior to the acquisition of a property to determine whether the seller of the property or its previous owners are not, or have not been, involved in illicit activities.

d. Taxes and contributions

Below are (i) the expenses and taxes that must be paid in Colombia for the acquisition of a real estate properties and (ii) the contributions and taxes that

must be paid for owning a real estate properties in the country.

Expenses and taxes related to the transfer of a property:

In Colombia, the costs related to the transfer of a property are around 3% of the value for which the property is transferred. The exact amount will depend on the price of the property and its location.

- i. **Notary fees:** Notarial fees are those that must be paid to a Notary Public because of the transfer of ownership of the property. For the acquisition of a property, a fee of 0.3% of the transfer price must be paid. According to commercial practice, notary fees are usually paid in equal parts between the parties involved.
- ii. **Registration fees:** The registration expenses consist of those incurred for the registration of the transfer of the property before the Public Registry Office. The amount to be paid is calculated depending on the range in which the price of the property is, for 2023, if the property costs more than COP \$159.189.625 this value will be between 0.755% and 1,04% of the price. If the property costs less than the mentioned price, it will be charged a fixed fee of COP \$44.100. In accordance with commercial practice, registration fees are usually paid in full by the buyer.

- iii. **Registration tax:** It is a tax that must be paid because of the registration of the transfer of the property in the Public Registry Office. The value of this tax is between 0.5% and 1% of the value of the property. The exact value is determined by the departmental authorities where the property is located. According to commercial practice, this tax is usually paid in full by the buyer.
- iv. **Other regional taxes:** Depending on where the property is located, there may be other regional taxes that must be paid for its transfer. These are established by the regional authorities, who annually indicate the amount for each one of them. Examples of the above are the “impuesto de beneficencia” (charity tax) charged in the department of Cundinamarca and the pro-hospital stamp paid in the department of Atlántico. This tax is usually paid by the buyer.
- v. **“Impuesto de timbre” (stamp duty):** This tax is generated because of the transfer of real estate property. This tax must be paid when the price of the property is higher than COP \$ 848,240,000 (USD \$ 199,257). Depending on the price, an amount of 1.5% and 3% of the value of the property must be paid. This tax is usually paid by the buyer, but it can be agreed to be paid in another way.
- vi. **Surplus value tax (plusvalía):** It is a tax created because of the activities carried out by the authorities that are intended to increase the use of the land, and that allow that the land use of the property to be more profitable. The surplus value tax becomes enforceable at the time urban licenses are issued or at the time additional construction rights are granted through other documents. This tax becomes enforceable when transferring of ownership of properties. Although the surplus value tax should be registered on the ownership certificate of the property, regularly, the registry is not always made.
- vii. **Betterment levy (valorización):** The betterment levy is a tax that should be paid as a result of the benefit that the execution of public works by the government generates to a property. This is recorded in the Ownership Certificate of the property and must be paid before making any transfer of ownership. The entity that executes the work will oversee the collection of the tax, and such collection may be carried out in different payments.
- viii. **Urban delineation tax (impuesto de delineación urbana):** It is regional tax that is related to the cost of construction per square meter and is caused by the construction of new buildings or the renovation of existing ones. This payment is required at the time of issuing construction licenses in the following types:

Expenses and taxes related to the ownership of a property:

new construction, extension, modification, and adaptation.

- ix. **Property tax (predial):** It is a tax that is generated by the existence of the property. This is collected by the

municipalities and districts, who are in charge of its administration, collection, and control. It is determined based on the cadastral appraisal of the property and is charged annually.

11.7. Regulatory Framework

NORM	SUBJECT
Civil Code	Contracts.
Code of Commerce	Contracts.
Law 820 of 2003	Urban Leasing Law.
Decree 2811 of 1974	National Code for Renewable Natural Resources and Environmental Protection.
Law 44 of 1990	Real Estate Tax.
Law 9 of 1989 and 1469 of 2011	Municipal development plans, acquisition and expropriation.
Law 160 of 1994	Rural land regime.
Law 388 of 1997	Amendment of Law 9 of 1989.
Law 507 of 1999	Modifications of Law 388 of 1997.
Law 810 of 2003	Planning sanctions.
Decree 564 of 2006 (partially removed)	Planning permits.
Decree 2181 of 2006	Partial plans.

NORM	SUBJECT
Decree 0097 of 2006	Planning permissions on rural land.
Decree 4300 of 2007	Partial plans.
Decree 3600 of 2007	Rural land zoning regulation.
Decree 4065 of 2008	Urbanization and development of lands and areas on urban land and expansion and applicable legislation on calculation of participation in surplus value.
Decree 4066 of 2008	Modifications to Decree 3600 of 2007.
Decree 3641 of 2009	Modification to Decree 3600 of 2007.
Decree 1469 of 2010	Planning permissions.
Law 1448 of 2011	Land restitution for the victims of the armed conflict.
Law 1454 of 2011	Organic rules for area zoning.
Law 1469 of 2011	Promotion of developable land and access to housing.
Decree Law 0019 of 2012	Paperwork reduction.
Law 1753 of 2015	National Development Plan 2015-2018.

NORM	SUBJECT
Decree Law 2365 of 2015	Winding up of the Colombian Institute of rural development (INCODER).
Decree Law 2364 of 2015	Creation of the Rural Development Agency (ADR).
Decree Law 902 of 2017	Issue to facilitate the implementation of the Integral Rural Reform contemplated in the Final Agreement signed with FARC, specifically the procedure for access and formalization and the Land Fund.
Resolution 740 of 2017 Agencia Nacional de Tierras (“ANT”)	
Resolution 041 of 1996 (Incora – today ANT)	UAF extensions.
Decree 2051 of 2016	Regulates the Unique Registry of Abandoned Lands and Territories -RUPTA-.
Decree 1766 of 2016	Modifies the decree of the rural development sector, Decree 1071 of 2015.
Decree 2537 of 2015	By means of which Title 5 is added to Part 10 of Book 2 of Decree 1071 of 2015, Sole Regulatory Decree of the Agricultural, Fisheries and Rural Development Administrative Sector, related to the temporary assumption of the administration of parafiscal contributions.
Decree 1071 of 2015	Decree of the rural development sector.
Decree 1273 of 2016	Regulates the Areas of Interest for Rural, Economic and Social Development (Zidres for its acronym in Spanish).
Law 1776 of 2016	Create the Areas of Interest for Rural, Economic and Social Development (Zidres for its acronym in Spanish).
Decree 2363 of 2015	Creates the National Land Agency, (ANT for its acronym in Spanish).

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