



ISSUES IN OWNERSHIP OF REAL ESTATE

COLOMBIA Brigard & Urrutia

CONTACT INFORMATION:

Francisco Uribe Noguera and Santiago González Rojas

Brigard & Urrutia

Carrera 7 # 71-21 Torre B – Piso 4

Bogotá, Colombia

Tel: 57.1.346.20.11 / Fax: 57.1.540.54.33

Email: furibe@bu.com.co

Web Site: www.bu.com.co

1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Yes, perpetual fee simple ownership of real property is permitted. In fact, Colombian Constitution sets forth in its article 58 a constitutional right of private property by means of which the ownership right is guaranteed and protected as well as the other rights acquired in compliance with civil regulations. Therefore, according to Colombian Constitution the ownership right legally acquired cannot be affected by posterior laws.

Nevertheless, Colombian Constitution has recognized that private property has a social function which implies several obligations by owners. In that sense, the law has developed certain regulations pertaining to the protection of public interest.

Consequently, Colombian law sets forth that the owner of property has the right to use it without limitation. Nevertheless, property rights are subject to the law and to the public interest (Civil Code, Art. 669).

Finally, in Colombia the ownership right over a real property may be owned by one or more individuals or legal entities or the combination of them.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Colombian Civil Code establishes that, in order to be valid and legally binding, the purchase of a real estate will have to be granted by means of a public deed signed by the seller and the purchaser before a Notary Public.

In addition, Colombian Civil Code establishes as a requirement for the transfer of the ownership of a real estate, the registration of the relevant title (public deed) before the Office of Public Registry of the place where the real estate is located at (*tradición*).

In conclusion, the instrument used to convey fee simple ownership has to include a public deed granted before a Notary Public (title) and the registration of the title in the public registry.

3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

In Colombia there is a public registry conducted by the Office of Public Registry (*Oficina de Registro de Instrumentos Públicos*), a national public entity member of the Superintendence of Notary and Registry (*Superintendencia de Notariado y Registro*) whose function is to keep a record of all the real properties in Colombia. There is an Office of Public Registry in the major municipalities of the country and the real properties are identified with an I.D. number.

Every act, agreement, judicial or arbitral decision, that imply constitution, declaration, clarification, adjudication, modification, limitation, encumbrances, precautionary measures, transference or extinction of the ownership right or any other right over a real estate is subject to registration in the Office of Public Registry.

As a result of the abovementioned, the Office of Public Registry issues a certificate of each property that certifies the ownership, encumbrances and liens that affect the property. The certificate is public and the registry may be consulted by any individual.

Purchaser generally performs the search.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

Taking into account that there is a public registry in Colombia that certifies the ownership, encumbrances and liens that may affect the properties, is not customary to obtain title insurance.

In spite of, is common practice for purchasers to make contact with a lawyer in order to perform a title search and issue a title opinion before the purchase of the property.

The cost of a title opinion depends on the complexity and number of documents that it is necessary to review as part of the title search. However, a title opinion will cost no more than US\$1,000.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The most common forms of investment vehicles are Corporations, Limited Liability Partnerships and Trusts.

Regarding taxation of this vehicle, it is worth mentioning that there are no substantial differences between them.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

Yes, Colombia's legislation (Resolution 400 of 1995 and Decree 2175 of 2007) actually permits the creation of real estate investment trusts, and real estate securitizations. In fact Brigard & Urrutia Abogados S.A. was the law firm that legally structured the first and only real estate investment trust in Colombia in 2006. This real estate investment trust has issued two (2) great emissions and has the faculty to continue executing real estate activities.

The real estate investment trust has just recently been adopted by investors in Colombia and the market has very well received it. The Superintendence of Financial Services (*Superintendencia Financiera*) is in charge of the regulation and surveillance of the trust structure and several legal requirements has to be accomplished in order to obtain the permission to create a real estate investment trust.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

In order to acquire a real property in Colombia, it is compulsory to pay the following:

1. Notary Fee:

- 0.27 % of the value of the real estate (notary fee)
- Copies of the public deed.
- VAT of 16% over the notary fee plus copies.

2. Registry Tax:

- 1.0 % of the value of the real estate (*Beneficencia*).

3. Registry Fee:

- 0.5 % of the value of the real estate.

4. Withholding Tax:

- In the event where the seller is an individual, should pay 1% of the value of the real estate.
- In the event where the seller is a legal entity, the purchaser will have to withhold 1% of the value of the real estate at the moment of the payment.

5. Income Tax:

- If there is a profit for the seller resulting from a difference between the value of acquisition of the property and the value of the selling, the seller will have to pay the income tax taking in into account some adjustments that may apply if the seller is an individual or a legal entity.

In Colombia local authorities of the Departments and Municipalities are vested to determine the rates of local taxes according to the national law. Thus, the mentioned rates may vary according to the location of the real estate.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

In the event of a transfer of an interest (shares or participations) in an entity which owns real estate, income tax will have to be paid.

The capital gain obtained on the sale of shares in a Colombian company is subject to income tax in Colombia at a rate of 34% (33% as of year 2008), except if the seller is a Colombian individual in which case he or she will be subject to taxes based on a progressive income tax table.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

With respect to the local regulation of real estate and how significant is the variation of real estate law among political subdivisions in Colombia, it is worth mentioning that article 313-7 of Colombian Constitution, and Law 388 of 1997 provide that local governments have the power to issue urban regulations in order to control and determine the use of the land and construction activities among others. Local governments have autonomy in the making of zoning regulations. Thus, some aspects related to real estate may change according to the municipality where the property is located. In that regard, local regulation of real estate is significant. Even though municipalities have autonomy in real estate property regulations, the variation of real estate law among political subdivisions of this jurisdiction is not significant.

Regarding taxation of real estate, local governments have the possibility to define and determine the rates of the taxes to real properties by virtue of article 317 of Colombian Constitution. Thus, property tax may vary according to the location of the real property at

rates that range from 0.1% to 1.6% of the real property value. In that regard, local taxation of real estate is significant.

Notwithstanding the above, it is important to point out that all local regulations have to comply with general rules and certain parameters established by national laws in order to guarantee coordination between local governments and national government.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No, it is not necessary to disclose the ultimate beneficial owner. For purposes of the public registry, the Office of Public Registry is obliged to register the purchaser that appears in the public deed of transfer.

Consequently, it is possible to register a corporation as the owner of the real property and its beneficiaries will remain unknown to third parties.