



GOMEZ TOMICZEK

HOW TO BUY A PROPERTY IN PANAMA



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The lack of knowledge of the legal aspects when investing in real estate overseas and not knowing the local practices and customs when buying a property abroad is always the fear that worries us when we look for foreign investment options. That is why reading, learning and studying before buying is definitely an obligation, if we do not want to lose our money, no matter how safe the transaction may seem. The purpose of this handbook is to help you understand a little of the procedures that you should take into account when you are going to buy a home in Panama.

The first thing to do is to differentiate the type of property you want to buy, because in Panama there are titled and untitled properties. There are also concessions, but that is another topic.

1. Titled Property

This is the safest form of property ownership in Panama since it is legally protected by the constitution. When you purchase a title property in Panama the property title is duly registered in the “Registro Público” of Panama. The Public Registry is the land register where the owner(s) of a property are recorded. The information of the Public Registry is publicly accessible. The property titles can be verified by individuals, by banks and prove that in fact, you are the owner who bought the property by means of a Public Deed (*“escritura pública”*). This public deed is the contract of sale where the parties sign, the notary attests that you buy/sell and this right is registered with the government of Panama. **Based on our experience, we strongly recommend our clients to invest only in titled real estate in Panama.**

Remember that the Notaries in Panama are public officers, i.e. they are appointed by the elected president of Panama for a period of 5 years, and as ministers of faith, they guarantee and ensure the legal compliance of the transaction. **Notaries in Panama do not hold in trust payments to their bank accounts to guarantee a sale or purchase transaction (ESCROW).** They can only take into custody cashier’s checks whereby

through a public deed the notary is asked to pay the seller the amount held into custody once the property is duly transferred to the buyer.

If you want to buy real estate in Panama and use a local Bank in order to guarantee the payment, you can purchase from the bank a "letter of promise to pay" that guarantees the seller by a local bank, while assuring the buyer that payment will not be made until the transfer of title to the property has been recorded.

2. Rights of Possession (ROP)

A Right of Possession could be also called "*right to own*", which means, when a property that belongs to the government of Panama, is "occupied" by a Panamanian (or an entity) for a period of time. The office of the Panamanian government that keeps the registry of these properties is the Department of Agrarian Reform.

For this type of property there are no property taxes (because they belong to the government) because the holder does not own the property. However, whatever is built on the property may incur municipal and/or national taxes if they are registered.

When the right of possession is purchased from the Panamanian government, then it becomes titled property. However, some coastal areas or islands are "protected properties" and this is called "asking for an administrative concession" to guarantee the use over the property, but not the ownership of the property. Unlike Rights of Possession, the government through a specific contractual agreement guarantees the right of the concession. Title insurance companies often offer policies for Concession properties

THE BIGGEST MISTAKES REAL ESTATE BUYERS MAKE

The process of buying real estate overseas can be complicated, time-consuming, and stressful. But it should not be like this. Read our guide below on the biggest mistakes buyers make and how you can avoid them:

1. Location is Everything

Almost everything can be fixed, but the location, the location, the location cannot be fixed. Buy location, NOT price. When investing in real estate overseas remember to do your due diligence and pay attention to the small details that can turn your dream home into the home of your worst nightmare. Before buying try to get information from different local sources in order to be sure that the location you chose is really the right one for you.

Besides common factors such as traffic connection, security, neighborhood, distance to the nearest hospital, and infrastructures such as supermarkets, shops, and restaurants, it is important to **verify the connection to basic public services**. That is water, telephone, internet, electricity, and garbage collection. Which are the available providers and how reliable are their services? **Are there any (regular) interruptions or connectivity problems with one of the basic services in the sector? Does the availability of one of these services vary according to the season (rainy season/dry season)?**

Speaking of seasons, although Panama is a tropical country without seasons, there are sub-climates in different areas of the country. Depending on the location and time of the year there are regions that are more humid than others, in certain areas, there is a constant strong wind during the dry season, others where heavy rain falls during certain months of the year, while there are zones suffer from drought during the dry season.

2. Not thinking about selling the house someday

Buyers often forget that they will most likely sell their home at some point. Personal circumstances can change, and eventually, you have to sell. The purchase of a home should be structured well from the beginning to avoid headaches and bad surprises in the future: **What will be the taxes to pay when you sell your home? Which legal figure is the most convenient to acquire a property? If something happens to me, what is the quickest and least expensive way to transfer the house to my heirs?**

3. Falling blindly in love with a house

Just as in love relationships **there are properties that are "problematic"**. Some details are cosmetic and can be solved in one way or another, but there are real estate options that can be called an **"uncontrollable risk"**. Whether it's a lawsuit, a conflict of interest, or some kind of encumbrance. Unless you like to play Russian roulette, don't get distracted by the "flashy" details of a house.

4. Trying to buy without a lawyer

Last but not least, one of the biggest mistakes we can observe in our legal practice is when buyers try to buy without an attorney. There are too many factors that cannot be calculated and making a mistake is somehow inevitable. Lack of experience combined with the desire to save "some pennies" can have serious consequences. The Laws and the legal basis in Panama are not the same as in other countries. You should not sign contracts or legal documents that were not reviewed by a trustworthy lawyer. If you have doubts about a transaction, seek advice from an experienced lawyer who will not only protect your interests during the purchase transaction, but also your wallet by avoiding problems in the future.

ARE YOU BUYING A CONDOMINIUM IN PANAMA?

Buying it seems easy, but there are common mistakes and problems you can easily encounter if you do not take into account the following:

1. You need an honest, reliable, English-speaking real estate broker looking out for your best interests. There are real estate agents who are more concerned about charging their commission quickly, rather than finding a property for you. You may find that most of the people showing properties are not licensed real estate agents and even that they are neither citizens nor residents of Panama. They most likely do not know the laws you need to know to ensure a successful sale and purchase. Therefore, do not expect them to know all the legal parts that are involved in a sale and purchase in Panama. That means, a real estate agent should handle issues such as zoning, civil contracts, commercial contracts and handles issues that facilitate the sale.
2. You need a lawyer who is honest, reliable, competent and speaks English or another language of your choice. **Ask an experienced lawyer to draft and review every document before you sign.** When your offer is accepted by the seller, the lawyer can perform a legal due diligence of the property and ensure that what you buy is not a problem.
3. **Purchase and sale contracts must be in writing.** If the real estate agent tells you that the condo is number 50 and this is not in the contract, it does not exist. He may also tell you that the maintenance fee is \$10 per month and it could be \$100.
4. **What should you ask when buying a condominium?** First, what are the maintenance fees and what services are included. Do all apartments pay the same? Is the Board of Directors of the condominium working properly? Do they have an administrator for the building? How are the finances of the condominium association? Under Panamanian law, you are entitled to that information.
5. The **measurements of the apartment** is EVERYTHING, including balconies, walls, everything.

6. **Air conditioning in Panama** is a must (unless you are living in the highlands of Chiriquí). There are energy efficient air conditioners. The climate in Panama is tropical-humid. With that in mind you will know the amount of temperature you can have inside your apartment.

SHOULD I BUY THE PROPERTY UNDER MY PERSONAL NAME OR A CORPORATION?

Everyday life can very quickly confront us with situations in which it is absolutely necessary to consult a legal expert. **Knowledge edge in legal matters helps you to make an informed decision and protect not only your investment and assets, but also your family, heirs and loved ones.**

Two case studies from our legal practice regarding inheritance law in Panama.

Let's make an analysis of two "figurative" case studies with their respective pseudonyms: Due to unpredictable circumstances, Michael Bauer arrives at the hospital in critical condition. He and his wife Carola moved from Canada to Chiriqui over three years ago. While the doctors try to establish his health status, Michael asks his lawyer to prepare the necessary documents to leave *"everything in order"*, and transfer his share of the family home located in an exclusive residential area in Boquete to his wife.

I have a will, why do I need a foundation?

Michael never wanted to create a foundation to protect his family's assets because he felt it was *"too expensive"* and an *"unnecessary"* expense. Unfortunately, Michael passes away before he could sign the legal papers. He leaves a vehicle (worth \$10,000), his share of the house (worth \$300,000 in total) in Boquete and a savings account at a local bank.

There is a formal will signed before a Notary Public in Panama, declaring his wife Carola as the sole heir. She feels alone in Panama and wants to sell everything fast in

order to return to Canada. However, two long years go by before she is able to transfer the title of the car and her deceased husband's share of the house in Boquete to her name, and finally put the property and vehicle up for sale. *But what happened? And, how could they have avoided this situation?*

Inheritance Law in Panama and its pitfalls

The delay in the inheritance procedure is due to the legal basis in Panama. If the deceased had assets within Panama, in his own personal name, regardless of whether or not he has a will, a probate proceeding must be completed. In order to do so, it is necessary to hire a lawyer and to file a probate lawsuit (*tested* if there is a will, or *intestate* if there is no will, which in practice is almost the same procedure) before a judge in Panama.

Courts and Judges

Your file must go through different stages and hands in the court and once all the formalities are completed the judge will make a decision and assign the final beneficiary(ies). Legal procedures in Panamanian courts take their time, and even under the best conditions, it will take at least two years until your heirs have the right to transfer your assets to their names, so that they can finally sell them. In the meantime, they will have to pay for expenses, lawyer's fees (15% of the total inherited assets according to the minimum lawyer's fee in Panama), among others.

Being Prepared...

On the other hand, our second "figurative" case study is the case of Max Mueller. He has been a part-time resident of Panama for five years. Max has been traveling back and forth between Panama and Germany, but now it is too exhausting, his health is not good. Mr. Mueller owns a piece of land in Las Lajas (with a value of 40,000US\$) in the name of a foundation, and a personal savings account at a local bank. On his last trip, he spoke with the bank official and filled out a form to leave his son Robert as the final beneficiary of the account. His lawyer has an original copy of his foundation's by-laws

that declare Robert as the secondary beneficiary and secondary protector of the foundation.

A foundation will not die

After Max passes away in Germany, his son Robert contacts his father's lawyer in Panama. He sends him his father's death certificate, duly apostilled, and a few weeks later he travels to Panama. Since the foundation (which is a legal entity) is the owner of the land in the Public Registry of Panama and the duration of the foundation is perpetual, no lawsuit, process or legal procedure has to be filed.

Robert now, in his role as universal beneficiary and protector of the foundation, leaves a signed mandate for the sale of the land, and immediately hires the service of a local real estate broker to sell the property. Before returning to Germany, he goes to the local branch of his father's bank, complies with the internal procedure and can access the funds in the account.

Create your individual estate plan

A Panamanian Private Interest Foundation (PIF) can ensure that after your death, your estate passes to your chosen beneficiaries without any stressful complications, delays, or litigation. For legal purposes, the assets of a PIF constitute a separate estate from the assets of its founder and the beneficiaries. Just as in a will, the foundation's private by-laws govern the conditions of the PIF. It can be established how the assets will be distributed, and who has control over the administration of the foundation's assets.

It is not required that the Founder be a resident in Panama, and with the telematics, originated due to the Covid-19 pandemic, Panama made an effort so that lawyers can create corporations and FIPs without the need for their clients to appear before a Notary Public. The commercial registry of the legal entity is filed electronically, making the registration process more expeditious.

Knowledge edge makes the difference

Carola is hopeful that the title to the house in Boquete will be transferred to her name soon, so that the property can be put up for sale. She has already traveled many times to Panama and sometimes she feels tired and exhausted due to so much protocol, stress and expenses.

Robert received a message from the broker a few weeks ago. There is an interested party who wants to buy the land in Las Lajas. The down payment has been already made and the deal will be closed this week. In a few more days he will receive the funds from the sale in his bank account in Germany.

NOW IN THE PRACTICE, HOW DO I INVEST IN REAL ESTATE IN PANAMA?

Foreigners (with or without residence permit) can acquire titled real estate in Panama without restrictions. The purchase of a property in Panama consists of the following steps:

Step 1 - Examination of the Title (Due Diligence)

Once the buyer has found a property in Panama and has agreed with the seller on the respective purchasing price and the conditions of the purchase transaction, the data of the property will be verified with reasonable care by the lawyer of the buyer.

In this process, it is clarified whether the real estate is the property of the person who claims to be the selling party and it is analyzed if it is unencumbered. This includes an examination of the property and the title of ownership in the Public Registry of Panama (Land Registry), an analysis of the tax situation at the Tax Authority of Panama, and an inquiry at the Judicial Authority (ongoing proceedings).

In some cases, it is advisable to conclude a preliminary purchase contract to guarantee that the agreement between seller and buyer remains valid until the final completion of the transaction.

Step 2 - The Purchase Contract

The contract of sale is an agreement of concurrence of wills in which a person called "seller" undertakes to transfer a property to another person called "buyer", the latter undertaking to pay a fixed, approved and agreed price for the property or object for sale.

The essential elements for this type of contract are the following:

- A. **Consent:** Both parties have to express their free will and in writing.
- B. **Property:** Property belonging to the seller and registered in the seller's name in the public register before the sale is carried out.
- C. **Capability:** If incapable parties are involved, they cannot commit themselves to the transaction alone. Therefore, both the seller and the buyer must have the capacity to commit themselves to the execution of this commercial transaction.
- D. **Price:** The property, object of sale, must have a price assigned in money or by means of a sign reflecting its value.

Step 3 - Public Notary in Panama

In the next step, a public notary in Panama will transfer the purchase contract into a public deed ("Escritura Pública"), which will then be registered in the public register (land registry) to complete the assignment of the property and transfer it to the name of the purchasing party. For this purpose, the following documents must be presented by the seller to the notary public in a legally binding manner:

1. Certificate of Good Standing of the Aqueduct and Sewerage Institute of Panama (IDAAN).
2. Certificate of Good Standing from the tax authority of Panama (DGI) of the property.
3. Certificate of payment of the transfer tax from the tax authority of Panama:
 - 3.1. Certificate of payment of the capital gains tax (3% of the purchase price - Form 107)

- 3.2. Certificate of payment for the real estate transfer (2% of the purchase price - Form 106).
4. If the property is an apartment under a horizontal ownership (residential ownership), the seller must additionally submit a certificate of good standing regarding the proper payment of the monthly maintenance fee, issued by the registered property management of the horizontal ownership.
 5. If the seller and/or buyer is a company or foundation, it must authorize the sale/purchase of the property by means of an appropriate legal document. In addition, the company or foundation must submit a certificate of good standing from the Panamanian tax authority, which confirms that the annual (tax) duties (annual franchise tax called "tasa única") have been duly paid.

Step 4 - Registration of the Title of Ownership

The registration of the new owner of the property in the Public Registry of Panama usually takes 8 to 15 days. The registration fees depend on the selling price of the property. **Due to Panamanian Law the seller must pay the transfer taxes. It is a common practice that the buyer pays the notary fees and registration fees.** It is possible to apply for an express registration at the public registry for an additional fee of US\$ 300. In this case the new owner will be registered within 24 to 48 hours.