



**DOMINICAN REPUBLIC**  
**- LEGAL INFORMATION FOR PURCHASING A PROPERTY -**

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**WHAT LEGAL DIFFERENCES WILL I FIND WHEN PURCHASING A PROPERTY?**

**A) SUMMARY OF THE SALE AND PURCHASE PROCEDURE**

Under the legislation currently in force, ownership of a property is acquired on registration in the Register of Title Deeds of a deed of sale and purchase which has been duly authenticated before a Notary. (Law No. 108-05 concerning Property Registration, dated 4/04/2007).

The Title Deed is the document which proves the right of ownership.

In order to transfer ownership from the vendor to the purchaser by an act of sale and purchase, the purchaser and the vendor must pass before a Notary and sign a CONTRACT of SALE and PURCHASE, which will include the legal description of the property which is the object of the transaction, the price and other details concerning the sale.

The contract of sale and purchase is presented to the Local Administrative Office of the Directorate-General of INTERNAL REVENUE, in order to confirm that the vendor has complied with all tax payments due, including the payment of property transfer taxes, the amount of which will be established after a prior valuation of the property purchased.

The Contract of Sale and Purchase and the Title Deed of the vendor, accompanied by the documents issued by the Directorate-General of Internal Revenue, are taken to the office of the Registry of Title Deeds covering the area in which the property is located, in order to register the act of sale and purchase.

The office of the Registry of Title Deeds will then proceed to:

- Enter the purchase concerned in its register books. Once this entry is completed, the purchaser is considered to be the owner of the property.
- Issue a Title Deed in the name of the purchaser.
- Cancel the previous Title Deed in the name of the vendor.



There are currently no restrictions on the purchase of property in the Dominican Republic by foreign citizens.

It should be highlighted that foreign citizens may inherit property in the Dominican Republic under the following conditions:

- If they are non-resident, the taxes to be paid are 50% higher than for residents.
- In cases of inheritance, there is a compulsory reservation of ownership rights under the Dominican Republic's laws of succession which takes precedence over individual wills or over the nationality law relating to the ownership of property by foreign citizens and the resulting arrangements for succession.

The Dominican Republic's law of succession stipulates that 50% of the property assets held in the country must be reserved for the owner's children. For this reason, foreign citizens are advised to purchase their property in the name of companies, which will prepare the way for a more open approach since the right of ownership will be linked to shares and not to individual persons.

## **B) DETAILS OF THE PROCEDURES TO BE FOLLOWED FOR ANY ACT OF SALE AND PURCHASE OF PROPERTY**

### **1. The promise of sale**

When the promise of sale is signed before a Notary, who authenticates the signatures, purchasers pay a holding deposit to vendors, who then undertake for their part to sell their properties to the purchasers.

The Promise of Sale must include:

- The full names of both parties. If vendors are married, the signatures of their spouses are also required.
- The cadastral (land registry) description of the property to be sold.
- The sale price and the method of payment to be used.
- The clause in the contract referring to cancellation due to non payment, if such a clause was included.
- The date for the transfer of ownership of the property.
- Details of legal checks concerning the property, the completion of which is a pre-condition for payment.

Vendors, on receiving the amounts to be paid, must sign the contracts of sale and purchase.

NOTE: If purchasers' interests are not well protected and a Promise of Sale is completed which does not include all the above points, problems may arise for the purchasers, and they may even lose the holding deposit paid to the vendors. In such cases the only remaining option for purchasers to recover their money would be to bring a lawsuit against the vendors. The latter may, however, declare themselves to be insolvent.

Example 1: Imagine that a vendor/developer has used the money paid to him by the purchasers (as a holding deposit, but without security of tenure or rights of any kind over the property) in order to complete the construction of the property, and that at the same time he has also requested a mortgage from a bank, for which the property is declared as collateral. If the developer/vendor is incapable of completing the development, the bank keeps everything by seizing the property, with the result that the purchasers find themselves with neither the property nor the money paid as a holding deposit.

Example 2: Another possible problem could arise if the vendor is able to cancel the Promise of Sale, keeping the money paid as a holding deposit because the purchaser did not pay the last instalment on the due date, without taking into account that the purchaser did not pay because the vendor did not comply with the agreed conditions for the transfer of ownership (for example, if an attempt was made to transfer ownership when the property was still unfinished, etc.). In order to avoid this, payment should have been made subject to a condition that safeguarded the purchaser's interests.

Such problems could be solved by using the *escrow* system as a method of payment (i.e., placing payments in the custody of a third party), instead of giving the vendor the opportunity to use the money without any kind of guarantee.

## 2. Documents required

a) If the vendor is a private individual:

- Photocopy of Title Deed of the property.
- Photocopy of plan of the property.
- Photocopy of identity card/passport and that of spouse, if married.
- Photocopy of receipt from Directorate-General of Internal Revenue, showing payment of last tax amount due on the property or exemption from payment.
- Photocopy of Certificate from Directorate-General of Internal Revenue indicating that all tax payments are up-to-date.



b) If the vendor is a company:

- Photocopy of the company's deed of incorporation.
- Certified extract of the company's entry in the register of companies, made on the same day as the act authorizing the sale.
- Certificate from Directorate-General of Internal Revenue indicating that all the company's tax payments are up-to-date.

c) If the property to be sold is an individual home:

- Photocopies of the officially authorized plans.
- Photocopies of receipts for the latest electricity, water, gas and telephone bills.

d) If the property to be sold is a condominium:

- Photocopies of the officially authorized plans.
- Documentation certifying the condominium status and confirming that all residents' association maintenance payments are up-to-date.
- Photocopy of the declaration establishing the condominium.
- Photocopies of minutes of the last 3 annual general meetings of the residents' association.

It should be noted here that, according to the provisions of the Law concerning Property Registration, sales of properties the boundaries of which have not been officially demarcated (i.e., which do not have a separate cadastral designation and a duly authorized individual plan of measurements) may not be entered in the Register of Title Deeds, except in the case of:

- Acts of sale and purchase dating from before 04/04/2007, which may be entered in the Register up to 04/04/2009.
- Acts of sale and purchase for non-demarcated properties. Further sales of non-demarcated properties are no longer permitted.

#### 4. Steps to be taken

- a) The purchaser must apply for Certification of the Registration of the Title Deed, in order to confirm that ownership of the property is free of any charges or encumbrances.
- b) The vendor must not have any outstanding payments due to water or electricity companies, etc.
- c) The vendor must pay all employees, if any.

- d) Hire a qualified surveyor to check that the property to be sold is as described in the vendor's plans.
- e) Check that the property is not subject to any planning regulations, coastal legislation, etc. (e.g., planning restrictions in coastal zones, within 60 metres of the shoreline, above the high-tide mark, etc.).
- f) Check that the property is free of any occupants or that there are no improvements belonging to third parties or tenants, etc. (the laws of the Dominican Republic protect the latter, and it is difficult to evict them.)

#### C) COSTS AND TAXES INVOLVED IN THE TRANSFER OF OWNERSHIP

- 1. A tax of 3% is applicable to transfers of property ownership, always calculated from the market value of the property transferred (Law No. 200-04, Article 20), on the basis of the valuation carried out by the public authorities and not of the price stipulated in the contract of sale and purchase. Law No. 173-07, Article 7 provides for a period of 6 months in which to pay the property transfer tax.
- 2. Tax duty of 1.3% is applicable to official documents (Law No. 835-45).
- 3. Small costs for administrative procedures, official stamps, etc.
- 4. Registration costs and notary's fees will amount to approximately 1% of the total value of the property.

#### D) INSURANCE TO PROTECT RIGHTS OF OWNERSHIP

The Dominican Republic state authorities have announced their intention to guarantee the Certificates of Title Deed that they issue, through the creation of a special Insurance Fund. The aim of the latter is to compensate any purchasers/owners who, although themselves acting in good faith, have been dispossessed of their property rights due to errors in legal procedures.

The Title Deed Guarantee is a form of insurance intended to provide purchasers with compensation and to guarantee to them that their investments will always be safeguarded in the face of hidden procedural errors or irregularities.

As has already been remarked above, the *escrow* system of payment (i.e., placing payments in the custody of a third party), together with Title Deed Guarantees, provides insurance for property investments and ensures that the

property acquired is adequately protected against the following types of possible situation:

- Hidden procedural errors.
- Previous property rights were false or unrecognized.
- Invalid procedures were followed after the death of the property owner.
- Actions were taken by persons who were not authorized to take them.
- There are encumbrances due to unpaid taxes.

The service referred to would aim to cover legal costs if there is a court case and to pay the cost of any claims against an existing title deed.

So far, the state authorities have not collected together sufficient funds to finance such legal protection. For this reason protection is in fact provided by private insurance companies which provide insurance policies to guarantee ownership rights.

## TYPES OF TAX

### Property Ownership Tax (I.P.I.)

I.P.I. is charged on properties owned by individual taxpayers at a rate of 1% of their value as assessed by the Directorate-General for the Cadastral Register (Law no. 18-88, Articles 1 to 3).

It is paid in two instalments per year (in March and September).

The following cases are exempt from payment of I.P.I.:

- Rural land used for agriculture.
- Properties subject to taxes on assets.
- When the owner of the property is over 65 years of age and has owned it for the last 15 years without having any other property in his or her name.

### Mortgage Tax

The registration of mortgages is subject to a tax of 2% of the value of the mortgage (Law No. 173-07, Article 7).

## Property Rental Tax

Tax is charged on rental payments at a rate of approximately 20%, and is payable by tenants, who are responsible for paying the amounts due to the public tax authorities.

It is important to examine a situation in which a Spanish citizen wishes to invest in properties in the Dominican Republic with the aim of subsequently letting them out for rental. At the present time, in the absence of any treaty between the two countries to avoid cases of double taxation, it is necessary to examine jointly the tax regulations in both countries in order to determine which taxes are payable in this case in the Dominican Republic and in Spain.

According to the **tax regulations of the Dominican Republic**, non-residents are liable to pay tax on income originating from the Dominican Republic, as is the case of that generated by the rental of property.

Individual taxpayers and corporate entities (i.e., companies) are taxable at a rate of 25%. A distinction is made between the following cases:

- Domestic companies, which are liable to pay on the basis of the net income earned (after deduction of other taxes, duties, interest, etc.).
- Overseas companies, which are liable to pay on the basis of the gross income earned.

According to **Spanish tax regulations**, it is necessary to determine whether the investment made overseas was undertaken by a private individual or by a corporate entity. Since, however, in either case the individual or company is resident or registered in Spain for tax purposes, the law requires them to pay tax on income received from anywhere in the world, although allowing for a possible deduction in the case of double taxation where tax has been paid in the other country concerned.

In the case of individual taxpayers, rent is considered as income from real estate, and therefore as part of the person's tax assessment basis.

Examining the terms of Article 80 of Law No. 35/2006 dated 28<sup>th</sup> November 2006 concerning income tax for individual taxpayers and the modification of the laws concerning company tax, income tax for non-residents and the taxation of personal assets, we can see that these provisions allow for deductions due to double taxation in an international context.

From this it can be deduced that if the taxpayer has income consisting of earnings on assets or other returns originating from overseas, the lesser of the amounts detailed below is deducted from the amount of tax payable:

- The amount previously paid in the other country in the form of a tax similar to the Spanish IRPF (standard income tax for individual taxpayers) or IRNR (income tax for non-residents) and payable on returns or earnings on assets.
- The amount resulting from applying the average rate of tax to the basis of assessment that was taxed in the other country.

Individual taxpayers are taxable at a rate of 18% on earnings on property investments with no possibility of exemption when the investment is repatriated.

In the case of corporate entities the law concerning company taxation establishes a system of exemption for dividends and capital gains originating from overseas, within certain guidelines (Article 21, Royal Legislative Decree No. 4/2004 dated 5<sup>th</sup> March 2004 - Law concerning Company Tax).

The law dealing with corporate entities stipulates that a tax rate of 25% shall be applicable to the tax assessment basis up to a value of € 120,000 and a rate of 30% for the remainder. According to the terms of Article 31, however, if the tax paid in the other country was direct, personal and established with the aim of taxing the income obtained, the company may deduct from the total amount of company tax payable the lesser of the following amounts:

- The amount effectively paid in the other country in the form of a tax analogous to company tax and determined by the income earned.
- The amount of the total tax payment which would be paid in Spain if this income had been earned in Spain.

**CONCLUSION:** It would be advisable for a Spanish investor who decides to purchase a property in the Dominican Republic to do so through the vehicle of a company. The rent earned from the property and which is taxable in the Dominican Republic must also be declared for income tax in Spain, but tax deductions will be applicable due to double taxation.

*WARNING: The legal information contained in these documents and on the New Homes International Portal has been prepared with the intention of providing certain general guidelines concerning the purchase of property in*



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