IN-DEPTH

Real Estate Law

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In-Depth: Real Estate Law (formerly The Real Estate Law Review) provides an invaluable overview of how key real estate markets across the globe operate and how they react to major world events. With a focus on recent developments, it analyses the legal frameworks governing real estate ownership and transactions in each jurisdiction, while also offering an incisive outlook of potential future trends.

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Dominican Republic

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Summary

Introduction

Ownership of real estate

Under Dominican law, there are several types of ownerships of real estate. The most common is absolute property, similar to the common law concept of freehold, which grants the titleholders, according to Article 51 of the Constitution, the right to enjoy, make use of and dispose of their properties.

Other types of ownerships of real estate recognised under Dominican law are as follows:

1. co-ownership under Condominium Law 5038 of 1958, by which two or more co-owners share the ownership of a residential or commercial property or both, each enjoying full rights over their own units and shared rights over common areas; and
2. indivision, whereby several co-owners jointly exercise the same right of full ownership over the same property considered as a whole.

Dominican law recognises other types of rights over real estate, such as:

1. usufruct, which grants the holder the legal right to use and benefit from property owned by a third party;
2. 'use' or 'habitation', which grants the holder the right to use or live in a property owned by a third party;
3. easements, by which a property is subject to a specified use or enjoyment by another, including the one that grants the owner of an enclosed property without access to a public road the right to transit through an adjoining property; and
4. administrative concessions granted by the government over public land that cannot be privately owned, such as the subsoil, coastline and riverside areas.

System of registration

Since 1920, the Dominican Republic has employed the Torrens system for real estate registration purposes. This system was developed in Australia in the nineteenth century and is now widely used in many countries. In the Torrens title system, a register of land holdings is maintained by the government, which guarantees an indefeasible title to the properties included in the register. Land ownership is transferred through registration of title instead of using deeds. The registrar has a duty to ensure that only legally valid changes are made to the register. Any interest affecting or limiting the ownership rights of the registered owner, such as mortgages, easements and liens, must also be registered. Interest in real estate (e.g., property, mortgages and privileges) is only valid and enforceable against third parties upon registration at the office where the register is located (i.e., Registrar of Titles). Once registered, the system guarantees title and priority on a first come, first served basis.

In the Torrens system, a third party, acting in good faith, can rely on the information in the land register as to the ownership of a property and the other rights and interests that may affect it. In a property purchase, the buyer is not required to look beyond the record in the register. In contrast, in the common law system a vendor cannot transfer to a purchaser a greater interest than the vendor owns, and the seller's title is as good or as defective as the weakest link in the chain of title, which necessitates a chain-of-title investigation at the record office.

As in most jurisdictions under the Torrens system, there are still some parcels of land in the Dominican Republic that are unregistered. However, most properties in the country – and 100 per cent of commercial properties, closed-gated projects and condominiums – fall under the registered category. Unregistered property is governed by the French 'ministerial' system, in which deeds affecting real estate are filed at a specific register that only serves as a recorder of documents, without any type of guarantee.

Choice of law

The Dominican Civil Code and Law 544-14 regarding conflicts of law mandate that all matters concerning real estate in the Dominican Republic are subject only to local law and courts, no matter who owns the property (a Dominican or a foreign individual or entity) or the place where the contract was signed. This is a rule of public policy that cannot be amended or waived by the contracting parties. If a transaction involves properties from another jurisdiction as well, then the part of the transaction that refers to the Dominican real estate must be governed by Dominican law; hence, all closing documentation must be drafted, executed and enforced according to Dominican laws. Nevertheless, for estate purposes, Law 544-14 allows foreigners to have their national law determine the rules of inheritance in connection with real estate located in the Dominican Republic; previously, Dominican inheritance rules applied in all cases.

Overview of real estate activity

In the past few years, international developers have launched multiple projects in areas such as Punta Cana, Bani, Miches, Puerto Plata, Santo Domingo and the southwest provinces of Pedernales, Barahona and Peravia. These projects are driving growth and attracting more tourists to these regions.

Public-private partnerships are also becoming more common, particularly in developing new tourism regions such as Cabo Rojo and Bahia de las Aguilas in Pedernales. These areas, known for their virgin beaches, are being developed with eco-friendly projects that include hotels and residential developments. This approach aims to balance tourism growth with environmental sustainability.

Another notable development is Ciudad Juan Bosch, a real estate project with over 12,000 homes. The government has contributed land and infrastructure to this project, which focuses on providing low-cost housing for low-income families in Santo Domingo. This initiative highlights the government's role in supporting affordable housing.

Local promoters, hotel operators and landowners from the eastern region have formed the Hotel and Tourism Association of El Seibo and Miches (Promiches). This association aims to position Miches as an environmentally responsible and inclusive tourist destination. Promiches plans to promote innovative and socially responsible businesses that protect and enhance the area's environmental and cultural diversity. The association's 13 members represent investments totalling US$1.18 billion, which will add 3,400 new hotel rooms and 1,400 residential rooms to Miches, along with the necessary infrastructure.

The booming tourism industry is significantly impacting the real estate market, driving demand for both commercial and residential properties, especially in coastal areas. This surge in tourism is also attracting foreign property investors, further increasing demand. Additionally, economic growth and improved access to financing are driving demand for housing among the local middle class.

Luxury properties are becoming increasingly popular in the Dominican Republic. The country has become a hotspot for wealthy individuals seeking high-end vacation homes and investment properties. The volume of luxury property transactions has been rising strongly since the end of the pandemic.

There is also a growing trend towards eco-friendly real estate. Many developers are incorporating sustainable design features into their projects, such as solar panels, rainwater harvesting systems and green roofs. These features make properties more appealing to environmentally conscious buyers.

In terms of real estate as an investment, there is a noticeable trend towards buying properties for rental income, particularly in tourist-heavy areas. Beachfront villas, apartments in popular tourist destinations and properties near major attractions are in high demand among investors. Areas with high tourist traffic, such as Punta Cana, Puerto Plata and parts of Santo Domingo, typically see robust demand for short-term rentals, catering to tourists and seasonal visitors who prefer renting over buying.

Government policies in 2024 are focused on further developing infrastructure, such as road expansions and airport upgrades, enhancing tourism facilities, and continuing to improve the legal framework for property transactions. These policies aim to support the ongoing growth and development of the real estate market in the Dominican Republic.

Foreign investment

The Constitution of the Dominican Republic lays out the fundamental framework for the organisation and the operation of the Dominican government and its institutions, and recognises an impressive list of civil rights for all individuals, Dominicans and non-Dominicans, including an equal protection clause for non-Dominican citizens and investors. Article 25 of the Constitution expressly states that foreign nationals are entitled to the same rights and duties in the Dominican Republic as Dominican nationals, except for the right to take part in political activities. Article 221 of the Constitution sets forth that the government will ensure equal treatment under the law for local and foreign investments.

Hence, there are no restrictions on foreign individuals or entities owning or leasing real estate in the Dominican Republic. The process for purchasing or leasing real estate for foreigners is exactly the same as for Dominicans. Foreign individuals and entities, and

Dominicans, must register locally with the tax authorities before registering purchases of real estate. Individuals must submit their application directly at the Internal Revenue office, while entities must first register at the Chamber of Commerce and obtain a mercantile registry certificate, before applying for their tax number. These are mere formal requirements that can be easily fulfilled.

Furthermore, there are no exchange controls issues in investing in real estate in the Dominican Republic. Under current foreign investment laws, foreigners can freely repatriate capital and profits from their investment in the Dominican Republic.

Finally, several statutory incentive laws make it attractive for foreign investors to purchase property in the Dominican Republic. For example, Law 158-01 on Tourism Incentives, as amended by Law 195-13, and its regulations, grants wide-ranging tax exemptions, for 15 years, to qualifying new tourist projects by local or international investors. The following projects and businesses qualify for these incentives:

1. hotels and resorts;
2. facilities for conventions, fairs, festivals, shows and concerts;
3. amusement parks, ecological parks and theme parks;
4. aquariums, restaurants, golf courses and sports facilities;
5. port infrastructure for tourism, such as recreational ports and seaports;
6. utility infrastructure for the tourist industry such as aqueducts, treatment plants, environmental cleaning, and garbage and solid waste removal;
7. businesses engaged in the promotion of cruises with local ports of call; and
8. small and medium-sized tourism-related businesses, such as shops or facilities for handicrafts, ornamental plants, tropical fish and endemic reptiles.

Structuring the investment

The most common entities used by foreign real estate investors in the Dominican Republic are the local:

1. individual limited liability company (EIRL), an individually owned company; or
2. LLC (or SRL), with two or more shareholders.

Some, preoccupied by the complexities of reporting a foreign entity to the tax authorities in their home jurisdiction, prefer to register their domestic entity in the Dominican Republic.

There are no restrictions regarding the structure or legal form of foreign investment in real estate. If it is duly incorporated and recognised in the jurisdiction where it was formed, entities can do business in the Dominican Republic upon registration at the Chamber of Commerce and Internal Revenue.

As for Dominican entities, Dominican company law allows different types of commercial companies (EIRLs and LLCs) and corporations (regular or simplified stock corporations), all of which provide limited liability for its owners or shareholders. There are other investment entities recognised under the law, such as business partnerships, limited partnerships and per share limited partnerships, but they are seldom used because they do not offer full liability shields to their members, and are subject to the same tax treatment as the other entities. In 2011, Law 189-11 introduced local fiduciary vehicles as a holding option.

Dominican law does not recognise the concept of pass-through entities. Any entity, local or foreign, is subject to the same tax (27 per cent), regardless of its legal structure. There are two exceptions:

1. entities that have obtained exemptions under Tourism Incentive Law 158-01; and
2. closed-end real estate investment funds approved by the Dominican Republic Security and Exchange Superintendence.

Real estate ownership

Planning

All planning, land use and change of use matters are handled by the municipalities where the real estate is located, the Ministry of Tourism (in tourist areas) and the Ministry of Environment and Natural Resources. The municipalities and the Ministry of Tourism establish the general rules regarding use (e.g., residential, commercial, industrial, mixed, density and maximum height). Any construction or development that may affect the environment must also be approved by the Ministry of Environment and Natural Resources.

The Maritime Zone, a strip of land all along the Dominican coastline measuring 60 metres from the high tide mark, is public property (Law 305 of 23 May 1968) and, as such, cannot be sold or purchased. However, it is possible for owners of the adjoining property to build on the Maritime Zone with a special permit granted by Executive Order.

Environment

Any real estate project, subdivision or infrastructure must apply for and obtain environmental approval from the Ministry of the Environment and Natural Resources, pursuant to General Law on the Environment and Natural Resources 64-00, which regulates environmental pollution, the generation and control of toxic and hazardous substances and the treatment of domestic and municipal waste, among other matters. Environmental due diligence is highly advisable for purchases of undeveloped land, as well as off-plan property purchases.

Environmental Law 64-00 requires mandatory insurance for projects needing a permit from the Ministry of Environment and Natural Resources.

Issues of environmental clean-ups in real estate transactions are still very rare in the Dominican Republic. Thus far, this has been a problem only in the mining sector. Therefore, there are no general covenants in use. Of course, the parties to a contract are free to insert mutually agreed terms regarding long-term environmental liability and indemnity issues.

Tax

A conveyance tax must be paid before registering the purchase of real estate. The conveyance tax amounts to 3 per cent of the price of sale or the market value of the property as determined by the tax authorities, whichever is higher.

Furthermore, a 1 per cent annual tax is assessed on real estate properties owned by individuals, based on the cumulative value of all the properties owned by each individual as appraised by government authorities. Properties are valued without taking into consideration any furniture or equipment to be found in them. For built lots, the 1 per cent is calculated only for values exceeding 8,138,353.26 Dominican pesos. The amount of the exemption is adjusted annually for inflation. For unbuilt lots, the 1 per cent tax is calculated on the actual appraised value without the exemption. The real estate tax is payable every year on or before 11 March, or in two equal instalments: 50 per cent on or before 11 March, and the remaining 50 per cent on or before 11 September.

The following properties are exempt from paying real estate tax:

1. farm properties;
2. homes whose owner is 65 years old or older and has no other property; and
3. properties owned by companies, which pay a separate 1 per cent tax on company assets.

Owners who have obtained their Dominican residency under Law No. 171-07 on Special Incentives to Retirees and Fixed-Income earners of foreign source are also eligible for a 50 per cent exemption of their real estate taxes.

Finance and security

Mortgages (financing from third parties) and privileges (seller's financing) are the customary security interests. Both grant the lender a registered right on the property (collateral) that can be enforced in case of default through a foreclosure process. Holders of mortgages and privileges must go through a court-supervised foreclosure procedure to execute the mortgage; automatic defeasible conveyances in the event of default are illegal.

Leases of business premises

Dominican law is very protective of tenants' rights and there is no fast and efficient eviction procedure in place. Key provisions in a Dominican lease include:

1. the lease's term;
2. tacit renewal clauses;

3. ownership of betterments made by the tenant during the lease;
4. default clauses and waiver of certain tenant-friendly statutory provisions;
5. clear distinction between minor and major repairs and who will be the responsible party to cover these; and
6. specific use of the property during lease term (e.g., the type of business and activities allowed).

Frequently, the tenant must find a guarantor to co-sign the lease. Dominican law requires landlords to deposit mandatory security deposits (in an amount equivalent to one, two or three months of rent, depending on the term of the lease) at the government-controlled Agricultural Bank. According to recent case law, this deposit is no longer required prior to initiating procedures against the tenant.

In the event of breach of lease terms, tenants can sue landlords for the specific performance of any obligation assumed by the landlord in the lease, as well as claim damages. The landlord, similarly, can sue for specific performance and damages, as well as for eviction.

The customary procedure to evict a defaulting tenant is to sue in court. The process is very time-consuming for two reasons:

1. before suing, the landlord is required in many cases to go through an administrative procedure that usually grants the tenant grace periods of six months or more; and
2. eviction orders by lower courts are subject to appeals to two higher courts, which lengthens the process to three or more years if the tenant retains the services of a savvy lawyer.

General contract law applies to the lease but is limited by various statutes that protect the tenants. For example, if there is no escalating clause for rent in a lease, the landlord cannot raise it unilaterally without undertaking a lengthy administrative procedure.

Owners and tenants face a standard strict tort liability (custody-based liability) for real estate they own or lease for damage suffered by third parties on their property, if the property has played an active role in causing the damage, or for environmental damages.

There are different tax treatments regarding leasing to individuals or to corporate entities: leases to entities are subject to value-added tax and leases by individual landlords are subject to a 10 per cent withholding tax that is credited towards the landlord's annual income tax.

Year in review

In 2024, the Dominican Republic's economy is expected to grow by 5.1 per cent, driven by monetary easing, increased public investment and a record influx of tourists. The real estate market continues to thrive, with residential property prices increasing by 7 per cent year-on-year for apartments and 5 per cent for houses as of May 2024. The market is projected to reach a value of US$585.80 billion in 2024.

The tourism sector remains a significant driver, with air arrivals increasing by 10.2 per cent year-on-year in the first four months of 2024. The real estate market has seen robust activity, particularly in the second-home vacation property sector, which continues to attract both domestic and international buyers. The areas of Santo Domingo and Punta Cana remain central to real estate and financing activities, while Puerto Plata, Las Terrenas, Miches and Pedernales are gaining increased investor interest due to new infrastructure projects.

The Central Bank's policies, including the lowering of interest rates and liquidity injections, have supported the real estate finance market. Additionally, the government's efforts to improve infrastructure and attract foreign investment have further bolstered the market.

Outlook and conclusions

The Dominican Republic is rapidly establishing itself as a leading destination for foreign investment, bolstered by an evolving legal framework and strategic infrastructure developments. The outlook for its economy and real estate sector remains promising. The country continues to be one of the fastest-growing economies in the region. The economy is projected to maintain a steady growth rate, driven by sectors such as tourism, agriculture and services.

The Dominican Republic remains an attractive destination for foreign investors due to its stable economy, favourable legal framework and competitive property prices. The government's investor-friendly policies and strategic infrastructure developments further enhance its appeal.

Notable initiatives, such as the Pedernales project, highlight the nation's commitment to eco-friendly development through renewable energy and sustainable tourism. Additionally, the Dominican Republic's economic and political stability, along with competitive tax incentives, further enhance its attractiveness for international ventures.

As foreign investors seek stable and promising markets, the Dominican Republic stands out as a compelling option that supports both economic growth and sustainable development.

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