

VIII. Buying and Renting Real Estate

A. Buying Real Estate. General Information

The process for a foreigner's buying real estate is no different from that of a Colombian, except for the foreigner's need to present documentation that he or she legally resides in the country.

Procedure

Step 1. Preliminary Stage

For the purposes of verifying the ownership of the property and the seller's capacity to enter into a contract, and establishing the state of the property and whether it is occupied or not, it is recommended that one starts by visiting the property.

Likewise, one should ask for the ownership history and no-lien certificate ("certificado de libertad y tradición") at the office of the Public Deeds Registry, in order to determine the title-holder(s). It is indispensable to consult a recently-issued certificate (one that has been in force for no longer than fifteen - 15 - days).

Finally, one should confirm that the regulations on land use, zoning and the conditions of the property itself allow one to undertake the activities for which it will be acquired.

Step 2. Promissory Contract for Sale and Purchase

After assuring oneself that the property is free of liens and in a good state, one should proceed to the drafting of a promissory contract for sale and purchase between the two parties.

This document should include:

- Information about the buyer and seller.
- Description and location of the property.
- Price and form of payment.
- Date and manner of transfer.
- Date and signing of the deed.
- A certificate of good standing ("paz y salvo"), attesting that there are no outstanding charges for public services, administration fees and taxes.

- A non-encumbrance certificate (“constancia de libertad y gravámenes” or “certificado de tradición y libertad”).
- Conditions for the payment of the expenses occasioned by the contract and its registration.
- Domiciles where the parties are to be notified.
- Signatures, authenticated by a notary public.

The promissory contract for sale and purchase has no cost whatsoever (unless it is granted by public deed) and one usually pays an amount of money, as an advance, when signing it. This is normally between ten percent (10%) and twenty percent (20%) of the total value of the property.

This warranty deposit is called an “arras” and there are two kinds of deposits.

-Waiver deposits (“arras de desistimiento”): these allow the buyer to renounce the acquisition before signing the deed, so that the buyer only loses the amount given as an advance. The seller may also renounce the transaction, returning twice the amount the seller has received. The advantage of this procedure is that the buyer does not risk the whole of the agreed-on price in case of unforeseen developments.

-Confirmatory deposits (“arras confirmatorias”): these imply that the sale and purchase agreement is definitively concluded, without any of the parties’ being able to unilaterally withdraw, at the risk of losing the price of the property and not only the amount handed over as an advance.

It is important to verify that all the information in the document is truthful, especially that related to the area and price of the property. Likewise, one should request from the seller a copy of the most recent receipt for the payment of public services, property tax, valuation and administration.

Step 3. Public Deed

Once the private stage of the transaction is concluded one must formalize the agreement by a public deed. The parties must go to a public notary and examine the draft of the deed drawn up by the officials of the notary before proceeding to its signing.

For the drawing up and subsequent signing of the deed, the following documents must be attached:

- A non-encumbrance certificate with regard to the property tax and valuation.

- A non-encumbrance for payment of administrative costs (if the property is under a horizontal property regime) ¹.
- Photocopies of the identity documents of the parties.
- If the purchase is subject to a mortgage, a form is required that provides information about the credit granted by the financial entity and a certification of the entity by the chamber of commerce.

The deed occasions the following payments:

- Notarial fees equivalent to 2.7 per thousand pesos of the value of the operation. Each of the parties normally pays half of this amount.

Once the documentation is complete, the parties must simultaneously sign the respective memorandum (“minuta”), after reading all the pages, so that no modifications may be made to it afterwards. A period of two months is allotted for the registration of the deed, after which interests on arrears are charged. For that reason, it is recommended that the deed be registered as soon as the parties sign it.

Step 4. Registration

The final step in the purchase of a property is to register the public deed at the Registry Office for Public Deeds (“Oficina de Registro de Instrumentos Públicos”). Once the deed has been formalized at the notary’s, it is necessary to pay one percent (1%) of the sale price at the liquidation counters.

Once they have the receipt for the registration tax, the parties must go to the registry office corresponding to the locality where the property stands, where they must pay the registration fees, which correspond to 0.5% of the sales price and another 0.5% of the mortgage, when this exists.

The registration procedures take between eight (8) and thirty (30) days, following the submittal of the documents and depending on the office and the city where the operation has been registered.

On registering the deed one must ask for a non-encumbrance certificate (“certificado de libertad”), in order to verify that it has been correctly registered.

If you have any other doubt about the process, consult the website of the Superintendency of Notaries and Registration: www.supernotariado.gov.co.

¹ The juridical system which regulates compliance with the norms for horizontal property in a building or building complex that is or will be established

B. Renting Real Estate. General Information

1. Definition of Renting

Law 820, of 2003, defines the renting of urban housing as “a contract whereby the two parties enter into a reciprocal obligation; one to grant the enjoyment of an urban property totally or partly meant for housing, and the other to pay a given price for this use”.

2. Form of the contract

The rental contract for urban housing may be verbal or written. In either case, the parties must reach an agreement on at least the following points.

- The name and identification of the contracting parties.
- Identification of the property subject to the contract.
- Identification of the part of the property which is rented, when such is the case, as well as the areas and services shared with the other occupants of the property.
- Price and form of payment.
- Description of the public domestic and similar or additional services provided to the tenant
- Term of the duration of the contract.
- Designation of the contracting party responsible for the payment of the public services of the property subject to the contract.

The tenant must assure himself or herself that the landlord is the real owner of the property, or in the contrary case, that this lessor has sufficient faculties to sub-lease. During the negotiating process, it is customary to ask for references and guarantees, whether directly or through specialized real estate agencies.

3. Kinds of Rental Contracts

Contracts for the rental of urban housing are classified in the following way, whatever their particular denomination.

Individual: Whenever one or several natural persons receive a property with or without public domestic and other services for their dwelling or that of their family, or it is received by third parties, in the case of legal entities.

Joint: when two or more natural persons receive the use of a property or part of it and jointly commit themselves to pay its price.

Shared: when it is matter of the use of a non-independent part of the property which is rented; the use of the rest of the property or part of it is shared with the landlord or with other tenants.

4. Obligations of the Landlord

The landlord's obligations are:

- To hand over the property given in rental to the tenant in a good state of service, security and hygiene and place at his or her disposal the public domestic and similar and additional services agreed to on the agreed-on date or the moment when the contract is signed.
- To maintain the public domestic and similar or additional services in a good state of service for the purpose agreed to in the contract.
- When the rental contract for urban housing is a written one, the landlord must provide the tenant or co-debtor, when the case applies, with a copy of the same with the original signatures.
- This obligation must be met within a maximum term of ten (10) days following the date of the signing of the contract.
- When it is a matter of housing subject to a horizontal property regime, the landlord must provide the tenant with a copy of the norms of the same.

5. Obligations of the Tenant

The obligations of the tenant are:

- To pay the price of the rent within the term stipulated in the contract, at the rented property or the place agreed on.
- To take care of the property and the utilities received in rental. In the case of damages or deteriorations other than those caused by normal use and the passage of time, and which may be attributable to poor use or the tenant's fault, the tenant, on his or her own account and in a timely manner, must undertake the needed repairs or replacements.
- Pay for the public domestic and related or additional services on time, as well as ordinary expenses when they arise, in accordance with the stipulations of the contract.

- Comply with the norms laid down in the regulations for horizontal property and those which the government decrees for the protection of the rights of all the neighbors.
- In the case of shared housing or boarding houses, the tenant is also obliged to care for areas and services of common use and to undertake, on his or her own account, the needed repairs or replacements when they may be attributable to the tenant or his dependents.

6. Subletting and Cession

The tenant does not have the right to cede the rental nor sublet it, unless he or she counts on the express authorization of the landlord. When such cession is expressly authorized by the landlord, the landlord has the right to demand restitution and other obligations arising from the rental contract from the cessionary.

7. Rental Price

The monthly rental price is fixed by the parties in legal currency but may not exceed one percent (1%) of the commercial value of the property or of the part which is given in rental. This is commonly known as the *rental rate or norm* (“canon de arrendamiento”). The monthly price of the rate stipulated by the parties may be set in any foreign coin or currency, payable in Colombian legal currency at the representative market exchange rate on the date on which the obligation was contracted, except when the parties have agreed to a different rate or exchange rate.

After twelve (12) months of the contract’s operation under the same price and yearly after that, the landlord may increase the rent by a percentage that may be no higher than one hundred percent (100%) of the increase in the consumer price index (“IPC”) for the immediately preceding calendar year. When this increase is chosen, the landlord must inform the tenant of the increase and the date on which it comes into effect.

8. Termination of the Rental Contract

A rental contract may be terminated by mutual consent, or by the landlord or the tenant, in accordance with the following:

- a. Termination by mutual consent: the parties, at any time and by mutual agreement, may terminate the contract for urban housing.

- b. Termination on the part of the landlord: The following reasons allow the landlord to unilaterally ask for the termination of the contract:
 - The tenant's failure to pay the rents and the readjustments within the term stipulated in the contract.
 - A failure to pay the public services which leads to the disconnection or loss of the service, or failure to pay the common expenses for which the tenant is responsible.
 - The tenant's total or partial subletting of the property, cession of the contract or enjoyment of the property or change of the property's use without the express authorization of the landlord.
 - The tenant's repeated incursion into conducts which affect the civic peace of neighbors, or use of the property for activities which are criminal or imply violations of the law, duly confirmed by the police authorities.
 - Making improvements, changes or enlargements of the property, without the express authorization of the landlord or the total or partial destruction of the property or rented area by the tenant.
 - The tenant's violation of the norms of the respective horizontal property regulations, when the housing is subject to that regime.
 - When the owner or possessor of the property needs to use it for his own residence for a period of no less than one (1) year.
 - When the building has to be demolished to make way for a new one, or when it has to be vacated for independent works of repair.
 - When the property has to be surrendered in compliance with the obligations found in a purchase and sale contract.

- c. Termination on the part of the tenant. The tenant may unilaterally terminate the rental contract within the initial term or its extensions, subject to a prior written notice sent to the landlord by registered post no less than three (3) months before the intended vacancy and on the payment of an indemnization equivalent to the price of three (3) months of rent. The following reasons allow the tenant to unilaterally ask for the termination of the contract:
 - The suspension of the provision of public services to the property by the premeditated action of the landlord or because the landlord is in arrears with the payments he or she is responsible for. In these cases, the tenant may choose to assume the cost of reestablishing the service and discount it from the payments which correspond to him or her as the tenant.

- The landlord's repeated incursion into activities which gravely affect the full enjoyment of the rented property by the tenant, duly confirmed by the police authorities.
- The landlord's failure to honor the rights which the tenant is granted by law or by the contract.

For further information one should consult the horizontal real estate association of the city where the property is located or do it through the Colombian Federation of Real Estate Associations at:

- www.fedelonjas.org.co
- www.lonjadebogota.org.co

The procedure whereby a foreigner rents a property does not differ much from the one which applies to a Colombian citizen. In addition, the tenant must present some kind of guarantee that he or she will not leave the country before the contracts ends, as well as documents which show that he or she is a legal resident.

9. Procedure for Renting a Property

Step 1: Where does one Look for a Property?

The first thing one should do is look for a property one wishes to rent. For this purpose, there are the property rental sections of the classified ads in newspapers, which one may consult by buying the newspaper or looking at them on the internet. Newspapers and magazines which offer these classified ads are to be found all over the country.

There are also online portals exclusively dedicated to assembling such classified ads, which may be consulted at websites like the following:

- Metro Cuadrado: www.metrocuadrado.com.
- Clasificados Colombia: clasificados.colombia.com.
- Adoos: www.adoos.com.
- La Guía Clasificados: www.laguiaclasificados.com.co

You can also simply visit the neighborhoods that most appeal to you and look for rental notices posted in the places you like, noting down the phone numbers and calling to find out the details.

a. Zones

The cost of renting a property in Bogota depends on the stratum of the neighborhood where it stands. There are six (6) strata, shown in Table 8.1

Table 8.1. Socio-economic stratification levels

1 –Lowest
2 –Low
3 –Moderately low
4 –Medium
5 –Medium high
6 –High

Bogota has a system for classifying the socio-economic levels of different neighborhoods which scales the cost of services like electricity, gas, water and others in accordance with the capacity for payment. More detailed information about the strata of the city may be found at the website of the District Planning Secretary: www.sdp.gov.co.

In addition to the above, these zones also have norms which restrict land use and thus, the tenant must determine beforehand if the activity which he or she seeks to engage in is allowed in that zone and that specific property.

b. Classification of Properties

Properties may be classified according to their price, neighborhood, area, size, number of rooms, number of bathrooms, age and whether they are furnished or unfurnished. There may be other kinds of classification, but these are the most common.

c. Ways of Renting a Property

Through a real estate agent: this method is the most common insofar as a third party who is an expert on the subject advises the interested party. The real estate agent will inform the interested party when he or she locates a property which suits his or her needs. The cost of this type of rental is normally higher, since it covers the work and mediation done by the real estate agency.

Directly: this method of renting is undertaken directly between the interested parties and one does not have to pay an intermediary. Although the same documents are usually required, the prospective tenant may directly deal with the landlord, thus permitting himself or herself more flexibility.

Step 2. Requisites

a. Employee

The original of an employment certificate which includes basic information about the post, wage and length of the contract. If one has other sources of income, one must annex the documents which accredit them.

b. Independent Worker

Demonstrate one's income, annexing documents which accredit it, such as an income tax statement, employment certificate or payment stub.

c. Pensioner or Retiree

The person must present the pension or retirement certificate or the stubs of the payment receipts. If the person has other sources of income, they should be accredited.

d. Legal Entity

- Certificate of incorporation and legal representation, issued no more than three months before.
- Balance sheets for the latest accounting period, certified by a public accountant.
- Photocopy of the most recent tax statement, when available.

e. Guaranty

Most real estate agencies and even owners of properties which are directly rented normally ask for additional requisites as a guarantee. This normally means that the prospective tenant must present letters of recommendation from one or several guarantors ("fiadores"), along with a photocopy of the deeds of their properties.

The joint debtors/guarantors must accredit incomes that are more than twice the value of the rental rate. These persons must annex bank statements for the past three (3) months and if the monthly rental rate is higher than COP\$ 700,000 (us\$350), the guarantors must accredit their ownership of a property.

f. Deposit

Asking for a deposit is very common. This generally amounts to at least a month's rent and thus covers any damage that might occur to the property and guarantees that it is returned in the same state as it was found when the tenant entered it. The total value is returned at the end of the contract and any needed repairs are deducted from that sum.

g. Commission

This refers to the payment made to the real estate agency for its services, although it varies from agency to agency. Some ask for the payment of a number of months of rent, and others earn a monthly commission on the rental rate but these costs are usually assumed by the landlord.

Step 3. Selection Process

After the prospective tenant has presented the documentation and met all of the established requisites, the real estate agency studies the case, and after comparing it with that of others who wish to rent the property, makes a decision and informs the interested party.

Step 4. Monthly Payment

The payment of the monthly rate or rent is done in the first few days of the month, generally during the first fortnight. The payment has two parts: the rent itself, plus a monthly administration payment. The latter may or may not be included in the rent and it is important to determine this beforehand.

This section was prepared by the authors of this document on the basis of the information found at:

- www.metrocuadrado.com,
- www.porsubien.com/requisitos.jsp?seccion=arriendos,
- www.bienraiz.com, Código Civil Colombiano.

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Editing: Invest in Bogota
March 2011

Invest in Bogota is the investment promotion agency for Bogota and Cundinamarca, a public-private partnership between the Bogota Chamber of Commerce, the Bogota City Government and the Government of Cundinamarca.

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