

# PURCHASE AND LEASING OF PROPERTIES

General information about purchase and leasing of properties in Colombia and related procedures.

Bogotá has major business centers and business activities which are strategically located: The malls area in Bogotá includes 1,490,038 square meters, while the street commerce area is 7,899,117 square meters, with a population of 7,878,783 (Census 2015) and a total commerce amount of \$30.6 trillion Colombian pesos<sup>9</sup>.

## General Information about the Purchase of Properties

The process for a foreigner to buy a property is no different from the process for a resident in Colombia, except for the documentation certifying that the foreigner is a legal immigrant in the country.

### Step 1. Preliminary stage (due diligence) (optional but advisable)

Request the property certificate from the Registry of Public Instruments ([www.sivirtual.gov.co](http://www.sivirtual.gov.co)) for the respective title search in order to verify the property's chain of title in the last 20 years, and to establish if there are liens, limitations, interruptions or contingencies adversely affecting ownership. For security reasons, it is essential that such certificate has been issued in the last fifteen (15) days.

Compliance status of the potential seller with tax obligations applicable to the property should also be checked in order to identify contingencies that are associated with the assets and may be transferred with the sale.

Finally, it should be confirmed that land use, both in the area and the property itself, allows the activities for which it will be purchased.

### Step 2. Promise to purchase and sale (optional)

Once you are sure that the property is free of liens and in good condition, proceed to draft the promise to purchase and sale between the parties.

This document must include:

- Information of buyer and seller.
- Description and location of the property, including its boundaries.
- Price and payment terms.
- Date and method of transfer.
- Date, time and place of signing of deed.
- Payment terms for expenses incurred by the agreement and its registration.
- Address for notice of the parties.
- Signatures and acknowledgement before a notary public.

The promise of purchase and sale is free of charge (unless it is granted by public instrument) and, upon signing, an amount of money is usually paid as an advance, called earnest payment. This amount is normally between ten percent (10%) and twenty percent (20%) of the total property amount, at the discretion of the contracting parties.

### Step 3. Public instrument

Once the private stage is concluded, this document must be formalized as a public instrument. The parties must appear before a notary and review the draft deed prepared by the employees of the notary before signing.

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

- Certificate of good standing of property tax and valuation contribution.
- Certificate of good standing of management fees (if the property is subject to the horizontal property system).
- Copies of identification documents of the parties.
- If the purchase is subject to a mortgage, a form with the information of the credit granted by a financial entity and the certificate of incumbency and good standing with such entity are required.

The deed involves the payment of notary fees equivalent to 3 per \$1,000 Colombian pesos (USD 0.32) of the transaction amount. Usually, fees are shared equally between the parties. In addition, there are other expenses associated with the transaction that will be described below.

The deed has a period of two months to be registered without bearing interest. For this reason, it is recommended that the deed be registered as soon as it is signed by the parties.

### Step 4. Registration

The last step in the purchase of a property is to register the public instrument with the Registry of Public Instruments. Once the deed is formalized at the notary, it is necessary to approach the payment counters where one percent (1%) of the sale price is charged.

Having the registration tax invoice, the parties shall go to the registry office corresponding to the location of the property, where they shall pay registration fees for 0.5% of the sales price and another 0.5% of the mortgage, if applicable.

The registration procedure takes between eight (8) and thirty (30) days after submission of the deed.

Once the deed is registered, a property certificate must be requested in order to verify that the transaction has been properly registered. If you have any other doubt about the process, go to the Superintendence of Notaries and Registries: [www.supernotariado.gov.co](http://www.supernotariado.gov.co)

## General Information about the Leasing of Properties

The process for a foreigner to lease a property does not differ too much from the process for a local citizen. However, in the case of foreign lessees, the lessor may request some additional guarantee to cover the risk of breach of contract due to change of domicile by the lessee.

### 1. Definition of leasing

Leasing of urban property is "an agreement whereby two parties are obliged to each other: one grants the use of an urban property totally or partly intended for housing, and the other pays a given price for this use".

### 2. Form of the lease agreement

The lease agreement for urban property may be oral or written. In either case, the parties must reach an agreement on at least the following points:

- Name and identification of the contracting parties.
- Identification of the property subject to the agreement.
- Identification of the portion of the property that is being leased, when applicable, as well as the areas and services shared with other occupants of the property.
- Price and payment terms.
- List of related or additional services, things or uses.
- Term of the agreement.
- Designation of the contracting party responsible for the payment of utilities of the property subject to the agreement.

The lessee must make sure that the lessor is the actual owner of the property or, on the contrary, that such lessor has sufficient powers 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. Obligations of the lessor

The lessor is obliged to:

- Deliver to the lessee the property leased on the agreed date and in good service conditions.
- Maintain in the property related or additional services, things and uses required for the purpose stated in the agreement.
- When the lease agreement for urban property is in writing, provide both the lessee and co-signor, where applicable, with a copy thereof with original signatures. This obligation must be fulfilled within a maximum term of ten (10) days from the date of signing of the agreement.
- In the case of housing subject to the horizontal property system, provide the

lessee with a copy of the condominium regulations.

#### **4. Obligations of the lessee**

The lessee is obliged to:

- Pay the lease price within the term set out in the agreement, at the leased property or in a place agreed.
- Take care of the property and things leased and keep them in good condition.
- Pay in a timely manner related or additional services, things and uses as well as common expenses, where applicable, as set forth in the agreement
- Comply with the rules laid down in the condominium regulations and those issued by the government decrees to protect the rights of all the neighbors.
- In the case of shared housing or boarding houses, take care of common areas and services, and make the necessary repairs or replacements at the lessee's expense, when they are attributable to the lessee or his or her dependents.

#### **5. Sublease and assignment**

The lessee does not have the power to assign the lease or to sublease, unless as expressly authorized by the lessor.

#### **6. Lease price**

The monthly lease price is fixed by the parties in legal tender but may not exceed one percent (1%) of the market value of the property. Regardless of the currency in which the lease price is fixed, it shall always be paid in Colombian pesos, calculated at the exchange rate of the date on which obligation was contracted, unless the parties have agreed to a different date or reference rate.

The lease price amount may increase every 12 months, provided such increase does not exceed the percentage adjustment to the Consumer Price Index (CPI) for the immediately preceding calendar year. The date on which the increase shall come into effect must be set in the lease agreement.

#### **7. Termination of the lease agreement**

##### ***a. Termination by mutual agreement.***

The parties may, at any time and by mutual agreement, terminate the lease agreement.

##### ***b. Termination by the lessor***

The grounds for the lessor to request unilaterally termination of the agreement are, among others, (i) lessee's failure to fulfill his contractual and/or legal obligations; (ii) total or partial sublease of the property without authorization of the lessor; (iii) performance of structural modification to the property without authorization of the lessor;

(iv) lessee's violation of horizontal property regulations.

In addition, the lessor's intention not to renew the agreement upon expiration of the agreed term shall be by three (3) months' written notice.

##### ***c. Termination by the lessee***

In addition to the lessor's failure to fulfill contractual and/or legal obligations, the lessee may unilaterally end the lease agreement due to (i) suspension of the provision of utilities to the property because of a premeditated action of the lessor or because the lessor is in arrears with the payments for which he or she is responsible, and (ii) any interruption by the lessor that prevents the lessee's enjoyment of the property.

For further information, please go to the horizontal property association of the city where the property is located or the Colombian Federation of Real Estate Associations at:

- [www.fedelonjas.org.co](http://www.fedelonjas.org.co)
- [www.lonjadebogota.org.co](http://www.lonjadebogota.org.co)

## Property Leasing Procedure

### Step 1. Where to look for real estate?

The first thing to do is look for the property you want to rent. For this purpose, there are property rental sections in the classified ads of newspapers. Below are some examples of online classified ads:

- [www.metrocuadrado.com](http://www.metrocuadrado.com)
- [www.fincaraiz.com.co](http://www.fincaraiz.com.co)
- [clasificados.colombia.com](http://clasificados.colombia.com)
- [www.laguiaclasificados.com.co](http://www.laguiaclasificados.com.co)

#### a. Zones

The cost of renting a property in Bogotá depends on the socioeconomic level where it is located. There are six (6) different socioeconomic levels:

- 1 – Very low
- 2 – Low
- 3 – Lower middle
- 4 – Middle
- 5 – Upper middle
- 6 – High

The cost of utilities such as electricity, gas, water, among others, increase according to the zone where the property is located. On the following website of the District Planning Office, you may find a detailed map of socioeconomic levels in the city: [www.sdp.gov.co](http://www.sdp.gov.co)

In addition to the above, these zones have restrictive rules on land use and, therefore, the lessee must determine in advance if the activity that he or she plans to carry out is allowed in that zone and specific property.

#### b. Classification of property

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

#### c. Types of leasing

*Through a real estate broker:* This type of leasing is the most common given that a third party who is an expert on the subject provides advice to the interested party. If the real estate broker finds a property that suits the needs of the interested party, it will inform it. The cost of this type of leasing is normally higher, since it covers the work and brokerage services of the real estate broker.

*Directly:* This type of rental occurs directly between the interested parties and does not involve brokerage costs. Although the same documents are usually required, the interested party can deal directly with the owner of the property, thus allowing for more flexible

negotiations.

### Step 2. Requirements

#### a. Employee

Original employment certificate that includes basic information such as position, salary and length of contract. In case of other revenue, attach the corresponding documents to certify it.

#### b. Self-employed

Demonstrate revenue by attaching documents that certify it, such as last income tax return, employment certificate or payment stub.

#### c. Pensioner or retiree

Submit pension or retirement certificate or pension payment receipts. In case of other revenue, it should be certified.

#### d. Legal entity

- Certificate of incumbency and good standing issued within the last three months.
- Financial statements for the last accounting period certified by a public accountant.
- Copy of the last income tax return, if available.

#### e. Guarantee

Most real estate brokers and even owners of properties that are directly leased usually impose additional requirements as a guarantee, especially co-signors. For this purpose, submit letters of approval for one or more of them, along with a copy of the title deeds of their properties. Alternatively, they may request provision of insurance policies or creation of term deposits.

The two joint debtors or co-signors must certify revenue of more than twice the lease price. These persons must attach bank statements for the last three (3) months if the rental price exceeds COP \$700,000 (USD 229.25).

Co-signors must certify ownership of a property.

#### f. Deposit

It is very common to ask for a deposit that generally amounts to a month's rent as minimum in order to cover any damage to the property and guarantee that it is returned in the same condition as was given. The total amount is reimbursed at the end of the agreement and any repairs will be deducted.

#### g. Commission Fees

This refers to the payment made to the real estate broker for its services, which differs depending on the real estate broker. Some require the payment of a number of monthly

rents, and others earn a monthly commission on the lease price, but these costs are usually borne by the lessor.

### **Step 3. Selection process**

Upon submitting the documentation and meeting all of the established requirements, the real estate broker studies the case, and after comparing it with other property applicants, makes a decision and informs the interested party.

### **Step 4. Monthly payment**

Payment of the monthly rental price is made in the first days of the month, generally during the first fortnight. The payment consists of the lease price itself plus monthly maintenance fees of the property, if subject to the Horizontal Property System. The latter may or may not be included in the lease price, so it is important to find it out in advance.

## **References:**

- Law 820 of 2013
- Colombian Civil Code
- Superintendence of Notaries and Registries: [www.supernotariado.gov.co](http://www.supernotariado.gov.co)
- District Planning Office: [www.sdp.gov.co](http://www.sdp.gov.co)
- Metro Cuadrado: [www.metrocuadrado.com](http://www.metrocuadrado.com)
- Finca Raíz: [www.fincaraiz.com](http://www.fincaraiz.com)



