

07

**ADQUISITION**  
& LEASING OF REAL  
ESTATE PROPERTIES



BY: **Invest in Bogota**

WATCH THE VIDEO

In Colombia, the mechanism used for leasing and acquiring real estate properties is the same for Colombian nationals and foreigners. Real estate transactions do not involve any additional taxes or any legal, or financial burdens for foreign investors.

## Acquisition of Real Estate Properties

### Preliminary phase - Due Diligence

Confirm that the seller is the actual owner of the property and that the property has no defects or limitations that could affect it. Additionally, it is necessary to confirm that the approved use of the urban soil allows for the development of the buyer's economic activities and that the seller has no criminal background, especially in relation to terrorism or asset laundering.



- **Study of Titles Deeds:** Carried out before the property is purchased; it allows the buyer to have certainty on the property's ownership history and the possible burdens that may affect the property. The information to be reviewed in a title study is as follows:
  - The certificate of title and ownership must be requested from the Office of the Registration of Public Instruments. This document allows to verify the chain of ownership of the property for the last 20 years and the levies, limitations, interruptions, or contingencies that fall on the property. For security reasons, this certificate must be issued with a validity of no more than fifteen days.
  - Public deeds containing acquisition titles and other relevant legal acts.
  - Certificates of payment and good standing.



**Integrity Analysis of Previous Owners:** Analysis done based on the information available in public and corporate databases, in public listings, in business journals, websites, industry publications, the media, etc. to investigate the background of the sellers and the previous owners of the property.

The objective is to identify potential incidents that could affect the chain of tradition of the property or its future property, or the reputation of the acquirer. These analyses include searching for information about:

- Disciplinary, tax liability, and judicial history of the owner and former owners.
- Verify if the owner has or had any links to asset laundering, terrorist financing, fraud, and corruption activities.



- **Land Use Study:** Done to establish the type of use that can be given to the property, i.e. the activities that can be carried out, and the types of construction. This step is required to meet the investor expectations and avoid any type of unforeseeable circumstances possibly affecting the project.



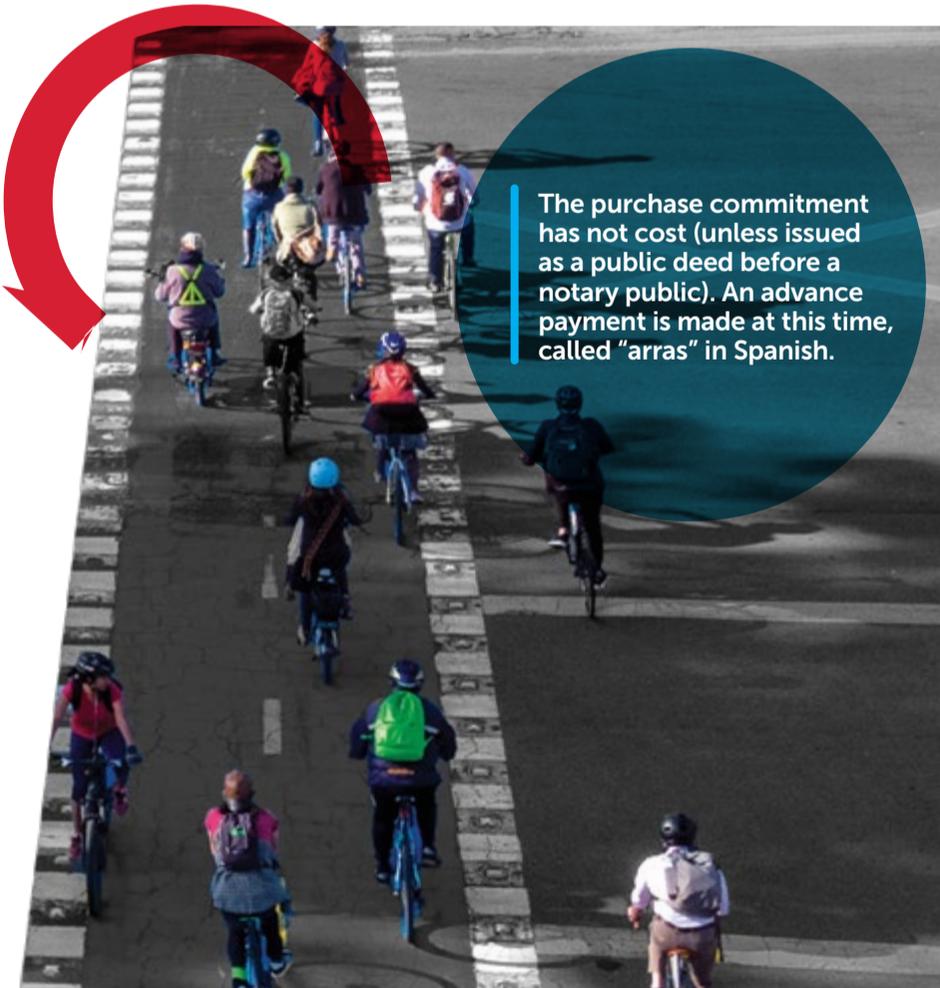
- **Acquisition of Rural Premises:** In Colombia, rural lands have a special regulation that can often result in a constraint on the development of commercial projects. For example, Section 72.9 of Law 160 of 1994 prohibits the acquisition of lands originally awarded as wasteland, if they exceed the size of the UAF Family Agricultural Unit, which varies by region. In Colombia, rural lands have a special regulation that can often result in a constraint on the development of commercial projects. For example, Section 72.9 of Law 160 of 1994 prohibits the acquisition of lands originally awarded as wasteland, if they exceed the size of the UAF Family Agricultural Unit, which varies by region.



- **Purchase commitment:** It is customary for the parties to make a purchase commitment before the property purchase agreement is done. This guarantees the performance of a contract that is to be postponed until the parties have taken the necessary legal and administrative steps. It has not cost (unless issued as a public deed before a notary public). An advance payment is made at this time, called "arras" in Spanish.



- **This contract must include:**
  - Buyer and seller information.
  - Property description and location, describing its boundaries.
  - Price and payment terms.
  - Date and manner of delivery.
  - Date, time, and place where the deed is to be executed.
  - Terms for the payment of expenses arising from the contract and its registration.
  - Parties' notification addresses.
  - Signatures and authentication before a Notary Public.



The purchase commitment has not cost (unless issued as a public deed before a notary public). An advance payment is made at this time, called "arras" in Spanish.

## Contract of sale



- **Public Deed:** The property purchase agreement should be executed as a public deed before a Notary Public. Usually, the notary officials prepare the public deed draft and submit it to the parties for review.

The applicable cost is approximately 0.3% of the transaction value. Should the parties not reach an agreement on which of them will pay such a cost, the law indicates that it will be shared equally.



- **Registration:** In the case of real estate transactions, the ownership is transferred when the purchase public deed is registered before the Public Instruments Registry.

The cost ranges between 0.5% and 1% of the value of the purchase or the property cadastre appraisal (whichever is higher). The so-called registration fees are 0.5% of the abovementioned value, usually paid by the seller.

## Lease of Real Estate Properties

### Lease Agreement

According to the Law 820 of 2003, Article 2, the urban housing lease agreement is an “agreement according to which two parties make an undertaking, one allowing for the enjoyment of an urban property that will be used for living purposes, in part or in whole, and the other to pay a specific price on such account”.

The contract execution can be either verbal or in writing (it is highly recommended that it be done in writing). An agreement between the parties and containing the following essential terms is the only requirement for its formalization:

- The price.
- The property that will be leased.

Despite not being required for formalization of the lease agreement it is advisable for the parties to include the following in their agreement:

- The payment terms.
- The manner and the date in which the property object of the agreement is to be delivered.
- Public utility agreements.
- Related aspects or uses.
- Contract duration.
- Designation of the person responsible for the payment of public utilities.

The lessee must ensure that the landlord is the true owner of the property or that the landlord is entitled to sublet.



- **Landlord's Obligations:**

- Deliver the property to the tenant.
- Keep the property in a state that allows the use for which it was leased.
- Solve any contingency that prevents the tenant from using the property for the object for which it was leased.
- Perform the necessary repairs required by the property.

- **Tenant's obligations:**

- Pay the lease fee.
- Use the property according to the terms of the contract.
- Ensuring the conservation of the property.
- Restore the property to the termination of the contract in the state in which you received it.
- Pay for the locative repairs of the property.
- Pay on time for related and additional services, things, or uses, as well as common expenses where there is any place.
- Comply with the rules enshrined in horizontal property regulations and those issued by the Government in the protection of the rights of all neighbors.
- The lessee does not have the right to assign the lease or sublet the property unless expressly authorized by the landlord.

- **Leasing Fee:** It is the price that the tenant must pay to the landlord for the use of the property. In Colombia, it is possible to agree on the value of the levy in any currency, although it must be paid in Colombian pesos at the market-representative exchange rate of the agreed date or the rate agreed by the parties.
  - In the lease of urban housing assets, the price may not exceed 1% of the commercial value of the property or the part of it that is leased.
  - Each year of the contract, the landlord may increase the levy by up to a proportion not exceeding 100% of the increase in the Consumer Price Index (CPI) in the previous year.

- **Renewal of Lease:** There is a difference depending on the type of property leased:

- Lease of Urban Housing: The parties have the autonomy to specify the conditions under which the contract is renewed.
- Leasing of Real Estate that is Part of a Commercial Establishment: The person who has occupied the property for two years or more will have the right to have the contract renewed at the time of its expiration, except in some cases established by law. Also, there are additional protections in favor of the tenant:
  - The lessee has the right to extend the term of the contract under the same conditions as those initially agreed, and the landlord must respect that right, provided that certain conditions laid down in Article 518 of the Commercial Code are met.
  - The owner of the property can give an eviction or notice of termination to the tenant no less than six months before the termination of the contract, in case the owner needs the premises for his room or establishment, or to rebuild it or repair.

**The lessee does not have the right to assign the lease or sublet the property unless expressly authorized by the landlord.**

- There is a right in favor of the tenant to be preferred over a third party interested in leasing the premises, if they are on an equal footing, according to the Article 521 of the Commercial Code.
- In cases where at the end of the contract the owner does not give the property the destination provided for by law or does not initiate the repair works within three months of the date on which the tenant delivers the premises, the latter will be entitled to special compensation, according to the Article 522 of the Commercial Code.

- **Termination of the Lease:**

- Termination by Mutual Agreement: Case in which the parties, at any time, terminate the lease.
- Termination by the Landlord: The landlord may terminate the contract in case of:
  - Non-compliance with the contractual and/or legal obligations of the tenant.
  - The subletting of all or part of the property without the authorization of the landlord.
  - The execution of structural modifications of the property that do not have authorization from the owner.
  - Violation of horizontal property regulations by the tenant.
- Termination by the Tenant: In addition to non-compliance with the legal and/or contractual obligations by the landlord, the lessee may unilaterally terminate the lease by:
  - Suspension of the provision of public services to the property, by premeditated action of the landlord or because of the landlord defaults on any of the payments under his or her expense.
  - Any interruption by the landlord that prevents the use of the property by the tenant.



## Real Estate Trust

A trust is a legal agreement according to which a person, called the trustor, transfers the legal ownership of one or more specific properties or assets to another person, called the trustee, the latter undertaking to manage or sell them in order to achieve a certain purpose, in their own benefit or to benefit a third party called the beneficiary, according to the Article 1266 of the Commercial Code.

On the other hand, a real estate property trust is a trust agreement according to which a real estate property is transferred to the trust company for its management and/or the development of a real estate project, in accordance with the instructions contained in the agreement. Subsequently, the trust transfers the completed units to the contract beneficiaries. These types of projects usually offer several advantages:

- The real property ownership is transferred to an independent trust, managed by a trust company overseen by the Colombian Superintendency of Finance.
- The independent trust is independent from the owner's and the trust's assets a circumstance that allows for the assets to be used exclusively for the real estate project.
- Being an independent trust, the risk of the project developer's assets being seized is reduced.

## Municipal Urban Planning Regulations

In Colombia, municipalities should have the necessary autonomy to establish the legal norms governing their territories, the use of the land, and the protection and defense measures required for the cultural and ecological heritage found in their territories. Consequently, a Territorial Land Use Plan (POT by its Spanish acronym) is required to regulate the development and use of municipal land.

The Territorial Land Use Plan (POT by its Spanish acronym) is a document prepared by the municipal administration containing a number of objectives, guidelines, policies, strategies, programs, acts, and norms established in order to guide and manage the physical development of the territory and land use. However, it has various objectives, of which the most important are:

- Improve the quality of life of those living in the area and benefit the development of the city.
- Provide citizens access to common services (roads, parks, schools, hospitals, etc.).
- Ensure the rational use of the land, guaranteeing environmental sustainability and protecting the region's assets.
- Protect the community against natural hazards.

The territories of the various municipalities and districts are classified as urban, rural, and urban expansion areas. The above classification determines the type of uses that can be given to the land:

- Urban: This is made up of the areas for urban uses, which have road infrastructure and access to home public services, making it possible to develop and build it.
- Urban expansion: This is made up of areas that want to be used for urban uses in the future, according to the implementation of urban land growth plans.
- Rural: It is made up of areas not suitable for urban use for reasons of opportunity or for the fact that they have a different destination.
- Suburban: It is made up of areas located on rural soil in which you can see some urbanization. Therefore, different measures are put in place to regulate these special circumstances.
- Protected: It is made up of areas that, by their characteristics, are part of areas of public utility for the location of infrastructure intended for the provision of public services or risk areas for human settlements. For these reasons, urbanization is not allowed there.

## Urban Building Licensing

A planning permission is an authorization required prior to land urbanization and division, for the construction and demolition of buildings, for the intervention and occupation of the public space, and for the division of land properties. This authorization is issued by the urban curator or the competent authority, in accordance with the POT norms. It involves various classifications:



- **Urbanization Permit:** A prior authorization required to create public and private spaces in one or several land properties located inside the urban area, to construct public roads, and to develop infrastructure and public household utility projects. This type of work aims to adapt these areas for urban purposes in accordance with the POT, providing the various necessary elements, and subdividing them for the subsequent construction of buildings.



- **Partitioning License:** Allows creating public and private spaces in one or several land properties located inside the rural and sub-urban area. It also allows executing the work required for the roads and the infrastructure required to guarantee the provision of residential services and the use of the resulting land properties in accordance with the respective POT.



- **Building Permit:** A prior authorization required for construction and to develop traffic areas and common areas in one or several land properties, in accordance with the POT, the Special Plans for the Management and Protection of Cultural Heritage Assets, and other applicable norms. These licenses specify uses, floor areas, volumetrics, accessibility, and other technical aspects approved for the respective building.

