

REAL ESTATE ACQUISITION IN BRAZIL – BRIEF INSTRUCTIONS

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There has been a large amount of real estate investments in Brazil in the last years.

Investments can be made by individuals or by foreign or national companies. In Brazil the most common practice is limited liability companies – Limitadas. The acquisition of real estate through Brazilian Companies is very much used for tax and inheritance reasons. Also, direct investment in Brazilian Companies may grant the right to permanent visa requirements (values vary according to type of investor – individual or legal entity).

The Public Register Law established a system. There are many Real Estate Registrars whose “jurisdiction” is defined according to the location of the real estate property and include a description of the property, previous and present owners, third party rights (as mortgages, liens, encumbrances or burdens) and other information. Any transfer or burden incurring upon real estate must be recorded at this Registrar. Transfer and other deeds shall always be executed by the parties (or its representatives) before a public notary and then recorded at the Real Estate Registrar.

Other documents that are necessary for the transfer (and shall be required by the notary when drafting the agreement) are certificates in name of sellers and the property to verify if there are any suits pending against such parties. Non-registered titles, claims, rights or liens are not enforceable against third parties, but can be enforced against those who took part in the transaction.

Ownership in Brazil is absolute for use, fruition and disposal and in perpetuity (there is no rule against perpetuities), solely limited to third party rights and applicable legal restrictions. There is however, need that the property be well used according to neighbor rights and public interest. When of death of owner, the heirs shall have to proceed with probation (at least regarding this property) in Brazil.

Nevertheless, there are other kinds of tenure to real estate, which must be observed.

Real estate can be negotiated and marketed by real estate brokerage or general advertisement. A professional assistance is always recommended. Promise to Buy and Sell are commonly used to pre-establish the rights and obligations of the parties. They can be provided through private or public means. Tax, joint property related expenses and Environmental liability shall be passed on to buyer unless specifically established otherwise. Even though, third parties still may sue buyer who may then sue seller.

A simple due diligence is required to analyze the property title and possibility of transfer. The cost of certificates for due diligence is generally paid by seller, unless otherwise agreed. Close attention must be given to potential liabilities (including environment and regulatory) as they will not be listed necessarily in the documents. As so, having any doubts regarding this matter, please call attention to your counsel.

When of transfer, a tax (owed to the city or state department) is due. Such tax varies according to the location and type of transfer. These taxes are usually paid by buyer, unless otherwise agreed

to. In addition to taxes, there are costs related to the execution of the deed, and registration of the deed with the Real Estate Registrar under its title number. Such costs vary from state to state.

The buyer is responsible for payments related to execution of the deed, except if the parties agree otherwise. The brokerage fee (variable) is usually paid by seller, unless otherwise agreed to. Accounting and attorney costs are paid by the hiring party.

The deed - that bind third parties and is recorded at the real estate registrar - is quite a simple document (contrary to large contracts of common law practice) because the law pre-establishes some warranties of seller (others may be included according to negotiation among parties), including: a) Eviction - in case of loss of the real estate property acquired due to any judicial order regarding third parties' rights seller is liable; and b) Debts related to the property until its transfer, except if the parties agree otherwise.

After the property acquisition, there are some maintenance fees and taxes due. Annually a property tax is due (rates vary according to the property location). There is also a small firefighters annual fee and some other minor fees that may incur. When of joint property areas, there is a condominium fee that is due monthly.

The owner can be deprived of real estate property in the event of expropriation, for public (social) need or interest, or if so demanded, in case of imminent danger. The Brazilian Constitution establishes the right to due indemnification.