

Real Estate Acquisition in Brazil

A Practical and Legal Guide for Foreigners:

Felipe Faltay Katz de Castro

1) Introduction

Acquiring real estate is a complex operation in all parts of the World, especially if you are buying as a foreigner and you are not aware about the rules of law, as well as some practical aspects. This short text is a quick reference to some topics that must be analyzed when doing business related to real estate in Brazil.

2) Brazilian Market

Before entering the legal topics, it is important to mention that the Brazilian Real Estate market has been developing rapidly in volume and quality. With a vast territory of continental proportions, investment opportunities are blooming.

Another attractive item is the accelerated expansion of real estate financing instruments offered to the real estate market both residential and corporate.

Besides direct investment in real estate, there are other investment alternatives such as private equity in real estate developing corporations, real estate funds and real estate receivables funds. It is important to inform that the mentioned funds are fully regulated by the Brazilian Securities Commission (CVM).

3) Brokerage

When speaking about professional assistance in the real estate market, we promptly think about brokers and, sometimes, lawyers as well. In Brazil, real estate brokers have to be registered before the local broker association and the profession is ruled by federal law.

Most real estate operations involve brokers. But, it is important to mention that it is not legally required. It is also important to know that whenever a broker is involved, the seller must pay the brokerage fee that can go up to 6%, but most brokers agree to negotiate the fees. There are many well known brokerage companies that follow the legal requirements at their operations, but the assistance of a lawyer to review and prepare the documents is always recommended.

4) Registration and ownership

The Brazilian system of real estate registration is somewhat bureaucratic but is designed to ensure the ownership to the one that registers. If the sale is not registered before the Real Estate Registry, there is risk exposure to the transaction. The bottom line: if you buy make sure to register! Registration fees are charged according to the value of the property involved and the taxation of real estate transfer is ruled by the city government. In Sao Paulo City, the tax rate is 2% of the transaction value.

5) Legal due diligence

Buyers need to be aware of any existing debts of the seller or of the real estate to be purchased. Besides the due diligence of the property, it is very important to perform a due diligence of the seller (person or legal entity), because some debts can follow the property acquired. For instance, lawsuits involving labor rights and tax authorities may be tagged to the property. If the buyer does not adopt certain precautions, he or she may end up having to pay for debts of the original seller. This is why a full legal investigation is mandatory before any real estate transaction.

6) Tax issues - registration and planning

The Federal Revenue Service of Brazil enacted a ruling that requires foreigners to obtain a registration called CPF (Cadastro de Pessoas Físicas), for individuals, and CNPJ (Cadastro Nacional de Pessoas Jurídicas) for legal entities.

According to this ruling, the Brazilian Taxpayer Registry (CPF or CNPJ) is mandatory for individuals or legal

entities residing abroad who own real estate properties in Brazil. Other assets are also subject to the mentioned rule and registration, such as: i) vehicles; ii) vessels; iii) aircrafts; iv) stock shares; v) banking accounts; vi) financial market investments; vii) capital market investments.

Documents and legal requirements may vary depending on the specific case.

Also all registered real estate operations are subject to real estate transfer tax. The rates vary from state to state and in the state of São Paulo the tax rate is 2%, as mentioned in item 2 above, and are usually paid by the buyer.

The tax burden issue is always brought up late in real estate transactions, usually on the closing day. But for maximum efficiency and outcome, tax planning is always recommended.

7) Bringing the capital to Brazil - Registration before the Central Bank

Foreign persons and legal entities bringing capital to invest in Brazil need to register the transfers before the Central Bank of Brazil (BACEN).

The registration will allow the future legal return of the capital and eventual gains earned in Brazil.

8) Conclusion

We hope to have brought up and called the attention to some aspects we think that need to be considered when investing in real estate in Brazil.