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Real Estate

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NICARAGUA

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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CONTENTS

1. General	p.6		
1.1 Main Sources of Law	p.6		
1.2 Main Market Trends and Deals	p.6		
1.3 Proposals for Reform	p.6		
2. Sale and Purchase	p.6		
2.1 Categories of Property Rights	p.6		
2.2 Laws Applicable to Transfer of Title	p.6		
2.3 Effecting Lawful and Proper Transfer of Title	p.7		
2.4 Real Estate Due Diligence	p.7		
2.5 Typical Representations and Warranties	p.7		
2.6 Important Areas of Law for Investors	p.7		
2.7 Soil Pollution or Environmental Contamination	p.8		
2.8 Permitted Uses of Real Estate Under Zoning or Planning Law	p.8		
2.9 Condemnation, Expropriation or Compulsory Purchase	p.8		
2.10 Taxes Applicable to a Transaction	p.8		
2.11 Legal Restrictions on Foreign Investors	p.8		
3. Real Estate Finance	p.8		
3.1 Financing Acquisitions of Commercial Real Estate	p.8		
3.2 Typical Security Created by Commercial Investors	p.8		
3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders	p.8		
3.4 Taxes or Fees Relating to the Granting and Enforcement of Security	p.8		
3.5 Legal Requirements Before an Entity Can Give Valid Security	p.9		
3.6 Formalities When a Borrower Is in Default	p.9		
3.7 Subordinating Existing Debt to Newly Created Debt	p.9		
3.8 Lenders' Liability Under Environmental Laws	p.9		
3.9 Effects of Borrower Becoming Insolvent	p.9		
4. Planning and Zoning	p.9		
4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning	p.9		
		4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction	p.9
		4.3 Regulatory Authorities	p.9
		4.4 Obtaining Entitlements to Develop a New Project	p.9
		4.5 Right of Appeal Against an Authority's Decision	p.9
		4.6 Agreements with Local or Governmental Authorities	p.9
		4.7 Enforcement of Restrictions on Development and Designated Use	p.10
		5. Investment Vehicles	p.10
		5.1 Types of Entities Available to Investors to Hold Real Estate Assets	p.10
		5.2 Main Features of the Constitution of Each Type of Entity	p.10
		5.3 Minimum Capital Requirement	p.10
		5.4 Applicable Governance Requirements	p.10
		5.5 Annual Entity Maintenance and Accounting Compliance	p.10
		6. Commercial Leases	p.10
		6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time	p.10
		6.2 Types of Commercial Leases	p.10
		6.3 Regulation of Rents or Lease Terms	p.10
		6.4 Typical Terms of a Lease	p.11
		6.5 Rent Variation	p.11
		6.6 Determination of New Rent	p.11
		6.7 Payment of VAT	p.11
		6.8 Costs Payable by Tenant at Start of Lease	p.11
		6.9 Payment of Maintenance and Repair	p.11
		6.10 Payment of Utilities and Telecommunications	p.11
		6.11 Insuring the Real Estate That Is Subject to the Lease	p.11
		6.12 Restrictions on Use of Real Estate	p.11
		6.13 Tenant's Ability to Alter and Improve Real Estate	p.11
		6.14 Specific Regulations	p.11

NICARAGUA LAW AND PRACTICE

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6.15	Effect of Tenant's Insolvency	p.12
6.16	Forms of Security to Protect Against Failure of Tenant to Meet Obligations	p.12
6.17	Right to Occupy After Termination or Expiration of a Lease	p.12
6.18	Right to Terminate Lease	p.12
6.19	Forced Eviction	p.12
6.20	Termination by Third Party	p.12
7.	Construction	p.13
7.1	Common Structures Used to Price Construction Projects	p.13
7.2	Assigning Responsibility for the Design and Construction of a Project	p.13
7.3	Management of Construction Risk	p.13
7.4	Management of Schedule-Related Risk	p.13
7.5	Additional Forms of Security to Guarantee a Contractor's Performance	p.13
7.6	Liens or Encumbrances in the Event of Non-Payment	p.13
7.7	Requirements Before Use or Inhabitation	p.13
8.	Tax	p.13
8.1	VAT	p.13
8.2	Mitigation of Tax Liability	p.14
8.3	Municipal Taxes	p.14
8.4	Income Tax Withholding for Foreign Investors	p.14
8.5	Tax Benefits	p.14

Contributed by ACZALAW - Nicaragua **Authors:** Minerva Bellorin R., Alonso Porras D., Diogenes Velasquez V., Ramiro Rodríguez Urcuyo

ACZALAW - Nicaragua is located in Managua, Nicaragua. Our team is composed of eight attorneys, three of whom have extensive expertise in real estate. During the last 15 years in Nicaragua there has been a boom in the purchase and sale of real estate, including very important investments in this sector for the development of Nicaragua, the construction of housing projects and developments in the city and beachfront properties, and also the use of the timeshare modality, even though it is not yet regulated in Nicaragua, nor is there any legislation that considers it as such. During

the time of the increase in real estate investments in Nicaragua, our firm and partners have been pioneers and legal advisers of many projects and developments that began in the mid-2000s. A particular real estate practice of our firm is the experience gained in the transactions of properties in the Caribbean Coast, which are regulated under the special legislation of Indigenous Communities and under the administrative instances of the special regime of the indigenous communities and the autonomy of the Atlantic Coast of Nicaragua.

Authors



Minerva Bellorin R. is co-founder, partner and chairman of the Board of Directors of Aczalaw Nicaragua Firm.

With more than 20 years of experience as an attorney, Ms Bellorin's expertise is in general practice, advising on foreign investment. Her most developed areas of practice are focused in real estate, business and corporate law, commercial law, labour law, intellectual property, regulated sectors such as telecommunications and energy as well others relating to health; free zone and taxation. Ms Bellorin is specialised in taxation law and has acquired great experience assisting and providing legal advice in the field of government procurement and tax, tax planning to corporations in different sectors of the Nicaraguan economy related to different business activities such as real estate development and hospitality. Ms Bellorin has been a member of the New York State Bar Association since 2013 and member of WIP (Women in the Profession) from Vance Center of New York, and was the Representative of WIP chapter of Nicaragua during 2016 – 2017. She speaks English and Spanish.



Alonso Porras D. is co-founder, partner and managing partner of Aczalaw Nicaragua Firm. He has vast experience in public policies, regulatory and administrative law, having advised international agencies, investment promotion agencies

and public institutions in matters related to drafting of proposals for regulatory frameworks, with an emphasis on business facilitation and improvement of investment conditions. Additionally, Mr Porras has extensive experience in corporate law, real estate law, energy, antitrust and consumer protection, combining law practice with his own business experience. He has become an expert in assisting foreign investors, accompanying them in their establishment processes in Nicaragua, from the incorporation of companies to obtaining regulatory licences and permits, including the incorporation of free-trade zones and providing support in day-to-day legal requirements of the

operation. He has been a representative to the National Assembly of Nicaragua and has been Secretary to the Government. He was previously a member of the team drafting the main regulatory laws of the property regime in Nicaragua.



Diogenes Velasquez V. is head of the IP division of Aczalaw Nicaragua Firm. Mr Velasquez specialises in intellectual property law, labour law, consumer law and competition. During recent years Mr Velasquez has been developing his

professional practice in the field of intellectual and industrial property law, advising and representing leading companies in different sectors, such as fashion, food, telecommunications, financial services, food and beverages, etc, in contentious and non-contentious matters (including the elaboration of legal opinions) in very different matters, but above all in matters related to the protection of intellectual property rights. His practice includes not only the processing and registration of rights before the respective national offices and their application before the competent judicial and administrative authorities, but also litigation in the administrative office before the oppositions of third parties, objections and appeals. In terms of labour law, he has accumulated experience in labour counselling in mergers, acquisitions, business restructuring processes, termination of employment contracts, lay-offs; advice on disciplinary and sanctioning files; due diligence of companies. He has also advised companies in compliance with regulations on consumer rights and competition.



Ramiro Rodríguez Urcuyo is an associate at Aczalaw Nicaragua Firm. Ramiro Rodríguez has been practising since 2007, being a legal counsel for foreign and local investment. He has extensive experience in the processing

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general to secure and protect the investment of his clients. Mainly focused on corporate law and real estate, he also practices immigration services, telecommunication, constitution of trust contracts and legal counsel in general, providing services of elaboration of contracts, due diligence and opinions of all the possible scenarios according to the needs and interest of the clients. He is also very experienced in constitution of the horizontal property regime (condominiums) and its regulation

(CC&Rs), obtaining all permits for execution of this regime, all type of transfer of real estate and possession rights, mergers and acquisitions, incorporating legal entities, transfer of shares, reforms of the incorporation documents, residency services according of the category of the applicant, obtaining tourism benefits for investment, importing household goods, and any other legal service focused on providing first-class services to clients of the firm. He speaks English and Spanish.

1. General

1.1 Main Sources of Law

The main legislation that regulates the acquisition and transfer of real estate is the Civil Code and Law No 698 (Law of Public Registries), but there are several laws that can apply to some specific situations, such as:

- DEVELOPMENT OF COASTAL AREAS LAW, Law No. 690, published in La Gaceta "Official Newspaper" No 141 of 29 July 2009, in force since its publication in the La Gaceta "Official Newspaper", amended by Law No 913, published in La Gaceta "Official Newspaper" No 193 of 13 October 2015; and Executive Decree No 78-2009 Regulations, published in La Gaceta "Official Newspaper" No 180 of 24 September 2009;
- LEGAL SYSTEM OF BORDERS LAW, Law No 749, published in La Gaceta "Official Newspaper" No 244 of 22 December 2010, in force since its publication in the La Gaceta "Official Newspaper", and its regulations authorized by DECREE No 06-2011, on 16 February 2011, published in La Gaceta "Official Newspaper" No 33 of 18 February 2011.

1.2 Main Market Trends and Deals

The main trends in the real estate market are the development of properties located near beaches of the Pacific Ocean, the development of urban properties into malls, and housing developments in Managua as well as other important cities in Nicaragua.

1.3 Proposals for Reform

A proposed law has been presented to the national assembly to regulate horizontal property/condominiums regime, to meet the current situation; the law currently in force is very old (it has been in force since 1971) and does not cover all condominium-related aspects required in Nicaragua. This proposed law could be approved in a short time, probably at the end of this year, as the Construction Chamber of Nicaragua is actively promoting and lobbying to get official approval soon from the National Assembly.

2. Sale and Purchase

2.1 Categories of Property Rights

Property rights that can be acquired are rights of domain, possession rights, usufruct rights and leasing rights.

2.2 Laws Applicable to Transfer of Title

The Civil Code and Law No 698 (Law of Public Registries) apply to transfer of title. There are also special laws, as follows:

- DEVELOPMENT OF COASTAL AREAS LAW, Law No 690, published in La Gaceta "Official Newspaper" No 141 of 29 July 2009, in force since its publication in La Gaceta "Official Newspaper", amended by Law No 913, published in La Gaceta "Official Newspaper" No 193 of 13 October 2015; and Executive Decree No 78-2009 "Regulations", published in La Gaceta "Official Newspaper" No 180 of 24 September, Article 29 covers encroaching of the public domain, and states that the usurpation of public property in coastal areas shall not, under any circumstances, involve the acquisition of rights of possession and ownership of this area. Those contravening this Article shall be liable for any damages caused the works or activities in the area of public domain of the state. The amount of damages will be determined by the respective technician. Article 30 covers the prohibition to sell or privatise, under which coastal areas in the public domain may not be sold or privatised, other than the exceptions provided for in Article 4 of this Act.
- LEGAL SYSTEM OF BORDERS LAW, Law No 749, published in La Gaceta "Official Newspaper" No 244 of 22 December 2010, in force since its publication in La Gaceta "Official Newspaper", and its regulations authorised by decree No 06-2011, on 16 February 2011, published in La Gaceta "Official Newspaper" No 33 of 18 February 2011.
- COMMUNITY PROPERTY REGIME OF INDIGENOUS PEOPLES AND ETHNIC COMMUNITIES LAW, Law No 445 published in La Gaceta "Official Newspaper" No 16 of 23 January 2003.
- PUBLIC REGISTRIES GENERAL LAW, Law No. 698, authorised on 27 August 2009, published in La Gaceta "Of-

ficial Newspaper” No 239 of 17 December 2009 and its Regulations – Decree No 13-2013, on 22 February 2013, published in La Gaceta “Official Newspaper” No 44 of 7 March 2013.

- NATIONAL CADASTRE REGISTRY GENERAL LAW, Law No 509, authorised on 11 November 2004, published in La Gaceta “Official Newspaper” No 11 of 17 January 2005.
- MINING LAW, Law No 387, published in La Gaceta “Official Newspaper” No 172 of 12 September 2012 and its Regulations of Licensing and Electrical Concessions regulate the content of concession contracts for mining or the generation of energy.
- HORIZONTAL PROPERTY REGIME LAW, Decree No 1909, published in La Gaceta “Official Newspaper” No 215 of 23 September 1971.
- REAL ESTATE TAX, Decree No 3-95, authorised on 31 January, 1995, published in La Gaceta “Official Newspaper” No 21 of 31 January 1995.
- OFFICIAL RATES OF PUBLIC REGISTRIES, Law No. 920, published in Gazette No 241, issued on 18 December 2015.
- TRANSMISSION PROPERTY OF HOUSING AND OTHER BUILDINGS BELONGING TO THE STATE AND ITS INSTITUTIONS LAW, Law No 85 of 29 March 1990, published in Gazette No 64 of 30 March 1990;
- LEGALISATION AND SPECIAL HOUSING AND LAND LAW, Law No 86 of 29 March 1990, published in La Gaceta “Official Newspaper” No 66 of 3 April 1990.
- AGRARIAN LAND PROTECTION LAW, Law No 88 of 2 April 1990, published in La Gaceta “Official Newspaper” No 68 of 5 April 1990.

In addition, the Taxation Law applies with respect to the payment of transfer taxes and Revenue Capital and Capital Gains. In cases related to hotels, there is a special law (Law No 306) that grants fiscal incentives.

2.3 Effecting Lawful and Proper Transfer of Title

A public deed is prepared by a Notary Public, on which the seller transfers all rights of domain and possession to the buyer. The registration of such transfer is then started by obtaining a cadastral certificate from the Cadastral Office, having the Tax Inspector appraise the property, paying the transfer tax (IR) and finally taking the title to the public registry for recordation; once recorded, the transfer is formalised. Title insurance is neither required nor available in Nicaragua.

If a property is subject to some additional provision or rules (eg, because it is located in a coastal area or has its origin in agrarian reform), the acquiring party shall need to obtain a certificate of no objection from the general prosecutor of the republic. Also, if the registration area is not the same as the physical area, it is mandatory for the seller to put in order

and formalise rectification measures, and to register such in the Land Registry; this process is necessary to make the registration of the public deed of purchase and sale possible for the buyer.

2.4 Real Estate Due Diligence

Buyers should hire a specialist attorney to investigate the liens and title chain of properties at the Public Registry. They should then investigate the municipal tax status at the Municipality and the location status at the Cadastral Office, and check if the area is in order and corresponds with the title of domain of the seller. Once all the information has been received, a legal opinion is prepared and, if special laws apply, the buyer is informed by the attorney via email, and it is included in the legal opinion. In the legal opinion, the attorney explains the legal situation regarding the Title of Domain and the situation in the Land Registry (if everything is fine and in complete order or not), clarifying what documents and steps must be executed. It is important to keep in mind that there are several formalities that must be fulfilled in order to make the acquisition and registration of the new title possible for the new acquiring party.

2.5 Typical Representations and Warranties

The typical warranty is indemnification against hidden defects, which is included in the public deeds of purchase of properties or construction contracts. However, this is hard to prove in Nicaragua and purchases are usually “as is”.

The law (civil code) establishes the general conditions and elements of the contract; any other term or condition must be agreed clearly by the contract between the seller and the buyer.

2.6 Important Areas of Law for Investors

The right of domain and possession of the property are important areas of law for an investor to consider when purchasing real estate. They should also investigate whether the property complies with the regulations of distance from borders, oceans, lakes and rivers, and whether it has been subject to agrarian reform, declared as indigenous property, or part of the municipal assets. It is also important to check the following aspects:

- the exact location and area of the property, including whether the physical area is the same and corresponds with the registration area as established in the public registry/ title of domain of the seller;
- whether the property is duly registered on behalf of the seller, and that there is no mortgage, lien or any other annotation that restrict or limits the free disposition of the property to be transferred in favour of the buyer;
- the seller must provide all documents required to make the registration of the new title in favour of the buyer possible, including the municipal solvency; and

- the mandatory payment of the taxes for transferring the right of domain.

2.7 Soil Pollution or Environmental Contamination

The buyer is not liable for soil pollution or environmental contamination, unless it is proven after an investigation that he or she was responsible for said pollution or contamination.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

A land owner can establish agreements with the Environmental Office or Municipality to develop a project, like transferring control for the development of a Private Protected Area, authorising the projects that can be executed in such area in order to guarantee its conservation and protection, or granting a building permit based on the Zoning Regulation established in the Municipalities all over the country.

Such agreements can be contracted within the legal aspects of the laws and regulations, so it is very important to know the limitations of the zones according to their categories and the nature of the investment.

There are land use regulations in the major municipalities that zone the city and indicate the allowable use of each zone, including the type of economic or residential activity and the type of construction that is allowed to develop in each area.

2.9 Condemnation, Expropriation or Compulsory Purchase

Expropriation is possible according to Law No 581 (Law of Expropriations) approved on 23 March 1961, and the process is as follows:

- declaration of a project as public interest;
- to declare the property on which the project will be executed as public interest;
- to start a Civil Process at Court to confirm the validity of the property as public interest and to fix the amount to be paid as compensation; and
- payment to the expropriated owner.

2.10 Taxes Applicable to a Transaction

The following taxes and fees are applicable in a transaction for the purchase and sale of real estate as an asset:

- notary fees: these depend on the amount of the transaction and the status or quality of the notary or law firm preparing the deeds (average: USD1,000 to USD5,000);
- fees for drafting the physical map of the property by a surveyor for registration in cadastre; these depend on the size and location of the property, and its distance from any rug-

ged topography (for reference, 1 hectare of flat land in the capital costs between USD200 and USD250);

- official fees and agent fees for the registration of maps and obtaining the cadastral certificate (USD150); transfer tax (income tax on capital gains) payable by the seller, who withholds and pays in favour of the Tax Administration; this is either 1%, 2%, 3% or even 4% of the value of the property as stated by the Tax Administration Office or the value of the transaction established in the deed, whichever is higher. The total amount of tax that the seller must pay is 7%, regulated by the Tax Concertation Law, Law No 822;
- Official Rates for registration at the Land Registry: 1% of the value of the transaction, but no less than NIO150 (USD5) or more than NIO30,000 (USD1,000), according to Article 3 of Law No 920 – the Land Registry Official Rates Law; and
- the transfer of shares in a company is subject to the payment of 5% or 10% of Capital Gains and Losses, depending on whether the transfer is made between non-resident parties or residents.

2.11 Legal Restrictions on Foreign Investors

There are no restrictions on foreigners and companies owned by foreigners owning real estate, if they are duly registered in Nicaragua. Legal entities must be registered in the Commercial Public Registry, have a Tax ID (RUC) and appoint a legal representative domiciled in the country.

3. Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

A finance loan is negotiated with the banks, usually with 20 years to repay the principal and interest. Some transactions are also negotiated with investment funds or the stock market for real estate developments, but these are not common.

3.2 Typical Security Created by Commercial Investors

Typical securities include a mortgage on the debtor's other real estate, or on the project that is to be developed or the property to be purchased.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

There are no restrictions on granting security over real estate to foreign lenders.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Fees incurred for the granting and enforcement of security over real estate include notary fees and recordation fees at the public registry.

3.5 Legal Requirements Before an Entity Can Give Valid Security

A copy of the title deed of ownership of the real estate must be provided, along with a copy of the property owner's ID and a certificate to show the number of securities registered over the property.

3.6 Formalities When a Borrower Is in Default

A lawsuit must be filed in order to start a Court Process whereby the Judge will authorise the forced sale of the property in order to pay the creditors. The order of payment to the creditors depends on the mortgage grade, which is determined by the registration date of the guaranty.

3.7 Subordinating Existing Debt to Newly Created Debt

The parties can agree to subordinate existing secured debt to newly created debt in the contract. If the subordination is in the first agreement, then the subsequent agreements will require the consent of the first creditor in order to receive a property as a guaranty of the debt. To be enforceable, the guaranty must be registered in the correspondent public registry.

3.8 Lenders' Liability Under Environmental Laws

A lender holding or enforcing security over real estate cannot be liable under environmental laws, unless an investigation process finds him responsible for causing pollution.

3.9 Effects of Borrower Becoming Insolvent

The effects of a borrower becoming insolvent depend on the type of guarantee that backed the security created by the borrower. Banks in Nicaragua that extend bank securities require a frozen deposit in cash or in certificates of deposits for the value of the security, in order to guarantee the security. In such a case, the insolvency of the borrower does not mean that the security interest created by a borrower in favour of a lender will be made void, because it is backed by the bank deposit or certificate.

4. Planning and Zoning

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The municipal authorities are empowered to approve the urban development plans of each municipality, which vary depending on the municipality. This is the primary regulation for urban development plans.

There are also national environmental regulations that can restrict or regulate the use of land, depending on the environmental impact that a development plan may have.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

There are no legislative rules, but technical building standards (norms) are issued by the urban planning departments of the municipal mayors and the ministry of construction and transport.

The municipal mayors must approve the architectural and construction plans before the project is started, in order to guarantee that they comply with the established standards.

Once the project is approved, the inspectors of the Mayor's office follow and supervise compliance with the provisions of the technical standards and the approved construction plans.

4.3 Regulatory Authorities

In urban zones, the municipal mayorships are the main responsible authorities. The Ministry of Environment can also regulate in some cases and some economical activities.

The main regulator in Nicaragua is the Ministry of Environment (and the Ministry of Agriculture in a few cases).

4.4 Obtaining Entitlements to Develop a New Project

The following must be obtained in order to develop a new project or complete a major refurbishment:

- the municipal permit (to record land use, and a construction permit after the approval of the design and construction plan);
- the environmental permit;
- a certificate of availability of access to public services from utilities suppliers; and
- approval of the fire department for the electrical drawings.

Third parties have the right to object if they consider their legal rights to be affected.

4.5 Right of Appeal Against an Authority's Decision

In Nicaragua, all decisions or regulations of an administrative authority can be appealed to the Supreme Court of Justice, through the administrative litigation procedure established in the law (*recurso contencioso administrativo*). However, this resource is not commonly used, with individuals instead seeking to negotiate with the relevant authority.

4.6 Agreements with Local or Governmental Authorities

Whether or not it is possible or necessary to enter into agreements with local or governmental authorities or agencies, or with utility suppliers, in order to facilitate a development project depends on the case and the nature of the project. It

is not usually necessary, but some large-scale projects with social or economic impact require certain agreements to be entered into, covering the maintenance of streets and infrastructure, donations to the municipality of the green areas, government co-operation to improve access roads, etc.

4.7 Enforcement of Restrictions on Development and Designated Use

Developments are restricted by the refusal to grant construction permits and environmental permits.

Penalties for non-compliance include fines or the destruction of any works developed without said permits.

5. Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Any legal entity can own real estate. The most common is the anonymous society (Sociedad anónima), but also limited liability companies and any other type recognised by the Nicaraguan legislation are capable of owning property.

5.2 Main Features of the Constitution of Each Type of Entity

The main features of the constitution of an anonymous society are as follows:

- name and general information of the shareholders;
- name and domicile of the legal entity;
- object of operations of the legal entity;
- process of election of the Board of Directors;
- process of election of the auditor;
- process of notification and celebration of meetings of the Shareholders or Board of Directors;
- social capital of the legal entity;
- type of shares and share amount of each shareholder;
- process of subscription of the social capital;
- rights and benefits of the founder shareholders;
- process of calculation of accountant numbers and disbursement of earnings;
- percentage of the reserve funds;
- period of existence of the legal entity (99 years maximum);
- percentage in favour to reach agreements on meetings; and.
- legal representative of the legal entity (provisional if a Board of Directors has not been elected).

The main features of the constitution of a limited liability company are as follows:

- name and general information of the partners;
- object of operations of the legal entity;
- name of the legal entity;
- amount of capital paid by each partner;

- domicile of the legal entity; and
- period of existence of the legal entity.

5.3 Minimum Capital Requirement

There is no minimum capital amount for each type of entity used to invest in real estate, nor for any company in Nicaragua. The commerce code does not establish a minimum capital stock, except for financial entities that are subject to special regulations.

5.4 Applicable Governance Requirements

The requirements and authorisations that apply are the same for all types of entity used to invest in real estate: registration at the Public Registry, registration at the General Direction of Revenue (DGI), registration at the Municipality (according to the domicile of the legal entity), registration in the social security of the company and its workers if it has employees, and fulfilment of all regulations that are applicable to any legal entity doing business in Nicaragua.

5.5 Annual Entity Maintenance and Accounting Compliance

Nicaraguan legal entities must declare monthly reports at the DGI of their operations, and pay an advance of 1% of the net profit. At the end of the fiscal year, there is a tax of 30% of the real profit, on which the advances paid during the year are deducted from the final tax payment. If the legal entity is just a title holder and does not have any business operations, the monthly reports are declared as zeroes and the annual cost will be the renewal of the yearly permits to keep the legal entity active.

6. Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

There are agreements in Nicaraguan legislation, such as “lease”, “Commodatum Agreement”, “Usufruct Agreement” and tender process, which allow a person, company or other organisation to occupy and use real estate for a limited period of time without buying it outright.

6.2 Types of Commercial Leases

There are different types of commercial lease available, including real estate leasing, lease of movables, livestock lease and sharecropping.

6.3 Regulation of Rents or Lease Terms

Leases are regulated by the Civil Code of Nicaragua, Title XIV, Book II, Chapter I to VI of which enshrines the general rules of the lease and the particular rules of leasing regarding rural properties and houses. The contract provides the parties with the faculty to agree the terms and particular conditions they want established.

6.4 Typical Terms of a Lease

According to the Nicaragua civil code, the maximum term of a lease contract is ten years. In the local market, the parties usually agree terms of one to two years.

Minor repairs and damages caused by the tenant; repairs made by the lessor to keep the business premises in good condition should be consistent with the standard of repairs required by any deterioration of the premises caused by a fortuitous event or force majeure, or by the inherent qualities or fault or defect of the real estate itself.

Rent is usually paid monthly, with the tenant paying the first and last month, and a deposit equal to a month's rent, when signing the lease agreement.

6.5 Rent Variation

Whether the rent will remain the same as long as the lease lasts can be agreed by the parties in the lease. If the parties agree to increase the rent every year, all parties must decide and accept whether the increase is annual or monthly. If this is not agreed, the rent payable will remain the same while the contract is valid.

6.6 Determination of New Rent

If the parties agreed to a change, said change will be determined according to what the agreement stipulates. In this case, it will be necessary to subscribe an amendment to the main contract.

6.7 Payment of VAT

The rent or lease is considered a provision of services, and is thereby subject to 15% VAT. It should be noted that the lease of real estate that is destined to provide furnished housing will be taxed; otherwise it would be exempt. For example, if the lessor is not a registered taxpayer "as lessor" because his or her economic activity is not the rent of houses, there will be no retention of the 15% VAT. In this case, the tenant must retain 7% of the rent to the lessor (owner of the house).

6.8 Costs Payable by Tenant at Start of Lease

According to the law, the tenant's only responsibility at the start of a lease is the payment of the rent. Usually, and according to market practice, the tenant pays the first and last month as well as a deposit (one month of rent) upon signing the lease agreement.

6.9 Payment of Maintenance and Repair

According to the Civil Code, if there is no agreement to the contrary, the lessor is obliged to keep the leased property in the same state during the lease, making all the necessary repairs.

In a condominium scenario, the payment and maintenance of the common areas must be covered by the owner, so the

owner must oblige the lessor in the contract in order to have the tenant cover this kind of costs; if the lessor does not establish this obligation for the tenant in the contract, then the lessor remains responsible for such costs.

6.10 Payment of Utilities and Telecommunications

This type of service is usually paid by the tenant. If the service is independent for each tenant, he or she will pay for the service, but if the service is for everyone, the payment can be pro-rated. The lessor and tenant can agree appropriate terms in the lease contract.

6.11 Insuring the Real Estate That Is Subject to the Lease

A lessor who owns the real estate will pay for insuring it. There are several types of policies. If the tenant wishes to insure their belongings (movable goods, equipment, etc) he or she can contract their own policy for their specific interests.

6.12 Restrictions on Use of Real Estate

The landlord may impose restrictions on how a tenant uses the real estate. The use that will be given to the property can be agreed freely by the parties.

6.13 Tenant's Ability to Alter and Improve Real Estate

The tenant is permitted to alter or improve the real estate with the written consent of the landlord. The conditions may vary according to the convenience of the parties. The conditions can include the following:

- the landlord will or will not pay for the improvements;
- that the improvements are for the benefit of the thing leased;
- that the tenant cannot demand compensation;
- whether the tenant must contract and pay a policy to protect the property from risks of flooding or fire, etc; and
- obligations for the tenant regarding what he cannot do inside the house, what he is and is not allowed to use, what things cannot be kept inside, etc.

Also, both parties can establish reciprocal reasonable conditions and obligations.

The obligations and prohibitions can vary and will depend on the use of the rented property (housing or office); the kind of business to be started by the tenant will also be taken into consideration if the tenant is a commercial person or entity.

6.14 Specific Regulations

No specific regulations and/or laws apply to leases of particular categories (real estate such as residential, industrial, offices, retail or hotels). Every contract will determine the obligations, terms and conditions as is convenient for the

interests of both parties (tenant and lessor). The lease contract is regulated in the Nicaragua Civil Code and regulates the general terms of the agreement.

6.15 Effect of Tenant's Insolvency

In the tenant's insolvency, the landlord can request the resolution of the lease, and the tenant must return the leased property. The landlord is entitled to damages and, if the tenant does not accept to cover any applicable damages, will need to interpose a judicial process for breach of contract in order to have the judge determine and quantify the damages that must be paid by the tenant.

6.16 Forms of Security to Protect Against Failure of Tenant to Meet Obligations

Specifically, Article 2835 of the Civil Code establishes that the lessor enjoys the privilege of retention of rent and other charges to cover obligations regarding the furniture and utensils of the tenant existing within the leased property. The retention must be declared judicially at the request of the landlord and proceed as a garnishment.

6.17 Right to Occupy After Termination or Expiration of a Lease

Once the contract has expired, it is possible for the landlord not to ask for the property and for the tenant to continue to use it. There is a tacit consent to renew the contract ("tenancy at sufferance"); the new term will be six months, and it is a requirement that the landlord receives the rent. To avoid tenancy at sufferance, the landlord should notify the tenant of his will not to continue leasing the property. The term to notify can be established in the contract. If the contract establishes an automatic renewal, it is necessary to have explicit clauses about such termination or renewal, and how it will be ratified (by written or tacit consent). Such aspects must be clearly written in the contract.

6.18 Right to Terminate Lease

The landlord may terminate the lease in the following circumstances:

- tenant's failure to pay the rent;
- use of property other than agreed;
- sub-lease of the property without the consent of the landlord;
- tenant's failure to pay the damages caused to the property;
- the tenant stores dangerous items in the rented place; and
- the tenant breaches prohibitions such as not keeping pets or making noise, or fails to maintain the common areas in a good state (garden, sidewalk, green areas).

In some cases, the landlord can oblige the tenant to contract a policy to insure the rented house against damages or fire.

The tenant is obliged to pay municipality taxes for garbage collection services and others, and to pay for the use of basic services in the rented house, such as water, electricity, cable TV, telephone, internet, etc. The landlord can ask for monthly proof/receipts of payment for all services in order to check that the tenant is meeting such obligations.

The landlord can inspect the rented property in order to check that it is in a good state, by providing previous written communication or notice to the tenant.

The tenant is usually obliged to make any minor repairs resulting from deterioration of normal and adequate use, in order to maintain the rented property in a good state.

The landlord may terminate the lease in the following circumstances:

- when the landlord deprives the tenant of the use of the property;
- when the landlord does not deliver the property in the agreed terms;
- when the landlord does not make the necessary repairs for the use of the property (the landlord is obliged to maintain the rented space in a good state, to pay the taxes to the municipality and to make all requisite major repairs);
- when, in spite of authorisation, the landlord opposes a sublet without founded reason; and
- when the tenant's use and enjoyment of the rented place is disturbed.

6.19 Forced Eviction

The landlord is entitled to evict the tenant in the event of default, in which case the eviction procedure must be requested through a judicial proceeding in summary process.

6.20 Termination by Third Party

A lease can be terminated by certain third parties, as follows:

- the owner, in cases where the landlord is not the owner and the owner has not given authorisation to lease the property. In these cases, the landlord assumes the damages;
- acquirers, who are not obliged to respect the lease if the property is sold or the usufruct is assigned. In these cases, the landlord assumes the damages; and
- the mortgage creditors, who acquire the property if they have recorded their mortgage before the Land Registry prior to the lease.

As clarification, the vacation of the property and the end of the lease can be forced in the following circumstances:

- if the lease contract has not been recorded in the Land Registry and the owner subsequently constitutes a mort-

gage which will be duly registered, in case of execution of the mortgage;

- if there was already a mortgage registered in the Land Registry before the lease was subscribed and, based on such mortgage, there is an execution of the property;
- if there is a forced garnishment on the property and the lease contract was not previously registered at the land registry; and
- in case of a bankruptcy event if the contract was not previously registered in the Land Registry.

7. Construction

7.1 Common Structures Used to Price Construction Projects

The most common structure used to price construction contracts is the fixed price contract. Construction projects are usually determined in a budget covering internal labour, external labour (subcontractors), construction materials, the duration of the project, etc. However, these agreements are contractual terms agreed by the interested parties at their convenience and according to their interests.

7.2 Assigning Responsibility for the Design and Construction of a Project

The assignment of responsibilities is done in a contractual manner. The services contract should establish everything related to design and construction services, and the conditions and specifications of the project. The contract establishes the specific obligations of the constructor and its reaches.

7.3 Management of Construction Risk

Constructors are obliged to fulfil any obligations and regulations applicable to them to carry out construction activities. They are subject to the supervision and control of the Construction and Transport Ministry (MTI), and must have registration and a licence to operate as authorised constructors. The MTI grants the licence if the constructor has fulfilled all the legal documents, warranties and requirements imposed by the legislation.

The clauses to be established and agreed between the constructor and the owner of the construction should be clearly written in the contract, so the owner can require all indemnifications and warranties from the constructor, and set the limitations of liability and waivers of certain types of damages, etc.

It should be noted that different regulations apply for government procurement, under the administrative law apply. The contracting party/owner of the construction/governmental entity demands all warranties, indemnifications, waivers, etc, from the contractor, as set by the contract. Also,

the contractor must take out a policy to cover construction risks for the workers on a project.

7.4 Management of Schedule-Related Risk

In the contract, the owner can agree the aspects he considers convenient. The monetary compensation will proceed if the contract clearly states what cases, when and why monetary compensation is relevant.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

The most common security form is the surety, which guarantees the beneficiary (owner of the work) that the contractor will comply with everything agreed in the construction contract.

The most common sureties used are bank guarantees, guarantees issued by insurance companies, and mortgage guarantees.

7.6 Liens or Encumbrances in the Event of Non-Payment

Such liens or encumbrances can be regulated by the construction contract, and a property can be encumbered by virtue of law in a breach of obligations. An encumbrance can be removed by payment of the debt. In addition, the owner can replace the lien with another guarantee, usually money in cash deposited judicially at the order of the petitioner, or substitute another warranty (property).

7.7 Requirements Before Use or Inhabitation

Parties always agree the procedures and requirements that shall be met before a project can be inhabited or used for its intended purpose, in the contract. There are several regulations (Technical Safety Standards) that apply, according to the kind of construction (mall, housing, supermarket, gas station, etc).

The contract is the main source to set the obligations, conditions, procedures, requirements, etc, in any stage of the construction, including to finish, receive to satisfaction and granting release of responsibilities to the builder if everything is as agreed and according to the Technical Safety Standards applicable to the specific construction.

8. Tax

8.1 VAT

No VAT is payable on the sale or purchase of corporate real estate; only income tax is paid. If a person or commercial entity is dedicated to economic activity, they will also pay sales tax to the Municipality, of 1% on the gross income, and must pay according to the Net Revenue, 30% annually rent.

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8.2 Mitigation of Tax Liability

It is feasible to implement methods to mitigate transfer, recordation, stamp or other similar tax liability on acquisitions of large real estate portfolios, in an adequate and reasonable manner, according to the taxation law. However, every method always has fiscal or legal implications.

8.3 Municipal Taxes

All municipal taxes that must be paid are common to all businesspersons and commercial entities. For clarification, if the lessor undertakes economic activity that commercialises a lease contract, then said lessor must pay 1% of its gross incomes to the municipality, monthly, and the registration (matricula) annually which is paid on the gross income of the latest three months previous to the following year. There are also other rates and contributions that must be paid, such as for street marks, parking spots and garbage treatment.

8.4 Income Tax Withholding for Foreign Investors

The following taxes apply:

- 15% withholding for non-residents; 7% withholding for residents on the rental of real estate. The resident pays 10%,

with a right of a gross deduction of 30% of cost of the deal (which is 7%); and

- payment of 1% of monthly net sales to the Municipality.

8.5 Tax Benefits

Tax benefits from owning real estate are established by the Taxation Law and apply to registered taxpayers whose business concerns rents or real estate. Deductions include the following:

- a depreciation deduction when acquiring new assets follows the straight-line method applied to the number of useful years of such assets;
- improvements on leasing properties during the the leasing contract – in the event of quantifiable improvements, the period will be equal to the useful period of such improvement;
- deductions on the interest paid during the fiscal year for debts acquired to generate rents on economic activities; and
- Article 39 of the Taxation Law establishes the deductible costs and expenses incurred in order to produce the rent and maintain the property, as long as such costs and expenses are duly recorded, with correspondent receipts.

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