

Fraud and money laundering: The incidence on the Real Estate Registry of Costa Rica

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Introduction

When land ownership is formalized and registered in a Property Registry, and consequently there are no doubts about the ownership and the existing charges on the properties, the value of that property grows exponentially.

It is therefore essential for public authorities to invest resources in the legal definition of property and in the provision of holders of registered public property titles. It is fundamental from an economic point of view to integrate the property of the land in a legal framework.

Costa Rica, opted for a system of preventive legal security, based on an organic system of presumptions, based on the validity of registered titles and the possibility of making economic decisions based on registration advertising, without further investigation of the background, elements that they give a correct sizing of legal security registries.

Confidence in the information provided allows the market to be dynamized when making decisions related to real estate, as well as a decrease in costs that at the judicial level may generate an inaccuracy in the registration publicity.

This is how the registration institution raises four basic issues such as: legal security, the guarantee of civil rights, the legality of real estate transactions and the responsibility of the registrar in the exercise of its rating function.

If we hope that the publicity granted by the Registry is legal, it is necessary to provide it with truth, without which it is not possible to secure the traffic or legal trade, hence the fraud response the response of the Registry must be fast and effective, because its inertia can cause social referents to appeal to other ways of guaranteeing real estate investments, such as title insurance.

When the registration system is not perfected, parallel systems of privatized advertising, insurance contracts, professional investigators of charges and titles of real estate are produced with the consequent disadvantages of excessive costs in transactions and citizen insecurity.

Bearing in mind that any alteration or spurious modification in the registry advertising that affects third parties and causes an injury to their interests, generates a weakening in the whole legal security system. Efforts should focus on minimizing this incidence. Well, although in our country the cases presented at the percentage level are the minimum, a single case that is present affects the trust in the entire registry system that is being strengthened.

"So we must see the registry beyond a simple homologation institution at the service of private interests, but on the contrary as a body to defend public order and how we contribute to that order by telling each one what is his and even what belongs to the others. "International Congress of Registration Law in Paris 1994

II-Inaccuracies in the registry advertising

The system of legal security that should prevail in the transfer of assets and rights is not the exclusive responsibility of the Registry, but under this dynamic, in our system of legal security of transfer of ownership of registrable assets, there is an interaction from the notarial activity, the registry and the jurisdictional.

The registration publicity as an essential tool in the operation of the registry, may be altered by situations of registered origin or extra registration, aspects that are developed in the "Regulation of Organization of the Real Estate Registry" (name in Spanish: "Reglamento de Organización del Registro Inmobiliario") and that come to pose a new paradigm when facing in trouble and lay the responsibilities of the case.

A-Inaccuracy of registry origin

Article 15 of the aforementioned normative body defines it as:

"The registry inaccuracies are those that have their origin in the process of qualification and registration of the documents subject to registration."

Considering those that are committed by involuntary error, system failures or intentional manipulation by the registrar.

Faced with an error in the registration of a document, the Registrar must correct it, regardless of the presentation of the document or not to the Registry; it is not the obligation of the user affected by the error to get copies of documents or deal with paperwork for the purpose of achieving the correctness of the entry, which must be done informally by the Registrar based on article 9 of the Law on Registration of Documents in the Registry Public (name in Spanish "Ley Sobre Inscripción de Documentos en el Registro Público) indicating the following:

"It is the obligation of the Registry to carry out all the pertinent procedures, including obtaining documents or copies to correct errors or omissions that the Registrars have incurred

when entering or registering documents." Therefore, it is not appropriate to require the parties or interested parties to provide documents or to carry out efforts to correct those registry errors ... "(the highlighted is not the original)

It is important to note that the commission of an error can be exploited to create a fraud, for example: If a registrar does not include a mortgage on the right property, the owner of the property could take advantage of this circumstance to sell the property free of liens.

Given this possibility, our system establishes different types of liability from the criminal, civil and disciplinary point of view on the part of the registrar who incurs in one of these events, without the same being mutually exclusive.

In order to reduce the incidence of this type of inaccuracies, a series of safety mechanisms or procedures were created, among which we can mention the following as the most significant:

1. Automatic distribution of documents: The documents that enter the registry for their rating are distributed automatically, randomly and considering their complexity, to avoid selecting a specific registrar and respecting an equity in workloads. It should be considered that the registrars in our country have national competence.

2. Biometric media: biometric media were established to enter the facilities and start the registration system, accompanied by security camera controls, which avoid repudiation and lay down the corresponding responsibilities.

3. Access key: it is the key to access the system and depending on the type of official will be assigned a profile that allows you to enter new information or change the existing one, either eliminating it or modifying it. As a guarantee for the same official, the password or password is encrypted, so that it can not be known by the system administrators (computer), they also have an expiration period in order that the official is forced to change it. every so often, foreseeing with it the possibility that someone would get to know it.

4. User: It is an alphanumeric code, usually composed of the initials of the name of the official and allows individualizing who is responsible for the modification made in the system.

5. Logs: These are computer files in which all the transactions made daily are registered, indicating the type of modification registered, the time, as well as the person in charge of it, which allows to have a more exact control of the changes made in the database and lay the responsibilities as the case may be.

6. Material security means: to guarantee the authorship of the documents, it is necessary to use notarial security paper, white seal of the notary, security ticket and control of the notaries' habilitations through computer communication with the National Notarial Office.

7. Cross-checks with other institutions: such as the verification of the identity documents of the nationals, as well as the verification that the respondents were alive at the time the deed was granted, through an online communication with the Civil Registry.

8. Registration alert. A type of communication through an email that alerts the holders of the goods if a presentation of any document occurs and comes to affect the farm of which they are owners.

Likewise, mechanisms for correcting registry advertising were created through a department called "Reconstruction", which is responsible for directing those responsible, all corrections that do not affect third parties. Such procedures can be requested even through the Registry website.

When there is affectation to third parties, an administrative procedure of information sanitation was established, known as "Administrative Management" (name in spanish "Gestión Administrativa"), for the beginning of the process a precautionary measure of advertising was created, called a warning note (name in spanish "Advertencia Administrativa"), whose purpose is to inform that it is being analyzed a possible inaccuracy of registry origin. A successful completion of the procedure, is the correction of registration, and when failing, the registration seat must be immobilized until the parties or judicial authorities make a decision in this regard.

B-Inaccuracy of extra registration origin

We must be clear that the registrar operates on the narrative inserted by the notary in the public instrument and that it is clothed with the public faith, hence the personal responsibility of the registrar is diminished in case the document exceeds the process of qualification is spurious as to its content or appearance of the parties.

"... The Registrar is a public official, and a lawyer. Receive the work of the notary or the judge, and give more publicity. His work is conservative, not creative or constitutive. It only confronts the document to be registered, with its background, although it has the faculty to qualify the act and reject the registration if necessary. It preserves what it is, as it is "(Carral y de Teresa, Luis.- Op. Cit, pp. 101 and 102).

The Regulation of Organization of the Real Estate Registry (name in spanish "Reglamento de Organización del Registro Inmobiliario") defines it as:

"The extra registry inaccuracies are those that originate outside the registry scope, and are produced by: ...

Information coming from reliable documents according to the law whose antecedent is not authentic or because it contains information presumably false or adulterated, without the inaccuracy or falsification of documents can be detected or valued in the process of qualification of documents by the Registrar ... "

The Registry in these cases, is surprised and some documents with pathologies access to the registry advertising, before this circumstance and in order to avoid greater consequences for third parties in good faith, a summary procedure was implemented, in order to the affected people alert about the commission of a possible crime. When an illicit act of this type occurs, the time that is invested in reacting is of vital importance, to avoid that the consequences are greater and more people are affected.

For this purpose, the Registry requests that the complaint be lodged with the corresponding judicial authorities, that the fact questioned be objective, such as the lack public deed grant, or the impossibility of appearance due to death or absence of the country at that time.

The administrative reaction of the registry is to publicize a precautionary measure called "Note of Prevention" (name in spanish "Nota de Prevención") with news publicity effects, which warns of the possible commission of a fraud and is maintained until the respective jurisdictional protection is achieved.

III-Registry as an instrument against money laundering

Our institution, like others worldwide, has been affected by real estate investments with money of dubious origin, for this purpose an inter-institutional commission has been created in which registration through highly trained officials coordinates and shares information with other police and judicial institutions. With regard to the Registry, mainly when there are movements on real estate, in order to carry out the pertinent studies and take the corresponding measures, among which the registration freeze of those assets is included.

All these actions are carried out in coordination with the Financial Action Task Force (FATF), an intergovernmental entity created in 1989 by the G7 (Germany, Canada, the United States, France, Italy, Japan and the United Kingdom). For this purpose, the FATF has published a series of 40 recommendations that consist of a conceptual framework that requires the legal and regulatory implementation in each member country to adapt its regulatory framework to these international standards.

At the regional level, the Financial Action Group of Latin America (GAFILAT) was established, grouping 16 countries in the Americas. It was formally created on December 8, 2000 in Cartagena de Indias, Colombia, by representatives of 9 countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. Subsequently, Mexico (2006), Costa Rica, Panama (2010), Cuba (2012), Guatemala, Honduras and Nicaragua (2013) joined as full members.

The GAFILAT Regional Group determined that the degree of compliance with the International Standards in ML / TF (40 Recommendations) for Costa Rica was below the minimum required.

Hence, there was a fast reaction from the Government, which implemented a series of

changes and measures, including the Registry entity as a collaborator in the provision and analysis of information. In addition, relevant legal reforms were made to:

- Freezing of terrorist funds and assets through Law.
- Report of suspicious transactions directly and confidentially to the FIU through Law.
- Involve the notary in the report of suspicious activities.

The intervention of the registry entity is strategic by virtue of the fact that some risks related to the registry activity were identified, such as:

- Abusive use of legal persons and trusts to hinder the identification of patrimonial assets of organized crime.
- Real estate investments -especially in ZMT- through public limited companies that do not have a commercial activity (registered owner).
- Basic information on the final beneficiaries of legal entities
- Notaries / lawyers / fund managers. Represent one of the parties as a lawyer and authorize the legal act as a notary.
- Absence of a registry of trusts and limited supervision of fiduciaries.

Conclusion

The Registry must carry out all the pertinent procedures to protect its main asset, advertising, since the trust in the information it provides is essential in the legal dynamics of commercial real estate. In addition, because of the information it manages, it becomes a strategic partner in combating an international scourge such as money laundering.