

Buying Property in Nicaragua

Investing in real estate in Nicaragua can be a very satisfying experience if you take the necessary steps to ensure your investment is secure. Buying property in Nicaragua is not the same as buying property in the U.S. It is important that you use common sense in evaluating the property you intend to purchase and remember that if it seems too good to be true, it probably is. The old rule of “buyers beware” applies in all cases of buying property in Nicaragua. The due diligence is up to you.

When you purchase land in Nicaragua you will be buying property in a civil law regime. This differs from the common law regime of the US because civil law is based solely on statutes and there is no such thing as an equitable remedy when problems arise. The official language for all real estate transactions is Spanish. Certainly you can sign a contract to buy a property in English, but if there is any need to interpret the contract, it will have to be translated for the courts. There are also many legal terms relating to real property that mean different things or do not exist in civil law, so it is very important that you communicate what you want clearly so there are no misunderstandings.

The following are ten tips to help you do your own due diligence and avoid a real estate problem.

- Tip #1: Your own attorney

Do not sign anything until you discuss it with your attorney. It is important to retain a good, local attorney that speaks English so you can communicate well. The best advice is to have your own attorney who will be looking out for your interests and not the developer's, seller's or real estate agent's. Ask the attorney about tax issues regarding how you will hold title to the land. Ask the attorney how to avoid problems upon your death. Do you need a Nicaraguan will? Tell your attorney how you want to take title so he can explain exactly what needs to be done. There are lists of attorneys that are available from the US Embassy, ANID and the international title insurance companies. Remember that it is your attorney and not the developer, seller or real estate agent that should advise you on the legal aspects of your purchase.

- Tip #2: Title Insurance

For peace of mind and a “deep pocket” in case of title problems or frivolous lawsuits, there is no better answer than title insurance. Title insurance is available in Nicaragua. The policy is in English and guarantees your title. However, it is important to check the Exceptions and Exclusions from Coverage. Ask to see a sample policy. Ask if the developer

has a master policy. Although the developer's policy will not protect you once you have purchased your lot, it will allow you to see from the beginning if there are any unusual exceptions to coverage. Review the exceptions with your attorney. There are three title insurance companies which offer policies insuring title to land in Nicaragua at this time: Fidelity National Title Insurance Company, First American Title Insurance Company and Stewart Title Guaranty Company. A title insurance policy once purchased will last so long as the insured owns the property or his heirs do. The premium is a one-time payment and is generally about \$5 per thousand dollars of coverage. The policy is non-transferrable so each new owner to be protected needs her own policy. More information on coverages and exceptions can be obtained from the three title insurance companies offering title insurance on property in Nicaragua.

- Tip #3: Check Title

Be sure that you and your attorney review carefully the chain of title to the land you wish to buy. Does your contract guarantee that you will receive a free and clear title without any encumbrances or defects, including mortgages, and allow you to get out of the contract if there is a serious issue with the title? Are there any issues that are in the chain of title? Are you dealing with the true owner? What kind of title is she selling- possessory or full fee interest? Who is living on the land? What rights do they have? The communication with your attorney and the title insurance company on the chain of title issues is vital to insure you are getting what you are paying for.

- Tip # 4: Survey

Do you have a survey of the land you are buying? Did the surveyor mark all the corners of the lot? Is the survey an official approved (cadastral) survey or just a drawing? Are the dimensions of all sides of your land clearly described? Examine the survey carefully to discover where the access is located. Is this access a public street or road, or is it an easement? If it is an easement, has the easement been granted to your seller and future owners or just to your seller? Is the easement registered? Does the survey show any fences or pathways, creeks or buildings? If so, do they affect your title? If you're purchasing in a development, has the developer secured your access? A discussion between you, your attorney and the surveyor is important to establish if anyone has acquired a right of use across any of the land you are buying and if all improvements are within your boundary lines.

- Tip #5: Permits

Use your local attorney to find out if the seller/developer had obtained all necessary permits to sell the land, subdivide it, build on it or use it. Environmental, land use, construction, and water permits should be reviewed prior to purchase.

- Tip #6: Utilities

Investigate the location of utility hook-ups. Water, electricity, sewer, internet, TV and phone lines should be checked. Have they been legally installed? Will they be connected directly to your lot/home or will you have to make the connection? Is the system on a municipal system or are they independent? If the systems are independent, has the developer made sufficient provision for supply up to and including when the development is fully built out and occupied? Who is in charge of maintenance? If you are in a development, the internal roads should be reviewed as to title and maintenance. Who will you pay for the use of the utilities? Are there separate meters for each lot or house?

- Tip #7: Developer

If you are buying from a developer, you should find out his track record. If you are buying pre-construction, what is his financial base? Is he merely using buyer's proceeds to build infrastructure? What is the recommendation of the US citizens in Nicaragua? Does the developer have any environmentally friendly and/or community friendly policies as part of the implementation of their master plan such as local sourcing and supply or energy friendly approaches – these are often good indicators of a developer's commitment to the development and the country. If you are purchasing pre-construction find out who will be doing the actual building of your home and if possible, see some examples of the builder's work in order to gauge construction quality.

- Tip #8: Development

When buying in a development, ask to see the master plan. Review the covenants, conditions and restrictions. Are they registered? Who is in charge of enforcing them? Will they be enforceable against future buyers or only the buyers who bought from the developer? Again this is an important question to review with your attorney. Do you agree with the conditions and restrictions? What are the homeowner's dues? Is the developer allowed to increase dues as he wants? When will they begin to be collected? Who will manage them? What does it cover? Does the development have security? Is this cost covered in the homeowner's dues? Who will maintain the internal roads, sewer systems, electric lines and common areas? Is this covered in the monthly dues? How can the homeowner's dues be increased? How will the homeowner's association be managed and who will elect the homeowner representatives and at what point in the completion of the development will dues become mandatory? Check on whether the property is under a

Law 306 inventive program such as a Condo Hotel. If so, there may be use and occupancy restrictions, along with tax benefits.

- Tip #9: Escrow and Closing Process

There are no trust accounts or escrows in Nicaragua. Therefore if you give your deposit or purchase money to an attorney, real estate agent or the seller, you may not be able to get it back. Some real estate agents have ties to a US escrow service through their US affiliates and the international title insurance companies have international escrow services that hold the funds in the US. This is a safe way to give a purchase money deposit and to assure that if your due diligence shows the title is not as represented by the seller, you can get your deposit refunded. The escrow services in the US will not be able to prepare your title deed or handle the registration, which will be done by a local notary public under the supervision of your attorney, but the US escrow service can assure that your money is distributed according to your instructions.

Prior to closing, confirm all fees and costs involved in purchasing your property with your attorney including the attorney's fees for the services they will perform. Ensure that your attorney explains clearly the closing process, what it entails and all the documents that will be needed for closing. Confirm that they have documentary proof at time of closing that all necessary real property taxes have been paid along with any outstanding utility bills and/or staff payments that might be owed by the developer or seller in relation to your property. If you will not be in Nicaragua at the time of closing ensure that you have left a correct Power of Attorney for the type of purchase you are making and for any other activities that you might need your representative to sign for, i.e. you will need to leave a Power of Attorney for someone to accept the deed of sale on your behalf, but if you have a financing or mortgage arrangement with the seller you may need a separate Power of Attorney for this.

- Tip #10: Post Closing

Once you have done your due diligence and purchased your property, you must now think about how to protect it. If you are in a gated community, there is no need to worry about squatters or trespassers. If you buy outside of a gated community or one without security, you will have to hire a caretaker to maintain the property and safeguard your land and improvements from "squatters" and trespassers. Make sure you have legal documents to protect yourself in case the caretaker wants to allege he has rights over your property. You will also have to hire a maintenance person for gardens, painting, and mold and mildew control, whether you are in a gated community or not. Property managers are available throughout Nicaragua to help safeguard your new investment. In addition,

property taxes have to be paid once a year (if paid by March 31st, there is discount). It will be important to hire someone to be responsible to pay your taxes each year during the discount period. Your attorney, property manager or a friend can do this task.

It is an adventure buying property outside of the US, but by following these tips you can avoid future heartache.