MAKING SAFE AND SMART INVESTMENT IN OVERSEAS REAL ESTATE PROPERTIES

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Introduction

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As an attorney specializing in offshore services, I'm often asked about the pros and cons and legalities of Americans owning real estate overseas.

The purpose of this report is to share insights and straightforward information about overseas real estate. Whether you're considering purchasing property for retirement, or you're a young internet entrepreneur, there are many advantages to buying and owning real estate overseas.

It is not without expense or challenge, but if you're thinking about relocating or investing overseas to 1) lower your cost of living; 2) diversify your investment portfolio; 3) reduce your tax liability; or 4) secure and protect your assets; then this report is for you.

Do Your Research

Buying real estate overseas is not very different from buying real estate in the US. A savvy investor must consider factors such as short-term and long-term investment goals; resale value; demographics; financing options; and costs and legal expenses.

But there are important considerations when investing or relocating overseas, such as language, cultural differences, political and economic stability, hiring reliable real estate professionals and attorneys, and ensuring that you have access to medical services, shopping, utilities, and other things we might take for granted.

Each country has its own real estate laws, rules and regulations, and a real estate investor should consider the following:

Conduct due diligence. Write to the consulate for that country to obtain information. Search out demographics for the country, town, city, or province where you are interested in buying real estate.

And before actually making a purchase, go visit the country or location where you plan to invest in real estate. And before buying, many investors and wannabe expatriates rent or lease a house, apartment, or condo in the area where they are considering purchasing real estate.

Renting gives an individual a feel for the area. What are the property values, and how do they compare to properties in other areas of the country or territory?

Are there stores close by, or is there a considerable drive to obtain groceries and basic necessities? Would you rather walk or bike to a post office, restaurant, or cafe?
Are the residents friendly, or do they resent foreigners and outsiders? Do the

residents speak English? Or do you speak the native tongue?

Do you want to reside near the water, or would you rather be closer inland, or in the mountains? Is the terrain conducive for building a residence or business? Or have you discovered that the area you've chosen is in the middle of a rain forest?

As you can see, there are many external factors to consider when investing or purchasing real estate overseas.

Finding The Right Professionals Overseas to Make Safe and Smart Investments"

With the internet age, the world has become a much smaller place. Do a Google search for real estate in Panama, and you'll discover pages upon pages of links for articles, investment counselors, and Panamanian real estate agents who are ready to jump at the chance to sell you real property in Panama. And although Google has supplied you with a huge list of resources, who do you trust?

Once you've made a list of potential countries where you would like to purchase real estate, and you've conducted research about the area, one of the next steps would be to find a trustworthy real estate professional and an experienced attorney.

Many well-known US real estate firms also have offices in countries such as Mexico, Canada, France, Germany, Japan, and China — just to name a few. As a result, you can contact a local US real estate agent with a company like Century 21 in order to obtain information about listings in foreign countries where they have offices.

Another way to obtain information about real estate professionals in a foreign country is to talk to expatriates or residents. Upon visiting the country of choice, seek out expatriates and talk to locals. Then compare notes. The cab driver, waiter, or business owner may have friends or family in the real estate business.

Each country has different laws about how to treat real estate investment by foreigners. Many countries have limitations for foreigners or even different tax and reporting requirements. US laws also have certain requirements for foreign investment made by US citizens. Not knowing these laws can put your investment and capital at risk. Working with an experienced US lawyer who is specialized in overseas investments can help you avoid any possible legal challenges.

You will find out more about the must-know laws about foreign real estate investment in the following sections.

Advantages of Investing in Real Estate Overseas

Real estate has always been known as a good investment, despite the global recession, which started with the collapse of an over-inflated derivatives market.

INVESTMENT VALUE

Unlike metals or the stock market, a real estate investment always has inherent value. It is a tangible asset that is backed or secured by land.

And unlike other investments, that land can be bought, sold, assigned, rented, or leased. And if the land is in an emerging market, the value of that asset can increase dramatically over a short period of time.

This happened in California and South Florida in the years leading up to the recession.

Investors could snatch up older homes in good neighborhoods, renovate and repair the home and land, then sell the property in a year or more, making a 50-70% return. Emerging markets can also be found in places like Ecuador and New Zealand.

AFFORDABILITY

Since Ecuador's economy is based on the US dollar, an American retiree living on $2,000 a month can live like a proverbial king in this South American country.

A beer or cerveza in a local cantina might cost you 85 cents, and a nice restaurant meal three dollars. Americans love living comfortably on less.

Real property, services, groceries, and taxes can cost considerably less overseas. Plus, most privately held overseas real estate does not have to be reported to the IRS.

ECONOMIC CITIZENSHIP AND RESIDENCY

Many countries offer investment programs whereby an investor that purchases real estate or bankrolls a local business can receive economic citizenship or residency, along with a visa.

An investment can be as small as spending $25,000 to buy a house in Ecuador, or investing $40,000 in a Panamanian business or forest project. As a result of the investment, one is automatically granted residency and/or citizenship.

There are additional requirements and restrictions, but if an overseas investor is thinking about spending time in their new home country, the advantages of economic citizenship are worthy of consideration.

For a small investment, one can command hard assets and enjoying living and traveling overseas.

TAXES

Providing that one's overseas real estate investment is held privately, and not in a trust or in a company, then it is not reportable to the IRS. This provides additional security, tax advantages, and hides wealth from potential claimants in the US or other home country.

The US has become a litigious society, where even neighbors and family members sue each other for petty disputes, loans, and damages. Property held privately overseas is out of the public eye and provides an excellent method of asset protection.

And if an investor decides to sell his real estate investment in the future, another consideration is that there are no capital gains taxes on a home that one has used as a primary residence. If the property is used as a second residence or rental, then the investor can use a 1031 Exchange to defer capital gains.

It is best to speak to a CPA or investment counselor prior to purchasing overseas real estate, in order to learn all of the tax implications of such an investment.

Disadvantages of Investing in Real Estate Overseas

LANGUAGE AND CULTURE

If you're considering moving to a Central or South American country, and do not speak a word of Spanish (or Portuguese in Brazil), then you might have a hard time adjusting to your new location. The same can be said if an investor is considering buying real estate in Europe or the Pacific Rim. Although English is a language spoken for the most part around the world, not all cultures and communities speak the English language fluently. Wherever one decides to invest, it is a good idea to determine if English is spoken locally, as well as learning the language of the locals in your new home.

When relocating or investing overseas, you must also remember that you are the foreigner: the culture and traditions with which you are familiar will be either quite different or unknown in a foreign country. Learning about different cultures and traditions should be part of due diligence.

TRAVEL AND VISAS

Purchasing offshore real estate means that the investor will have to travel back and forth from their home country to a foreign destination. The traveler can enter most countries with a government issued ID, such as a driver's license or passport, but there may be additional requirements.

For instance, if the real estate buyer purchases a home in Panama, and obtains economic residency, then there are rules regarding how long he or she can remain either within or without Panama. This is the same in Ecuador. Immigration and visa laws vary greatly from country to country, and can be complex and technical.

Obtaining a visitor or traveler's visa may be relatively simple, but for extended stays and travel over 90 or 180 days, it will require a lot of additional paperwork.

If you are purchasing real estate as an investment or second home, and will not be occupying the property full-time, then factors come into play for an absentee owner. A property manager might be required, or someone that will maintain the property, check security, and take care of the grounds, while you're not in residence.

COSTS, TAXES, AND DUTIES

Depending upon where the investor is investing in real estate, he or she might find that although the price of the property was affordable, some of the basic necessities like groceries, appliances, or other branded goods may be more expensive than in the US, due to import duties and taxes.

Purchasing property in some locations might come with additional costs and fees due to the paperwork required for a foreigner to make the purchase. An investor may be required to hire a host of professionals in order to invest in overseas real estate, depending upon the country and local laws.

If buying property in Portugal, one should be aware that under Portuguese law, judgments and debts follow the property, unlike the US, where they follow the debtor. Do not deal under the table. Employ licensed real estate professionals and attorneys to assist with overseas real estate purchases or sales.

Tax Consequences of Owning Real Estate Overseas

The tax consequences of buying real estate overseas must be addressed prior to making a purchase.

INDIVIDUALLY HELD VS. CORPORATE HELD REAL ESTATE

Under US law, if real estate located abroad is held in one's private name and not in a trust or company name, then it does not have to be reported to the Internal Revenue Service. This provides the investor with both security and privacy.

But if the property is held by an offshore corporation, and you are the shareholder of the corporation, then the property must be reported to the IRS on Form 5471, which is an informational return about ownership in foreign corporations. This may not foster privacy.

There are certain reporting thresholds depending on the value of individually held foreign assets like stocks, bonds, CD's, or interest in a foreign partnership or corporation. At a certain value, the taxpayer must report the ownership to the IRS on Form 8938.

An unmarried taxpayer has a threshold of $50,000, providing the foreign assets had a value of $50,000 of the last day, of the last tax year and at any time if the assets exceeded $75,000. Whereas married taxpayers filing jointly may hold up to $100,000 in foreign financial assets, and the threshold is any amount greater than $150,000 at any time during the tax year.

CAPITAL GAINS EXEMPTIONS

There are no specific laws under the Internal Revenue Code governing individual ownership of overseas real estate: the same tax applies whether a taxpayer owns real property domestically or abroad.

If you as an individual investor purchase real estate overseas, and then sell the property, then there is a $250,000 tax exemption on the property value, provided you lived and resided on the property for at least two of the previous five years you owned it. Married couples enjoy a $500,000 tax exemption.

If the country where your real estate is located charges a capital gains tax on the real estate, then under US law, you do not have to pay double tax. The amount of capital gains paid in the foreign country is deducted from any capital gains taxes stateside.

If the property is located in Costa Rica, Ecuador, or New Zealand, no capital gains are incurred locally. The taxpayer is only liable for capital gains earned under US law.

1031 EXCHANGES

Capital gains can be deferred under a 1031 Exchange or swap. This is where property is purchased and sold, and then the investor purchases another property of the same type, within the statute of limitations.

For instance, if a US taxpayer purchases a single residential unit in Mexico and sells the property five years later, if he or she closes on another parcel of real estate of the same type or kind within 180 days, then he can reduce or eliminate any capital gains on the sale.

Section 1031 states that the basis of the new property is the same as the property exchanged, less money you received, plus any gain recognized. Fair Market Value (FMV) of the property is considered when calculating the loss/gain.

A taxpayer can reinvest in up to three properties or rental properties, provided the FMV of the replacement properties does not exceed 200% of the relinquished property. There is also a 95% rule that states that the FMV of the newly acquired property is equal to the FMV of all the replacement properties.

SELF-DIRECTED IRA'S AND 401(K)'S

Self-directed IRA's, Roth IRA's, and 401(k)'s can be used to purchase and hold overseas real estate. This section does not go into depth regarding the procedures involved, which can be complicated, and the reader should contact their CPA or family attorney for more information on the subject. But self-directed IRA's can and do hold real estate, including overseas real estate.

In order to take advantage of this aspect of your IRA or 401(k), you will require a custodian for assistance in order to make purchases on your behalf. There are some legal strategies using LLC's in addition to a self-directed IRA in order to purchase overseas real estate, but the requirements are very technical. We cannot provide legal advice for your specific situation.

We do suggest that an investor speak to their CPA, family attorney, or other professional in order to make sure that their IRA can hold overseas real estate.

PROPERTY TAXES

Some overseas countries and territories charge annual property taxes. For instance, in Panama, any property valued over $30,000 US incurs a property tax, whereas property valued under $30,000 is exempt. The cap on the annual real estate property tax is 2.1% if the property's value is over $75,000.

In Ecuador, property taxes are based upon the real estate's municipal or assessed value, and taxes are quite low. A $170,000 home located in Cuenca might only have $110 in property taxes, and a more rural property with an assessed value of $34,000 may have $7.50 in property taxes. Senior citizens who retire to Ecuador pay less than 50% of these rates in property taxes.

New Zealand's property taxes are levied similarly to those in the United States, where services such as subsidies are included in the annual bill. Property taxes are based on the assessed value of the property, and home owners can appeal

Estate Planning Considerations

One of the most important considerations in purchasing real estate is what will happen to a property when its owner becomes incapacitated or passes away.

If the property is in the US, one will generally own it in a living trust, or have a joint owner in order to make it easy to pass to heirs upon death.

Even if one does not have a plan in place, an executor can locate properties and transfer them through a probate process.

However, when the property is located overseas, dealing with incapacity or death of the owner becomes more complicated. In most cases, transfer of real estate will follow local laws, which might be significantly different from US law.

Family members might have to travel to the foreign country to claim properties under an unfamiliar legal system. If the owner did not have an estate plan in place, his family might never find out about the property, and the asset could be lost forever.

Even if the property owner had an estate plan set up in the US through a will or a trust, it can take a long time to get the judgement from the US recognized in a foreign country.

Therefore, it is important to have an estate plan in a country where you own properties, according to local law. Find out if the country has a forced heirship rule, which requires distributing most of the estate to certain beneficiaries, and the power to dispose by will is limited.

Check if there are ways to avoid probate, which is a court process for passing properties at death, often taking a long time to conclude. Some countries allow trust ownership or joint tenancy to bypass probate.

One’s estate plan for a foreign property should not conflict with an overall estate plan of all of one’s properties, including domestic ones. Keep in mind that US citizens have to pay estate tax on all their worldwide assets if the total estate is valued above $5,450,000 (as of 2016).

Foreign real estate might also be subject to local transfer tax when it is passed from the deceased to beneficiaries, but it can be deducted from the US estate tax.

Conclusion

Buying real estate in a foreign country is a great way to diversify investment or to establish a foreign residency. Of course, it comes with caveats. You must research the country's real estate and other relevant laws. Due diligence might be more difficult in a foreign country, but you should not skip the process. Finding qualified professionals in a foreign country can be challenging, but professional help early in the process can prevent unnecessary troubles later.

Keep in mind that each country has different laws about how to treat real estate investment by foreigners. Not knowing the laws can put your investment at risk. Highlights of some of most popular countries for real estate investment are provided in the following section.

Treat your foreign properties as a part of your overall portfolio. A foreign property should not be isolated from the whole. Seek out counsel from professionals who understand cross-border issues to minimize conflicts between different laws.

Whether you are buying a dream retirement beach house in Costa Rica or a commercial space to open a local business, buying real estate in a foreign country will open the door for you to a new world.

Are you interested in buying foreign real estate, but concerned about legal issues that could haunt you and your family later? Imagine having a counsel who can guide you through complicated legal obstacles so that you can focus on growing your global assets.

Contact our office today to find out why we are the right legal partner for your global real estate investment.

Popular Countries for Real Estate Investment

MEXICO

Mexico is a popular destination for many Americans both for pleasure, retirement, and real property investments due to its low cost of living and proximity to the US. Real estate prices and property taxes vary from city to city, and by region.

Over 1 million Americans are either living or working in Mexico, where there are a number of popular retirement locations. Considering the current value of the peso against the US dollar, it is better to convert your dollars to pesos, which will save a lot of money.

Since 1989, foreigners have been able to purchase and hold real estate in Mexico. There are restrictions related to property ownership near the Mexican border regarding indigenous land and property within a certain number of miles to the coastline. Some restrictions can be lifted if the real estate investor has Mexican bank accounts, or operates from a Mexican business, under Mexican real property laws, and a direct deed is issued upon purchase or at closing.

Mexican property taxes are similar to US, which must be paid annually. The investor should also keep in mind that the postal system is not always reliable in Mexico, and people should not wait on companies or municipalities to send invoices for services or bills. In Mexico you are still expected to pay all invoices and taxes by their due date, even if you do not receive a bill.

Mexican real estate properties are often owned through a trust to avoid a lengthy probate. The trustees are regulated financial institutions. Upon the death of the owner, the beneficiary can be changed from the original owner to his heirs.

However, changing a beneficiary designation can take a long time and a lot of money to conclude.

Another way to avoid a probate after death for a real estate owner in Mexico is to have a corporation own the property and arrange transfer of interests upon death.

This way, you can avoid real estate transfer tax on a state level, which is only the inheritance tax in Mexico.

PANAMA

Foreigners are allowed to purchase real estate in Panama, and as in Mexico, there are a few restrictions. An American would not be able to purchase or own land within six miles of an international border, nor may untitled land be sold to a foreigner until it has been owned by a citizen of Panama for two years.

According to the US Embassy in Panama City, over 90% of all land located outside Panama City is considered untitled, therefore it would be wise to work with a legal professional and a real estate agent to ensure that any property you wish to purchase is not restricted. Coastal areas like beaches and navigable waterways are considered publicly owned, and therefore cannot be bought or sold.

Panama offers an economic citizenship program if an investor puts $40,000 in their reforestation program, or purchases a home worth at least $40,000. Once an investor has residency, within five years he can apply for citizenship and receive a passport. There are additional fees related to the visa application process.

Panama does charge property tax and capital gains tax. Property taxes are between 1.75% and 2.10%, depending on the value of the property, and capital gains are based on the sale or proceeds of property, less expenses and improvements.

Keep in mind that the IRS allows Americans to have exemptions if they are required to pay capital gains on the sale of overseas real estate.

Panama allows ownership of real estate properties by trusts and foundations to pass them on to the next generation without a court process. Panamanian foundation is an entity that holds assets gifted by a grantor (or a founder) for the benefit of beneficiaries.

The foundation is different from a revocable trust in the US because it is its own entity that has to be registered with a government, while the trust is an agreement between private parties.

The property owner in Panama can also use corporations or joint ownership to facilitate transfer of the property at death.

COSTA RICA

Costa Rica is located in Central America, and foreigners can purchase and enjoy the same rights of property ownership as Costa Rican citizens. Coastal land is considered a concession, owned by the Costa Rican government, and is not available for sale to foreigners.

When an investor purchases real estate in Costa Rica, he is granted fee simple ownership, just as in the US, and title or deed is officially registered with the government.

Many US-based title companies now operate in Costa Rica, and title insurance is available and affordable.

Costa Rica does not regulate or license its real estate professionals, so it is wise to inquire prior to engaging such a professional or attorney to assist you with any real property purchase.

Property taxes are only assessed at 0.25% annually on the assessed value of the property, and are paid quarterly. Costa Rica does not have a capital gains tax on real estate.

Foreign real estate owners in Costa Rica often use a separate will, drafted according to Costa Rican law, to address the transfer of properties at death. If the owner wants to avoid probate in Costa Rica, he can set up a trust to hold the title of his properties.

PORTUGAL

Foreigners are permitted to purchase and own property in Portugal, and there are a number of requirements. The investor must have a personal fiscal number, which can be issued by a bank, and professionals suggest that the investor open a bank account in Portugal prior to actually purchasing real estate.

Individual sellers of property may compel the new American arrival to pay cash or deal under the table in order to save money on the purchase price. This is frowned upon in Portugal, and due to restrictions and capital gains concerns, could leave the unwary investor with an invalid title and no property, which is why it is best to always work with a real estate professional and a local English-speaking attorney.

Laws in Portugal allow debts, judgments, and liabilities to follow a property, unlike US law. Therefore, it is wise to work with an attorney to ensure that there are no liens or debts levied on the property prior to purchase.

Portugal charges property taxes, which depend on the location of the property.

Portugal is a member of the European Union (EU), therefore both Portuguese and EU laws apply. The currency in Portugal is the Euro, and banks exchange USD for Euros, but there is an exchange fee or commission.

Depending on the investor's needs, he may want to have more than one bank account to hold money for purchases: one in USD and another in Euro, considering the current exchange rate.

Unlike many countries that apply the succession law of where the deceased had domicile or habitual residence, including US and EU, Portugal applies the law of nationality of the deceased to distribute even Portuguese properties.

However, if the US citizen is domiciled in Portugal, the US court will defer distribution of estate properties to Portugal. One way to avoid the confusion for beneficiaries after the owner's death is to choose the succession law to apply for distribution in a will or trust.

Be aware that a beneficiary who resides in Portugal is taxed on distribution from a trust.

JAPAN

Foreigners are allowed to hold, own, and purchase real estate and other properties in Japan, and have the same rights to own property as a Japanese citizen. The process of buying and then closing on real estate has a total of six procedures, and closings can take place in as little as two weeks. Japan's real estate laws are very straightforward, and similar to those in the United States.

Japan does charge a capital gains tax on the sale of real property, but if the property has been held for five years or more, there is a reduced rate of up to 50%.

Due to lack of demand, Japanese banks are more willing to draft mortgages for foreign investors, although there is a lot of paperwork and red tape. If the investor is willing to invest money in Japan through opening bank accounts, purchasing property, establishing businesses, and applying for residency, he may be able to obtain a loan or mortgage at a fixed rate much less than he would receive in the US or elsewhere.

Although permanent residency can take up to 10 years, if one is married to a Japanese citizen, it can take as little as three years.

If a US citizen owns real estate in Japan, it is a good idea to draft a separate Japanese will because it takes a long time to get a US will recognized in Japan. In addition, the Japanese inheritance and gift tax system is especially onerous, potentially exposing US assets of a Japan-residing US citizen to Japanese inheritance tax. Therefore, it is important to plan ahead for your Japanese properties.

NEW ZEALAND

Overseas investors can purchase real estate in New Zealand, provided that the land involved is not considered sensitive, like areas close to coastal areas, and some lifestyle properties. This is why it is good to work with a real estate professional and a qualified attorney in New Zealand.

One great advantage of purchasing real estate for investment in New Zealand is that citizens and residents speak English, although it is called Kiwi English, their own special dialect. Therefore, an American investor would not have to learn a new language in his new place of residence.

New Zealand does charge annual property tax, which pays for local services and utilities, and is assessed on the value of the property. New Zealand is known for minimal taxes, in fact they do not have an inheritance tax, capital gains tax, payroll tax, or social security tax.

New Zealand offers free or low-cost public healthcare to residents or foreigners that hold a work visa for two years. And the average life span of a New Zealander is over 80 years, well above the US average.

The cost of living is comparable to that in the US.

In New Zealand, trusts are commonly used for asset protection and succession planning. Since New Zealand estate planning law applies if the US citizen is domiciled in New Zealand, it is a good idea to utilize a trust for your real estate properties.

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