ARIFA
ARIAS, FABREGA & FABREGA

Plaza 2000, 16th Floor
50th Street
PO Box 0816-01098
Panama, Republic of Panama
Phone: +507 205 7000
Fax: +507 205 7001

LEGAL FLASH

LAW 80 OF THE 31ST OF DECEMBER, 2009 WHEREBY POSSESSORY RIGHTS ARE RECOGNIZED AND THE REGISTRATION OF COASTAL ZONES AND INSULAR TERRITORY IS REGULATED AND OTHER PROVISIONS ARE ENACTED

Real Estate and Property Practice Area

Primary Contacts

María Carolina Arroyo
Head of Practice
mcarroyo@arifa.com
+507 205 7021

Cristina de Alba
Associate
cdealba@arifa.com
+507 205 7000

Lawyers in this Practice Area

María Carolina Arroyo
Ma. del Pilar Castillero
Juan F. Corro
Cristina de Alba
Vivian Holness

Panama, February 2010. Law 80 of the 31st of December, 2009, published in the Official Gazette No. 26438-B of the 31st of December, 2009 (hereinafter, the "Law") gives to the Real Estate and Private Property Directorate of the Ministry of Finance and Treasury (the "MFT"), the power to recognize possessory rights and to register parcels on patrimonial goods of the Nation, national wastelands that are the responsibility of the MFT, coastal zones and insular territory, applying the proceeding of massive land registration established in Law 24 of 2006. The administration, processing, allocating, concession, leasing and protection of national wastelands, rural or urban, insular territory, coastal zones and other patrimonial goods of the Nation that were destined for livestock and farming purposes, will be the competence of the Ministry of Livestock and Farming Development.

The allocating petitions that were already in process upon entering into effect the Law, and that are sustained in the existence of possessory rights, must adjust to the value chart established in the Law and that must prove the possession pursuant to what has been established therein. If the petitions submitted were not based on possessory rights, then they are processed pursuant to what has been established in the Public Procurement Law and they will also be applied the reference value chart provided in the Law.

The petition files for the correction of measures and boundaries that were being processed at the Real Estate and Private Property Directorate upon entering the Law into effect, and that were pending expert's valuation report, will be sent to the courts of justice in order to continue their relevant proceeding.

The Law modifies an article of Law 2 of 2006, that regulates the concessions for tourist investment, of insular territories, coastal zones and lands owned by the State, and the transfer of insular territory for tourist profiting purposes, based on which bills of sale on insular territory may be granted, provided always that it may have been declared special development area by the Cabinet Council.

It is declared that mangrove zones, indigenous and regional territories, protected areas or areas subject to legal restrictions of private appropriation, cannot be object of land registration, which will be identified by the competent authorities. Neither possessory rights will be recognized on said zones, except that the recognition proceeding had been initiated prior to the fact that it be declared non-allocatable.

In the Law, the terms *beach, possession, shore, coastal zone and allocatable littoral* are defined, and assigns to the Real Estate and Private Property Directorate, the technical determination of the high tide line in both oceans and insular territory.

The Law establishes that the Nation will acknowledge the possession of a natural person or legal entity that shows that he/she/it has exercised the physical ownership as owner for a period over 5 years, peacefully and continuously, over lands of the Nation, in insular territory and coastal zones, to whom the first purchase option is given if he/she/it has not obtained the bill of sale.

This Law establishes the possibility of acquiring, on gratuitous title, lands located in allocatable coastal zones, goods of the Nation, insular territory (complying with the requirements established by Law) and coastal zones of the competence of the MFT, with an area of up to 50,000 m2, if the legal possession over 5 years is evidenced, exonerating this acquisition from every charge or tax, but the sale after the parcels have been acquired on gratuitous title, will indeed be subject to the payment of Tax on the Transfer of Real Estate and Capital Gain. The Law prohibits the partition of parcels to benefit from the gratuitous title.

The Law also establishes the possibility of acquiring, on onerous title, parcels of land in the allocatable coastal zones, goods of the Nation, insular territory and coastal zones over 50,000 m2, to persons that do no hold the possession, paying the prices fixed on the value chart that has art. 7 of the Law, which takes as reference for the determination of the prices, three (3) regions (Pacific, Atlantic Coast and insular region), and their extension (5 up to 30 hectares, and of more than 30 hectares). These buyers have a period of 15 years to pay the fixed price, subject to the payment of prime interest rate in effect at Banco Nacional, remaining the parcel mortgaged in favor of the Nation as long as the price is not settled. The owner may not transfer these properties to third parties as long as the mortgage is not settled, except to relatives within the first degree of consanguinity or to the spouse, nor those areas that have right-of-way to the beach in the cadastral plan may be transferred.

Every 3 years, the Executive Branch will update the value chart based on the values of the markets of the regions.

If the buyers of lands that buy to the State, under the protection of this Law, were legal entities, their shares must be registered in the owner’s name and the real holders of shares must be revealed in the purchase petition, being prohibited the transfer of shares before registering the parcel, without prior communication to the Directorate of Real Estate Registry.

The Directorate of Real Estate Registry must guarantee that the public right-of-way to coast and island beaches be established, pursuant to the legal rules and their violation will be penalized with a fine from US$1,000.00 to US$5,000.00, and in the event of repetition, from US$5,000.00 to US$20,000.00 Other violations may be penalized with fines from US$20,000.00 to US$100,000.00, but the violations that may be the object of these fines are not described.

This Law also modifies art. 7 of Law 24 of 2006, which declares that the allocation proceedings of real estate located in areas declared as for regulation and massive registration of lands and the registration of property rights at the Public Registry, are compulsory. This rule states that they must be served in person of the process, in order that the holder subject to one of the 2 existing land registration options (gratuitous or onerous), and in the event of not accepting any, the relevant institution will allocate him/her/it, the parcel on onerous title and will proceed to register it at the Public Registry, with the mortgage in favor of the Nation, until the payment of the price and the cost of the land registry proceeding are completed. After the bill of sale has been registered, the owners will be notified by means of posting the edicts at the mayor’s office and at the Corregidor’s office of the place for 5 business days, and it will be published in a newspaper of national circulation.

The Law grants a term of 90 calendar days to finish the allocation proceedings to the holders of cadastral lots as from 1999 by means of programs financed by the State, otherwise, the onerous allocation process will be applied.

This Law entered into effect on the 31st of December, 2009 and abolished Law 23 of the 21st of April, 2009 (which regulates the allocation of coastal zones and insular territory) and numeral 59 of art. 425 of the Fiscal Code (that established the fee of $5.00 for the issuance of the tourist card).