

# Dominican Republic

Pellerano & Herrera

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## 1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in the Dominican Republic. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.

The main governing legal text regarding Real Estate Property in the Dominican Republic is Law 108-05 as of February 22, 2005, regarding Real Estate Registration. Additionally, the Dominican Constitution and the Dominican Civil Code provide the general legal framework.

1.2 What is the impact (if any) on real estate of local common law in Dominican Republic?

The Dominican Republic legal system operates under Civil Law as opposed to Common Law. In this regard, the Dominican Civil Code contains a series of provisions regarding the sale and purchase, lease and sub-lease and easement of real estate that act as a complement to the application of Law 108-05 on Real Estate Registration.

1.3 Are international laws relevant to real estate in Dominican Republic? Please ignore EU legislation enacted locally in EU countries.

International Law has little effect regarding Real Estate in the Dominican Republic since Law 108-05 is of public order.

## 2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

As per the Dominican Constitution the only restriction is that Dominican citizens will have a priority over foreigners to acquire land located on the national border. The conditions and regulation for the acquisition of real estate are still pending ruling since the Dominican Constitution came into effect on January 26, 2010.

## 3 Real Estate Rights

3.1 What are the types of rights over land recognised in Dominican Republic? Are any of them purely contractual between the parties?

The rights over land are as follows:

- Property Rights.
- Lease.
- Sub-Lease Right of Way.
- Right of Use.
- Easement.
- Usufruct.

These rights are all regulated by law except the Sub-Lease which is contractual between the parties.

## 4 System of Registration

4.1 Is all land in Dominican Republic required to be registered? What lands (or rights) are unregistered?

The previous Real Estate Law introduced the Torrens System in the Dominican Republic, and its main purpose was to pursue the registration of all Real Estate property in the Dominican Republic.

Furthermore, Principle 2 of Law 108-05 states:

"The Dominican government is the original proprietor of the lands that conform the Dominican Republic territory. All lands over which no person can prove to have ownership are registered in the name of the Dominican government."

Currently very little, if any, real estate property in the Dominican Republic is not registered as either private property or as government property.

4.2 Is there a state guarantee of title? What does it guarantee?

The Real Estate Registry Law provides that in the moment of the registry of the real estate rights, the interested party must pay a contribution to the Guarantee Fund held by the Supreme Court of Justice in order to ensure the payment of an indemnity to any owner who is without fault, because of the application of the law.

#### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

Since the system obliges the registration, in order for the rights to be enforceable to third parties they would have to be registered.

#### 4.4 What rights in land are not required to be registered?

All of the rights are registrable.

#### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

The principle on Dominican Real Estate Law is that the "first in time is the first in right". The priority corresponds to the first one to register. In the case of mortgages, there is a possibility to register as many ranks as mortgage creditors exist. The lender in first rank will collect before any other lender in a foreclosure procedure.

#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer? Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

As per the Civil Code the ownership is transferred at the moment that the parties agree on price. In order for this transaction to be valid to third parties it is necessary to be registered. This publicity take place at the moment the purchase and sale agreement is deposited at the Registrar Office for the process of recording. However, as per the provisions of the Real Estate Law, the transfer of ownership is only enforceable to third parties upon registration before third parties.

The first person to register has a priority over other registration. For example, on property rights, the rights of the first person to register will be enforceable to other parties. Regarding mortgages, please refer to question 4.5.

### 5 The Registry / Registries

#### 5.1 How many real estate registries operate in Dominican Republic? If more than one please specify their differing rules and requirements.

There is one National Title Deed Registry Directorate which in turn is in charge of coordinating, directing and regulating the functions of the Title Deeds Registers Offices, which are located throughout the national territory and only have jurisdiction over a determined extension of land.

#### 5.2 Does the Land Registry issue a physical title document to the owners of registered real estate? Can any transactions relating to registered real estate be completed electronically? Can information on ownership of registered real estate be accessed electronically?

The Title Deed Registers Office issues a Title Deed Certificate in the name of the owners of the registered real estate property.

Regarding the completion of transactions relating to real estate

property by electronic means, there is currently no system in place allowing the performance of such operations.

#### 5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

The new Real Estate Registry Law provides that in the moment of the registry of the real estate rights, the interested party must pay a contribution to the Guarantee Fund held by the Supreme Court of Justice in order to ensure the payment of an indemnity to any owner who is without fault, because of the application of the law.

#### 5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

Due to the public nature of the real estate jurisdiction, there are no legal restrictions regarding who has access to the registry. However, the Title Deed Registers' Offices have adopted a practice of requesting that the identity card of the owner of the property, or his representative, in the event of a corporate entity, be filed along with the judicial status certification request.

### 6 Real Estate Market

#### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in the Dominican Republic? Please briefly describe their roles and/or duties.

The tenant would normally be involved, in the event that a lease agreement affects the real estate property being sold or any person that has easement rights over the real estate property being sold.

#### 6.2 How and on what basis are these persons remunerated?

The basis for remuneration of the aforementioned parties is to be determined by consensual agreement.

#### 6.3 What are the main observable consequences on the real estate market in the Dominican Republic arising out of the global credit crunch and worldwide recession in 2008/9? Please include both local and international investors in your answer.

A decrease has been seen in the tourism real estate market destined towards second and third home purchasers, as well as persons or entities that acquire such real estate property for investment purposes.

Aside from the aforementioned sectors, the local real estate market has remained unchanged as a result of the global credit crunch.

### 7 Liabilities of Buyers and Sellers in Real Estate Transactions

#### 7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The minimum formalities are:

- Proof of ownership of the real estate property on the part of the Seller (Title Deed Certificate).

- Purchase Sale Agreement between Purchaser and Seller, duly notarised by a Notary Public. In the event that one of the parties executes the document abroad, the document must be notarised and then have either the Hague Apostille stamped on the document or the Dominican Consulate legalisation, as applicable.
- In the event that the seller is an entity, the corresponding Shareholders' Meeting minutes or Board of Directors' Meeting minutes authorising the sale of the real estate property and designating a representative to execute the transaction documents must be included upon filing before the Title Deed Registers office.
- In the event that the purchaser is an entity, the corresponding Shareholders' Meeting minutes or Board of Directors' meeting minutes authorising the purchase of the real estate property, and designating a representative to execute the transaction documents must be included upon filing before the Title Deed Registers Office.

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#### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

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The seller is under no legal duty of disclosure, and as a result the effective performance of a due diligence is highly recommended.

It is important to note that any rights affecting the real estate property remain with the property even in the event of the transfer of property rights.

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#### 7.3 Can the seller be liable to the buyer for misrepresentation?

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As stated previously under question 7.1, in the event that the warranties are included as essential conditions without which the purchaser would not have entered into the transaction, the seller may be liable for losses and damages arising in connection with the misrepresentation.

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#### 7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

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The usual warranties included in Real Estate Property purchase-sale agreements by the seller include:

- Right of peaceful ownership. This warranty usually stipulates that there are no claims of ownership by third parties regarding the real estate property.
- Authorisations to execute the transaction (in the event that the seller is an entity). This warranty stipulates that the person executing the document on behalf of the seller has been granted all the corresponding authorisations by the corresponding corporate body.
- Liens and encumbrances. The seller warrants that no liens and encumbrances affect the real estate property, or in the event that any liens and encumbrances have been disclosed, the seller warrants that no additional liens and encumbrances affect the real estate property.
- Other Agreements. The seller warrants that by executing the real estate sale-purchase agreement, it is not contravening any other previously executed agreements with third parties which may invalidate the sale-purchase agreement.
- The contractual warranties are normally included as a statement by the seller as essential conditions without which the purchaser would not have executed the agreement, and as a result if any of them are proven to be false, would effectively allow the purchase to unilaterally terminate the

agreement with cause.

Nevertheless, the warranties are not a substitute for performing due diligence, since there are numerous manners in which right of property may be affected, some without the knowledge of the seller.

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#### 7.5 Does the seller warrant its ownership in any way? Please give details.

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Real Estate Property Sale-Purchase Agreements typically include the following or a similar clause:

"Evidence of Ownership Right. Seller herein evidences his right of ownership over the real property sold hereunder by Property Deed No. \_\_ issued by the Registrar of Deeds of [jurisdiction] on the dd/mm/yyyy".

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#### 7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

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In addition to paying the sale price, the purchaser must also satisfy the Transfer Tax as detailed in question 9.1.

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## 8 Finance and Banking

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#### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

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There are no governmental permissions, approvals or licences required for foreign or domestic persons or entities to make real estate loans secured by real property.

However, in the event that the lender is an Intermediation Financial Entity, certain restrictions apply as mandated by the financial and monetary authorities.

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#### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

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The main method real estate lenders seek protection against default is by means of registering a mortgage on the real estate property.

In this regard, a mortgage agreement or a mortgage act is the instrument that is used to create a lien on real estate to secure indebtedness in the Dominican Republic.

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#### 8.3 What minimum formalities are required for real estate lending?

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Except for the restrictions imposed to Intermediation Financial Entities in the Financial and Monetary Code for lending with public funds, there are no legal formalities or requirements for real estate lending.

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#### 8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

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The lender is protected against claims by means of the issuance of a Mortgage Creditor Certification, which contains the details of the mortgage registered on a real estate property.

Mortgages grant a privilege to the registered creditor regarding unsecured creditors.

## 9 Tax

### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The purchaser of real estate property is subject to the payment of a 3% tax on the purchase price or the appraisal of the property performed by the government, whichever is the higher amount.

### 9.2 When is the transfer tax paid?

The 3% transfer tax must be paid within six months of having executed the document by which the transfer of the property operates. Upon the expiration of the six months a penalty is applied in excess of the amount of the transfer tax.

### 9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The 3% transfer tax is a unified tax. As a result, no additional tax is paid in connection to the transfer of real estate property.

### 9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

The sale of real estate property (not improvements) may create a capital gains tax to be satisfied by the seller, in the event that the conditions are met in accordance to the provisions of Article 289, paragraph I of the Dominican Tax Code.

In this regard it is important to note that the capital gains tax is equal to 25% over the taxable amount.

### 9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

In the event of transference of ownership of a company owning real estate property, a capital gains tax may apply if the conditions are met in accordance to the provisions of Article 289, Paragraph I of the Dominican Tax Code.

In this regard it is important to note that the capital gains tax is equal to 25% over the taxable amount.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The main laws that regulate leases in general terms are:

- the Dominican Civil Code; and
- Presidential Decree No. 4807 (hereinafter "Decree 4807"), regarding rent control and evictions dated May 16, 1959.

### 10.2 What types of business lease exist?

Dominican Law only contemplates Leases in general terms, without differentiating among different forms.

### 10.3 What are the typical provisions for leases of business premises in the Dominican Republic regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

The typical contractual provisions pertaining to leases of business premises are:

#### (a) Length of Term

Taking into consideration that the Civil Code of the Dominican Republic provides that the lease must be agreed on a certain term, there are no legal restrictions on a maximum term for said agreement, however a term must be included.

#### (b) Rent Increases

It is important to note that Decree 4807 provides that the landlord must request an authorisation to raise the rent charged to the tenant to the Bureau for the Control of Lease and Eviction, explaining the reasons for such a raise. If the Bureau deems the reasons adequate, the Bureau will authorise the landlord to raise the rent.

In case the cause of the raise is the reparation, remodeling or redesigning of the property, the landlord may adjust the rent to the worth of such works without the intervention of the Bureau for the Control. However, in case the rent exceeds 1% of the value of the property, the tenant may file a claim to the Bureau for the Control, which may adjust the rent to this amount.

For this purpose, the Bureau for the Control will take into account the appraisal made by the General Direction of the National Cadastre.

Nevertheless, it is important to note that the previous restriction has fallen into disuse, and as a result of the contractual freedom principle stated in the Dominican Civil Code, parties are free to determine the price to be paid for leasing real estate property.

#### (c) Tenant's right to sell or sub-lease

The Civil Code allows tenants to assign the Lease Agreement or sub-lease the property if it is not expressly forbidden in said agreement.

#### (d) Insurance

In this regard, it is important to note that as per the provisions of the Dominican Civil Code, one of the tenants is responsible for the deterioration of the leased property, including but not limited to damages in the event of fire. As a result, it is standard practice to request of tenants an insurance policy covering such said damages.

#### (e) (i) Change of control of the tenant

Unless a change of control provision is included in the agreement, a change in control of the shares of the tenant does not cause the termination of the agreement.

#### (e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

Unless expressly stated in the agreement, if the tenant merges with another entity to create a new entity, the lessor may terminate the agreement as a result that the entity resulting from the merger is a new moral person and different from the original tenant.

#### (f) Repairs

According to the Dominican Civil Code the tenant is obligated, upon the termination of the Lease Agreement, to return the property in the same conditions as it was originally received. As a result, the tenant must perform, at his own cost, the corresponding repairs as needed.

#### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

There is a 16% VAT applicable to leases. The landlord must file said tax before the Dominican Tax Authorities. However, in the event that the landlord is a person and the tenant is an entity, the tenant is obligated to withhold 10% of the VAT to file on behalf of the landlord, with the latter being responsible for filing the remaining 6% of the VAT before the Tax Authorities.

#### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.). Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

The circumstances in which leases are usually terminated are:

- Reaching of the term of the agreement without renewal.
- By the initiation of an eviction proceeding by the landowner in the event that the tenant fails to comply with payment obligations, as per the procedure indicated in Decree 6807.
- Mutual consent among the parties.
- The destruction of the leased property.
- In the event the tenant uses the property for a different function than agreed upon in the lease agreement, and only in the event that such situation negatively affects the landowner.
- In the event that the tenant sub-leases the property in whole or part if the lease agreement expressly prohibited sub-leasing.
- If the tenant performs modifications to the property.
- Renewal or extension of the lease period must be mutually agreed upon by the parties.
- Furthermore, compensation for termination must be contractually agreed upon by the parties.

#### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

Unless otherwise stipulated or agreed upon by the parties, the landlord and/or tenant cease to be liable for their respective obligations once they have sold their interests.

#### 10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Apart from the fact of having to observe the provisions of an Environmental Licence, in the cases that warrant it, no green lease obligations as such are contained in local legislation regarding leases.

## 11 Zoning and Environmental Issues

#### 11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The main Law governing zoning in the Dominican Republic is Law 975/44, dated June 29, 1944, regarding urbanisation and public adornment, sets forth the main legal provisions pertaining to zoning and the use of land.

Furthermore, Law 64-00, dated July 25, 2000, the General Environmental and Natural Resources Law, also sets forth a series of provisions regarding zoning in determined regions of the national territory, and also includes a series of limitations with regards to the use of lands declared as national parks as well as protected areas.

Furthermore Article 51 of the Dominican Constitution established that the Dominican government may force a person to sell land to it in the event that the purchase of said property is declared of "national interest". The price to be paid as compensation in these cases is to be determined by agreement among the government and the landowner or by a ruling issued by the competent court.

#### 11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land use is controlled by the corresponding city or municipal hall, which varies depending on where the real estate property is located.

Environmental regulation is controlled by the Dominican Ministry of the Environment and Natural Resources.

In the tourism sector, building use must be authorised by the Ministry of Tourism.

#### 11.3 What main permits or licences are required for building works and/or the use of real estate?

- Certificate of No Objection to the use of land issued by the corresponding city or municipal hall.
- Construction Permit duly issued by the Central Office of Plan Approval of the General Buildings Directorate of the Ministry of Public Works.
- Certificate of No Objection of use of Land issued by the Ministry of Environmental Affairs (as required).
- Certification of No Objection of use of Land issued by the Ministry of Tourism (as required).
- Certification of approval by the National Directorate of Monumental Patrimony (in the event the works are to be performed in the colonial zone).
- Approved waterworks plans by the Santo Domingo Water and Aqueduct Corporation or the National Institute of Potable Water and Sewers, as applicable, for residential developments of more than 10 housing units or in excess of 10,000 mts<sup>2</sup>.
- In the event that construction is performed within 60 meters of the shoreline, a presidential authorisation is required.

#### 11.4 Are building/use permits and licences commonly obtained in the Dominican Republic? Can implied permission be obtained in any way (e.g. by long use)?

Construction permits are commonly obtained in the country.

Furthermore, it is important to note that implied permission cannot be obtained by the passage of time.

#### 11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?

The time involved in obtaining the corresponding building/use permits varies between approximately two to five months, but may take longer depending on the amount of permits and the complexity of the plans filed for approval.

Regarding the cost associated in obtaining said permits, the amount varies depending on the magnitude of the project.

#### 11.6 In what circumstances (if any) is environmental clean up ever mandatory?

Dominican Environmental Law requires that any person that causes damage to the environment or natural resources is obligated to materially repair such damage at their own cost.



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Ms. Mena focuses her practice in commercial law and regulations, intellectual property, real estate, corporate law, banking, tourism and infrastructure. She is highly experienced in counselling tourism projects, from financing onwards, also in projects of infrastructure, international business transactions, mortgage loans, commercial renting and corporate transactions, as well as real estate mergers and acquisitions. She has represented local and international clients in establishing their operations in Dominican Republic. She is fluent in Spanish and English, and is an honorary member of the Center for International Legal Studies.

#### 11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in the Dominican Republic.

Currently there are no regulatory requirements in place for the management of energy performance in the country.

## 12 General

#### 12.1 Are there any current proposals for significant reform of real estate law in the Dominican Republic - please give details.

The current real estate law is of recent enactment (March 23, 2005), and currently there is no proposal to significantly reform said legal text. Nevertheless, it is important to note that said law has undergone certain modifications after its enactment, and has been complemented by the promulgation of regulations.

Moreover, as per the new Constitution, regulations regarding the priority of Dominican citizens to acquire property near the border with Haiti are pending to be enacted.

#### 12.2 Date at which law is stated.

This chapter is up to date as of February 4, 2010.



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## Pellerano & Herrera

### Attorneys at law

Pellerano & Herrera has been the leading law firm in the Dominican Republic for over 15 years, with the best legal solutions to the business needs of its clients. The firm is typically involved in all major transactions in the country and its multidisciplinary team of lawyers is recognised as the most comprehensive and sophisticated in the market.

#### INTERNATIONAL EXPERIENCE

The firm has steadily participated in all major transactions involving acquisitions, joint ventures, project finance and tax planning, among others. It has also participated in the entry process to the Dominican market of important multinational companies, as well as in the international financing of high value operations, such as bond issuances and acquisitions of several major companies from different industry sectors.

#### MAIN INTERNATIONAL AREAS OF PRACTICE

Banking, Finance & Securities  
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Intellectual Property Rights Law  
Tourism  
Mining  
Antitrust & Unfair Competition