



**BUYING REAL PROPERTY IN BRAZIL**  
**(ESPECIALLY IN THE STATE OF SANTA CATARINA)**

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Dated: October 5, 2016

There may be many reasons for buying real property in Brazil. These reasons could include having a winter home, establishing a profit center for rents, using the purchase for U.S. tax purposes, or simply a lifestyle choice, including retirement. With many areas ripe for real estate investment now (and in the future), especially in the south and in the beautiful State of Santa Catarina<sup>1</sup> where it does not have a single city in the top thirty-five (population) for Brazil, it is a prime target for foreign real property procurement.

Globally, Brazil has the fifth largest country, the fifth largest population, and a GDP that ranks seventh. In less than two decades, its economy is expected to jump at least two spots in the world. Only ten years ago did Brazil even constitute a Ministry of Tourism for a country that has a people and a culture that is as genial, spontaneous, and fun as any.

It should then not come as a surprise that there are many entities, typically professional investors, and individuals that have and continue to procure real property in Brazil. The previous implies that non-Brazilians can own real estate in the largest South American country, which they can.<sup>2</sup> This article provides a non-exhaustive overview for non-Brazilians purchasing real property in Brazil.

As is typical with the purchase of real property in the United States, neither independent legal advisors (*Advogados*) nor realtors/agencies (*Imobiliárias*) are required to complete a transaction. However, one or both may provide invaluable advice, which is especially true to a buyer purchasing property in a foreign land. Similarly, those that specialize in helping to first identify a particular property, i.e., brokers (*Procuradores*), are also not necessary but can be quite useful, especially when all of the services previous listed are bundled with one entity (such as the Newman Law Offices).

Thus, an important consideration in conducting any transaction is having competent and trusted professionals guide you or even conduct the transaction by proxy. For example, once a

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<sup>1</sup> This state has the highest levels of income, education and public health, one of the lowest rates of illiteracy, the highest average life expectancy, and the lowest homicide rate in addition to lower levels of corruption. No wonder that Florianópolis, the capital of Santa Catarina, is one of the top four destinations in Brazil. More importantly, as of 2013, the average price for residential property in Florianópolis was among the lowest of sixteen major Brazilian cities surveyed.

<sup>2</sup> There are some restrictions on non-Brasilians owning real property in Brazil. These limitations are generally intended to secure the integrity of the Brazilian territory and its national security. If the transaction is related to rural property, the foreign buyer must also present an identification card from Registro Nacional de Estrangeiros known as RNE. This identification card is only issued to foreigners with a permanent Brazilian visa.

prospective buyer has completed certain tasks, including obtaining a CPF,<sup>3</sup> a valid passport, and a bank account, the buyer may give power of attorney (*Procuração*) to such a trusted professional. Aside from helping prospective buyers with currency risks and completing said tasks, these trusted professionals can review, for example, one important legal document (*Matrícula*),<sup>4</sup> which describes the property in detail and lists all previous owners, all boundary details, any outstanding debts and all legal, financial and judicial transactions relating to the property.

Yet, even though a transaction may proceed in English and Portuguese, how can a lay person satisfactorily inspect all of the appropriate documents and perform the necessary due-diligence on the property deeds? Without appropriate support, a prospective buyer could fail to even request the appropriate documents. Worse, a buyer could end up procuring real estate that is already saddled with outstanding debts (or liens) or *de facto* purchase only some meaningless pieces of paper (instead of the real property itself) since the seller did not have full legal ownership to even divest it. Or, an unaided buyer could fail to properly register the transaction in the national Public Registry of Deeds and Documents (*Registro Imobiliário*), a failure that could cause a fatal claim to possession.<sup>5</sup> Like anything else, investing in appropriate advisors as part of a total transaction necessarily reduces overall risk.

Trusted professionals will ensure that the seller actually owns the particular parcel and further, has the power to divest it. Then once the contract (*Contrato*) is modified and confirmed to be in accordance with Brazilian real property law and all searches have returned satisfactorily, the buyer may consummate the transaction. Closing periods in Brazil tend to be much faster than those in the United States. The trusted professionals/agents will then provide guidance on the payment process, which includes monitoring and confirming any transfer through financial institutions.<sup>6</sup>

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<sup>3</sup> All prospective buyers must obtain a CPF (*Cadastro das Pessoas Físicas*), which is a tax registration number that allows a holder to open a bank account, apply for utilities, repatriate funds, some times tax-free from the sale of property, and even to purchase, more easily, intra-Brazil airline tickets. Essentially, the CPF acts to register the amount of capital brought to Brazil and such should help in satisfying any U.S. laws providing for currency migration transparency. Additionally, the CPF will provide a mechanism to register with the Bank of Brazil any money transaction as a foreign investment, another cost in the process.

<sup>4</sup> The Matricula is in addition to a title deed and only exists for construction built after 1973. Since this document defines the legal property rights (whereas the real property itself does not), any material changes should get judicially rectified via a legal process (*Processo de Retificação*).

<sup>5</sup> Registration usually occurs at a registry office (*Cartório do Registro de Imóveis*), which is located in the same jurisdiction as the property. However, a trusted professional could help conduct the registration at any location by an authorized official.

<sup>6</sup> Wiring money to Brasil is much different than wires within the United States or to countries in the European Union or Asia, for example. Sometimes, wires can take many days to clear either as a function of the many holidays in Brazil or the not so occasional strike. Sometimes with certain appropriate trusted professional as a function of established relationships, this portion of the process can be made easier by certain understandings, something impossible without established relationships.

Below are some other factors a prospective buyer should consider:

**Brazilian Mortgage.** Currently foreign nationals (unless they possess a permanent visa) cannot obtain a Brazilian mortgage. However, why would anyone want to execute such an encumbrance? Interest rates are still historically low in the United States. As a result, it would be much simpler and most-likely more economical to secure a US-based mortgage or to use other non-Brazilian financial instruments (e.g., existing lines of credit, etc.) in funding the purchase of Brasilian real estate.

**Visa Eligibility.** Currently, the act of purchasing Brazilian real estate does not, in itself, afford an(y) *individual(s)* eligibility for a different type of visa.<sup>7</sup> Thus, prospective buyers should factor the current 90-day limit, which can be extended to no more than 180 days, on annual-calendar stays in Brazil as a function of a ten-year tourist visa (that initially must be obtained at least 45 days prior to visiting Brazil). However, Brazilian investor visas may be obtained via a registered entity. Then, the registered company will then register any investment on behalf of the company that will then be the legal party in interest.<sup>8</sup>

**Currency Fluctuations.** In the last six years, the exchange rate (for \$1.00 USD) has gone from R\$1.53 in 2011 to a high of R\$4.17 in 2015.<sup>9</sup> Prospective buyers must account for macroeconomic factors where slight changes could change the net present value of the real property asset. Additionally, carrying costs and other expenditures, which would directly affect any capital gains tax, for example, would also vary as a function of currency fluctuations. Accordingly, a prudent buyer (or seller) will factor in geopolitical issues (e.g., the accidental death in January, 2017, of Brazil Supreme Court Justice, Teori Zavascki, whose replacement will be appointed by the very man, the President of Brazil, Michel Temer, who is, among others, being investigated; representations by Chairwoman Yellen that should new President Trump implement certain parts of his economic plan, then US interest rates will increase faster, etc.). Therefore, a prospective purchaser may wish, with the help of trusted advisors, to employ a third party to incur some risks associating with a pending transaction and any currency fluctuations, e.g., a currency exchange bank.

**Potential Taxes and Fees.** There are a number of taxes or fees that may or must get paid as a result of the purchase of real property in Brazil

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<sup>7</sup> Fortunately, there are other avenues that afford longer or even permanent stays.

<sup>8</sup> For those individuals who are looking to keep their property interests discreet, entity ownership may be useful. Similar to the United States, real property ownership information is public.

<sup>9</sup> Though these are the stated historical rates, in one high value transaction we participated in, the rate used around that time was R\$4.27. In actuality, there are three types of rates used in exchange: 1) Parallel Market Dollar, the rate typically used in real estate transactions, 2) Tourism Dollar, and 3) Commercial Dollar, used by the Bank of Brasil in the transfer of funds from abroad and in goods and services.

- Agent Fees. These include the fees associated with hiring a lawyer, a realtor, and/or a financial institution. As in the United States, the realtors (on both sides of the transaction) split 6% of the declared value of the real property (“ $V_d$ ”) in a property exchange. In an outright sale, the buyer’s realtor gets the full amount from the seller. Additionally, the legal advisors will get paid 2-3%  $V_d$  as well.
- Government Taxes and Fees. These typically total to ~7%  $V_d$ . They may be comprised of the following:
  - Public Deed Fee (*Escritura Pública de Compra e Venda*); varies
  - Municipal Transfer Tax (*Imposto Sobre Transmissão de Bens Móveis* known or ITBI); varies.
  - Real Estate Register Fee; varies.
  - National Government Tax (*Imposto Sobre Operações Financeiras* or IOF); constant.
  - Registry of the Federal Heritage (*Laudêmio*):<sup>10</sup> 2-5%  $V_d$ .
- Income Tax. Should the real estate get rented, the owner of the CPF will become liable automatically for any income tax; varies, sliding scale.
- Capital Gains Tax (“CGT”). Unless exempted if reinvesting the profit into other Brazilian real property (like a U.S. 4797 reinvestment, the CGT is calculated by the final selling price less the registered buying price<sup>11</sup> less, *inter alia*, maintenance fees and traveling costs; varies, sliding scale.

In the final analysis, there are many reasons for buying real property in Brazil and any or many will be personal to the prospective buyer. Whatever the reason, even savvy individuals will require local (Brazilian) support to consummate the transaction. We can help with those transactions.

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<sup>10</sup> This fee is reserved only for some beachfront or other properties located near water. While the payment is managed by a governmental official (*Secretaria do Patrimônio da União*), a significant amount goes to the Catholic Church.

<sup>11</sup> This amount is not the  $V_d$ . Rather, the amount is set by the government and may differ from the  $V_d$ .