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One option to make a sale is an owner-carry mortgage

By Garland M. Baker
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In a market where buyers are scarce, sellers need to look at all the options to snag a sale. Owner financing is one option available to sellers, but many expats are scared to death of the courts and shy away from carrying a mortgage.

The judicial debt collection law, Ley 8624, changed collection processes significantly upon its enactment in May 2008. Before the extensive revisions made by the law to collection actions, carrying a mortgage was scary. There were so many ways a dishonest debtor could hoodwink an honest creditor. Trying to collect a debt took years in many cases, and in some, creditors just gave up because of the inefficiency of the system.

The new law is better than the old one but still has its share of problems. The old scheme allocated collection cases into the regular courts, overwhelming them in many jurisdictions. The newer law created special collection courts and put many cases in few places to process them, thus bottlenecking the system.

To this day, from the enactment of the law back in 2008, the special courts are still jammed and slow. However, even though they move like molasses, they do move and have not come to a complete standstill as with some courts under the original, outdated law.

Because of these facts, lending institutions and private individuals used guarantee trusts in lieu of mortgages.



This structure was extremely convenient for sellers because a notary transferred assets into a special trust and registered it at the Registro Nacional. There was no transfer tax on this kind of a transaction until laws 9068 and 9069, law for the enforcement of fiscal transparency and law for strengthening tax enforcement, made some major changes to Costa Rica's code of commerce. Article 662 eliminated the tax exemption of property transfer taxes when transferring property between [trustor and trustee](#).

If a debtor did not pay, assets were returned without too much hoopla. This changed when debtors started to complain the structures were *pacto comisorio* and not legal in Costa Rica. A *pacto comisorio*, known in English as a termination or rescission agreement, is illegal in

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many Latin American countries because [Roman law](#) is the foundation to most legal systems here.

Is it a good idea to carry a mortgage? The answer depends on the borrower. They are not all created equally. Some are deadbeats waiting for the right person to bamboozle, while most are honest buyers looking for an investment, second home, or simply to retire to this beautiful country.

Seth Derish of Costa Rica Investigations, an international private investigation firm, says good due diligence is key to lending money. Costa Rica has several [credit reporting agencies](#) that provide in-depth information on Costa Ricans and foreign residents alike. However, the information available on non-Costa Ricans is sketchy at best.

Derish explained that when lending to a foreigner a creditor should do a study about them in their home country. Many services to do so are available today. Paying someone to prepare a due diligence workup on a borrower is just good business and a great investment, he said. Good, credit worthy borrowers rarely default on a debt unless there are extenuating circumstances. In those cases, they usually are up front about any problems and try to work out a compromise.

Taking a mortgage on a property in Costa Rica is not the only option available for property sold here, Derish added. Taking a first deed of trust on a foreign property, perhaps in the States where there is a good legal system, is a good alternative, he said.

Offering financing to sell a home or property definitely helps to market it. It can also be [profitable](#) since interest is higher here than in other countries like the United States or Canada.

Even though the collection system in Costa Rica is not perfect and slow, it does work. The slowest

part is at the beginning, waiting for the auction dates. Yes, dates, usually three, are set. The first one is for the full amount, the second for 25 percent less and the third 50 percent of the original amount.

Lenders who are collecting can bid at the auction or take back the asset if there are no bidders. One very important thing for lenders to remember is that interest in this country expires after one year. If a borrower is in default, it is important to go to collection immediately because then interest is protected.

Also, crucial, is to never make a deal with a debtor without legal counsel. Deals, deferred payments, returning of assets without a court case, or just trying to be a *nice person* usually backfires due to restrictions on pactos comisorio and out-of-court settlements.

Carrying a mortgage or other financial instrument when trying to sell a property can be the difference between selling or waiting forever for a buyer. There is no shortcut for using a good attorney with years of financing experience. However, most of them do not know much about international due diligence, so potential creditors must know the borrower and investigate. Good bankable advice.

Garland M. Baker is a 42-year resident and naturalized citizen of Costa Rica who provides multidisciplinary professional services to the international community. Reach him at info@crexpertise.com. Baker has undertaken the research leading to these series of articles in conjunction with A.M. Costa Rica. Find the collection at <http://crexpertise.info>, a free reprint is available at the end of each article. Copyright 2013, use without permission prohibited.

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