



Abogados & Notarios

CONSTRUCTION AGREEMENTS

CONSTRUCTION AGREEMENTS – COSTA RICA REAL ESTATE LAW – COSTA RICA REAL ESTATE ATTORNEYS – By: **Rogelio Navas Rodríguez, Esq., Costa Rica real estate attorney** – Building a house is one of the most important events of many people’s lives. If everything goes smoothly and as planned, the experience may end up in a dream come true. To increase chances of achieving your dream and avoid the experience of building a house becoming a nightmare, execution of a proper construction agreement is necessary. The same applies to corporations building their premises. If important delays should occur, important loses may be caused. As follows a few tips to protect yourself when embarking into this experience:

- **BUILDER BACKGROUND CHECKS**: Before choosing someone for the website they have, for their offices or for the nice way they speak, you should ask around if the builder or developer is reputable, experienced and responsible. Costa Rica is a small country, so just by asking people around you can get an idea of how well-known the builder or developer is. There are also entities, such as CFIA (Engineers and Architects Bar Association) and the Costa Rican Chamber of Construction, that can be inquired.
- **OBTAIN LEGAL COUNSELING**: Before executing any agreement and committing with certain builder or developer, seek for the advice of an attorney who has knowledge in construction matters. Do not enter into a contract that has not been reviewed and approved by your trusted attorney.
- **IDENTIFY THE PROPERTY AND ITS LIMITATIONS**: Costa Rica has a very reliable Public Register and Cadastral Department that allow identification of registered property with a high level of certainty. When executing a construction agreement, make sure that the property where the works will take place is correctly identified and that the builder does not go beyond its boundaries. It is also important to verify if there are limitations as to the kind and size of constructions, and the distances that have to be kept from water sources, public roads or other existing constructions, among others.
- **OBLIGATIONS**: A good construction agreement must also clearly identify what are the duties and obligations of the builder. Remember that there are different modalities under which a builder can be hired, such as project administration and turn-key project, among others. To avoid confusion and potential conflicts, include a list of obligations that is consistent with the modality under which you are hiring your construction.
- **PROFESSIONAL IN CHARGE**: Every construction in Costa Rica must have a professional



in charge; an engineer or architect who is responsible for the right construction of the house or premises being built. Make sure the professional in charge is duly identified with his or her full name, professional identification number and personal I.D.

- **EMPLOYMENT**: A good construction agreement must include provisions on the employment of construction workers and payment of all employment related duties. In the case of turn-key projects, it is expected for the construction agreement to provide that all costs are included and that the builder is the one responsible for employing the workers that will be used for the construction works and all related duties. On the other hand, when speaking about project administration, it may be the owner the one expected to assume such obligations.
- **TIMEFRAME AND LATE-DELIVERY PENALTIES**: It is very important to agree on the term within which the finished construction must be delivered and the penalties for not complying within said term. These penalties, besides working as compensation for the late delivery of the construction, are also an incentive for the builder to deliver the finished construction in time.
- **FINISHES**: Always include a detailed description of the kind of finishes and fixtures that the construction must have when delivered to the owner. If possible, not only include provisions on the quality of said finishes and fixtures, but also on brands, if possible. The more detail is provided, the better.
- **CHANGE ORDERS**: During a construction process it is not rare for the owner to request changes that may cause delays or even increase the cost. Include provisions on the proceedings that must be followed for the inclusion and implementation of a change to the original design and how it may affect the original cost.
- **COSTS**: A good construction agreement must also include a detailed list of all costs, including materials and labor.
- **PAYMENT SCHEDULE**: The payment schedule must also be explained in detail. Clarity on when and under what circumstances a payment becomes due is key for a successful construction project.
- **PERMITS**: Designs and construction projects need previous approval and permitting. It is highly recommendable to entrust the task of obtaining such approvals and permits to the builder and include the associated costs as part of the contract.
- **GUARANTEES**: It is not only important and recommendable to include provisions on



guarantees applicable after the construction works have been delivered, but also on guarantees applicable during the construction process to make sure that the builder complies with all agreed obligations. A good idea is to establish hold-back percentages that the owner keeps from each payment and that are paid to the builder upon satisfactory delivery of the finished construction.

- **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTATION:** During a construction process, intellectual property and technical documentation is produced. It is highly recommendable to include provisions on the ownership and delivery of all such materials after the finished construction is delivered.
- **APPROVAL PROCESS:** It is also highly recommendable to agree on final inspection and approval by the owner prior to final delivery and acceptance of the finished construction. This allows repairs to be made accordingly and reduces the chances of further complaints.
- **CONFLICT RESOLUTION:** A good construction agreement must be drafted precisely to avoid conflicts. Nevertheless, it is always important to include provisions on the applicable law and jurisdiction. Specially in the case of construction agreements, alternative conflict resolution methods, such as mediation and arbitration may become more attractive options than time-consuming court proceedings. Nevertheless, some alternative solutions, such as arbitration, may be much more expensive than ordinary justice, so make sure you choose wisely and according with your specific needs.

If you should need additional information on these matters or assistance with a construction agreement, please do not hesitate to contact us at: navas@costarica-law.com.