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REAL ESTATE INVESTMENTS IN CUBA: BACK TO THE FUTURE

*Antonio R. Zamora**

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I. INTRODUCTION

Even an uninterested visitor to Havana, Cuba today is bound to notice the construction of what appears to be free-market style condominium apartments on Miramar's *5ta. Avenida* (5th Avenue), one of the most prominent streets of the city. The interested visitor can easily find several other real estate projects similar to those found in other world capitals that involve both commercial and residential developments. These developments are important for all Floridians: government officials and business leaders who will some day have to deal with changes in the relations between the United States and Cuba; professionals, such as, attorneys, architects, and accountants, who need to advise their clients; persons and entities who lost property in Cuba in the

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past; those who may want to invest in Cuba in the future; individuals who want to visit the island and those who may want to retire there; and generally, everyone living in South Florida since it does not take much imagination to visualize Cuba as the principal business partner of South Florida in the not too distant future.

This article reviews the development of real estate in present day Cuba with particular emphasis on residential real estate. In order to do this, we must look both to the past and to the future. In looking to the past, this article first discusses how Cuba's foreign investment program arrived at its present state of affairs, and second, analyzes the legal framework for real estate development in Cuba, which surprisingly is partially based on pre-revolution (1959) legislation. Next, this article attempts to predict where real estate development in Cuba is going and what obstacles, such as foreign ownership claims and legal framework deficiencies, might be found along the way.

II. CUBA'S REAL ESTATE SECTOR IN MID-1998

For the better part of the last four decades, private capital has been absent from Cuba's real estate sector. During this period of time, real estate activities were strictly government enterprises. Private real estate investment was revived in Cuba in 1994 with negotiations that led to the formation of the joint venture, Inmobiliaria Aurea, S.A., whose purpose was to rehabilitate the old *Lonja del Comercio* (Commodity Exchange)¹ building in Havana's historic center.² Inmobiliaria Aurea, S.A. is composed of the Spanish financial and real estate group, Argentaria, and the state-owned Cuban company, Habaguanex, S.A., which specializes in the rehabilitation of historic buildings.³ The project was completed in late 1996 and consisted of rehabilitating the old *Lonja del Comercio* building into approximately 150,000 square feet of modern business offices.⁴

The second real estate project involving private capital is a joint venture of a Cuban company, Inmobiliaria Lares, S.A., and an entity of the Principality of Monaco called Montecarlo International Real Estate, S.A.⁵ The resulting joint venture, "Real Inmobiliaria, S.A." proposes to construct

1. *Lonja del Comercio* building was built between 1907 and 1909. CONAS, S.A. Y EDICIONES PONTÓN CARIBE, S.A., CUBA, INVERSIONES Y NEGOCIOS, 1996/1997, at 46 (La Habana, Cuba, 1997).

2. *La inversión en la actividad inmobiliaria*, CUBA ECONÓMICA 15, Jan. 1998, at 1, 2.

3. *Id.*; see also *Real-Estate Investment in Cuba: A Virgin Market in Expansion*, BUS. TIPS ON CUBA, Feb. 1998, at 20 (reporting on the expansion of the real-estate market in Cuba to include foreign investment) [hereinafter *Real-Estate Investment*].

4. *La inversión en la actividad inmobiliarial*, *supra* note 2, at 2.

5. *Real-Estate Investment*, *supra* note 3, at 12, 20.

600 apartments in about twenty to twenty-three buildings in the Miramar sector of Havana.⁶ The first Real Inmobiliaria building is substantially close to completion and is located on *Calle 44 y 5ta. Avenida* (44th Street and 5th Avenue).⁷

A third project presently under construction is the Miramar Trade Center situated between *3ra. y 5ta. Avenidas y Calles 70 y 80* (3rd and 5th Avenues, and 70th and 80th Streets) in the Miramar section of Havana.⁸ The Miramar Trade Center will be constructed in several stages and upon completion, is estimated to have approximately 2,000,000 square feet of office, commercial, and parking space.⁹ The first phase is near completion and will consist of two buildings with approximately 135,000 square feet of office space, plus required parking.¹⁰ The developer of the Miramar Trade Center is Inmobiliaria Monte Barreto, S.A., which is a joint venture between Inmobiliaria Lares, S.A. and the Israeli-owned BM Group.¹¹ All Cuban real estate development companies are owned, either directly or indirectly, by the Cuban government.¹² The purpose of these Cuban real estate development companies is to develop real estate independently or in joint venture with foreign private developers and investors.¹³

The last project under construction in Cuba, *Jardines de 5ta. Avenida* (5th Avenue Gardens), is being developed by Inmobiliaria Costa Habana, S.A., a joint venture of Inmobiliaria Lares, S.A. and the Spanish group Esfera 2000.¹⁴ The project consists of 175 condominiums to be built at *5ta. Avenida entre las Calles 112 y 114* (5th Avenue between 112th and 114th Streets).¹⁵ The project is presently in the site preparation stage.¹⁶

As of mid-1998, the four projects mentioned above are the only real-estate development ventures involving substantial private foreign participation that have either been completed or are under actual construction. At present, there are five joint ventures between Cuban companies and foreign entities whose purpose is to develop real estate. In addition, there are more than thirty projects under consideration by the Cuban government.¹⁷ Included

6. *Id.* at 12.

7. Personal observation by the author; Sales Brochure, Real Inmobiliaria, S.A., Miramar Municipio Playa, Ciudad de la Habana, Republica de Cuba [hereinafter Sales Brochure] (on file with the author).

8. *Real-Estate Investment*, *supra* note 3, at 24.

9. *Id.*

10. *Id.*

11. *Id.* at 24.

12. *Id.* at 21.

13. *Id.* at 21-22.

14. *Id.* at 16.

15. *Id.*

16. *Id.*

17. *La inversión en la actividad inmobiliaria*, *supra* note 2, at 2.

among the projects currently under consideration are two time-share developments.¹⁸

III. LEGAL FRAMEWORK FOR REAL ESTATE INVESTMENTS IN PRESENT DAY CUBA

A. *Recent Developments*

The basis for real estate investment in present day Cuba involving foreign participation and capital is found in Chapter VI of Cuba's Foreign Investment Act, Law 77, of 1995.¹⁹ Chapter VI provides that foreigners may acquire ownership and other property rights in the following types of Cuban real estate: "[h]ousing and residences and other structures destined for private residences or tourism activities of persons who are not permanent residents in Cuba; (2) [h]ousing or offices of foreign companies; and (3) real estate development for use in tourism."²⁰

In other words, individuals who are not permanent residents of Cuba may purchase real estate in Cuba for use as a second home or a vacation residence.²¹ Permanent residents, apparently, may not acquire real estate as individuals.²² Foreign companies whether domiciled in Cuba or not, may acquire Cuban real estate for office or residential housing purposes.²³ Additionally, foreigners, whether as individuals or through a company, may acquire Cuban real estate when they are involved in a real estate development in the tourism sector, which presumably has been approved under the mechanism created by Law 77.²⁴

Law 77 establishes three forms of foreign investment for development purposes: "a joint venture, an international economic association contract, and a totally foreign capital company."²⁵ Law 77 provides that the Executive Committee of the Council of Ministers approve investments of

18. Luis B. Pérez, "Tiempo Compartido: Tendencias Actuales del Sector, Retos para su Introducción en Cuba," Presentation at the Primer Encuentro Internacional sobre Derecho del Turismo (Varadero, Cuba May 18-20, 1998) (on file with the author).

19. Ley Numero 77, Ley de la Inversion Extranuero [Law 77, Foreign Investment Act], ch. 6, GACETA OFICIAL DE LA REPÚBLICA DE CUBA [GACETA OFICIAL] Extraordinary Ed. No. 3, Sept. 6, 1995, 33 I.L.M. 331 (1996); Antonio R. Zamora, *Cuba, New Foreign Investment Law: Better, Worse, or the Same as Before?*, FOCUS AMERICAS, Feb. 1996, at 5 (comparing Cuba's foreign investment legislation, Law 50 and Law 77).

20. Law 77, *supra* note 19, ch. 6, art. 16.1, 33 I.L.M. at 349; *see* Zamora, *supra* note 19, at 5.

21. Law 77, *supra* note 19, ch. 6, art. 16.1(2)(a), 33 I.L.M. at 349. This includes Cuban citizens who do not reside permanently in Cuba. *See id.*

22. *Id.*

23. *Id.* art. 16.1(2)(b), 33 I.L.M. at 349.

24. *Id.* art. 16.1(2)(c), 33 I.L.M. at 349.

25. *Id.* ch. 5, art. 12(a)-(c), 33 I.L.M. at 347; Zamorra, *supra* note 19, at 4.

more than US\$10 million, investments where foreigners own 100% of a business, and investments made under certain other special conditions.²⁶ A specially designated commission on foreign investment has the power to authorize all other investments.²⁷

The term "tourism sector" falls under the definition of a "tourist" that is used by Cuban authorities: "[A] foreign person who visits Cuba for at least 24 hours and [who] returns to his/her place of permanent residence after a visit for recreational purposes, to visit friends or relatives, to attend a seminar or a conference or some very limited business purposes."²⁸ Therefore, all activities related to a "tourist" may be considered as part of the tourism sector. Included in these tourist-related activities are real estate investments.

Investments resulting in the ownership of Cuban real estate are also covered by the general provisions of Law 77. For example, Articles 3 through 8 of Law 77 provide guarantees concerning "expropriation without compensation, protection against claims of third parties under Cuban laws; . . . the right to transfer ownership to other foreign investors," and the right to transfer invested capital and earned profits or dividends abroad in freely convertible currency.²⁹

In addition to Law 77, the Cuban Constitution, as amended in 1992, provides support for the concept of real estate ownership. Article 21 of the Cuban Constitution states that *bienes* (assets) in Cuba are divided into (1) those forming the patrimony of the State, (2) small agricultural holdings, and (3) those derived from personal work.³⁰ Foreign investors may acquire Cuban real estate under the first and third categories.³¹

Under category (1), a foreign investor may acquire Cuban real estate through a project that is developed on lands that are part of the patrimony of the State, approved under the rules of Law 77.³² Foreigners may also

26. Law 77, *supra* note 19, ch. 8, art. 21.1(2)(a)-(g), 33 I.L.M. at 350; Zamorra, *supra* note 19, at 4-5.

27. Law 77, *supra* note 19, art. 21.1(3), 33 I.L.M. at 350.

28. Luis Bonifacio César Rodríguez, "El Status Jurídico del Turista Extranjero en Cuba en Materia Migratoria y de Extranjería," Presentation at the Primer Encuentro Internacional sobre el Derecho del Turismo (Varadero, Cuba, May 18-20, 1998) (on file with the author).

29. Zamora, *supra* note 19, at 4 (citing Law 77, *supra* note 19, arts. 3, 5, 6, 8, 33 I.L.M. at 346, 347-48, 349, 350-51, respectively).

30. 1992 CONSTITUCION DE LA REPUBLICA DE CUBA [1992 CUBAN CONSTITUTION], art. 21, OFICIAL GACETA Extraordinary Ed. No. 7, Aug. 1, 1992; Sergio Leiseca, Address at the Conference on The Future for Investment and Economic Development in Cuba 2 (Mar. 14-15, 1996) (on file with the author). The author purchased a diskette containing the Cuban Constitution from the Union Nacional de Juristas de Cuba (the Cuban Bar Association), Havana, Cuba.

31. See Leiseca *supra* note 30, at 3.

32. *Id.* at 3 (upon "prior and specific approval of the Council of Ministers of the Republic [of Cuba]"). Land that is part of the state patrimony is "broadly defined." *Id.* at 3, 16 n.5 (translating, in relevant part, 1992 CUBAN CONST. art. 15).

acquire Cuban real estate under the assets derived from the personal work category.³³ Once the real estate is acquired, Article 25 of the Cuban Constitution provides a guarantee against arbitrary expropriation and expropriation without proper compensation.³⁴ Similar provisions concerning ownership of property and guarantees against expropriation are found in Cuba's Civil Code.³⁵

A last form of support for foreign investment in Cuba, including real estate investment, can be found in international treaties entered into by the Cuban government. First, there are bilateral treaties entered into with other countries such as the United Kingdom and Northern Ireland, and Spain.³⁶ These bilateral treaties are for the promotion and protection of foreign investments and consequently, provide for protection from expropriation, transfer of profits from Cuba in freely convertible currency, and dispute resolution.³⁷ Second, there are general treaties and conventions that Cuba has signed, for instance, the New York Convention on foreign arbitration awards.³⁸

B. Pre-1959 Laws

Whenever the topic of real estate investment comes up in discussions about foreign investment in Cuba, they almost certainly includes the issue of the resurrection of the pre-1959 real estate laws. Some of these laws are still technically valid.³⁹ The principal laws usually discussed are those dealing

33. *Id.* at 3, 15 n.4 (translating, in relevant part, 1992 CUBAN CONST. art. 21).

34. *Id.* at 9 (translating, in relevant part, 1992 CUBAN CONST. art. 25).

35. 1987 CÓDIGO CIVIL, Ley Numero 59, OFICIAL GACETA Extraordinary Ed., Oct. 15, 1987 [hereinafter 1987 CIVIL CODE], arts. 133.1, 134.1, 135.1.

36. Leiseca, *supra* note 30, at 11 & 21 nn.22-23. The treaty with the United Kingdom and Northern Ireland was signed in January of 1995. *Id.* at 21 n. 23; Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Cuba for the Promotion and Protection of Investments, London, Jan. 30, 1995, published in Treaty Series No. 50 (London: HMSO, 1995), Investment Promotion & Protection Treaties, U.K.-Cuba, Vol. 6 ICSID Release No. 95-4 (Nov. 1995). In May 1994, Cuba signed a treaty with Spain. Leiseca, *supra* note 30, at 21 n.22; Acuerdo 110/000138 Entre el Reino de España y la República de Cuba para la Promoción Recíproca de Inversiones, La Habana, May 27, 1994, published in BOLETIN OFICIAL DE LAS CORTES GENERALES (Dec. 23, 1994), Investment Promotion & Protection Treaties, Spain-Cuba, Vol. 6 ICSID Release No. 97-1 (May 1997).

37. Leiseca, *supra* note 30, at 11-12.

38. U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 U.N.T.S. 3, 21 U.S.T. 2517 (1959) (New York Convention); Leiseca, *supra* note 30, at 11-13. Cuba's treaties with the United Kingdom and Ireland, and its treaty with Spain "may provide the general blueprint of an eventual investment treaty between Cuba and the [United States]." Leiseca, *supra* note 30, at 11.

39. *Real-Estate Investment*, *supra* note 3, at 21; see generally CONAS, S.A. Y EDICIONES PONTÓN CARIBE, *supra* note 1, at 43-45; *La inversión en la actividad inmobiliaria*, *supra* note 2, at 2-3.

with condominiums, real estate mortgages, and the Registry of Property.

By the 1950s, Cuba had a well developed legal system. This was particularly true in the commercial or business area, including real estate development. Condominium laws in pre-1959 Cuba are a good illustration of the extent to which real estate laws were developed. On September 18, 1952, Cuba enacted its condominium law, the Law of Horizontal Property (Condominium Law).⁴⁰ Cuba's Condominium Law contains sections on all the essential elements of present day condominium ownership, such as co-ownership of common elements, horizontal division of property, mutual easements through, or the right to use, common elements, administration of common property by owners, and restrictions on the right of partition, lease, or sale of the underlying property and the individual units.⁴¹ Fortunately, Cuba's Condominium Law of 1952 was never repealed. Therefore, at a minimum, it can provide the basic legal framework for the condominium developments discussed previously.⁴²

Real estate mortgage law in pre-1959 Cuba was also well developed. Cuba's mortgage law dates back to colonial times when the Mortgage Law of July 1893 was the controlling law on mortgages in the 1950s, and it may still be the law of the land.⁴³ Cuba's mortgage law provides for summary procedures in the execution of mortgages, and mortgages are specifically incorporated into the Condominium Law of 1952.⁴⁴ However, none of the present condominium developments offers mortgage financing. Buyers make purchase-price payments in installments during the construction of the condominium, paying off the balance at the time of occupancy.⁴⁵ This situation is bound to change as competition develops, and it appears safe to predict that mortgage financing soon will be available.

Throughout most of the twentieth century, Cuba had applied the 1889 Spanish Civil Code. Because of this code's incompatibility with socialist theories, a new civil code was adopted by Cuba's National Assembly in 1987.⁴⁶ This new code, the Civil Code of 1987, went into effect 180 days

40. Propiedad Horizontal [Horizontal Property], Ley Numero 407, OFICIAL GACETA Extraordinary Ed., Sept. 16, 1952 [hereinafter Condominium Law of 1952]. Puerto Rico became the first U.S. legal jurisdiction to adopt a condominium law when it enacted the Horizontal Property Act of 1958. WARREN FREEDMAN & JONATHAN B. ALTER, *THE LAW OF CONDOMINIA AND PROPERTY OWNERS' ASSOCIATIONS* 2 (1992).

41. *Id.*

42. See *supra* text accompanying notes 1-15.

43. *Real-Estate Investment*, *supra* note 3, at 21; see also ALBERTO SUÁREZ ORTEGA, *EL PROCEDIMIENTO SUMARIO HIPOTECARIO Y SU NULIDAD* (Jesús Montero ed. La Habana, 1959).

44. ORTEGA, *supra* note 43, at 277-79.

45. Sales Brochure, *supra* note 7.

46. See 1987 CIVIL CODE, *supra* note 35, preamble; see generally MARIANO SÁNCHEZ ROCA ET AL., *LEYES CIVILES DE LA REPÚBLICA DE CUBA* (Editorial Lex, La Habana, 1940).

after its publication on April 12, 1988.⁴⁷ Neither condominiums nor mortgages are mentioned in the Civil Code of 1987. Either the Civil Code of 1987 will have to be amended to incorporate references to these two important elements of real estate development, or new regulations on condominiums and mortgages will have to be adopted. A special law dealing with the regulation of real estate developments in Cuba, which presumably will address these and other important topics, is expected by the end of 1998.⁴⁸

The Registry of Property is not directly or specifically mentioned in the Civil Code of 1987.⁴⁹ However, Cuba's present government has created two new property registries to supersede the old Registry of Properties, which dated back to colonial times and was in enforcement in 1959.⁵⁰ The two new property registries are the Land Tenure Registry, created in 1987 and later substituted by a similar law in 1990, and the Registry of Property of Urban Housing and Unimproved Lots, created in 1984 and recreated in 1989.⁵¹ With both registries, regulations were not issued; therefore, the government has the choice of reactivating the pre-1959 Registry of Property or issuing regulations to make the Land Tenure Registry and the Registry of Property of Urban Housing and Unimproved Lots operational.

Purchasers of Cuban real estate may acquire land for development, buildings for commercial use, freestanding residential properties, condominiums and timeshares, and other forms of multiple use residential units. Title may be taken individually, or through a corporation, joint venture, or some other form of multiple ownership.⁵² In addition to the fee simple ownership, other nonownership forms of interest in land are available, such as land leases and commercial leases.⁵³ Leases (*Contratos de Arrendamiento*) are well established in the Cuban Civil Code of 1987 as well as in the Spanish Civil Code that had been enforced prior to 1987.⁵⁴

Buy and sell transactions are accomplished by private buy/sell contracts (*Contratos de Compraventa*), which are also well established in the Civil

47. 1987 CIVIL CODE, *supra* note 35, preamble.

48. *La inversión en la actividad inmobiliaria*, *supra* note 2, at 1.

49. Oscar Salas, *Huellas de la Legislación Española en las Legislaciones Registrales Iberoamericanas in*, 6 LEYES HIPOTECARIAS Y REGISTRALES DE ESPAÑA 432-33 (Editorial Castalia, Madrid, Spain 1991).

50. *Id.* at 434.

51. *Id.* at 434-42.

52. 1987 CIVIL CODE, *supra* note 35, art. 160.2.

53. Olga Miranda Bravo, "El Arrendamiento de Industrias, una Nueva Forma de Negocio con Capital Extranjero," Address at the Primer Encuentro Internacional sobre Derecho del Turismo (Varadero, Cuba, May 18-20, 1998) (on file with the author); see CONAS Y EDICIONES PONTÓN CARIBE, *supra* note 1, at 44, 47.

54. CONAS Y EDICIONES PONTÓN CARIBE, *supra* note 1, at 44; see 1987 CIVIL CODE, *supra* note 35, arts. 389-395.

Code.⁵⁵ The closing is consummated by means of a public document entered into before a Civil-Law Notary and registered in the appropriate Registry of Property.⁵⁶ Buy and sell contracts are covered under Articles 334 to 352 of the Civil Code of 1987.⁵⁷ Registration of the transaction in the Registry of Property is not mentioned in the Civil Code, but it is mentioned in Articles 24 to 37 of the Condominium Law of 1952.⁵⁸ Articles 24 to 37 also have references to mortgages on the individual units and the registration of the mortgages in the Registry of Property.⁵⁹ Currently, a commission of jurists and other professionals is reviewing these somewhat outdated laws and procedures to see how they actually function in practice, and then they will make recommendations for improvements to the laws for the future.⁶⁰

IV. UNITED STATES ECONOMIC EMBARGO ON CUBA

Any review of real estate investments in Cuba, particularly one from a U.S. perspective, would be incomplete if it did not include a discussion of the U.S. embargo on Cuba. As a result of the economic embargo on Cuba, imposed since 1962, U.S. persons cannot legally engage in most business transactions, acquire property, or spend money in Cuba unless they fall within certain specific exemptions, such as phone service, air travel, and delivery of packages to relatives.⁶¹

On March 12, 1996, President William J. Clinton signed into law the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, also known as the Helms-Burton Act (Helms-Burton).⁶² The stated purposes of Helms-Burton are: to further tighten the U.S. economic embargo in Cuba, to offer U.S. assistance to a political transition process in Cuba, and to discourage persons and companies who are not U.S. citizens from conducting business or investing in Cuba, particularly if the activities involve properties that were seized illegally by the present Cuban government and to which

55. CONAS Y EDICIONES PONTÓN CARIBE, *supra* note 1, at 44; *see* 1987 CIVIL CODE, *supra* note 35, arts. 334-352.

56. 1987 CIVIL CODE, *supra* note 35, arts. 334-352; *see La Inversion en la actividad inmobiliaria*, *supra* note 2, at 3.

57. 1987 CIVIL CODE, *supra* note 35, arts. 334-352.

58. Condominium Law of 1952, *supra* note 40, arts. 24-37.

59. *Id.*

60. Juan Vega Vega, Concluding Remarks at the Primer Encuentro Internacional sobre Derecho del Turismo (Varadero, Cuba, May 18-20, 1998) (on file with the author).

61. 50 U.S.C. app. § 5(b) (1994). The embargo established by President John F. Kennedy was based on the Trading with the Enemy Act of 1917. Andreas F. Lowenfeld, *Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419, 420 (1996). The Trading with the Enemy Act gives the President power to regulate or prohibit commercial transactions with a foreign country in times of war or national emergency. 50 U.S.C. app § 5(b)(1).

62. 22 U.S.C.A. §§ 6021-6042, 6061-6067, 6081-6091 (1996).

U.S. persons or entities hold a claim.⁶³ Helms-Burton further provides that the President may not suspend the economic embargo on Cuba unless both the Executive Branch and Congress determine that there is a transition government in power in Cuba.⁶⁴ One of the conditions for the determination that a transition government is in power is that such government “[has] taken appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property.”⁶⁵

It is clear that without a substantial revision of Helms-Burton, U.S. persons or entities may not invest in Cuban real estate. Furthermore, Helms-Burton has discouraged, to some extent, foreign investments in Cuba by citizens of other foreign countries. Among the types of investments that have suffered chilling effects are certainly real estate investments. An in-depth discussion of Helms-Burton is beyond the scope of this article. However, three relatively recent developments should be mentioned because they indicate that Helms-Burton will be revisited in the next Congress and may be modified or even repealed.

First, the forces opposing the U.S. embargo on Cuba appear to be in their strongest position ever. Longtime opponents of the embargo, such as the U.S. Chamber of Commerce, have been joined by new organizations, such as the group called “Americans for Humanitarian Trade with Cuba.”⁶⁶ The leadership of this group includes prominent Americans such as David Rockefeller, Dwayne Andreas, Carla Hills, and Lloyd Bentsen.⁶⁷ This group’s primary goal is to end the ban on sales of food and medicine to Cuba.⁶⁸ The group supports a bill in the House of Representatives, which is sponsored by Representative Esteban Torres of California, a Democrat, and a bill in the Senate, which is sponsored by Senators Christopher Dodd of Connecticut, a Democrat.⁶⁹ This legislation would allow the nearly unrestricted sale of food and medicine to Cuba.⁷⁰

Second, on May 18, 1998, the United States and the European Union reached an agreement to deter the acquisition and use of expropriated

63. *Id.* § 6022.

64. *Id.* § 6062.

65. *Id.* § 6065(b)(2)(D).

66. Christopher Marquis, *Coalition Will Urge End to Cuba Embargo*, MIAMI HERALD, Jan. 14, 1998, at 10A.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

property around the world, including Cuba.⁷¹ The Agreement represents the latest effort at a compromise in the longstanding dispute between the United States and the European Community over Helms-Burton. The Agreement proposes to create a worldwide registry of claims for expropriated property that would be subject to certain binding disciplines.⁷² The disciplines would prohibit government assistance to those companies investing or utilizing expropriated property.⁷³ The Agreement applies only to European Union companies and existing investments are exempt.⁷⁴

The Agreement requires that the Clinton Administration seek from Congress a modification of Helms-Burton that would allow a permanent waiver of Title IV of the Act but would only be applicable to European Union companies.⁷⁵ Title IV denies visas for entry into the United States to officers, principals and controlling shareholders of foreign entities that have trafficked, as defined by the Act, in property confiscated from a U.S. person.⁷⁶ As part of the agreement, the Clinton Administration also proposes "to consult Congress with a view to obtaining a Title III waiver provision that would have no specific time limit."⁷⁷ Title III gives U.S. persons the right to sue for compensation in U.S. courts.⁷⁸ This provision may be waived by the President,⁷⁹ and indeed, President Clinton has waived enforcement of Title III every six months since the Act was enacted in 1996.⁸⁰

Third, the whole concept of international sanctions is under attack in Congress. According to USA Engage, during the last four years, the United States has imposed sixty-one unilateral sanctions against thirty-five countries, covering forty-two percent of the world's population.⁸¹ USA Engage, a broad based coalition of U.S. business interests, which includes corporations

71. Bureau of Econ., Bus., & Agric. Affairs, U.S. Dep't of State, *Understanding with Respect to Disciplines for the Strengthening of Investment Protection*, May 18, 1998 (visited Nov. 25, 1998) <http://www.state.gov/www/issues/economic/us-eu_invest_protect.html> [hereinafter *Understanding*]. Secretary of State, Madeleine K. Albright, issued a statement asserting, "This Understanding advances in a most significant way the goals of the supporters of the Helms Burton Act . . ." *U.S.-EU Understanding on Expropriated Property* (visited May 18, 1998) <<http://secretary.state.gov/www/statements/1998/980518a.html>>.

72. *Understanding*, *supra* note 71, at pt. III, Annex A.

73. *Id.*

74. *Id.* pt. I(C), pt. III Annex C.

75. *Id.* pt. II(4)-(5).

76. Helms-Burton, 22 U.S.C.A. § 6091.

77. *Understanding*, *supra* note 71, pt. II(5).

78. Helms-Burton, 22 U.S.C.A. §§ 6081-6085.

79. *Id.* § 6085.

80. Harvey Oyer, Note, *The Extraterritorial Effects of U.S. Unilateral Trade Sanctions and Their Impact on U.S. Obligations Under NAFTA*, 11 FLA. J. INT'L L. 429, 442 (1997).

81. USA Engage, *Statement of Purpose, 1998* (visited Oct. 1, 1998) <<http://usaengage.org/background/purpose.html>>.

listed in the Fortune 500 list, opposes unilateral economic sanctions by the United States on political and economic grounds.⁸²

Congress has responded to this and other initiatives by starting a review of the sanctions process. In 1997, Senator Richard Lugar of Indiana, a Republican, and Representative Lee Hamilton of Indiana, a Democrat, introduced bills to curb the use of sanctions.⁸³ The Clinton Administration also has initiated a review of all measures that call for the use of economic sanctions as a tool of U.S. foreign policy.⁸⁴ This review presumably will include the U.S. embargo on Cuba. A review of the Cuban Embargo has been recommended recently by a group of prominent Republicans, including former Secretaries of States, Henry Kissinger and Lawrence Eagleburger; former Secretary of Defense, Frank Carlucci; former Senate Majority Leader, Howard Baker; and Republican Senators John Warner of Virginia, John Chafee of Rhode Island, and Craig Thomas of Wyoming. The specific proposal recommends the formation of a bipartisan commission to reexamine U.S. policy toward Cuba following the model of the Central American Commission, otherwise known as The Kissinger Commission, created by President Ronald Reagan in 1984.⁸⁵

In addition to these important developments, it is worth noting that even within the Cuban American community of Miami, things have changed with respect to the U.S. embargo and the Helms-Burton Act. First, there is a growing dispute among Cuban American hardliners concerning, among other things, how to deal with the issue of humanitarian trade.⁸⁶ In fact, it appears that pro-embargo and pro-Helms-Burton forces are not only divided, but relatively weak at the moment. Second, in late March of 1998, a group of 157 Cuban Americans from Miami chartered a plane and flew to Washington, D.C. to lobby against the embargo.⁸⁷ There have been frequent lobbying efforts against the embargo by Cuban Americans, but certainly not by the planeload. It is evident that the Pope's visit to Cuba and his antiembargo message is having a substantial effect on the Cuban

82. *Id.*

83. *Team Will Review Economic Sanctions*, CUBANEWS, Jan. 1998, at 5.

84. *Id.*

85. Frank Davies, *Republican VIPs Urge Review of Cuba Policy*, MIAMI HERALD, Oct. 14, 1998, at 1A; Frank Davies, *U.S. May Take a New Look at Cuba Policy*, MIAMI HERALD, Nov. 24, 1998, at 6A; William D. Rogers, *Time to Take a Fresh Look at Our Policy Toward Cuba*, MIAMI HERALD, Nov. 22, 1998, at 6L.

86. Christopher Marquis et al., *Details Released About Sen. Helms' Aid to Cuba Bill*, MIAMI HERALD, Jan. 30, 1998, at 2B.

87. Olance Nogueras, *Cámara aprieta tuercas a Cuba*, EL NUEVO HERALD, Mar. 27, 1998, at 1A; see also Pablo Alfonso, *Exiliados cubanos apoyan proyecto contra embargo*, EL NUEVO HERALD, Apr. 1, 1998, at 1A.

American community of Florida.⁸⁸

Finally, it is also important to note that Americans for Humanitarian Trade with Cuba has created a Florida branch with chapters in Miami, Tampa, and Jacksonville.⁸⁹ This new organization, lead by prominent Cuban Americans, has asked to be officially recognized and was given a seat in Governor Lawton Chiles' Cuba Task Force.⁹⁰ All of these developments indicate that there will be a lively debate about and a strong challenge to the U.S. embargo on Cuba during the next couple of years. The final result of this challenge and its timing are difficult to predict, but the debate and challenge are not.

V. PROPERTY CLAIMS

All prudent individuals who seek to acquire an interest in real estate, whether as developers, investors, users, or buyers want assurances of clear title. Clear title basically means that there are no impediments to the intended use of the property acquired, and that no one is going to challenge the ownership interest created by the acquisition.⁹¹ In Cuba, there are zoning, development, construction, and environmental laws that regulate the use of real estate. These laws, however, do not pose a serious impediment. What should be of much greater concern are the ownership claims brought by former property owners who lost their property in the revolutionary process.

In this article, we are concerned with three categories of former owners, classified according to their legal status at the time they lost their property in Cuba: (1) U.S. citizens and companies, (2) Cubans who have adopted U.S. citizenship, and (3) those persons who remain Cuban citizens at the present time. The legal basis for the claims in each category varies; therefore, they are treated separately.

A. *United States Citizens and Companies*

Claims of U.S. citizens and companies against Cuba are based on the International Claims Settlement Act of 1949 and the Helms-Burton Act of

88. Fabiola Santiago, *Cuban Exiles Rethink Options After Papal Visit*, MIAMI HERALD, Jan. 30, 1998, at 1A (reporting that some exile groups are developing new strategies, such as "working on legislation to send food and other humanitarian aid to Cuba"). "[E]ven conservative exiles who caution against changing hard-line strategies . . . are saying the Pope's visit provokes soul-seraching." *Id.*

89. Fabiola Santiago, *Exile Groups: Relax Cuba Embargo Coalition: Children, Elderly Are Suffering*, MIAMI HERALD, July 8, 1998, at 1B.

90. *Id.*

91. BLACK'S LAW DICTIONARY 1485 (6th ed. 1990).

1996.⁹² Properties in Cuba owned by U.S. persons were expropriated between January 1, 1959 and October 16, 1964.⁹³ International law requires that governments pay compensation to foreigners whose property they expropriate.⁹⁴ The Cuban government has, from time to time, indicated its willingness to negotiate the compensation issue with the United States. Cuba has settled the issue of compensation for expropriation of property with several countries, including France in 1967, Canada in 1980, and Spain in 1986.⁹⁵

The International Claims Settlement Act of 1949 is based on international law principles. Accordingly, settlement of these expropriation claims affects the property rights of new owners because it involves not the restitution of the property but only payment of a negotiated sum of money.⁹⁶ Claims under the International Claims Settlement Act are certified by a settlement commission to the U.S. Secretary of State for use in future negotiations.⁹⁷ The total certified claims on Cuban property amounts to US\$1,851,057,358, principal only.⁹⁸ Once a settlement amount is reached between the two countries, the certified claim owners are paid proportionately.⁹⁹ Some of the best real estate in Cuba, approximately 1.5 to 2.0 million acres, is included in the U.S. certified claims category.¹⁰⁰

Claims derived under Helms-Burton include any U.S. party, not only those certified by a settlement commission to the Secretary of State.¹⁰¹ As mentioned above, Helms-Burton requires compensation or restitution to U.S. persons or entities for property expropriated in Cuba before the embargo can be terminated.¹⁰² In addition, under Title III, a U.S. claimant can initiate a lawsuit in U.S. Federal Court against any non-U.S. party deemed to be "trafficking" with the expropriated property.¹⁰³ The concept of property is broadly defined to include both real estate and personal property having a

92. International Claims Settlement Act of 1949, 22 U.S.C. §§ 1643-1643k (1994) (pertaining to Cuba and China); Helms-Burton, 22 U.S.C.A. § 6082; Leiseca, *supra* note 30, at 6.

93. Leiseca, *supra* note 30, at 6.

94. *Id.* at 7.

95. Barbara Ehrich Locke, "Resolution of U.S. Claims Against Cuba: Comparative Models," Address at The Evolving Cuban Marketplace Conference (Apr. 28, 1994) (on file with the author).

96. Leiseca, *supra* note 30, at 7.

97. *Id.*

98. *Id.*

99. *Id.*

100. EXMART CORPORATION, A COMPREHENSIVE REPORT ON THE ECONOMIC INFRASTRUCTURE OF CUBA 127 (1996) (on file with the author). The acreage mentioned represents between 5% to 7% of the entire territory of Cuba.

101. Leiseca, *supra* note 30, at 7.

102. Helms-Burton, 22 U.S.C.A. § 6082.

103. Leiseca, *supra* note 30, at 8.

minimum value of US\$50,000.¹⁰⁴ As noted previously, to date, President Clinton has repeatedly waived the application of Title III of the Helms-Burton Act.¹⁰⁵

B. Cuban Americans, Cuban Citizens, and Cuban Companies

Cubans that have been naturalized as U.S. citizens are not covered by the International Claims Settlement Act of 1949.¹⁰⁶ Although, they are covered by Helms-Burton, they are not protected under current international law because the claimant was not a U.S. national at the time of the expropriation of the property.¹⁰⁷ Cubans who became U.S. citizens after the expropriation of their property and Cubans living in Cuba, the United States, or any other country are not protected under international law, and their claims will be entirely a matter to be resolved by Cuban law and policy.¹⁰⁸ It is unreasonable to expect, without a major system change, that the Cuban government will nullify its own expropriation policy and undermine its present economic development program by recognizing the rights of Cuban citizens to expropriated property.¹⁰⁹ What might happen in the future is some kind of limited restitution and some form of modest compensation by the Cuban government to encourage certain types of foreign investments in Cuba.¹¹⁰

VI. THE FUTURE OF REAL ESTATE DEVELOPMENT IN CUBA

The future is always difficult to predict, but it is possible to make limited predictions based on what presently exists in Cuba and based on two different future scenarios. What exists in the commercial area is the *Lonja del Comercio* building that is being leased, apparently successfully, for about US\$20 per square foot per year.¹¹¹ The other commercial development, The Miramar Trade Center, is still under construction.¹¹²

In the residential sector, Real Inmobiliaria has two apartment buildings that are almost completed. The Monte Carlo Palace is selling its smallest units for US\$121,049 for 637 square feet of space and its largest units for US\$480,881 for 2,530 square feet.¹¹³ The price per square foot for this

104. *Id.*

105. *See supra* note 80 and accompanying text.

106. *See Leiseca, supra* note 30, at 6.

107. *Id.* at 8.

108. *Id.*

109. *Id.* at 9.

110. *Id.*

111. CONAS Y EDICIONES PONTÓN CARIBE, *supra* note 1, at 46.

112. *See Real-Estate Investment, supra* note 3, at 24.

113. Sales Brochure, *supra* note 7.

project ranges from US\$145 to US\$190. The Havana Palace sells its smallest units, 427 square feet, for US\$66,278 and the largest units, 1500 square feet, for US\$226,418.¹¹⁴ The per square foot price is approximately US\$153.

The other residential project, *Jardines de 5ta. Avenida*, is in the early stages of construction although it has been announced that the selling prices will be in the range of US\$128 to US\$143 per square foot.¹¹⁵ There is no long-term financing available. Payment of the purchase price on these developments is generally made in phases, as follows:

Upon execution of contract	15%
At completion of foundation	10
At completion of structure	25
At completion of interiors	25
Upon issuance of certificate of occupancy	10
At closing	15
	100% ¹¹⁶

A. *The United States Embargo Remains*

With the U.S. economic embargo on Cuba in place, the growth of real estate development on the island will be relatively modest. Growth will depend entirely on investment from countries other than the United States. Favoring growth is the fact that Cuba is a very attractive place and that real estate development is part of the tourism sector, which has been growing at approximately 20% per year since 1990.¹¹⁷ Undoubtedly, many of the companies involved in the tourism sector would consider buying an apartment or leasing an office. However, it is unlikely that many of the tourists visiting the island would buy real estate because they are mostly from far away countries and spending US\$100,000, all cash, for an apartment is very different than spending a few hundred dollars on a tourist visit. Time-sharing, now being introduced, offers an attractive alternative to an outright total purchase and could be successful when fully available. Recently, a Canadian firm, Cuban Canadian Resorts International, announced a joint venture with a Cuban company called Gran Caribe Hotel Corporation

114. *Id.*

115. Sales Brochure, Costa Habana Inmobiliaria, Miramar Playa, La Habana, Cuba (on file with the author).

116. *Id.*

117. Armando H. Portela, *Why Lage Called Tourism "Heart of the Economy,"* CUBANEWS, May 1998, at 11.

to develop beachfront time-share units and condominiums throughout Cuba.¹¹⁸

B. *The United States Embargo Is Lifted*

Most post-embargo scenarios predict a very substantial increase in trade and tourism between Cuba and the United States. For example, some estimates place the number of tourists from the United States at approximately ten million per year if travel restrictions are lifted.¹¹⁹ Another source predicts trade of between US\$2 to US\$4 billion dollars per year, solely of items of basic need.¹²⁰ These are very substantial figures for a country the size of Cuba. Furthermore, a substantial increase in trade will necessarily generate real estate development to accommodate the influx of tourist and business visitors.

Another possible source of buyers for real estate in Cuba is the large Cuban population residing in the state of Florida. The Cuban population in Florida consists of about one million individuals and includes: legal immigrants born in Cuba, recent arrivals on parolee status, illegal immigrants, and U.S. citizens with Cuban parents.¹²¹ Many of these individuals may desire to have a vacation home or a second home in Cuba. In 1996, Cubans living abroad spent approximately one billion dollars to help their relatives and friends in Cuba.¹²² In addition, around 100,000 "Cubans" travel from South Florida to Cuba every year.¹²³ Therefore, it is clear that there is already considerable interest.

Finally, another interesting source of potential buyers of Cuban real estate is retirees. Cuba offers many advantages as a retirement haven for U.S. seniors. The island is very close to the United States. In addition, Cuba has good medical facilities, a friendly population, relatively inexpensive goods and services, an excellent climate, and good communications. A substantial percentage of Cubans living in Florida have reached, or will soon reach, retirement age. Florida is the state with the highest percentage of retirees, and it is estimated that by the year 2000, there will be 2,836,429 retirees in

118. Cynthia Corzo, *Condos in Cuba Will Be Sold to Foreigners*, MIAMI HERALD, Oct. 9, 1998, at 1C; Mark Heinzl, *Canadian Venture, Raising Ire in U.S., to Build Beachfront Condos in Cuba*, WALL ST. J., Oct. 9, 1998, at A4.

119. Jim Carrier, *Cuba corteja a empresarios de Estados Unidos*, EL NUEVO HERALD, Apr. 24, 1998, at 1A (reporting estimates from Peter Blyth, President of Radisson Hotels).

120. *Id.* (reporting estimates from North American executives).

121. State of Florida, *Online Sunshine* (visited Jan. 6, 1999) <www.leg.state.fl.us/edr> (Florida Census Bureau Data, Jan. 1998).

122. *Exile Remittances Aid Cuba, Report Shows*, CUBANEWS, Aug. 1997, at 6.

123. *Id.*

Florida.¹²⁴

VII. CONCLUSION

Cuba has a great potential for real estate development, particularly as related to tourism, leisure and sports activities, and second-home projects. As a well known Miami developer once said: "*Can you imagine a land as pretty as Hawaii, just 90 miles from the eastern seaboard of the United States?*" To the physical beauty it is necessary to add the island's impressive history and rich cultural tradition. The resulting combination is positive proof of Cuba's excellent potential for real estate development.

There are numerous impediments that would certainly delay progress. The delay could be shortened, however, if these impediments are addressed correctly. Two impediments that are quite evident are the lack of a legal structure addressing, for example, financing or title problems that may arise from ownership claims. This lack of a legal structure is presently being addressed by a committee preparing real estate legislation that would cover financing, marketing, business organizations, contracts, co-ownership of property, construction, and development. Certainly, the result of such legislation would not only be the creation of new laws, but also the updating of old laws such as those on mortgages and condominiums.

Title issues will be around for a while but this is a problem common to many jurisdictions. As in other jurisdictions, all titles to Cuban properties must be investigated. Properties with clear titles would be the most attractive, and in some cases a deal similar to that of STET, an Italian company, and ITT, a U.S. corporation, may be possible.¹²⁵ In addition, the problem of a registry of property must be addressed and resolved. As established in international law, the claims of former owners should be resolved by compensation, not restitution, so that the ownership rights of future owners will not be in jeopardy. Helms-Burton, which is arguably the biggest impediment to real estate development in Cuba, is only being partially applied and probably will be repealed or substantially modified in the near future.

Finally, there are the political problems affecting Cuba, particularly in its relationship with the United States. It appears that real estate development in Cuba will go forward at a moderate pace if this relationship remains as is. However, if the economic embargo is lifted, normal diplomatic relations

124. BUREAU OF ECONOMIC AND BUSINESS RESEARCH, UNIVERSITY OF FLORIDA, FLORIDA STATISTICAL ABSTRACT 1997, at 34 (1997).

125. In 1997, ITT sold the right to use former ITT properties for ten years for US\$25 million to the Italian Communications firm, Stet. Christopher Marquis, *ITT Paid for Confiscated Cuban Properties*, MIAMI HERALD, July 24, 1997, at 1C.

established, and present travel restrictions terminated, it is easy to predict a substantial development boom. This boom will be felt most strongly in the state of Florida and hopefully, in a positive way.

