

REAL ESTATE DEVELOPMENT IN CUBA: PRESENT AND FUTURE

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I. INTRODUCTION

During the last twenty years, the Cuban government has faced two very significant challenges that have seriously threatened its survival. The first was caused by the demise of the Soviet Bloc in the late 1980s. As a result, the Cuban economy went into a deep depression which lasted until the late 1990s. The second, mostly of a political nature, was the result of Fidel Castro's illness, surgery, and subsequent retirement.

Cuba recovered from the crisis of the 1990s by liberalizing the 1976 Constitution in 1992, dollarizing the economy in 1993, adopting a Foreign Investment Code in 1995, promoting limited real estate development, modernizing and globalizing its economy, and normalizing to some extent its relationship

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with Cubans residing abroad. The crisis of Fidel Castro's health started in 2006 and still continues. However, the succession process itself was completed when Cuba's National Assembly of Popular Power elected Raul Castro as President on February 24, 2008. This election followed Fidel Castro's statement made public a few days before, that he would not accept or be a candidate for the country's presidency.¹ After the election, Raul Castro appointed some of his closest friends and allies to key positions in the Council of State, Cuba's ruling body.

While Fidel Castro may have some advisory role in the new government, it is clear that Raul Castro and his team are in charge of the Cuban government. The question is then, what kind of policies are going to be adopted by the new administration. There are two important clues. First, Raul Castro supported the economy reforms of the early 1990s even to the point of having important disagreements with his brother. Second, since taking over in an interim basis after Fidel's surgery, he has favored a change of direction. For example, he has called for "structural changes" to Cuba's socialist system, wants to increase foreign investment, and favors government decentralization and the expansion of the Island's private sector, such as restaurants, bed and breakfasts, transportation, etc.

Even before Raul Castro formally became Cuba's President, he took a number of significant steps in the direction of a more open and dynamic society. For instance, the government now allows Cuban nationals to stay in tourist hotels, and purchase cellular telephones and all kinds of consumer goods. Salaries and pensions have also been raised, thousands of apartments built by the government have been deeded to their occupants and tracts of idle farm land have been leased to farmers willing to work the land and produce agricultural products.

Most analysts believe that Raul's government is going to continue making changes to Cuba's socialist economy.² The question then becomes how deep will the changes be and what areas of the economy will be affected? This paper will examine the role of Cuba's real estate as a factor in this process of change. There can be little doubt that real estate will play an important role in the future

1. *Castro Resigns Presidency of Cuba, After 49 Years*, NPR Reports and the Associated Press, February 19, 2008, <http://www.npr.org/templates/story/story.php?storyId=19157999> (last visited Mar. 26, 2009).

2. See, e.g., Phillip Peter, *Will Raul Castro Reform Cuba's Economy?*, Lexington Institute (No. 26), Sept. 25, 2007, http://lexingtoninstitute.org/printer_1177.shtml (last visited Mar. 26, 2009); Oscar Espinosa Chepe, *¿Llegan los Cambios a Cuba? [Have Changes Come to Cuba?]*, EL NUEVO HERALD (Miami), Jan. 2, 2008, at 12A; David Adams, *Cuba Flirts With Economic Reforms*, ST. PETERSBURG TIMES, Mar. 8, 2008, at 1A; *How Far will Raul Take Economic Reform? Here's What Top Cuba Experts Have to Say*, CUBA NEWS, Aug. 15, 2008, http://findarticles.com/p/articles/mi_hb5140/is_2008_August_15/ai_n29457051/pg_1?tag=artBody;coll (last visited Mar. 26, 2009).

economic changes of the Island. This conclusion is based on the fact that real estate development played a significant role in the crisis of the 1990s and that the new government has already expanded home ownership, taken steps to grant land to farmers and is considering large real estate developments based on golf and marinas.

II. THE CUBAN REAL ESTATE CONCEPT

Cuba is a socialist country; therefore, in general terms, all real estate is or should be owned by the state. Residential property under Cuba's socialist system is considered personal property and ownership thereof is limited by the needs of the whole society. Cuban citizens may legally own a primary residence and a vacation home. The intent of the Socialist State is for every Cuban family to own a comfortable residence.³ This policy of the Cuban Revolutionary Government has resulted in a high rate of home ownership, but with important restrictions on such ownership.

For instance, Cuban residential property owners cannot sell or exchange their homes without the authorization of the Municipal Housing Authority.⁴ Property owners may transfer ownership by will, but only if their heirs are living on the property or the residence is empty.⁵ If the property is occupied by others, whether they are family members or not, then the final disposition of the property is determined by the Housing Authority. The same is true when the property has been abandoned because the owners left the country or simply moved to another location. Disputes over ownership of residential property are frequent. Most disputes are resolved by the Municipal Housing Authority. Appeals of the decisions issued by the Housing Authority are made to the People's Provincial Courts.⁶

Occupation is a key factor in determining who gets to own a residential property. Two examples of this: a religious order wanted a house for a seminary, so they located a terminally ill person who was living alone in a large house. They offered to care for this person for the rest of his life in exchange for leaving the house in his will to a member of the order. The owner agrees and a will was prepared naming as heir a member of the order who moved into the residence as part of the team that will care for the terminally ill person. When the person died, the will was successfully probated and title issued to the designated heir as the transfer meets a combination of requirements—there is

3. Leonardo Pérez Gallardo, Marta Fernández Martínez, & Zurely Rodríguez Reina, *Ley General de la Vivienda [General Residential Law]*, EDITORIAL DE CIENCIAS SOCIALES, (La Habana, Cuba) 2004, at 2.

4. *Id.* at 79–146.

5. *Id.*

6. *Id.* at 192–96.

a will, the heir is living in the house, and there is no opposition by the relatives of the deceased.⁷

The other example involves a family of three—a husband, wife and child. One day this family discovers that a close relative, along with his family, left Cuba without telling them. They owned a large and well located house which they had abandoned. The family that stayed behind immediately goes into action and files a claim for the ownership of the house with the Municipal Housing Authority. The claim was grounded in family ties and the fact that their child frequently spent weekends living with his relatives in that house. The decision was favorable for the petitioners.⁸

In present day Cuba, the ownership of a residential property to serve as a family home is highly prized despite all of the conditions and restrictions placed on such ownership. This is because of the housing shortage existing on the Island and the fact that owning a home represents significant material benefits beyond simply providing a place of residence.⁹ Among them are the possibility of exchanging it for a larger or smaller property (in Cuba, this type of transfer is called *permuta* or exchange)¹⁰ and the sale or assignment of air rights over the property.¹¹ Many roofs in Cuba are made of a concrete slab; therefore, building a second residence above the existing one is usually possible. In both of these types of cases, whether exchange or sale of air rights, there is usually some monetary consideration involved.

There are other benefits associated with home ownership in Cuba; for instance, the owner's right to transfer title to family members or to third parties by will or occupation. The property owner may also remodel or expand the residence and, finally, it is possible to rent a portion of the property or even, in special cases, all of the property. The tenant can be a Cuban national residing in Cuba or abroad, or a foreigner residing in Cuba or working for a foreign company doing business in Cuba.¹²

The fact that Cuban owners of residential property can rent to nationals as well as foreigners illustrates the duality of the Cuban society. Cuba is not just a socialist country, but rather a socialist country with an important capitalist sector. Socialist Cuba is based on the Cuban Peso, free education, free health

7. From several interviews conducted by the author of persons involved in the transactions who prefer not to be identified.

8. *Id.*

9. The head of the National Housing Institute estimates Cuba's housing deficit at 600,000 units. See Patricia Grogg, *CUBA: Putting Their Houses in Order*, INTER PRESS SERVICE NEWS AGENCY, Aug. 18, 2008, available at <http://ipsnews.net/news.asp?idnews=43560> (last visited Mar. 24, 2009).

10. Gallardo, *supra* note 3, at 87.

11. *Id.* at 52–53.

12. *Id.* at 119–20.

care, food subsidies, utilities subsidies, etc.; while Capitalist Cuba is based on the Convertible Cuban Peso (CUC), which replaced the U.S. dollar in 2005, foreign investment, foreign companies doing business in Cuba, tourist resorts, world class hotels, etc.

Residential housing in Socialist Cuba resulted from home ownership prior to 1959, the Urban Reform Law of 1960, the departure of about one million Cubans to other countries, mainly to the United States, and the construction of new houses and apartments by the government and by private citizens acting within or without the law. In the rural areas, housing has resulted mostly from the Agrarian Reform Law of 1959 and various other government programs. Residential housing in Capitalist Cuba is the result of legal changes implemented after the collapse of the Soviet Bloc which brought about the special period in the early 1990s.

The current Constitution of Cuba was adopted in 1976 and was based on the Soviet model that prevailed in the Soviet Bloc until the late 1980s. In 1992, the Cuban Constitution was extensively amended to recognize the end of the Soviet Bloc, to declare Cuba a secular, as opposed to an atheist state, and to open part of the economy to capitalism and market conditions.¹³ The Constitution was also amended to allow private ownership of real estate in certain cases.¹⁴

Article 14, as amended in 1992, states “The Republic of Cuba is governed by an economic system based on socialist property of the people over the fundamental means of production . . .” Therefore, the Constitution, as amended in 1992, allows private ownership of property in parts of the economy not considered “fundamental.”¹⁵

Furthermore, Article 15 allows for state property to be transformed into private property owned by natural or corporate persons when deemed beneficial for the development of the country and when the fundamental, political, social and economic elements of the state are not affected. The Council of Ministers or its Executive Committee will have to approve a development proposal involving real estate.¹⁶ These changes to the Constitution were followed by a new Foreign Investment Law, Law Number 77 of September 5, 1995, which replaced Law Number 50 of February 15, 1982.

13. HOW CUBA’S LEGAL SYSTEM WILL ADAPT TO A BUSINESS OPENING, 7 *LatinLawyer* Vol. 5, available at <http://uscubalegalforum.org/images/LatinLawyer.pdf> (last visited Mar. 26, 2009).

14. Constitución Política de la República de Cuba [Political Constitution of the Cuban Republic], art. 14, 15, as amended, Gaceta Oficial de la Republica de Cuba [O.G.] [Official Gazette of the Cuban Republic], Feb. 24. 1976 (Cuba) [hereinafter Const. Cuba].

15. DEBRA EVERSON, LAW AND SOCIETY IN CONTEMPORARY CUBA 241 (Kluwer Law International) (2003).

16. *Id.*

Law 77 states in its Chapter VI. "Real Estate Investments:"

Article 16:

Under the authorization of this Act, investments may be in the form of real estate and acquire ownership, and other property rights over that real estate;

The real estate investments discussed in the previous paragraph may be used for: (a) housing and other structures destined for private residence or tourism activities of persons that are not permanent residents in Cuba; (b) housing or offices of foreign companies; (c) real estate developments for tourism use.

Article 17:

Investments consisting of the purchase of real estate which constitute corporate activity are considered direct investments.

Article 18:

The conditions and terms under which the purchase and transfer of real estate discussed in Article 16 of the Act are determined in the authorization, and must be in accord with current legislation.¹⁷

These legal changes resulted in a modest real estate development boom during the mid and late 1990s. Commercial real estate in the form of office buildings and small shopping malls were built mostly in the Havana area. The effort to restore Old Havana and the development and construction of hotels went into high gear. There were also a number of residential condominium projects started in Havana. These condominiums projects offered fee simple sales of the units to foreigners.¹⁸

III. REAL ESTATE IN CAPITALIST CUBA TODAY

By the end of the 1990s there were a number of projects in Havana in various stages of development.¹⁹ These commercial projects included:

- a) La Lonja de Comercio (Chamber of Commerce): This project consisted of the rehabilitation of an old historic building in Old Havana and turning it into a first class commercial building of approximately 150,000 square feet. This project has been

17. Ley Número 77, Ley de la Inversión Extranjera [Law 77, Foreign Investment Act] Ch. 6, GACETA OFICIAL DE LA REPÚBLICA DE CUBA [G.O.] Extraordinary Ed. No. 3, Sept. 6, 1995, 33 I.L.M. 331 (1996).

18. See Antonio R. Zamora, *Real Estate Investments in Cuba: Back to the Future*, 11 FLA. J. INT'L L. (No. 3) 539, 541 (1997).

19. *Id.* at 540-42.

completed and is ninety percent leased to first class commercial tenants;

- b) The Miramar Trade Center: This is a mega project involving some 2,000,000 square feet of offices, stores, plazas, parking, etc., in the Miramar sector of Havana. It is located between 70th and 80th streets, fronting both 3rd and 5th Avenues. This is the premier office and commercial development in Cuba consisting of about a dozen eight or ten story buildings, and at the present time is half built. The spaces are leased at an average of twenty to twenty-five dollars per square foot. It is a very successful project with more than ninety percent occupancy. New buildings are being built based on demand; therefore, it will take years to complete; and
- c) Galerías de Paseo: This is a shopping center in the Vedado sector of Havana. The shopping center has approximately 20,000 square feet and has been completed and leased. Other shopping centers were built, such as the one adjoining the Comodoro Hotel in Miramar.²⁰

At that time, there was some discussion about the Manzana de Gomez rehabilitation in Old Havana. The project would have involved some 300,000 square feet of stores and offices, but it did not go forward. In the Old Havana sector, there have been many small commercial projects basically consisting of one or two stores. These are located at Calle Obispo (Obispo Street), la Plaza Vieja (Old Square), Parque Central (Central Park), and others. Commercial developments of this type of small shopping centers and individual stores have continued in Havana, Santiago, Varadero and other Cuban cities to the present time.

The situation with residential developments is quite different. Residential projects at the end of the 1990s included:

- a) The Montecarlo Palace: This is a first class residential condominium development located at Miramar's Quinta Avenida (5th Avenue), between 44th and 46th Streets. The project was completed, sold out, and consisted of about twenty large apartments;
- b) The Havana Palace: This is a fifty-eight unit condominium project also located in the Miramar sector, on 42nd Street between 3rd and 5th Avenues. The project was completed and sold out; and
- c) Jardines de la Quinta Avenida: This is the largest condominium project built in Cuba with 175 units. The project was

20. *Id.*

completed and sold or rented. It is located on Quinta Avenida (5th Avenue) and 100th Street, across from La Concha amusement park.

Other residential projects included: Edificio Sevilla (forty units), Raffaello Palace (sixty-five units), Residencial Granada (fifty-six units), Residencial La Cecilia (forty-five units), and Residencial Paraiso (seventy-four units), all located in the Miramar sector. By the year 2000 there were seventeen projects under construction in various stages of development in Havana.²¹ These projects aggregated to 855 units, some which have been completed and sold, and others which were under construction.²² The total numbers of condominium apartments planned were approximately 2000 units.²³ Most of these planned units were never built as the Cuban government imposed a moratorium on the construction of new condominium buildings in Havana in April 2000. In effect, this measure put an end to foreign investment in residential real estate. The measure halted the sale of condominium units to foreigners and the Cuban corporate partner in existing projects bought back unsold units.²⁴

Condominium unit ownership is fee simple, but is not available to Cubans as sales are made only to foreigners. The deed to the unit is registered using the Spanish style of indexing and registration and filing fees cost over 500 CUC. The deed is handwritten into an official registry book in Havana, but the information is not readily available to the public. A transfer tax of several percentage points is paid every time a unit is sold and the equivalent of an annual two percent property tax is paid semiannually, with actual payment made in CUC at a Cuban bank (there are large fines for late payment). Monthly maintenance fees are also paid at a Cuban bank and cover administration costs, maintenance of the grounds, pool, security, etc. Utilities, such as electricity, telephone, and cable (where available) are all billed in addition to other fees.

The official reason given for the moratorium was deficiencies of infrastructure and services. Problems did exist with the water supply, sewage

21. Pablo Alfonso, *Cancelan las Inversiones Inmobiliarias [Real Estate Investments Have Been Cancelled]*, EL NUEVO HERALD (Miami), May 10, 2000, at 17A.

22. Interviews by the author of developers and other real estate professionals that prefer not to be identified.

23. Juan O. Tamayo, *Cuba Suspends Real Estate Investments from Abroad*, THE MIAMI HERALD, May 11, 2000, at 1A.

24. See generally Ernst & Young, *Doing Business with Cuba Guide*, CUBA ABSOLUTELY, July 2007. See also Melissa Johns, *Inversión Extranjera en Cuba: Evaluación del Panorama Legal [Foreign Investment in Cuba: Assessing the Legal Landscape]*, 106 BOLETIN MEXICANO DE DERECHO COMPARADO [MEXICAN BULLETIN OF COMPARATIVE LAW] 35, 54 (2003).

collection and treatment, and water drainage.²⁵ There were other reasons cited for the moratorium. These included that the government was simply inundated with too many proposals for residential developments²⁶ and that the sale of luxury apartments for foreigners in a country with serious housing problems had created social and political problems.²⁷ Another legal reason advanced was the lack of a modern or up to date real estate law. In fact, the condominiums sold in the 1990s were sold under the Condominium Law of 1952. There was a real estate law being prepared for enactment in 1999 or 2000, but it never happened.²⁸

This situation has now been reversed since condominiums are selling again in Havana. They are being sold to foreigners with residency status or doing business in Cuba. This has been the policy since mid-2004.²⁹ There is also a new condominium project that is selling and renting apartments and commercial spaces in Havana. This condominium is named Edificio Atlantic and was developed by the Cuban company Cimex and the Italian company Bi & Di Real Estate Spa.³⁰ This Italian developer builds in Italy, Mexico, Cuba and the United States. Condos are being sold at \$500 per square foot and sales are doing very well.³¹ This project is located in the Vedado sector of Havana, at D Street between 1st and 3rd Avenues, on the famous Malecon Boulevard.

Another indication that times are changing is that the prospect of a new real estate law has resurrected. A commission was recently appointed by the succession government to study property reforms.³² A report of the commission is expected by the end of 2009. It is not clear at this time how comprehensive

25. Operaciones Inmobiliarias de Envergadura: Suelo, Montajes Financieros y Mercados, conference held in Havana, August 23–25, 1999, Summary p.3 and various conversations between the author and Mario Coyula Cowley, Director, Grupo para el Desarrollo Integral de la Capital during year 2000. (Editor's note: this source has not been verified).

26. Tamayo, *supra* note 23, at 1.

27. Raul Rivero, *La Vivienda: Otra Odisea Cubana [Housing: Another Cuban Odyssey]*, EL NUEVO HERALD (Miami), May 10, 2000, at 2.

28. This information is based on conversations between the author and several Cuban attorneys familiar with the text of the proposed law.

29. During 2006–2007, author interviewed developers and attorneys that prefer not to be identified.

30. Vito Echevarría, *New 25-Story Condo-Office Tower may be a sign of Rebirth along Havana's Malecón*, 15 CUBA NEWS (NO. 3), Mar. 2007, at 1.

31. This information is based on conversations by the author with sales personnel at the site.

32. Conversations by the author with Cuban attorneys and news reports. See Domingo Amuchastegui, *Clues Behind Raúl's Landmark Jul. 26 Speech in Camagüey*, 15 CUBA NEWS (NO. 8), Aug. 2, 2007, at 13; *Fidel Castro Says He Still has a Say on Government Decisions*, CARIBBEAN NET NEWS, Aug. 2, 2007, available at http://www.caribbeanetnews.com/archivelist.php?news_id=2837&pageaction=showdetail&news_id=2837&arcyear=2007&arcmonth=8&arcday=02=&ty= (last visited Apr. 9, 2009).

the recommendation of the commission will be or what actions will the government take.

Finally, the Cuban government selected a number, perhaps as many as eighty, sites for large developments based on golf courses.³³ Some of these projects have been in the planning stage waiting for approval for years. It is said that the deciding factor for the approval was the argument that Cuban tourism could not increase in numbers and quality without golf courses. The proponents of this argument point out that the Dominican Republic, which is smaller than Cuba, receives more tourists yearly than Cuba, and a good percentage of their tourists are high end. The Dominican Republic has twenty-two golf courses, while Cuba only has two.

The author has been able to identify about ten of these large developments, including some that include marinas. One of the biggest projects is located in Pinar del Rio, about 100 miles west of Havana. This project will be built by British and Spanish developers, includes three golf courses, a 200 slip marina, 200 villas, 1500 apartments, two hotels and even a small airfield. Another interesting project is at the very end of the Hicacos Peninsula/Varadero, which is being built by Gaviota, a Cuban company associated with the military, and a French construction company. When completed, it will have a golf course, more than 500 apartments, a hotel and a large marina.³⁴

Another project is located about twenty-five miles West of Varadero in Matanzas. This development will include a golf course, about 1000 residential units, a hotel, clubhouse, commercial area, and a small marina. There are other projects in Jibacoa, Trinidad and in Cayo Coco. There is only one project in the Havana area, it seems that an effort has been made to develop outside of the capital. It appears that the residential units in these golf and marina developments will be sold mostly as long term (seventy-five years) leases. However, some may be sold as timeshares or as apartahotel (condo-hotel) units.³⁵ Another option has also been discussed and involves ownership of the land by the state and ownership of the dwelling by the foreign buyer. The foreign buyer will receive the right to use the land forever at no cost, but technically will not own the land. Once one or more of these projects is formally approved, then the actual conditions of sale will be established.

Two other types of developments need to be discussed before completing our survey of real estate in Capitalist Cuba today. First, the concept of Cuba as a retirement destination has been superficially approached by Cuban and

33. Conversations and interviews of the author with developers, attorneys, and other real estate professionals that prefer to remain anonymous.

34. Conversations and interviews among the author, developers, attorneys, and other real estate professionals that prefer to remain anonymous.

35. *Id.*

foreign developers authorized by the government. There is a condominium development east of Havana, in Santa Maria del Mar that was built with retirees in mind—the project is named Vista Mar. Approximately nineteen of the seventy-eight units there, the majority of which were sold to Italian seniors before the Cuban government's 2000 moratorium, may be purchased in fee simple from the current owners. Cimex bought out the remaining unsold units from their Italian developer partner. A Canadian firm in 2004 was offering "life leases" for up to fifteen years or until the death of the Buyer, whichever occurred first. The purchaser was given what amounts to a life estate; however, it does not appear that any of these life estates were sold, as it appears the Cuban government was ultimately not comfortable with this arrangement.³⁶ The project consists of some seventy-eight apartments, and it seems as if twenty-five percent of the units have been sold. Cimex is currently marketing their units as furnished rentals, with the Canadian company, Sheritt, renting multiple units for workers at its local mining operations. At present, many of the units remain vacant and unused.

Cuba as a retirement destination has a lot to offer. It is very close to the United States, enjoys great climate, is relatively inexpensive, has a good healthcare system, low crime, and has a generally educated and friendly population. In addition, Cuba has great natural beauty and an interesting history. There is no doubt that Cuba compares favorably with other retirement destinations in the Caribbean, such as Costa Rica, Panama, and the Dominican Republic.

Finally, two well known buildings in Havana have been selected to be refurbished for leasing. These buildings are the Riomar and the Focsa, both built in the 1950s. The Riomar is located in Miramar on the west side of the mouth of the Almendares River; the renovations have not been completed. The Focsa, one of the first and most famous condominium buildings in the Western Hemisphere, is located in the Vedado sector, close to the Malecon, and is the tallest building in Cuba. The refurbishing of Focsa is complete and most of the building occupied.³⁷

IV. PRINCIPAL CHARACTERISTICS OF CUBA'S REAL ESTATE SECTOR IN MID-2008

The two main characteristics of Cuba's real estate sector are that the biggest landowner is, by far, the Cuban government, and that Cuba has one of the world's highest home ownership rates. This apparent contradiction is

36. Promotional materials and "Contrato de Arrendamiento Vitalicio" of Apartamentos Vistamar [Lifetime Leasing Contract for Vistamar Apartments] obtained by the author while visiting the project in 2005.

37. Field observations made by the author.

explained by the socialist nature of the Cuban government and two laws enacted by the government before it declared itself socialist, the Agrarian Reform Law and the Urban Reform Law. These two laws are responsible for the spread of residential ownership in Cuba's urban and agricultural areas.

The Agrarian Reform Laws of 1959 and 1963 targeted large agricultural properties for expropriation. Once the properties were expropriated by the state, they were parceled out to small farmers and to agricultural cooperatives. As a result of this, some 230,000 small farmers hold title to agricultural property. By the same token, as a result of the second Agrarian Reform Law (1963), over seventy-five percent of Cuba's agricultural land ended up in the hands of the state.³⁸

Article 20 of the 1976 Constitution recognizes the concept of agricultural property ownership, usually less than 100 acres, by small farmers.³⁹ It also recognizes the right of small farmers to organize trade organizations and agricultural cooperatives. These small farms can be sold but only with the prior approval of the Ministry of Agriculture.⁴⁰ These properties cannot be mortgaged, but they can be transferred to relatives as inheritance.

As a result of the Urban Reform Law of 1960, Cuba became a country of homeowners. The law ended the sale of residential properties in the open market and prohibited all rentals of residential housing. It also expropriated rental properties and offered them for sale to the tenants, with monthly payments to the former owners, fixed by the government, over a period of years. If the former owner left the country then the payments were made to the state. By 1984, more than fifty percent of all Cuban houses and apartments were owner occupied and by 1988 the percentage of home ownership was over eighty percent. The increase was due to government housing efforts and the fact that most of the purchases by former tenants had been completed by the late 1980s. By the end of 2004, about ninety percent of Cuban families owned their homes.⁴¹

When Cuba adopted socialism in the 1960s and 1970s, the state became the largest landowner. The small farmers own about twenty percent of the agricultural land; therefore, the state owns almost eighty percent.⁴² The state also owns all non-agricultural and all urban non-residential properties in the

38. Timothy Ashby, *Cuban Real Property: Current Laws and Future Prospects*, REAL EST. L. J. 128-31 (Fall 2004).

39. VICENTE RAPA ALVAREZ, PROPIEDAD Y OTROS DERECHOS SOBRE BIENES [PROPERTY AND OTHER RIGHTS WITH RESPECT TO GOODS], 56-59 (Editorial Félix Varela 1999).

40. *Id.* at 58.

41. See Ashby, *supra* note 38, at 134; Everson, *supra* note 15, at 213. In comparison, 71% of Americans own their homes, Venezuelans 83%, and Colombians 59%.

42. Ashby, *supra* note 38, at 130.

country. This includes all kinds of commercial properties in the countryside and in urban areas, all non-residential waterfront, beach areas, parks, and industrial properties, etc. All of this was made part of the 1976 socialist constitution, specifically in Articles 14 and 15, under the concept of socialist property.

Resulting from the above, there are two other important characteristics of Cuba's real estate: a large amount of land to be developed and the issue of potential claims by former property owners. The Cuban government has sold very little real estate. Sales have been limited to few properties and a couple of hundred condominium units, mostly in Havana. The majority of the tourism and industrial developments that have taken place in Cuba are based on long-term land leases of twenty-five, fifty, or even seventy-five years, but not on land sales. The problem of former-owner claims has been resolved with every country, except the United States and Cubans living abroad mostly in the United States. Therefore, the issue of present claims is conditioned on a resolution of the existing situation between Cuba and the United States and a future real estate policy change by the Cuban government, which allows for settlement of the claims of Cubans living abroad.

V. WAYS TO CLAIM COMPENSATION OR RESTITUTION FOR LOST PROPERTY

Former property owners basically have four ways to claim compensation or restitution for their lost property. These are:

*A. The U.S. Claims Certification Program based on the International Claims Settlement Act of 1949.*⁴³

This applies to U.S. nationals who had their property taken by the Cuban government after January 1, 1959. To date, almost 6000 claims by U.S. corporations and individual citizens have been certified with an aggregate amount of \$1.8 billion; however, this program is closed to new claims and is unlikely to be reopened. The Foreign Claims Settlement Commission of the United States (FCSC) is a quasi-judicial, independent agency within the Department of Justice which adjudicates claims of U.S. nationals against foreign governments. In the past fifty years it has handled dozens of programs where offending governments have negotiated to either make lump sum or annual payments, usually giving claimants pennies on the dollar for their claims, although a couple of wealthier countries have paid all claimants in full, including interest. Germany is the only country that has offered the option of receiving the disputed property back. Cuba, in terms of dollar amount is by far the largest Program the FCSC has ever had. All certified claimants have given

43. 22 U.S.C. § 1643 (West 1964).

up their negotiating power to the FCSC and the FCSC's ultimate settlement is final and nonappealable.

*B. The Cuban Liberty and Democratic Solidarity Act of 1996.*⁴⁴

This Act of the U.S. Congress is generally known as the Helms-Burton Law. It mandates that before the U.S. Embargo of Cuba is terminated, the Cuban government must have taken significant steps to return property taken from U.S. citizens, or provide equitable compensation therefor. Further, the Act creates a cause of action in U.S. courts against the individuals or entities utilizing property confiscated from U.S. citizens.

C. Direct Negotiations Between Former Owners and Foreign Users of Confiscated Property.

There have been several of these type of negotiations, the most public and famous was the agreement between Societa Finanziaria Telefonica (STET) and ITT Corporation (ITT). STET agreed in a 1997 negotiation to pay ITT compensation for using the telephone installations confiscated by the Cuban government in 1960. The amount of the settlement was not disclosed, but reliable sources placed it at \$25 million.⁴⁵ After the payment, STET entered into a joint venture to operate Cuba's telephone system.

D. Direct Negotiations Between the Claimants and the Cuban Government.

There have been several of these negotiations but, for obvious reasons, they have remained very confidential. These negotiations have involved: sugar mills, commercial properties, agricultural property, and waterfront property.⁴⁶ This approach can be used at any time with the present or a future Cuban government, assuming that both parties agree to negotiate.

Creighton University, under contract with the United States Agency for International Development (USAID), produced a report on the property claims issue between Cuba and the United States.⁴⁷ The report basically concludes that the certified claims will be settled based on international law and the claims of Cuban nationals under Cuban law. However, Cuba's Foreign Investment Law

44. 22 U.S.C. § 6021 (West 1996).

45. Tom Buerkle, *Italy's STET to Pay ITT for Cuba Property*, INT'L HERALD TRIB. (France), July 25, 1997, at 1.

46. This information is based on conversations between the author and participants in the negotiations that prefer to remain anonymous.

47. See generally *Report on the Resolution of Outstanding Property Claims Between Cuba and the United States*, CREIGHTON UNIV. PRESS, 2007.

denies the use of Cuban courts to present property claims against foreign investors.⁴⁸

One final important characteristic of Cuba's real estate is that it is underdeveloped and primitive in nature; this is mostly the policy of the government that has kept real estate development in check. There are some basic elements, such as: sale of condominiums, exchange (*permuta*) market, apartment and house leasing, shopping centers, office buildings, hotels and resort developments. The timeshares concept has been approved, as well as the sale of long term leases for retirement apartments and golf villas.

But there are many negative points. There is no financing—short or long term, no land or leasehold mortgages, no capital markets, and very little bank financing for companies involved in real estate development. Real estate laws are very limited or very outdated. There is a condominium law from 1952, a mortgage law based on Spanish law from the nineteenth century, and even a securities law from 1959. Marketing and entrepreneurship are also limited.

VI. THE MOST IMPORTANT STAKEHOLDERS IN THE FUTURE DEVELOPMENT OF CUBA'S REAL ESTATE

There are numerous stakeholders in the future development of Cuba's real estate. The first group is comprised of homeowners of urban residential properties and the second group, of owners of agricultural properties. In this category, there are several million persons. It is estimated that ninety percent of the total urban population are homeowners, and there are more than 225,000 owner occupied small farms. It is easy to estimate that seventy-five to eighty percent of Cuba's total population of more than eleven million consider themselves owners of their present residence.

This status is based on acts of the Cuban government, such as the Agrarian Reform or the Urban Reform. It is also based on abandonment and the old civil law concept of "*usucapio*" or what is known in the United States as adverse possession.⁴⁹ The civil law concept of *usucapio* like adverse possession, has two forms, ordinary and extraordinary. Ordinary *usucapio* requires obtaining possession in good faith and registering title with the Public Registry. Extraordinary *usucapio* requires only uninterrupted possession during thirty years, without need of title or good faith.⁵⁰

48. Ley de Inversion Extranjera [Foreign Investment Act], Law No. 77, *Gazeta Oficial* [G.O.] [Official Gazette], Ch. III, art. V, Sept. 6, 1995 (Cuba).

49. Agustín de Goytisolo & José M. Hernández, *Debating Cuban Property Law*, 1 CUBA NEWS (No. 2), Oct. 1993, at 8.

50. *Id.*

Cuban law is at least eighty percent Spanish civil law.⁵¹ Therefore, it is very relevant that the Supreme Court of Spain stated in a June 1960 decision, that the true purpose of granting titles to current possessors had little to do with seeking justice, but to provide for the smooth functioning of society . . . elevating such conduct to de jure to secure the social peace that the law should protect.⁵²

A third category of stakeholders will be the Cuban people as a whole. The Cuban people, through the Cuban government, will own most of the land on the Island. The present Cuban government has sold very little real estate. However, there have been a significant number of leaseholds, including long term leases, and even a few grants of leaseholds in perpetuity or "*usufructos vitalicios*," in Spanish.⁵³

These grants have created several subcategories of stakeholders: 1) foreign individuals and companies who have a lease on Cuban real estate; 2) Cuban companies that have received a long term lease or other form of possession of real estate for a particular development or as a joint venture partner in some development; and 3) foreign companies doing business in Cuba on their own, which are very rare, or the most common, in a joint venture with a Cuban company.⁵⁴ Cuban Law and Bilateral Investment Treaties (BITs) protect the rights of most of these joint venture foreign partners.

A fourth category is that of many Cubans living abroad who have acquired or may acquire an interest in Cuban real estate. There are some 500,000 Cubans living and working abroad that maintain Cuban citizenship and pay Cuban taxes which allows them the right to keep residential property in Cuba, social security benefits, as well as health care and other benefits. Then, there are about one million Cubans living abroad maintaining limited contacts with the Island and, in many cases, with citizenship in their country of residence.⁵⁵

Most of these one million Cubans are in the United States, but there are also significant numbers in Spain, Mexico, Venezuela, Canada, and other countries. The Cuban government has recently begun recognizing the de facto concept of dual citizenship. All three Cuban Constitutions, 1901, 1940 and 1976, state that the Cuban citizenship is lost when another citizenship is adopted. However, the Cuban government commenced in 2004 to grant citizenship and Cuban passports to Cubans living abroad, even when they are

51. Antonio Zamora, *How Cuba's Legal System Will Adapt to a Business Opening*, 5 LATIN LAW (No. 7) 27 (2006).

52. See generally De Goytisolo, *supra* note 49.

53. See generally Antonio Zamora, *Cuba's Business Enterprises: How Business is Conducted in the Island*, 15 FLA. J. OF INT'L L. (NO. 3) (Spring 2003), and the author's own research.

54. *Id.*

55. Information gathered by author's field research.

naturalized citizens of other countries. The Constitution of 1976, as amended in 1992, in its Article 33 states: "The Cuban citizenship may be recovered in such cases and forms prescribed in the law."⁵⁶ This provision seems to override the prohibition against dual citizenship.

To date, about 300,000 Cubans living abroad, without maintaining a residence status in the Island, have been granted Cuban passports as Cuban citizens.⁵⁷ The importance of this group is that many of them may want to have a vacation or retirement home in Cuba. There are indications that the present Cuban government will allow, in the future, some form of ownership to this category of stakeholders and, in fact, there are numerous cases of Cubans living abroad establishing temporary or event permanent residence in the Island.⁵⁸

A fifth category is that of foreign claimants that have lost property in Cuba as a result of the actions of the Cuban government. This applies only to U.S. citizens since practically every other nationality, such as Spaniards, Italians, etc., has settled their claims by negotiations between their countries and Cuba. U.S. citizens will have to look at the Certified Claims Act for compensation or the Helms-Burton Law for some government action.

The last category of stakeholders includes Cubans who remain on the Island, but who lost property and may decide to litigate in Cuba to obtain restitution or compensation of their claims. Under the present Cuban law, this would be impossible; therefore, these stakeholders would have to lobby the Cuban government for legal changes or some form of collateral compensation such as tax benefits or investment credits.

VII. CONCLUSIONS

The biggest problem confronting the Cuban government is not to successfully manage the succession, but rather making the succession government successful. The succession has already occurred without significant problems. The passing of Fidel Castro's leadership created expectations from friends and foes. Friends are wondering whether the succession government will bring stability and progress to the Cuban people, while foes hope for exactly the opposite—instability and chaos.

Today's Cuba is in a much better position than it was back in 1990 when the Soviet Bloc collapsed. Almost twenty years have lapsed and the economy has substantially recovered from the disaster of the early 1990s. There are laws in place today in such areas as foreign investment, banking, dispute resolution, foreign trade, and intellectual property that did not exist when the Soviet Bloc

56. Const. Cuba art. 33.

57. Author's interviews with Cuban Consular officials who prefer to remain anonymous.

58. Author's field research.

disintegrated. This will facilitate any kind of economic opening that the succession government may initiate.⁵⁹ Additionally, Cuba's business elites and business professionals have more than fifteen years experience in foreign investment, marketing, management, law and accounting, and the global economy.

In the international arena, Cuba's position is a lot better than it was at the beginning of the 1990s. In fact, Cuba's international situation is better today than it has been in many years. Latin America has become very favorable to Cuba with its move to left-leaning populism in several Latin American countries. Even the two principal allies of the U.S. in the region, Colombia and Mexico, maintain excellent relations with Cuba. Venezuela is helping with Cuba's energy needs, Russia is granting credits especially to the military, China is investing in nickel mining and tourism, and five or six countries, including Canada, China, and Brazil, are involved in oil explorations in Cuba's northwestern coast, less than 100 miles from the United States.

Most observers of the Cuban situation believe that Raul Castro will take steps to improve the economy in order to consolidate his government and the legacy of the Revolution.⁶⁰ However, Fidel Castro in his *Reflexiones del Comandante en Jefe*, (Reflections of the Commander in Chief) has taken a negative position on an economic opening.⁶¹ This disagreement on economic matters between the Castro brothers is not new. For example, it is well known that they had different positions on the role of the military in the economy and on farmers' markets. On both situations Raul prevailed and the military today is more in control of the economy than ever before and the farmers' markets are thriving. Moreover, the economic autonomy of small farmers has increased in recent years.

What appears to be the first biography of Raul Castro, *Raul Castro a la Sombra de Fidel* (Raul Castro in the Shadow of Fidel) was published in Spain in June 2008.⁶² The author makes the point that Raul Castro has a history of more than twenty years of promoting economic changes. As the book points out, Raul Castro's efforts go way beyond promoting to actual programs and accomplishments. For instance, under Raul Castro, the military became basically self sufficient in food production, developed into the dominant force

59. See generally Zamora, *supra* note 51.

60. See Amuchastegui, *supra* note 32, at 13; Marifeli Pérez-Stable, *Better Opportunities Await Cuba*, THE MIAMI HERALD, Aug. 30, 2007, at 27A.

61. Isabel Sánchez, *Castro Rechaza Propuestas de Apertura Económica en Cuba* [Castro Rejects Offers to Open the Economy in Cuba], EL NUEVO HERALD (Miami), Sept. 5, 2007, at 5A; Frances Robles, *Are Castro's Writings Subtle Jabs at Raul?*, THE MIAMI HERALD, Feb. 17, 2008, at 1A.

62. See generally LISSETTE BUSTAMANTE, RAÚL CASTRO A LA SOMBRA DE FIDEL [RAUL CASTRO IN THE SHADOW OF FIDEL] (Martínez Roca ed., S.A. Madrid) (2008).

in Cuba's economy and have introduced market, management, and accounting practices to many of Cuba's companies under the program of *Perfeccionamiento Empresarial* (Perfecting Business Performance). Moreover, Raul Castro experimented with a "perestroika" type effort in Pinar del Rio province in the late 1980s.⁶³

Cuba needs to move beyond the special period and provide better living conditions to the Cuban people. This can only be accomplished by improving the economy and, to improve the economy there must be more foreign investment and a new economic opening. Authoritarian political rule, coupled with a strong economy, could guarantee the success and continuity of the Cuban government. This political and economic model would have to be based on Cuban history and conditions in order to appeal to both the government, as well as the governed. In this scenario, real estate could play a very important role.

On the other hand, in a transition as contemplated by the Commission for Assistance to a Free Cuba, created by the Bush Administration in 2004, and required by the Helms-Burton Law, real estate could become a serious destabilizing problem because of the need for compensation or restitution. Compensation is basically out of the question because the Cuban government would not be able to afford it. Restitution is subject to many problems. First, the opposition of present "owners" such as urban residential owners, agricultural land owners, foreign companies, Cuban commercial companies, and the Cuban people in general that may want to keep most of the real estate in the hands of the government. Second, there would be serious legal issues. For instance, who is the proper claimant and what are the rights of heirs, shareholders, partners, relatives, etc. Finally, there would be opposition by foreign investors and the governments involved, perhaps under bilateral investment treaties.

In this issue, it is better to follow the advice of Goytisolo and Hernandez, regardless of the path, succession or transition, Cuba may take in the future.

In a future Cuba, the application of *usucapio* is likely to be a major factor in balancing the wants of former owners . . . and the need to assure certainty of legal rights to those currently in possession of properties, especially when those properties may need to be sold or encumbered as part of much needed economic restructuring projects.⁶⁴

A common position among individuals who support the transition model is that "foreign nationals and companies will not invest one cent in Cuba unless

63. *Id.* at 157–90.

64. Goytisolo, *supra* note 49, at 8.

the property rights issues are dealt with.”⁶⁵ This does not seem to be a valid concern in Cuba’s future although dealing with the claims issues could be beneficial. When Cuba opened its real estate market in the mid 1990s, there were plenty of foreign investment companies and individuals willing to develop and purchase Cuban properties, even without a resolution of the property rights issues. In fact, it was the Cuban government in 2000 that turned away foreign investors and not the other way around.

As stated above, Americans and Cuban Americans have four ways of dealing with the real estate property claims issue, certified claims, Helms-Burton, negotiations with foreign entities using the property, and negotiating with the Cuban government. None of these alternatives offer much hope for a quick and satisfactory resolution. Certified claims apply only to U.S. citizens and involve direct negotiations between the governments of the United States and Cuba. The issue is compensation, not restitution. Based on the results of other cases in various parts of the world, the payment amount is usually way below the expectations of the claimants. In addition, many U.S. claimants have already been partially compensated by tax deductions against income allowed by the Internal Revenue Service. Whatever amount of compensation may be received could have adverse tax consequences for the receiver.⁶⁶

Another problem with the certified claims alternative is that Cuba almost certainly will counterclaim. The counterclaim will be based on the economic damages caused by the U.S. embargo and the many incidents of attacks, sabotages, and other types of actions committed by the Central Intelligence Agency (CIA) and other agencies of the U.S. government against the Island. At a minimum, the negotiations will be lengthy and complicated.

The second alternative for dealing with real estate property claims is the Helms-Burton law. This alternative seems to be even less promising than the first one. Helms-Burton deals with property claims in two ways. First, it creates a legal cause of action in the United States against the parties using the expropriated properties under Title III. In addition, under Title IV, visas to enter the United States could be denied to the principal owners and executives of the entities using the expropriated properties. Second, under Titles I and II, Helms-Burton requires that there is restitution or compensation for the properties’ expropriation before the United States can establish normal relations with Cuba.⁶⁷

65. Statement by Ernesto Hernandez Cata, *President of the Association for the Study of the Cuban Economy (ASCE)*, THE MIAMI HERALD, May 22, 2005, at 3B.

66. See generally Timothy Ashby & Tania Mastrapa, *Taxation of Cuban Confiscated Assets After Property Claims’ Settlements: Issues for Taxpayers and the U.S. Government*, 15 CUBA IN TRANSITION (2005).

67. Cuban Liberty & Democratic Solidarity (LIBERTAD) Act of 1996 [Helms-Burton]; 22 U.S.C. §6032–45 and 22 U.S.C. §6062–66.

Title III of Helms-Burton has never been applied. Both President Clinton and President Bush have deferred application as provided in the law since 1996. There is really no indication that Title III will ever be applied. Moreover, Title IV has been applied, but only in three cases, even though there are hundreds of entities from two dozen countries that are potentially in violation of said law.⁶⁸ The principal reason for the repeated waiver of Title III is the strong opposition of the European Union, Canada, Mexico, Brazil and other countries. This opposition will not change if a business opening and better relations with the United States were to occur in Cuba. If anything, the opposition would intensify because with those developments the economic interest of the European investors would grow. Therefore, it is highly unlikely that any part of Helms-Burton will ever be applied.⁶⁹

We are left, then, with the third and fourth alternatives. In both cases the claimants would have to initiate negotiations either with the users of the confiscated properties or the Cuban government. It is interesting that the Commission for Assistance to a Free Cuba recommends such a course of action: "The United States should also offer to allow any claimants who wish to seek private settlements to do so."⁷⁰

Others also recommend private negotiations to resolve the real estate property claims.⁷¹ It is fair to say that these recommendations are probably based on a change of government in Cuba. However, the concept of negotiations to settle real estate claims should apply regardless of who is in power in Cuba. This is certainly the case in the third alternative— negotiations with the user of the property. The STET/ITT settlement was mutually beneficial and apparently well received by Washington, Havana, and the European Union.

If American and Cuban-American claimants are willing to settle property claims with the Cuban government it should be allowed. In the case of agricultural and commercial properties, it would be beneficial on a case-by-case basis for the Cuban government to agree to settlement discussions. In an ideal situation, the claimants would recover some interest in the property and some financial benefit as a joint venture partner or some other business form, and Cuba would get capital, technology, and markets. A series of these settlements would greatly benefit Cuba's agricultural and tourism industries.

68. Shoshana Perl, *Whither Helms-Burton? A Retrospective on the 10th Anniversary*, 6 U. MIAMI JEAN MORMET /ROBERT SCHUMAN PAPER SERIES (No.5) (2006).

69. *Id.*

70. *Report to the President*, COMM. FOR ASSISTANCE TO A FREE CUBA (U.S. DEPT. OF STATE, Wash., D.C.), June 2006, at 76, available at <http://www.cafc.gov/documents/organization/68166.pdf> (last visited Apr. 8, 2009).

71. See generally Matías F. Travieso-Díaz, *Alternative Recommendations for Dealing with Expropriated U.S. Property in Post-Castro Cuba*, CUBA IN TRANSITION ASCE, Aug. 2002; Marifeli Pérez-Stable, *The Dilema: Confiscated Properties*, THE MIAMI HERALD, Sept. 30, 2004, at 29A.

The question of residential properties is different because most agricultural and commercial properties are not occupied by Cuban families, while most residential properties are. Existing ownership of Cuban residential properties should be legally confirmed by *usucapio* in favor of the occupants. This can and should be confirmed in the courts and in conferences, publications, etc. This will be very well received by the Cuban people and in the words of the Supreme Court of Spain “secure the social peace that the law should protect.”⁷²

The Cuban government could improve the economic situation of most of the population by liberalizing the rules and regulations applicable to residential properties. There is a saying in Cuba: “*La vivienda es para vivir en ella, no para vivir de ella.*” (“Residential properties are to live in them, not to live off them.”). However, without affecting the high rate of home ownership, changes could be made to generate income to residential owners which are the majority of the population.

For example, the rules on *permutas*, sales of air rights, and renting portions of the properties, could be made easier. In fact, these things could be encouraged through educational campaigns and advertising. A good and recent educational effort is the book *Ley General de la Vivienda*, by Leonardo Perez Gallardo, Marta Fernandez Martinez, and Zurely Rodriguez Reina, published in Havana in 2004. The theories and programs sponsored by Peruvian economist Hernando de Soto could be adapted to Cuba, which already has the high rate of home ownership that de Soto advocates as a solution to poverty in Latin America.

Another possibility is to legally allow Cubans living abroad to invest in the residential properties of their relatives in the Island, especially when the investment results in an improvement to the property. This has happened quite often and Cubans residing abroad have also financed *permutas* for a bigger property.⁷³ But, the relatives living abroad are not allowed to be on the title, lien, or mortgage the property. If the government allows these kinds of things, there would be substantial investment in Cuba’s residential sector by Cubans living abroad. This would provide a much needed cash infusion to the Cuban economy and will go a long way in fixing the dilapidated condition of many residences in the Island. Cubans living abroad, but with Cuban citizenship and holding Cuban passports, presumably have a special status as citizens allowed to reside abroad, for instance, they should be able to own property in the Island.

Making Cuba a retirement destination would be a very attractive proposition for Cubans living abroad, especially for many Cuban Americans. Cuban Americans with Cuban citizenship and a Cuban passport should be able

72. De Goytisolo, *supra* note 49.

73. Juan Tamayo, *Los Exiliados de Miami Entran en Negocios con Cuba* [*Miami’s Exiles Enter into Business with Cuba*], EL NUEVO HERALD (Miami), Mar. 5, 2000, at 5A.

to retire in Cuba under present law. American “baby boomers” could also be attracted to the possibility of retirement in Cuba. However, for this to happen Cuba would have to adopt a “retirement law” and the United States would have to change the Cuban embargo.

The Cuban Ministry of Tourism recently announced the construction of thirty new hotels in the next two years.⁷⁴ Both the Ministry of Tourism and the Ministry of Foreign Investment are on record as favoring golf and marina projects. The construction of new hotels and the development of golf and marina resorts, if approved by Raul Castro’s government, and if successful, would be a tremendous boost to Cuba’s economy. These initiatives would be very attractive to foreign developers and buyers, especially if the United States would end its current restrictions on investing, operating businesses and living in Cuba.

An argument can be made that thirty new hotels and golf and marina projects with thousands of residential units to sell will not be successful without U.S. tourists and buyers. However, what is absolutely undeniable is that a 1500 slip marina cannot be successful without boaters and yachts from the United States. The Cuban military is currently building such a marina in Varadero.

No wonder that Raul Castro has said publicly, at least twice since becoming president of Cuba, that he will be willing to negotiate with the United States on the normalization of relations. As a presidential candidate, President Obama said that he would be willing to talk to Cuban officials about normalizing relations. The reaction in Cuba to Barak Obama’s presidency has been positive. Both Raul Castro and Fidel Castro have praised the new President on comments after January 20, 2009.⁷⁵

In addition, important political changes are taking place in Miami, the center of Cuban American activity in the United States. These changes favor travel and engagement between the United States and Cuba. Finally, the U.S. Congress, where the legislative changes must take place to substantially modify the Cuban embargo, is and will continue to be controlled by democratic legislators that generally favor changing the embargo restrictions and negotiating with Cuba. If there are substantial changes in the U.S. embargo against Cuba, particularly allowing travel and investment by U.S. citizens, the future of Cuban real estate will surely be very bright.

74. *Cuba Proyecta una Expansión en su Infraestructura Turística con plazo al 2010* [Cuba Projects an Increase in its Tourism Infrastructure for 2010], CUBANET, January 9, 2008, <http://www.cubanet.org/CNews/y08/en08/09o2.htm> (last visited Mar. 26, 2009).

75. *See Fidel y Raúl Castro Alaban a Obama* [Fidel and Raul Castro Praise Obama], UNIVISION, Jan. 22, 2009, <http://www.univision.com/content/content.jhtml?cid=1812768> (last visited Mar. 26, 2009).