

University of Miami International and Comparative Law Review

Volume 3
Issue 1 *THE UNIVERSITY OF MIAMI YEARBOOK
OF INTERNATIONAL LAW VOLUME 3*

Article 4

10-1-1995

Real Property Law Under the Current Cuban Regime

Douglas E. Matthews

Follow this and additional works at: <https://repository.law.miami.edu/umicl>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Douglas E. Matthews, *Real Property Law Under the Current Cuban Regime*, 3 U. Miami Int'l & Comp. L. Rev. 137 (1995)

Available at: <https://repository.law.miami.edu/umicl/vol3/iss1/4>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

REAL PROPERTY LAW UNDER THE CURRENT CUBAN REGIME

*DOUGLAS E. MATTHEWS**

- I. INTRODUCTION
- II. AGRICULTURE
- III. HOUSING
- IV. COMMERCIAL ENTERPRISES
- V. CONCLUSION

I. INTRODUCTION

This comment focuses on the current law in Cuba affecting real property, particularly in the areas of agriculture, housing, and commercial enterprises (factories, shops, and the like). Much of the information coming out of Cuba is anecdotal and contradictory. It appears, moreover, that there may be considerable divergence between the law on the books and the actual conditions existing in the country. Recent constitutional reforms and legislation purport to grant Cuban citizens the right to own their homes, farms, and businesses. In reality, such rights appear to be so restrictive that they can hardly be said to comport with classical notions of private ownership of real property.

* B.A. *with high distinction*, Judson College; J.D. *cum laude*, University of Wisconsin Law School; M.S.L.I. University of Wisconsin-Madison, LL.M., Harvard Law School; Associate Professor of Law, St. Thomas University School of Law. This comment was prepared in connection with a Miami symposium on Cuban property law sponsored by the Cuban American Association in early 1994.

At the time of the Revolution, Cuba had many of the attributes of a developed country:

[M]ore than half of its population lived in urban areas; the majority of both its urban and rural labor force was composed of wage earners, most of whom were unionized; and by some measures, its standard of living, especially in the largest cities rivalled that of Southern Europe. . . . [T]hose who made the Cuban revolution took over a country with its economic and residential infrastructure largely intact . . .¹

Sadly, there has been a marked increase in the deterioration of both the economy and residential infrastructure in the interim.²

II. AGRICULTURE

Article 20 of the 1976 Cuban constitution "recognizes the right of small farmers to own their lands and other means and implements of production. . . ."³ This article also recognizes the rights of small farmers to organize into agricultural cooperatives to

1. J. Hamberg, *Cuba*, 35 HOUSING POLICIES IN THE SOCIALIST THIRD WORLD (K. Mathey ed., 1990). Even so, at the time of the Revolution about half of the total housing stock of 1.4 million units was considered substandard. *Id.* at 37.

2. See, e.g., J.P. Rathbone, *Cuba: Current Economic Situation and Short Term Prospects*, BULLETIN 20 (La Sociedad Economica 1992). Since early 1991 La Sociedad and its research director, John Paul Rathbone, have published a series of very useful occasional bulletins on economic issues facing Cuba now and in the future. Other bulletins relevant to this discussion are *Private Property Rights in Cuba: Housing*, BULLETIN 15 (La Sociedad Economica 1992) [hereinafter BULLETIN 15] and *Private Property Rights in Cuba: Farmland*, BULLETIN 16 (La Sociedad Economica 1992) [hereinafter BULLETIN 16].

3. CONSTITUCION DE LA REPUBLICA DE CUBA, art. 20 (1976). [hereinafter "CUBA CONST."].

constitute "a form of collective ownership on the part of the peasants. . . ."4 Article 21 gives the small farmer the right to sell his land "with the previous authorization of state agencies," yet the state reserves the "preferential right to the purchase of the land while paying a fair price."⁵ Article 24 limits the right to inherit legal title to agricultural land to "heirs who are personally involved in its cultivation," with apparently some exceptions.⁶

While the legal right to hold a title to private property appears to be constitutionally established,⁷ it is questionable whether it is within traditional notions of private property.⁸ Restrictions on inheritance, an expansive right of first refusal reserved by the state, and other limitations do not comport with classical notions of private property. Moreover, one's freedom of action is considerably restricted where the state controls transport, credit, marketing, distribution, and agricultural inputs.

4. *Id.*

5. *Id.* art. 21.

6. *Id.* art. 24.

7. *See infra* § III.

8. As one group of reporters note:

[P]rivate farmers are private only in the sense that they own their land and live mainly off the sale of their produce. But unlike private farmers in capitalist countries, they cannot freely sell their land, they must respond to the government's request as to what to grow, they are dependent on the government for inputs, and they must sell part of their produce to the government at prices the government sets.

An analysis for the division of land for farming provides an example. There are four categories of farms in contemporary Cuba:⁹

- (a) State farms (representing roughly 83% of cultivated land);
- (b) production cooperatives (7.8% of cultivated land);
- (c) credit and services cooperatives (7.5% of cultivated land); and,
- (d) small private farms (2.2% of cultivated land representing some 20,000 recorded private farmers).¹⁰

These last three categories represent private or semi-private arrangements. Each will be considered in turn.

First, however, some points must be made regarding land registers. As *La Sociedad* reports, "[p]rior to the Revolution, all land titles and land transfers were noted, at a municipal level, in Rural Property Registers."¹¹

Under the 1959 Agrarian Reform Law (Article 9), the Ministry of Agriculture had to register all land that had been confiscated by the State A final provision to the law (No. 3) added that, with Cuba's

9. BULLETIN 16, *supra* note 2, at 1.

10. Another fairly recent source suggests that independent farmers, members of the National Association of Small Farmers (ANAP), represent about a fifth of all cultivated land in the country. M. AZICRI, CUBA: POLITICS, ECONOMICS AND SOCIETY 113 (1988). The source is unclear about whether this figure includes farmers participating in the production cooperatives and the credit and services coops.

11. BULLETIN 16, *supra* note 2, at 5.

existing Property Register, the National Institute of Agrarian Reform would create a rural property register and that all land transfers, and subsequent land transfers, should be duly noted in it.¹²

The 1959 and 1963 Agrarian Reform Laws had the combined effect of expropriating some 63% of Cuba's crop and pasture land.¹³ Farms thus expropriated were those in excess of five "cabellerias," where one caballeria equals 13.4 hectares. Farms under roughly sixty-seven hectares were retained by about forty-five thousand farmers. In addition, the various agrarian reform acts vested ownership in small parcels to over 100,000 small farmers, mostly tenants, sharecroppers, and squatters. Over time, the government has "encouraged" these small holders to sell their property to the state and join the state sector.¹⁴ By 1978 the number of small farmers dropped to 137,000 and, more significantly, the average small holding was in the neighborhood of 12.6 hectares, representing a total of 20% of cultivated land in private hands.

Those who did not sell their land received "soft pressure"¹⁵ to voluntarily integrate into collective, albeit private farms. The semi-private production cooperatives [hereinafter *Cooperativas de Producción Agropecuaria* or CPAs] are one example. Their members are of two types: "contributory members" (those who

12. *Id.* at 1-2 (citing D. GHAI, ET AL., LABOR DEVELOPMENT IN RURAL CUBA (1988)). The International Labor Organization, in an ILO sponsored study entitled, LAND AND DEVELOPMENT IN RURAL CUBA [hereinafter ILO Report], reports that land registers are indeed kept at the municipal level, with rural land classified under one of the following headings: State, Cooperative or Private.

13. All figures contained in this paragraph are taken from BULLETIN 16, *supra* note 2.

14. Benjamin et al., *supra* note 8, at 96. Reports are that some "felt forced more than persuaded" to sell to the state.

15. In the form of various incentives, including preferential access to machinery, seeds, fertilizers, and credits. BULLETIN 16, *supra* note 2, at 2.

have contributed land) and "non-contributory members" (those who have not). There are over 1,300 production cooperatives, each representing an average of 647 hectares farmed by forty-seven workers. Most are involved in export oriented agriculture, with sugar cane, tobacco, and coffee representing the major crops. A provision is made for the production cooperative to buy out the contributory members' interests over time.

Production cooperatives occupy a middle ground between the public and private sector:

On the one hand, their organization is socialist - with CPA members organized into specialized labor brigades; property, with each CPA, is not inheritable, and output is determined by the state.

On the other hand, their statutes describe the CPAs as being privately (as opposed to explicitly State) owned; CPAs are free to divide or merge into small or bigger units, and, CPA members are technically free to leave the coop [sic] when they wish¹⁶

Hence the production cooperatives would benefit "from economies of scale and a less individualized (and therefore 'higher') stage of organization."¹⁷ A report of the International Labor Organization [hereinafter "ILO"] describes the production co-ops as "self-managed collectives since the members who collectively own the land and other means of production retain almost all their profits and in general run their own affairs democratically."¹⁸

16. BULLETIN 16, *supra* note 2, at 3.

17. A. Zimbalist & S. Eckstein, *Patterns of Cuban Development: The First Twenty-five Years*, in THE CUBA READER: THE MAKING OF A REVOLUTIONARY SOCIETY 132 (1989).

18. BULLETIN 16, *supra* note 2, at 3 (quoting ILO Report, *supra* note 12).

The next two major categories of land tenure are the credit and services co-ops and the small farmers. These are more recognizable as private entities. Credit and services coops "share some installations and services, but land, equipment and produce are all privately owned." Title to land is transferable and inheritable consistent with the above-mentioned constitutional provisions. This fact is also true of the small farmer, who now controls only about 2.2% of the cultivated land. Notwithstanding these modest numbers, private farmers represent virtually the only meaningful for-profit private economic activity in the Cuban economy.¹⁹ Yet, as the ILO reports, "ultimate extinction appears virtually inevitable."²⁰

III. HOUSING

Article 22 of the 1976 constitution "guarantees the right to personal ownership . . . of the dwelling to which one had legal title and of the other possessions and objects which serve to satisfy one's material and cultural needs." Cubans may either own or lease their homes or apartments. Even before the Revolution, Cuban renters enjoyed significant protection in the form of rent controls and a right to permanent occupancy.²¹ Since the Castro regime, three major housing legislative packages have been enacted: The 1960 Urban Reform Act, The 1984 Housing Law, and The 1988 Housing Law.

Over time, The 1960 Urban Reform Act converted more than half of the urban tenants in Cuba into landowners.²² The

19. GHAI, *supra* note 12, at 124.

20. *Id.* at 83.

21. Hamberg, *supra* note 1, at 37.

22. BULLETIN 15, *supra* note 2, at 2. For a detailed examination of the various articles contained in the 1960 Urban Reform Law, see MARUJA ACOSTA & JORGE E. HARDOY, URBAN REFORM IN REVOLUTIONARY CUBA 61 (Mal Bochner trans.,

remainder, living in slum tenement buildings, eventually received long-term rent-free leases.²³ Most landlords were compensated, but slum landlords were not.²⁴ An individual could theoretically own one primary residence and one vacation home.²⁵ Almost all private renting or subletting was declared illegal and rents for government-built housing were capped at no more than 10 percent of household income.²⁶ Between 1959 and 1988, just over 1.4 million units were added to the housing stock, fully two-thirds of which represented "self-built," and not government-built, housing.²⁷ The situation reflects the relatively low priority which the government placed on meeting the demand for housing in favor of infrastructure, schools, and industrial plants.²⁸ Nevertheless these numbers represent an 87% increase in housing units for the period, which saw just a 58% growth in population.²⁹ One Cuba watcher, no admirer of the current regime, reports that "[w]ell over 1 million Cubans have become homeowners since 1959. Although there is an extreme poverty of data on private home ownership in Cuba, of a total

1971) [hereinafter Urban Reform].

23. Hamberg, *supra* note 1, at 38.

24. *Id.*

25. Urban Reform, *supra* note 22, at 65.

26. Hamberg, *supra* note 1, at 57.

27. *Id.* at 39.

28. C. Brundenius, *Development Strategies and Basic Human Needs in THE CUBA READER: THE MAKING OF A REVOLUTIONARY SOCIETY* 113 (1988).

29. *Id.* at 41.

housing stock of approximately 2.75 million units, informed estimates suggest that between 80% and 90% are privately owned."³⁰

By the time the 1984 Housing Law was enacted, out of a total of 2.5 million Cuban households, approximately 50% owned their homes.³¹ The 1984 Housing Law was intended "to extend home ownership even further, especially among those households that had lived, since 1960, as long-term usufruct lessees (a type of life estate) of newly-built, government-constructed buildings."³² Almost one-half million families became homeowners under the law by amortizing the price of their dwellings. The 1984 Housing Law also allowed limited short-term private rentals and established a National Housing Institute. The government established a methodology for computing the so-called "legal price."³³ Despite measures to liberalize the housing market, the State still maintained its right to purchase a property at the legal price.³⁴ However:

[b]ecause owning more than one permanent dwelling remain[ed] illegal, it is highly unlikely that anyone could make an ongoing business out of buying and

30. BULLETIN 15, *supra* note 2, at 2.

31. Hamberg, *supra* note 1, at 50.

32. *Id.* Housing vacated by newly emigrating families is treated the same as government-built housing, *i.e.*, sold to the newly installed tenants.

33. J. Hamberg, *The Dynamics of Cuban Housing Policy*, in CRITICAL PERSPECTIVES ON HOUSING 611 (1986). The legal price was based on the type of construction, usable floor area, location, extra yard space, and depreciation. *Id.*

34. *Id.*

selling houses. The only way to make a "profit" is to trade down, either by moving in with someone else or to a unit of lesser value.³⁵

The 1988 General Housing Law kept in force most of the policies of the 1984 law. In addition, it provided for increased state intervention in the construction and housing markets and further restricted the right to buy and sell housing on the open market.

[O]vert speculation [under the 1984 Law] was so rampant that the government clamped down and began requiring that most sales be directly to the state, except in the case of property transfers to close relatives Because of all of these problems with buying and selling, the most common way that Cuban families move is by exchanging their units.³⁶

Another observer reported that, under the 1988 law, "[s]waps between large, high-quality residences and obvious smaller, less-good residences are not allowed. Such a system leads to speculation and profiteering. . . .[and] [h]ouses for exchange are announced in classified advertisements, at bus stops, in windows and in grocery stores. An estimated 20,000 exchanges take place each year."³⁷ Prior government approval for such swaps is normally not required unless the homes are located in Havana, the Isle of Youth, or other areas specified according to the 1989 House Swap Regulation.³⁸

Another form of redistribution is inheritance:

35. *Id.* at 615.

36. Hamberg, *supra* note 1, at 54.

37. BULLETIN 15, *supra* note 2, at 6.

38. *Id.*

Privately owned homes may be inherited, but a distinction is made between the right to occupy the dwelling and to receive its value. The current occupants, if they had lived with the now-deceased occupant for at least two years if close relatives, and five years if not, cannot be thrown out whether or not they are heirs. These occupants amortize the value of the dwelling over a period of time to the government, which, in turn, reimburses the heirs.³⁹

Private residential owners record their title in a new allegedly computerized Register, created under the 1988 Law (Article 116).⁴⁰ The old Property Register, created by the *Ley Hipotecaria de España* (1861), was established in 1893. After the Revolution, most property transfers were not registered until the computerized system was established. It is intended to include all property transfers that have taken place since the Revolution. Scant information about its efficacy or accuracy is available.

IV. COMMERCIAL ENTERPRISES

In July 1992, the Cuban National Assembly significantly modified or updated some of the main articles of the 1976 Cuban constitution. These modifications, for all practical purposes, nationalized what little private ownership over the means of production survived from the earlier revolutionary period.

Article 14 had previously provided for "socialist ownership" of all the people over all the means of production, while Article 15

39. *Id.* at 55-56.

40. BULLETIN 15, *supra* note 2, at 6.

listed the "irreversible" nature of state ownership over a long, non-exclusive list of productive enterprises, including mills, factories, transport, communications, and banks.⁴¹

The relevant provisions, as modified follow (emphasis added):

Article 14:

An economic system based on the socialist ownership of all the people over the *basic* means of production and the elimination of the exploitation of man by man rules in the Republic of Cuba.

Article 15:

The following are the socialist state properties of all the people:

(a) the land which does not belong to the small producers or the cooperatives, the subsoil, the mines, the maritime and natural resources - both living and non-living - within the economic area of the republic, the forests, the waters and the means of communication;

(b) the sugar mills, factories, basic means of transport and all the enterprises, banks, installations and goods that have been nationalized and expropriated from the imperialists, large landholders and members of the bourgeoisie [or built by the state]

These properties and installations cannot be transferred to any persons or corporations, except in

41. See *supra* note 3, at CUBA CONST. arts. 14, 15.

*cases in which the property is transferred in order to be used in the economic and social development of the country . . . with the prior approval of the Council of Ministers or its Executive Committee.*⁴²

The changes also embraced a recognition of freedom of religion, a stricter definition of Cuban citizenship, and a broadening of the definition of the Communist Party to include the ideals of the Cuban nationalist and hero Jose Marti.⁴³ Electoral reform was also included.⁴⁴ Some seasoned Cuba watchers were cautiously optimistic: "This is the type of legislation that Hungary was introducing when it began to move toward a market-oriented economy," one said.⁴⁵ Another noted that "[the changes] open up the potential for ownership of small businesses and even medium-sized businesses by foreigners and maybe even by Cubans some day." "Of course, I don't see this happening in the near future," said another. Others were more sanguine: "I don't think these changes mean much to people's daily lives in Cuba, [rather] I look at them as an elitist maneuver to try to make the system more flexible so it will survive in the short and medium term."⁴⁶

42. *Summary of World Broadcasts - The Middle East, Africa and Latin America*, ME/1442/D/1 (British Broadcasting Corp., July 25, 1992).

43. Mimi Whitefield, *Cuba Ratifies New Constitution: Private Property Now OK*, MIAMI HERALD, July 13, 1992, at 1A, 8A.

44. *Summary of World Broadcasts - The Middle East, Africa and Latin America*, ME/1444/D/1 (British Broadcasting Corp., July 28, 1992). *See also Cuba's New Constitution: Better or Worse*, 1 THE CUBA REPORT 1 (1992) [hereinafter *Cuba Report*]. This latter source appropriately points out the ominous fact that Castro has been given greater control over the Cuban military and increased powers to declare a state of war of emergency, amounting to *de jure* recognition of his existing *de facto* powers.

45. Whitefield, *supra* note 43, at 8A.

46. *Id.*

V. CONCLUSION

Clearly, there can be considerable divergence between Cuban law and Cuban reality. The Speaker of the Cuban National Assembly, for instance, cautioned observers: "Let the enemy not be deceived. They will find nothing in this [revised Constitutional] text that implies retreat, nor a return to the past, because we bow to no pressure."⁴⁷

Indeed, in light of recent Cuban history, skepticism is in order:

The amendments presumably provide the predicate for future policy changes by the Cuban government and also provide constitutional recognition and authorization for many activities which the Cuban government has undertaken in its efforts to meet both the drastic economic changes and economic freefall, and the world political changes. The extent to which the amendments will provide a more open and mixed economy and, more importantly, a new, better and different economic and personal life for Cubans remains to be seen.⁴⁸

47. Cuba Report, *supra* note 44, at 1.

48. *Id.*