

Cuba's New Real Estate Market

Latin America Initiative Working Paper



Philip Peters

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All photos by the author, Philip Peters. Cover photo: a small house for sale in the Sancti Spiritus province of Cuba.

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INTRODUCTION

The November 2011 law that permits Cubans to buy and sell residential real estate is among the most impactful of the reforms undertaken in Cuba since Raúl Castro became president in 2008. It opens a potential source of capital to the 84 percent of households that own their homes. By ending a prohibition on the essence of property rights – the ability to buy and sell – it constitutes a positive human rights step. It has created a new and unusual real estate market where brokers were only recently allowed to operate, no mortgage finance is available, and local demand is hampered by a lack of cash to make purchases.

In response to these reforms, Cuban Americans and others are beginning to buy properties through Cubans who live on the island. Already some Cubans, especially retirees, are selling their homes to buy smaller ones, retaining a nest egg from the sale. The new policy, with an assist from a more recent judicial decision, is leading homeowners to update and register their property titles. The policy does not, however, directly address Cuba's main housing problem – a serious shortage of residential units – but the government is beginning to implement policies that, in time and if expanded, will increase the housing stock.

This paper examines Cuba's real estate market at this early stage of its development, describes the basic functioning of the sector and discusses the role of foreign nationals. It is based on reviews of Cuban laws and regulations and on interviews with participants in this market and officials responsible for the policies that govern it.

Real Estate Laws and the Market Before 2011

Housing was one of the first public policy issues addressed by Cuba's socialist government. In revolutionary lore it is held that grievances over housing helped the rebel movement to gather political support and win its victory in 1959.

Months after that victory, the new government suspended evictions of tenants who were in arrears on their rent and ordered rent payments to be cut in half. In 1960, the Urban Reform Law established the principle that housing is for people to live in, not to live from – and based on that, private rental of housing came to an end. Renters were given control of their apartments, they paid half their previous rent payment to the state, and after five or ten years they gained full ownership. Landlords were offered a choice between a lump sum payment or a monthly payment for life to compensate for their loss.

Like the rental market, the market for sales of residences disappeared as the state gave itself the *derecho de tanteo*, or right of first refusal, whenever a homeowner wanted to sell. A 1984 law explicitly permitted the sale of housing between private parties, but only with the state's authorization, and authorizations were rare. In 2003, a new law prohibited such sales altogether.

In this legal framework, to hold a property title to a home meant that one could live in it, improve it (with government permission), pass it to heirs, or swap it for another. Cuba's socialist constitution guarantees personal property rights, specifically the right to "income and savings from one's own work, the housing that one possesses with proper title, and other goods and objects that serve to satisfy the material and cultural needs of the person." But the inability to sell one's house and buy another was a restriction that, seen from any but the socialist viewpoint, drained the property right itself of most of its meaning.



On Havana's *Paseo del Prado*, sellers and buyers congregate in an informal real estate market.

None of this meant that a real estate market did not exist. Cubans worked their way around this restriction and created a real estate market of sorts based on their ability under the law to swap residential housing units among themselves. This market was visible in Havana every Saturday morning as people gathered on a 19th century boulevard, the *Paseo del Prado*, to arrange swaps (called *permutas*),

sometimes involving chains of transactions to satisfy multiple parties. In the eyes of the law, homes were simply exchanged and no cash changed hands, even in a swap between a two-bedroom apartment and a four-bedroom house. In reality, side payments were routinely and discreetly made to compensate the person giving up the higher-value property. Legal papers were often executed to make these ostensibly money-free transactions official. In other cases, homes were sold illegally for cash but the property titles were not updated to reflect the new owner. As a result, the seller retained title and legal ownership of the home, and the buyer, now occupying the home, incurred this legal risk.

Law 288: The Legalization of Residential Real Estate Sales in 2011

All this changed on November 2, 2011 when Decree-Law 288 was published in the *Gaceta Oficial* and went into effect, permitting Cubans to buy and sell homes at prices they set between themselves. The impact, Cuban novelist Leonardo Padura wrote, is “the conversion of property titles into documents much more real than had been the case before.”¹

The intention to change this policy had been announced long before, and is part of an economic policy overhaul that is the centerpiece of the Raúl Castro presidency that began in 2008. A detailed reform blueprint including this change – and hundreds more measures to cut the size of government, expand the private sector, and reform agriculture and state enterprises – was published in April 2011 after approval by the sixth Congress of the Communist Party of Cuba. This document, known as the party’s *lineamientos*, committed the government to “apply flexible formulas for the exchange, purchase, sale, and rental of housing so as to facilitate solutions to the housing needs of the population.” It also called for adoption of “new organizational forms in construction, both state and non-state.”²

In July 2011, Cuban media reported on a Council of Ministers discussion of the real estate policy under development. Its purposes were to alleviate housing shortages, simplify approval processes, reduce prohibitions on citizen actions, and review and simplify the 188 laws, regulations, and legal procedures from various ministries that apply to housing. The idea, the report said, was to ensure that

¹ Padura, Leonardo, “Cuba y la Propiedad,” essay posted on the blog *Sin Permiso*, November 11, 2013, at <http://www.sinpermiso.info/textos/index.php?id=4546>.

² “Lineamientos de la Política Económica y Social del Partido y la Revolución,” issued by the Sixth Congress of the Communist Party of Cuba, April 2011, at <http://www.granma.cubaweb.cu/secciones/6to-congreso-pcc/Folleto%20Lineamientos%20VI%20Cong.pdf>.

citizens' residential property transactions "are not slowed by bureaucratic regulations that give rise to illegality and corruption."³

When Decree-Law 288 was issued, its preamble said that experience dictated that the prohibition on home sales needed to be repealed "to guarantee the effective exercise of property owners' rights."

The main provisions of the law are as follows:

- Cubans residing in Cuba and foreign nationals legally residing in Cuba may buy and sell homes at prices they set between themselves. Ownership of one residence and one vacation home is permitted.
- Properties may also be transferred by donation or through swaps. The side payments that have long accompanied housing swaps are now legal if properly declared.
- Buyers and sellers, or the parties to a donation or swap, register their transactions before a *notario*, a government official. Unlike before, the parties to the transaction do not need to obtain prior approval from the local office of the National Housing Institute. The *notario* changes the title to reflect the new owner, who registers the new title at the municipal property registry.
- Transactions have to occur through bank accounts; buyers pay with a cashier's check.
- Buyers state under oath that they own no other main residence and that the money for the purchase was obtained legally.
- Buyers pay an asset transfer tax equal to four percent of the home's value. Sellers make a lump sum income tax payment in the same amount. For tax purposes, the home's value is the purchase price or the legally declared value, whichever is higher.
- A process is established for property titles to be updated and made accurate, and entered in the municipal property registry.

³ "Raúl Castro invita a discrepar para hallar mejores soluciones," *Prensa Latina*, July 1, 2011; details on housing discussion at <http://www.cnctv.icrt.cu/node/1082>.

A Cuban may sell or otherwise transfer ownership of a home before emigrating. If no transfer is effected and the home is abandoned by an emigrant, the state takes possession of it and if there are claimants, the state transfers ownership to the highest-ranking claimant in this ranking: co-owners; spouse and children; parents, grandparents, and other “ascendants;” brothers, sisters; nephews, nieces; uncles and aunts; cousins. This is a significant change to previous law, which provided that an emigrant was obliged simply to forfeit residential property to the state, and if a transfer to another person was made to evade this requirement – even a donation to a relative – it was nullified.

Legal Processes under Law 288

Title registration. The new law simplifies procedures for registering property titles, and Cuban officials and media have encouraged homeowners to do so even if they have no current intention to sell. As in the case of other recent reforms, Cuban media have provided practical information on the processes involved. Within days of the real estate law’s promulgation, *Radio Reloj* was featuring explanations of how to update and register title to a home. The newspaper *Trabajadores* did the same, noting that a fully updated title, properly inscribed in the municipal property registry, is a precondition for any transfer of ownership and “constitutes a singular protection” for the homeowner.⁴

Another benefit is that the property registry, which a justice ministry official says was “paralyzed” and in disuse, will become more accurate with each new title. Vice Minister of Justice Francisco Eduardo Garcia told Cuban media in November 2011 that only about 200,000 residences (six percent of the total) had their titles registered, and many of those need updating.

To register a title, a homeowner first has to ensure that the property is accurately described in the title. If the title is out of date, a municipal architect must survey the property and amend the description in the title, reflecting changes and improvements. The architect assesses the value of the property, assigning it a “legally assessed value” valid for five years, which is written on the title and is far below market value.

The owner takes the title to the municipal property registry with proof of identity and, if applicable, proof of payment of real estate transfer tax. The registrar

⁴ Iliana Hautrive, “Inscribir significa garantía,” *Trabajadores*, November 14, 2011, <http://archivo.trabajadores.cu/news/20111114/255648-inscribir-significa-garantia>.

reviews the documents and, if they are all in order, the title is registered within 15 days. This period can be extended by the registrar for 30 days if there is a need to resolve questions about the title.

Cubans responded to the new law by updating and registering titles in large numbers. Cuban media reported that in the first month of registration under the new law, there were 62 percent more title registrations of cars and residences than in the entire first half of 2011, and government offices were adding night and weekend hours. In seven weeks, there were 45,900 inquiries about certifying titles and there were 12,000 requests for architects to document property conditions in preparation for title re-certification. In a 2013 interview, a justice ministry official said that the “great majority” are registering their titles to their homes for protection and legal security, without a plan to sell.⁵ The Ministry of Justice announced that in the first ten months of 2013, 659,968 titles to residential property were registered across Cuba; about one third of those registrations were tied to a housing transaction, while the rest were apparently done to update records for reasons of legal security or to prepare for a future transaction. Cuba’s housing stock consists of 3.9 million residential units, 85 percent of which are privately owned.

Home sales. The procedure for sales of homes begins with the buyer and seller agreeing on a price. “The state does not involve itself in that,” a Cuban official explains. “That is a matter for the parties to determine.”

They then go to a *notario*, a key government official in this process. The *notario* in Cuba is not equivalent to a notary public in the United States. In Cuba’s civil law system, a *notario* is a Justice Ministry lawyer, a representative of the state that generally handles noncontentious civil matters and procedures between private parties. In real estate transactions, they prepare property titles after verifying that the transaction meets the law’s requirements. They also handle sales of cars, marriages, uncontested divorces, and similar civil matters.

The *notario* develops the contract and the real estate transfer document (*acta de transmisión*). The buyer attests that the funds to make the purchase were obtained legally. Payment is made by a bank cashier’s check. The buyer pays the asset transfer tax, and the seller pays the income tax. Both are due within 30 days, after which penalties are assessed.

⁵ Interview with the author.

Buyer and seller receive the property title and other documents from the *notario*, and they take the new title to be registered at the property registry.

The New Market in Operation

To get a sense of this new marketplace, imagine living in an isolated town where incomes do not vary widely and nearly everyone owns their homes, but for 50 years the property title has had a unique meaning. It guarantees ownership and possession, allows owners to pass property to heirs or to donate it to someone else, or to swap it for someone else's property, but it does not permit simple sales to willing buyers. Over the years this restriction on sales was evaded, but only by a few.

Imagine then that the restriction is lifted and a market for residential real estate springs up overnight with no history of transactions to guide pricing, no mortgage lending available, no real estate agents. And as soon as the market begins, two groups of buyers emerge: locals using their own savings, and locals backed by persons from outside with money far beyond the earning power of anyone in town.

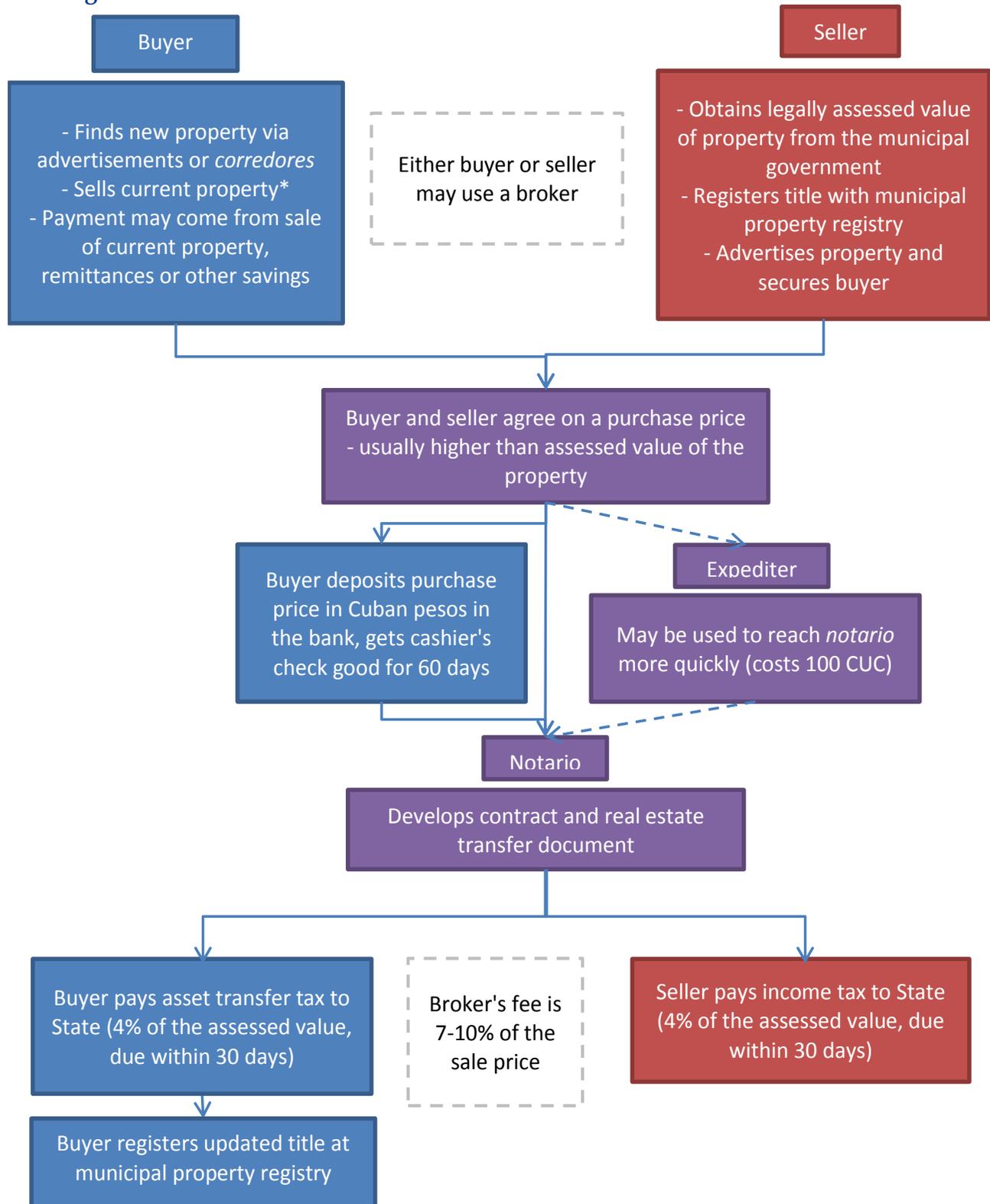
That loose analogy begins to explain the incipient real estate market that has emerged in Cuba since 2011.

In the first 20 days of the new law being in effect, Cuban media reported that 364 sales of residential property were executed, along with 1,579 transfers by donation and 409 swaps. Since then, data on transactions have not been issued regularly, but the market is clearly very active. On December 3, 2013, the Ministry of Justice reported that in the first eleven months of 2013, 200,000 property transfers were registered, of which 80,000 were sales and the rest were donations, inheritances, or swaps.

In general, the market is working along the lines prescribed by the law, with two exceptions.

The first has to do with brokers, whom Cubans call *corredores* or "runners." These agents have operated illegally but openly since long before real estate sales were legalized, working to help arrange swaps of housing under the previous law. When the law changed they continued to operate, representing sellers and buyers, arranging sales, and earning sales commissions ranging from four to ten percent of the sale price. In December 2012, Vice President Marino Murillo told a legislative meeting that real estate brokers would soon be added to the list of lines of work in which Cubans may engage on a private basis. This step was taken in September

Figure 1. The Real Estate Sales Process in Cuba



*Cuban law permits ownership of only one primary residence and one vacation home.

Cuba's two currencies

Cuba is a rare country where two national currencies circulate side by side. The convertible peso, or CUC, was issued in the 1990s when the prohibition on citizens holding foreign currency was lifted. It trades at par with the U.S. dollar in bank transfers and its value is slightly higher than the dollar when purchased with U.S. cash. The older Cuban peso, also called the *moneda nacional*, is worth about \$0.04 USD. The elimination of this dual currency system was promised under the current reform program and in October 2013 the government announced that it had adopted a schedule for a phased unification of the two currencies. In the real estate market, sellers often state their prices in dollars, Euros, or CUC, even though the transactions are effected in the Cuban peso.

2013, when real estate agents were added to the list of lines of work eligible for self-employment.

The second exception has to do with taxes. The law provides that buyer and seller are each to pay a tax equal to four percent of the purchase price or the legally declared value, whichever is higher. But buyers, sellers, and brokers unanimously recount that in practice, they pay four percent of the legally assessed value of a home, the value written on the property title as assessed by the municipal government. This is usually a tiny fraction of the property's market value; for example, a Havana apartment on sale for 30,000 CUC carries a value of 149 CUC on its property title. "Even the lawyers tell you not to declare the full price," one broker says. It amounts to a skirting of the law that benefits buyers and sellers at the expense of the tax collector.

Supply and demand. Demand in this new market is driven by two groups of buyers. One set of buyers is composed of Cubans who rely on their own earning power and savings. In some cases, such as farmers, established entrepreneurs, or others with hard-currency income, these savings can be substantial. One broker says he has worked with Cuban doctors who returned from two years or more of service in missions abroad with nest eggs ranging from 6,000 to 20,000 Cuban convertible pesos (CUC). But these are rare cases. Because there is no mortgage lending in Cuba, even high-income Cubans who could afford a monthly payment are unable to obtain credit to enable them to buy homes. As a result, it appears that the majority of Cubans using their own resources to buy homes are those who have acquired capital by selling their own home to buy something smaller.

The other set of buyers consists of those who receive assistance from abroad – from family members, foreign friends, or foreign spouses.

The bifurcated demand affects supply. Cubans with experience in the market say that many of those who are advertising their homes for sale are not serious sellers; they have placed "dream" prices on their homes "in the hope that a Cuban married to a foreigner comes along." On the other end of the spectrum, one broker says, are "serious" sellers who have decided to emigrate or who have excess space and want to buy a smaller home; these have priced their homes in a range where they are more likely to sell.

Pricing. The result of all this is that prices are high for the average Cuban, prohibitively so for many.

In this incipient market where market knowledge is based on two years' experience, buyers and sellers have only an imprecise sense of the market price of a particular type of housing unit. Certain locations and neighborhoods are more desirable and hence more expensive. Quality of construction also matters, with many buyers preferring "capitalist" construction, i.e. homes built before 1959. Still, asking prices vary widely; one broker notes that many set prices "by asking their neighbors, not necessarily by learning comparable properties and recent sale prices." Indeed, there is no database of home sales. Municipal records of home sales transactions are not available to the public, and because they do not necessarily reflect actual transaction prices they would not be a reliable guide to market behavior. At this stage of the market's development, participants in the market say that many asking prices are highly negotiable, with sellers accepting deep discounts from their advertised asking price.

Examples:

- Brokers seem to agree that prices for a two-bedroom apartment in Havana's Vedado neighborhood range from 25,000 CUC to 60,000 CUC, with most selling for about 40,000 CUC. Comparable apartments in a neighborhood such as La Vibora to the south cost half the price. Outside Havana in Cojimar, houses can sell for about 20,000 CUC.
 - A solid one-story house built in the 1930s on a leafy street in Vedado is for sale for 120,000 CUC. It has four bedrooms and one bathroom. The owner says his family numbered seven but is now down to two, and he and his wife want "a smaller place and money to go to [the beach resort] Cayo Largo and to do other things."
 - A broker offers a two-bedroom apartment in western Havana near the Finlay military hospital for 4,000 Cuban pesos (\$160) plus 10,500 CUC after the transfer of property and the legal papers are completed.
 - A retired stage manager for theatrical productions is looking to cash in on his small one-bedroom penthouse apartment two blocks from the sea in Havana, with a large outdoor terrace. His asking price is 30,000 CUC.
 - When buyers have a partner or investor from abroad, brokers try to conceal that fact from sellers. "If I have a Cuban buyer with a
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foreign husband,” one broker says, “I leave the foreigner behind, otherwise the seller says you misunderstood my price, and it’s really 30,000 CUC more.”

Market Experiences

Buyers have numerous ways of finding homes for sale. They can hire a broker who will search the market in hope of earning a fee when a purchase is made. They can listen to government radio stations and even some television programs, where “for sale” listings are read. In Havana, they can go to the *Paseo del Prado* where buyers, sellers, and brokers congregate every Saturday. They can go to websites such as *revolico.com* or *espaciocuba.com*, where there are thousands of listings, albeit many without prices. They can rely on word of mouth, or make visits to neighborhoods where they want to live, asking around to find out what is on the market.

The buyers. One Havana couple, originally from an eastern province, was living in a noisy area on the edge of Havana’s colonial district and wanted to find quieter surroundings. “To live there you have to have been born there,” the husband said.

At first they considered selling, but decided instead to give their apartment to their daughter and they relied on aid from family in the United States to buy a new apartment.

The process took nearly a year. They decided against using a broker once they found out that a broker’s fee would be seven to ten percent of the sale price. Instead, they searched neighborhoods each weekend on a motorbike, asking residents about homes for sale. They found that prices were unreliable, with sellers stating sales prices well below what they actually demanded of buyers.

Finally, they found a two-bedroom apartment for 17,000 CUC, 2,000 CUC below the original asking price. They paid 100 CUC to an expediter who secured an appointment with a *notario* who processed the transaction. They declared the transaction value to be 4,700 Cuban pesos, or \$188, and paid about \$8 in tax on the transaction. The *notario* did his work and the transaction was complete in less than three hours.

The broker. A Havana man works part-time as a broker when he is not working as a translator or tour guide. He has been in the real estate business for two years, and has arranged three sales, earning a 500 CUC commission on one 8,000-CUC apartment sale. He generates leads in an unconventional way, by posting small

signs near phone booths where he effectively poses as a seller or buyer, and includes his phone number. He represents both buyers and sellers, keeping all his information on buyers and properties organized in a set of zip-loc bags labeled according to priority. The typical seller, he says, is “someone with extra space – someone died, or divorced, or the children moved out...they sell the big house to end up with smaller one, and they live from the money left over.” In his view, it’s a buyer’s market. “There is a lot of pressure on sellers,” he says, “because they want to make thousands and thousands, and they realize that they have to negotiate or lose the buyer.”

The Internet entrepreneur. Yosuan Crespo started his real estate business in February 2012, obtaining a license to work on his own as a computer programmer and promptly opening *espaciocuba.com*, a website that now advertises about 3,000 properties for sale or rent. His rented business premises, where he and two employees work, is the front porch of a lady’s home in Havana.

Crespo graduated from and went on to teach at Cuba’s information technology university. He started *espaciocuba.com* in the hope that it would become a sort of multiple listing service for which real estate brokers would pay. For now, he charges for the creation and placement of listings on his site – 49 CUC for a simple listing for 120 days, a higher price for prominent placement on the site, and a higher fee if he visits the property to take photographs and create the advertisement for the property.

Housing Stock and Construction

In Cuba’s current reform program, the legalization of home sales is one of several actions that President Raúl Castro took to eliminate what he calls “excessive prohibitions” in Cuban law and regulation.⁶ (Others included allowing Cubans to sell cars, have cellular phone accounts, travel abroad, and stay in all hotels in their own country.) The legalization of home sales was presented in the 2011 *Lineamientos* as contributing to “solutions to the housing needs of the population,” in part by enabling a “rearranging” of the housing stock as homeowners with excess space would sell to families short on living space. According to one unofficial estimate, there were 200,000 vacant housing units around the time home sales were permitted.

⁶ Raúl Castro first used this phrase in a December 2007 speech to the Cuban National Assembly and has used it since to refer to a set of measures that ease or eliminate regulations applied to citizens in their personal lives.

In a country where many live with their parents for lack of housing options, housing is in short supply, and new home construction is inadequate, such a “rearrangement” as a result of home sales has the potential to meet the housing needs of many thousands of Cuban families. But it does not address the more fundamental need to expand Cuba’s housing stock. According to preliminary data released from Cuba’s 2012 census, Cuba’s population of 11.2 million occupies 3.9 million units of housing with an average of 2.8 residents per housing unit.

According to National Housing Institute figures released in September 2013, Cuba needs to build 60,000-70,000 new housing units per year to alleviate its housing deficit. But only a fraction of that number is being built – 16,000 per year by the state at current rates, and 8,000-10,000 by homeowners themselves. Hurricane Sandy alone destroyed 22,396 homes in eastern Cuba in 2012.

The Cuban government is addressing this deficit with a series of new measures whose effectiveness remains to be demonstrated, and many involve private initiative.

Private construction cooperatives. Cuba’s small entrepreneurial sector has tripled in size since 2010, and many in its ranks practice construction trades. The next step in the expansion of the private sector – the creation of private cooperatives outside the farm sector, which is still in its incipient stages – holds the possibility of developing larger-scale private construction enterprises. As the first non-farm cooperatives are being created either by converting state enterprises into cooperatives or by approving citizens’ applications to create start-up cooperatives, the construction sector is well represented. In August 2013, the newspaper *Trabajadores* reported that 34 construction cooperatives have begun to operate in a pilot project. Of these, three are state construction enterprises converted into private cooperatives, and the rest were formed by people who applied for and received approval to form new private cooperatives. In September 2013, 33 more construction cooperatives were announced.

Do it yourself. A Cuban newspaper report during the 2011 Communist Party Congress mentioned the need for policies “to speed up the procedures for remodeling, rehabilitating, construction, and renting,” so as to better address “public demand for housing.”⁷

⁷ Maria Menéndez Quintero and Alina Perera Robbio, “Cocción doméstica: Más eficiencia en la reparación y otras opciones,” *Granma*, April 18, 2011, <http://www.granma.cubaweb.cu/secciones/6to-congreso-pcc/artic-16.html>.

Around Havana and in the provinces, do-it-yourself construction projects abound, with nearly every work-in-progress marked by a hand-lettered sign displaying the number of the building permit. One such project is under way not far from Havana's largest farmers market. A 49-year-old plumber who works in a tourism-related state enterprise where he receives part of his salary in hard currency is building a small, four-room house on a modest lot that his employer gave him in 2008. Working with his own labor and with 6,000 pesos spent so far, by last June it was nearly ready for his wife, newborn son, and him to move in. It has a refrigerator, electric stove, and personal computer. "We have the essentials to live," he said, "and bit by bit we will keep going."

Building supplies. A half block away from the plumber's new home is a sign of the government's encouragement of do-it-yourself construction and repair: a vacant building turned into a government-operated store that provides the basics for construction and repair: cinder block, particle board, cement, paint, plumbing and electrical supplies, and some tools. The workers have an old Soviet refrigerator in the corner and an old Soviet fan on the front desk. The goods are priced in Cuban pesos, the equivalent of \$3.30 for a gallon of latex paint, \$10 for 42 kilograms of cement, \$14 for 3.5 square meters of particle board, \$0.28 for a cinder block, \$0.12 for a red brick, \$0.80 for a door hinge, \$1 for a 40-centimeter square floor tile. In Havana there are 43 building supply centers like this, and 1165 around the country. To encourage sales, prices were reduced across the board in December 2011.



A small house under construction, and a Havana construction materials store.

Low-income grants. For those without the resources of the plumber mentioned above, the government is providing grants to low-income families to assist in home repair and construction projects.

Since January 2012, proceeds from home supply stores have been used to fund these grants. Grantees sign an agreement governing the use of the funds, up to 30 percent of which may be used to pay for labor. The maximum grant is 95,000 Cuban pesos (\$3,800). Last May, the newspaper *Trabajadores* reported that between January 2012 and April 2013, 33,431 households had received grants totaling 566 million pesos.

Loans. Another assist came in a new credit policy that took effect in November 2011. It made loans available to Cuban citizens for home repair and construction, to start or improve a new business, and to assist small farmers. Last August, Cuban media reported that 271,152 loans had been made, the largest number for home construction.

Can Foreign Nationals Buy Real Estate in Cuba?

The opening of Cuba's real estate market prompts many to ask whether foreign nationals and Cubans living abroad can now buy property in Cuba. In a word, the answer is "no."

Cuba's new law permits the purchase and sale of residential property only by Cuban nationals who reside in Cuba and foreigners who are legal residents of Cuba, such as persons in Cuba for long-term work or foreigners who have married Cuban nationals. Cubans who left Cuba in the early years of the socialist government are considered under Cuban law to have abandoned their properties and have no basis under Cuban law to reclaim them.

An intriguing question is whether a Cuban émigré could return to Cuba, re-establish Cuban residency, and then buy residential property in his or her own name, perhaps even retaining citizenship and a residence in the country to which he emigrated. For Cuban Americans who are legal permanent residents of the United States, such a move could be problematic since the establishment of a residence abroad could put their legal permanent resident status at risk. The criteria are interpreted on a case by case basis, but the risk would be high for a person who stayed outside the United States for more than a year, had no U.S. residence and/or did not pay U.S. taxes. U.S. citizens, on the other hand, are not barred from having a residence abroad and would not lose their citizenship by living in Cuba and buying a property there.

U.S. regulations permit Cuban Americans to visit relatives in Cuba as often as they wish and for as long as they wish. Cuba permits emigrants to re-establish residency in Cuba and Cubans may travel abroad for up to two years, and that term can be renewed. Though Cuba has a legal prohibition on dual citizenship, it does not enforce this prohibition and, in practice, neither country prevents a person from holding passports from both countries. The difficulty, if one were to emerge, would likely involve the transfer of funds from the United States to Cuba. While the United States permits Cuban Americans to send unlimited remittances to relatives in Cuba, the U.S. government does not permit federal benefits such as Social Security to be transferred directly to Cuba. For other categories of U.S. citizens, the embargo poses far more onerous restrictions on financial transfers to Cuba.

As for foreigners with no tie to Cuba, there may soon be a means to acquire residential property in Cuba – on resorts that are slated to be built with foreign corporate partners, combining golf course, hotel, and real estate development.

Cuba has one world-class golf course at the Varadero beach resort east of Havana. Since at least 2004 the tourism ministry has sought to develop new golf courses– to enhance Cuba as a tourism destination and to better compete with nearby countries that offer ample golf options to foreign visitors. It has sought to develop these courses in conjunction with foreign partners, and the projects that have been discussed all include real estate development where foreign nationals would be able to buy houses or apartments around the golf course itself.

Two legal reforms have been made to make projects of this type possible.

On July 19, 2010, Decree-Law 273 was promulgated with the express purpose of promoting “the participation of foreign investment in international tourism.” It does so by changing Cuban law pertaining to “surface rights” by permitting such rights to be conceded for up to 99 years, with the possibility of renewal after that. Surface rights are a means of allowing a business to improve and use a piece of land while the state retains ownership of the land itself. In this case, a joint venture between a foreign company and a Cuban entity would acquire surface rights, build the golf course and real estate development, sell housing or lease it for long terms, and share proceeds from the entire business. Decree-Law 273 also permits the granting of surface rights in perpetuity to Cuban entities “for the construction of housing or apartments dedicated to tourism.”

In October 2012, the reform of migration and travel laws created a new category of foreign visitor to Cuba: “residents of real estate developments,” for owners or renters of housing in real estate developments and their family members. When they enter Cuba they may stay for one year, renewable in one-year increments.

While the policy and legal paths have thus been cleared, the process of approving golf-real estate projects has been slow and excruciating. Not a single one has broken ground, and none has been fully approved and constituted as a business.

The project closest to reaching the starting gate appears to be the Carbonera Club, a hotel, marina, golf, and real estate development east of Havana near the Varadero beach resort. In May 2013, Cuban authorities approved this project, but the joint venture agreement has not yet been concluded. When it does proceed, it is slated to feature 1,000 housing units in its first phase of construction.

Tourism ministry officials say that six more projects are targeted for development through 2020, and six more are contemplated after that. Locations have been selected in the provinces of Mayabeque, Matanzas, Pinar del Rio, and Holguín. Each will require investments in excess of \$300 million.

Conclusions

The legalization of residential real estate sales in November 2011 is one of the most significant actions taken in Cuba’s economic reform program. It has impact on the vast majority of Cuban households, transforming the nature of residential property.

Before, a home was an asset to use and to pass on to heirs. Now it can be made liquid. At the family level, the result is instant capital formation, the creation of wealth through the granting of a new legal use for assets to which Cuban families hold clear title.

Cuban homeowners thus have new options, although not all the home-related transactions practiced elsewhere are available to them. Notably, there are no home mortgages, nor is it possible to use one’s residence as collateral for a loan.

Still, this action has the effect of creating a vast new stock of capital in private hands that is being used for private ends in a new market driven by decisions of private parties. The market appears to be functioning according to clear norms, and transactions are effected without excessive taxation or bureaucracy. Moreover, this market is bringing an inflow of capital from Cubans abroad. The creation of

this new market is a clear case of the government ending burdensome controls and allowing a major expansion of private economic activity.

This reform counts as a human rights improvement because it a) expands economic freedom and advances private property rights by ending a prohibition on normal, beneficial transactions that affected all Cuban families, and b) it ends a long-despised aspect of Cuban immigration law by repealing the requirement that emigrants forfeit their property to the government.

The market is producing one effect that officials desired – the *reacomodo* or “rearranging” whereby homeowners with excess space are selling, buying smaller homes, and coming out ahead with a bank balance from which they can live or retire.

But home sales alone are not destined to solve Cuba’s housing shortage. While the measures that encourage home construction are having an effect, they are still being developed and implemented and their full impact will not become clear for several years.

Except in the tourism sector, the option of using foreign investment to expand Cuba’s housing stock is not a topic of discussion, even though Cuba’s current laws governing foreign investment would not bar it. It is an open question whether the Cuban government could find profitable formulas where foreign investors could build moderately priced housing for sale to the Cuban public. President Raúl Castro announced that, after long deliberation, new policies will be adopted in March 2014 to encourage greater foreign investment in Cuba’s economy; these policies may open the door to housing projects developed with foreign capital.

Finally, the absence of mortgage finance stands out as a major impediment to expansion of this young real estate market. Demand in this market, and consequently the expansion of the housing stock, is constrained by the lack of credit. In a market where full payment must be made at the time of purchase, the universe of Cuban buyers consists mainly of those who have sold a home or those who receive capital from a relative abroad. A monthly payment of approximately \$200 would amortize a \$25,000 loan at a five percent interest rate over 15 years. While many Cubans cannot afford such a monthly expense, \$200 per month is affordable to many who work as entrepreneurs or for foreign businesses or elsewhere in the hard-currency sector, and it would put modestly priced housing within their reach. Assistance to low-income buyers could further expand affordability.

A justice ministry official says that consideration is being given to having Cuban banks offer home mortgage loans or other lending mechanisms. "But if so, no one would be put out on the street in case of default," she says, adding that "the system of social justice will never be put at risk." One option in case of default would be for the state to assume ownership of the property with the resident permitted to continue residing there, she says.





A P P E N D I X O N E

Cuban Supreme Court decision permits legalization of illegal transactions of the past

In November 2011, Decree-Law 288 made it legal for Cubans to buy and sell residential real estate. But this law contains no provision regarding the innumerable illegal real estate transactions that had taken place in the previous 50 years, which have resulted in large numbers of Cubans owning homes in the sense that they bought them and live in them, but not possessing clear title to the homes in their own name. What these buyers did in the past is now legal for others to do today, but the law gave them no path to legal security for their homes.

A recent decision of the Cuban Supreme Court has now opened a way for past transactions to be legalized, and for owners to gain clear title to the homes they bought before 2011.

The court ruled on a case brought by Bertha Lina Bouly Wilson, a woman from Guantanamo province who bought an apartment in Havana for \$5,000 from Ricardo Andux Barrueta in 1998. Andux vacated the home, and Bouly moved in. In a legal maneuver typical of the time, Bouly has explained, they married with the intention of divorcing so that ownership of the home could pass to her in the marital property settlement. But the divorce did not take place, and in time Andux tried to regain possession of the home and to have Bouly evicted. Bouly turned to the courts to try to obtain full legal ownership of her home.

She and her attorneys fought a losing battle for six years. After the new real estate law went into effect in 2011, Bouly argued in Havana's top provincial court that the law should not penalize her for a transaction that was illegal in 1998 but would be legal if conducted today. But she lost that case too; the court reasoned that the law's silence about past transactions gave it no basis to rule in her favor.

When she exercised her last option, an appeal to the Supreme Court, her argument finally found favor. On February 28, 2013, the Supreme Court gave her a complete victory, declaring the 1998 transaction to be valid today. It ordered that she and Andux appear before a *notario* (a local Ministry of Justice official) to have her name inscribed on the property title and that of Andux removed. For good measure, in the event that Andux would not appear, the Supreme Court ordered the provincial court to appear in his stead to ensure that the transfer of title would proceed.

In its decision, the Supreme Court used its interpretive powers to remedy the omission in Decree-Law 288, and it explained itself with both legal and social justice reasoning. It decided that because the 2011 law contained no provisions “that would regulate the passage from one legal regime to another, the norms that are to be applied are those in force and not those that have been repealed.” In other words, the law’s silence regarding pre-2011 home sales and its repeal of statutes that made those sales illegal leave only one legal norm in place, making home sales legal – past, present, and future. Hence the Supreme Court declared that the lower court was “in error” on legal grounds in deciding against Bouly, and had failed to act with a “sense of justice that should be most important in a judicial decision when one puts in relief the defenselessness of the appellant (Bouly) in the face of the antisocial conduct of the seller (Andux),” who was trying to repossess a home for which he had been paid.

Following the decision, the Supreme Court sent an instruction (*circular*) to courts and judicial authorities across Cuba to ensure that the legal standard applied in Bouly’s case would be applied across the board. Buyers and sellers who made transactions before 2011 may thus appear before *notarios* to update the property title and to put the new owner’s name on it and pay taxes. In cases like Bouly’s where the seller is not cooperative, the buyer can go to a local court and, upon demonstrating evidence of the transaction, the court is instructed to represent the seller before the *notario*, relinquishing the seller’s rights to the property so that the buyer can obtain title in his or her name.

It is not known why Decree-Law 288 failed to provide mechanisms to legalize past transactions. But the Supreme Court decision has now done so, with the result that large numbers of Cuban homeowners now have the opportunity to obtain proper title to homes they bought when home sales were done in the shadows.

A P P E N D I X T W O

One buyer's view of the market

A successful home buyer who was interviewed for this study decided to put on paper the basics of the home buying experience that she and her family experienced. These are her notes:

Search tools

- Personal Internet searches
- Internet searches by persons who charge for the service
- Brokers (*corredores*) for home sales and swaps who customarily charge a commission equal to ten percent of the sale price
- Neighborhood visits, asking residents if they know of properties for sale
- Radio and television announcements, such as the *Revista Hola Habana* magazine program on the *Canal Habana* television station
- Classified ads read on television and radio programs
- Prices are not published, just names and telephone numbers and general information about the property

Prices

- Vary according to neighborhood
- Normally, prices are not published on the Internet or in other public announcements.
- The legally assessed value of the property that appears on the title [a value assessed by the municipal government, far below market value], expressed in Cuban pesos, is the price declared in most home sale transactions for purposes of banking operations and title registration.
- In the Plaza municipality of Havana the average price of one-bedroom or two-bedroom apartments is 25,000 CUC.
- Freestanding houses in Havana with two to four bedrooms are on the market for 60,000 to 200,000 CUC. Examples: a second-floor, two-bedroom apartment on *Linea* avenue in the Vedado neighborhood is priced at 50,000 CUC; another two-bedroom apartment in the same neighborhood started at 50,000 and the asking price was reduced to 45,000 CUC; similar apartments in the *Cerro* and *10 de octubre* neighborhoods are on the market for 15,000 CUC.

- Land-line telephones may be transferred to a new owner of a property for 1,000 CUC until September 30, 2013 if the phone line transfer is included in the housing transaction.

Administrative processes for home sales

The seller must be the legal owner, holding the title and certificate that the property appears in the municipal property registry. Persons holding power of attorney on behalf of the seller may also effectuate a transaction. In cases where two owners hold title to the property, both must participate in the sale.

Step one: Buyer deposits the sale price in the bank, denominated in Cuban pesos, and the bank issues a cashier's check valid for 60 days.

Step two: Buyer and seller appear before a *notario* with the bank document certifying payment, and the new title is prepared. To speed the process and avoid waiting in line, some use the services of expeditors who typically charge 50 CUC each to the buyer and seller.

Step three: Both parties pay tax – income tax for the seller, transaction tax for the buyer – equal to four percent of the transaction price.

Step four: The buyer registers the updated title at the municipal property registry.

In the colonial section of Havana, the transaction requires approval of the Office of the Historian.

It is known that some declare the transaction as a donation rather than a sale.

Other considerations

- Thousands of homes are on the market for sale.
- Sales are slow because buyers need first to sell their own homes to obtain the cash to make their purchase.
- Actual sale prices, as opposed to those declared in the legal process, are negotiated between buyer and seller and denominated in CUC.
- There are cases of fraud, and some sales have been annulled due to illegalities, some due to corruption, and others for failing to understand the legal requirements.

- Foreigners buy homes using Cuban nationals as the buyer in the legal process, and the Cuban national's name is registered on the title as the legal owner, which exposes the foreigner to considerable risk.



SELECTED SOURCE MATERIALS & FURTHER READING

The texts of Cuban laws, including those cited in this paper, can be found in Cuba's *Gaceta Oficial* at <http://www.gacetaoficial.cu>.

Official statistics on housing and other matters are published by Cuba's National Office of Statistics and Information at www.onei.cu.

Online Cuban real estate listings can be found at revolico.com and espaciocuba.com.

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Palli, Jose Manuel, "Cuba's *derechos de superficie*: Are they 'real' property rights?," *Cuba Standard*, May 24, 2013; a clear explanation of the meaning of "surface rights" in Cuban law.

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ABOUT THE AUTHOR

Philip Peters (peters@us-crc.org) is a researcher and consultant who has reported on Cuba's economy since 1996. He is President of the Cuba Research Center in Alexandria, Virginia.

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The Brookings Institution
1775 Massachusetts Ave NW
Washington, D.C. 20036
www.brookings.edu