

BUYING REAL ESTATE IN MEXICO

FOREIGN OWNERSHIP

Potential buyers often hear that Mexico does not allow foreign ownership of real estate. Historically as far back as 1917 the Mexican Constitution prohibited foreigners from owning real estate 100 km from the border and 50 km along the coast of Mexico. Current Mexican legislation allows foreigners to own real estate indirectly through a bank trust arrangement known as "fideicomiso." This method of acquiring an interest in real estate has gained universal acceptance among U.S. investors purchasing their second home in the resort areas. A Mexican bank acts as the trustee and hold legal title for the benefit of the investor. The parties to a Fideicomiso are the seller or the lender (trustor), the bank which acts as the trustee and the buyer or borrower which acts as the beneficiary. The purchase price is generally paid in full and the seller waives any right he may have to revoke the trust thereby making conveyance a completed transfer. A fee for the registration of the Fideicomiso must be paid to the Ministry of the Economy. The amount will vary depending upon the duration of the trust. A registration fee must also be paid to the Federal Bureau of Foreign Investment when the buyer or lender is a foreigner.

TRANSACTION COSTS

The investor should be aware ahead of time of the transaction costs associated with the purchase of real estate. The costs are generally a percentage of the value of the transaction. Transaction cost include but are not limited to state transfer tax (2%), registration fees (.8%-1%), appraisal (.3%-.8%), and notary fees (.5%-1%). There is also a 16% value added tax on buildings and a 30% income tax on capital gains. All fees and costs with the exception of the income tax are paid by the buyer.

THE ROLE OF THE NOTARY

Unlike transactions in the United States, all land transfers in Mexico must be prepared by the "Notario Público" who is a licensed attorney. The Notario must remain neutral in real estate transactions. His responsibility is to draft the documents, verify the facts contained in the documents, perform a search at the Public Registry of Property, and prepare a public deed that serves as title to the property. The Notario search generally lists the three prior owners. In the past investors relied exclusively on the services of the notary as an absolute guarantee of title which has given the investor a false sense of security. The Notary opinion is lacking in several respects. First, the notary opinion does not protect against fraud and forgery in the public registry. There is no protection against mistakes made by the property registrar as well as the priority of a lien. Property issues that would not be found on the record such as adverse possession or prescriptive easements are also not covered by the notary opinion.

SELECTING AN AGENT/BROKER

Mexico has fewer requirements about who can offer services as a real estate agent so it is important that you make sure the agent is qualified and reliable. There are several levels of real estate professionals. The Mexico Broker is the professional who oversees the transactions of a given real estate office. Ask to see his certificates and degrees. Mexico Realtor officially refers to brokers agents affiliated with the National Association of Realtors in the United States. He could be a member of the Canadian Real Estate Association in Canada. Mexico's only professional real estate association is AMPI with professional standards similar to NAR.

ESCROW

Most real estate transactions in Mexico require a down payment. In the past these payments were usually made to agents or brokers. There are many cases in Mexico where the agent or broker absconded with the funds and the buyers were left with little or no recourse. Many of our clients are pleased with the new escrow services. Uⁿⁱ escrow services protects the buyer's investment. No payments are made to the intended persons until there has been compliance with the terms of the escrow agreement.

There are many advantages to [] Escrow Services. The buyer has the option of depositing the escrow monies in U.S. dollars or Mexican pesos. Disbursements will only be made as specifically stated in the escrow agreement. The funds are disbursed the same day.

H₉ TITLE POLICY

The title policy is a contract of indemnity which will protect the buyer against fraud and forgery. There is also protection against matters that cannot be found by searching the public registry such as adverse possession and prescriptive easements. The policy also protects against mistakes in the registry. In the event of a claim, A ^ will hire one of our many top Mexican firms to represent you.

Contact Us for Your Title Insurance Needs in Mexico

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