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RESOLVING REAL ESTATE PROBLEMS IN MEXICO THROUGH MEDIATION AND ARBITRATION

Lawsuits, courts and attorneys cause headaches in any country. Mexico is no different. INEGI, the National Statistics Institute, says that there are 33,000 persons in Mexico City for each judge. It isn't really any better in other parts of the country. We simply do not have enough courts and judges to listen to every complaint, legitimate or not, within a reasonable time. The result is that reasonable claims may take years to be heard and then additional years to be resolved. After that there is an appeal period that adds to the delay. Thus it is not unusual to hear of a civil complaint to force a seller to honor a real estate contract taking five, ten or even fifteen years to resolve.

Once resolved, attorney fees may take 30% to 50% of the award, in addition to the costs that have already been paid by the plaintiff.

Instituting a lawsuit can be a lose-lose proposition for everyone.

The good news is that we now have an alternative method of resolving disputes and enforcing them in Mexico. Due to provisions in NAFTA, Mexico has modified its laws to permit Alternative Dispute Resolution and has provided for enforcement of arbitration awards in the courts. Articles 1415 to 1463 of the Mexican Commercial Code provide the guidelines for resolving problems outside the courts and eliminating much of the delay and expense of a lawsuit. The court authorities in Mexico now realize that all matters cannot always be resolved by government and they now realize and accept that the most economical and efficient resolutions may be obtained in a resolution arrived at outside of a court of law.

Alternative Dispute Resolution (ADR) has been practiced in the United States and Canada for many years and has become a highly successful and preferred method for settling conflicts by many. The process is now receiving the approval and encouragement of the highest courts in Mexico which have set up separate departments to study and implement mediation and arbitration sections in the federal, state and local courts.

Instead of being forced into a lose-win situation, as is the case in a lawsuit which is confrontational by nature, in mediation, the parties may find areas of mutual interest and amicably settle their differences in a cost-effective and timely manner. In addition to commercial and trade disputes, ADR has been highly successful in family and divorce matters and, even more, in real estate related matters.

Some basic elements:

MUTUAL CONSENT is a requirement. In order for a problem to be submitted for resolution through mediation or arbitration, it is necessary that both the complaining party and the defending party agree to submit to arbitration. This is often accomplished by inserting a special clause in the contract of purchase/sale or the deed before the notary public when real property is involved. In this manner both parties have agreed prior to a conflict arising and do not have to argue about this point when the problem comes up.

MEDIATION first, then **ARBITRATION**: Most clauses which provide the mutual consent will specify that a good faith attempt be made to settle the matter in an informal setting. Agreements made through mediation are not binding upon the parties. If the parties cannot reach a mutually agreeable solution, the matter goes to arbitration in a more formal setting. The parties have the opportunity to approve or disapprove of the arbitrators and, generally, one to three arbitrators are called to hear the case, depending upon the wishes of the parties and the severity of the matter to be decided. The decisions handed down by the Arbitrators are binding upon the parties and, should it become necessary, the courts will be called upon to enforce the judgments.

MEDIATORS and ARBITRATORS are generally professional people with legal background and/or expertise in the subject matter under consideration.

COSTS FOR MEDIATION, ARBITRATION are generally minimal in comparison with those involved in a lawsuit. Normal charges will involve processing fees, hearing room rentals, hourly fees for the arbitrators and travel expenses as required as well as charges, as necessary for translators, copies, courier services and expert witnesses.

TIME CONCERNS Since the arbitration and mediation services are private and run by business people, economy of effort and time is seen as an important portion of the equation for the success of the company supervising the arbitration and mediation services. While a track record has yet to be established, it is anticipated that most mediation/arbitration services will be completed within a few months of filing the complaint.

Unquestionably, the number of conflicts and disagreements that are resolved through Alternative Dispute Resolution will increase considerably over the next few years. Since it is will be far less expensive and quicker to solve problems in this manner, it may make sense to begin to include an arbitration clause in all of your real estate contracts now.

ABOUT THE AUTHOR:

Linda Neil founded The Settlement Company® in 1991. It is the original escrow company in Mexico and has successfully processed thousands of trusts and title transfers of Mexican real estate. Mrs. Neil, a real estate broker licensed in California, has spent more than thirty-five years in Mexico in the development of real estate and related activities. She frequently presents seminars on both sides of the border on the subject of real estate ownership in Mexico and is a member of AMPI, NAR and FIABCI. She holds PROFECO Certificate 00065/96, The Settlement Company® handles transfers of properties and provides title insurance for properties located throughout Mexico. It specializes in the Virtual Closing®

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