

FIDUCIARIES and THE BUYER'S AGENT

by Linda Jones Neil

WHAT IS A FIDUCIARY?

This term is most commonly used in Mexico to describe the bank which holds the title if you are purchasing a property in a Mexican bank trust, a *fideicomiso*.

However the word has another very important meaning for those who are buying property in Mexico.

The Fiduciary also refers to the person who takes on the responsibility to represent YOU, and your interests in a business transaction. If you are visiting in Mexico and have fallen in love with the lifestyle and possibly a lot or a home, it is super important to find a BUYER'S agent to represent your interests in the transaction. This means that the agent you select should disclose all facts to you and should be open and truthful in all matters regarding the properties you are considering. He or she should put YOUR interests and needs ahead of the Seller's and ahead of his own. The Buyer's agent has a FIDUCIARY duty to represent you in the transaction.

Conflict of Interest

Many times, we have heard*Oh! but Betty, the seller's agent, is so NICE! I am sure he/she will represent my interests!*

How will that be possible?

The seller, for sure, will expect to receive the highest amount possible and the most advantageous terms for the sale of the property.

The buyer wants to buy at the lowest possible price, and with as many benefits and amenities as possible.

How is one agent, negotiating between buyer and seller, going to be able to obtain all of this for buyer and seller? *Smells like conflict of interest to me!*

It is also important to remember that real estate agents in Mexico do not have the same responsibility under Mexican law, to fully disclose problems and defects to potential buyers and sellers. There is also less government control in this area.

The buyer's agent who has the fiduciary duty to represent your interests should, of course, treat all parties honestly and fairly. But, the buyer's agent will

more than likely not have any listings. This is important to avoid a potential dual agency (*problem!*) situation. Everything he/she shows you will be listings handled by other agents and/or companies. An additional advantage for using the buyer's agent is that, as your agent, he or she will search the ENTIRE market, including For Sale By Owner properties.

Better yet, if you drive by an attractive property with a sign on it, or locate something on the internet, your buyer's agent should be prepared to research it, obtain information about it for you and draft and negotiate an offer on your behalf.

Selecting your Agent:

1. Make a conscious decision to acquire any property ONLY through an agent who is committed to representing only your interests and not those of the seller.

2. In preliminary viewings of property, thank the agent showing the property, for his time, and explain that if you have further interest you will have your agent contact her.

3. Find YOUR own special agent!! Interview several that appeal to you, ask for a resume of past business experience and references. Ideally, the agent you select will be a member of AMPI and the National Association of Realtors® (NAR) and will have obtained the Accredited Buyer Representative (ANR) designation awarded by NAR.

4. Once you feel comfortable with the person selected to represent YOU, expect to sign some sort of simple agreement in which terms of the representation are outlined.

Advantages of Working with a Buyer's Representative:

Working with a Buyer's Agent can save the buyer time by:

1. Helping determine the amount that can be spent and exploring financing options.
2. Previewing properties, and verifying property condition
3. Suggesting important inspections by experts.
4. Verifying property taxes, utilities, verifying value.
5. Structuring an Offer
6. Presenting the offer to the Seller and/or Seller's representative
7. Negotiating favorable contract terms for the Buyer
8. Overseeing preparation of documents for transfer.

A good Buyer's representative will persevere, has solid negotiating skills, and is on the BUYER'S side. Be sure to protect your interests by obtaining proper representation at the negotiation table!

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