

HOW SECURE IS YOUR INVESTMENT IN MEXICAN PROPERTY???

by Linda Jones Neil

All too often citizens of the United States, Canada and other countries ASSUME that property purchases are carried out automatically in Mexico in a manner similar to that of their native countries. The first law of property purchase in Mexico is DON'T ASSUME anything! Purchasing property is NOT the same as in other parts of the world.

Would you purchase a property in your hometown which is not registered in the local public registry or land titles office?

Would you hand a complete stranger, without an office or an established business entity, a check for perhaps hundreds of thousands of dollars to pay for a property?

Why do so many foreigners do this when they purchase in Mexico?
Many do not realize that Mexico has a complex and complete legal system and a court system that is as well organized as any that exists in the United States, Canada or Europe. It is essential that you have an idea of how the system works and what to expect when considering a purchase of property in Mexico.

Don't leave your brains at the border!

Article 27 of the Mexican constitution prohibits ownership by a foreign individual or business entity of real property (real estate) within the "restricted" zone which is a strip of land approximately 30 miles from any coastline and 60 miles from any border. Recognizing the demand by foreigners for ownership of property and recognizing the importance of making desirable properties available to foreigners for potential positive impact on the economy, the Mexican government implemented a series of Foreign Investment Laws beginning in 1973. The law was modified in 1989 and again in December 1993, to incorporate the provisions of the NAFTA treaty passed in late 1993.

For those who are acquiring property for residential usage, the law requires that title to the property in the restricted zone be transferred to a Mexican bank, as trustee, in the establishment of a trust (*fideicomiso*) in which the foreigner is the beneficiary. The bank is the titleholder of the real property and the foreigner is the owner of the rights of usage of the property. The bank owns the *real* property rights and the beneficiary owns the *personal* rights of usage. Ownership of these personal rights is evidenced through a deed prepared by a Mexican Notary Public and signed by a representative of the trustee bank.

Currently the term for a trust is fifty years. The Foreign Investment Law of 1989 provides for renewal by filing an application. Multiple renewals are permitted under the law. By requesting extensions every fifty years, a property may be controlled by a family or business entity for generations.

For those foreign individuals or companies buying property in the interior of the country, not in the restricted zone, no bank trust is required but authorization from the Secretary of Foreign Relations must be obtained and ownership must be registered in the National Foreign Investment Registry located in Mexico City, as well as in the municipality where the property is located.

AVOID TAXES AND EXTRA COSTS, LEAVE THE DEED IN THE SELLER'S NAME: *This is wrong!* Until the buyer is formally named as the owner in fee simple or in the bank trust in a public document before a Mexican Notary Public, title to the rights in the property remain with the persons named in the previous property deed. Their signatures are required to transfer title. If the buyer fails to obtain his or her own deed he/she will be required to obtain the titleholder's signature before a sale and transfer to another buyer. This can be costly, frustrating, dangerous and time consuming.

THE IMPORTANCE OF REGISTRATION OF THE DEED FOR BENEFICIAL RIGHTS.

The purchase/sale document signed by buyer and seller is generally legally valid between the parties to a transaction. It most likely contains the description of the property, the price to be paid to the seller, and any other special terms and conditions. It WILL NOT, however, provide valid notice to third parties unless it is recorded in the Public Registry Office of the municipality in which the property is located. Mexico's land registry system functions in much the same manner as the Public Registry offices in Podunk, North Dakota, Los Angeles, California, Ottawa, Canada or places in between.

Many foreigners purchasing property in Mexico do not understand the importance of registration of their interest in property. They believe that it should be left in the name of the property developer, in the Master Trust, or in the name of the previous holder of title. **What if the developer goes bankrupt? What if the corporation and its principals, disappear? Who then owns the property? Who can sign as the representative of the property? What happens if an unscrupulous seller sells the property to someone else?** While title is in the name of the seller, it is HIS/HER asset; she may mortgage it, he may sell it again, it may be attached in satisfaction of a judgment, she may die without a will.

Unless the deed for the rights of the beneficiary has been recorded, there may not be a remedy for the purchaser who neglected to obtain a registered deed...his or her interest and investment, may be lost.

*To obtain the deed an appraisal, a property tax certificate, and a no-liens certificate must be obtained. Notarized bank instructions must also be obtained if property is in the "restricted " zone. Seller's capital gains tax and Buyer's acquisition tax must be paid. The deed transferring rights to the buyer must be registered and stamped by both the tax office and the public registry. If this process is not complete, the buyer is not fully protected. **The buyer's ultimate protection is registration in the Public Registry office record, NOT the Notary Public or the trustee bank!***

FINANCED PROPERTIES

When property is sold with a down payment and the balance to be paid over a term of years, many sellers prefer to hold title to the rights in their name and transfer title to their rights only upon receipt of payment in full. Meanwhile, however, the seller may die, may disappear, may go bankrupt... again risky situations for the buyer. **The prudent buyer will insist upon a transfer of title and registration of a mortgage or pledge in which he gives his rights in the property as security for**

payment of the remaining purchase price.

In the event of default by the buyer, the seller must conduct a proceeding similar to a judicial foreclosure in the United States and Canada. It is as troublesome as a foreclosure in any country in the world but not notably more problematical. The registered title and recorded pledge or mortgage provides the buyer a greater comfort level in his investment. The lender also enjoys protection in having his loan recorded and will have an established legal proceeding to follow in the event of default by the buyer.

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