

Caveat Emptor – Mexico Buyers Should Be “AWARE”

**Mitch Creekmore, Stewart Title Guaranty Company
Mexico Division**



Americans being threatened with eviction from their beachfront homes in a residential development in Mexico, known as the “Baja Beach and Tennis Club,” has taken center stage in various US papers and periodicals. Well known publications like *USA TODAY*, *The Wall St. Journal* and the *Los Angeles Times* have all run articles depicting the tragic plight of these unfortunate Americans in Mexico. Chris Kraul of the *LA Times* writes, “the looming evictions at this surfside community known as Punta Banda provide a wrenching example of how life in Mexico can turn risky or even tragic.” He writes further in the article that “It should also cause the estimated 63,000 Americans who already own in Baja California to reflect how ownership can be like the shifting white sands of the Baja beaches, and how powerless U.S. authorities are to intervene in disputes.” All of the articles portray that the sun is setting on these Americans supposed paradises in Mexico. One obvious question out of the journalistic sensationalism that’s being presented should be “could this tragedy have been avoided?” The simple answer in truth is yes and it is not the fault of the Mexican government as has been portrayed.

Mexico has had a constitutional prohibition on foreign ownership of land in the “restricted zone” since 1917. In 1972, the government of Mexico initiated a legal process of entitlement to protect foreign purchasers known as the *fideicomiso*. (Arizona Journal “Trust” Article, March, 1999) Today, as in 1972, any type of residential property within the prohibited zone can only be acquired by foreigners (non-Mexicans) with title being held in a fifty year renewable bank trust whereby the purchasers have a recorded beneficiary interest to the property. In essence, foreign buyers have the right to use, develop, mortgage and enjoy the property like in the United States, but legal ownership is vested in a federally chartered Mexican bank that holds title to the real estate as trustee for the beneficiary. In the case of “ejido” property, land that is entitled by Mexico’s Ministry of Agrarian Reform for use by Mexican citizens or “campesinos”, these agrarian parcels can not be sold or conveyed to foreign purchasers or Mexican nationals without the ejido first being privatized. This process is known as “regularization” and it was created in 1992 as a result of a constitutional amendment to Article 27 of Mexico’s constitution. However, ejido land has been “sold” to naïve and somewhat unsuspecting foreign buyers for years. What is the allure? Quite simply, a beautiful piece of beachfront property at a cheap price by American standards.

But what really is at the crux of these articles and the other “horror” stories we’ve all heard or read about involving Americans buying Mexican real estate they can’t get title to? This writer will tell you that it is a multi-faceted problem involving the manner in which real estate has been developed, marketed and sold to uninformed U.S. buyers for years. And it’s still going on today, not only in Baja California, but in most of Mexico’s other resort markets including Sonora and certainly in “Rocky Point”. At the heart of the problem is the development process of the land and the way the resulting residential property is marketed and sold. As has been stated before, Mexico is not the “wild west”. (Arizona Journal, “Subdivisions” Article, May, 1999) There is formality of law and prescribed development procedure on a state by state basis. The question then becomes, “is the developer adhering to the appropriate process or are they ‘cutting corners’ in order to get their sales effort going”? More times that not, the answer is the latter and you, the buying public, must roll the dice as to whether the developer or real estate agent will make good on their claims and promises. It comes back to that tired adage of “trust me, that’s just the way we do it

here in Mexico.” However buying public, you can be a lot smarter than that and you can certainly be better informed!

With recent changes in the market place over the past five years, foreign purchasers of Mexican properties should know what to ask and what to look for. First and foremost, any buyer today can get a title search done on a prospective property. There are several companies, U.S. and Mexican, that provide title examinations or title reports. These title investigations should include a lien search of the property, subdivision approvals and permitted development licenses for the land, in addition to an extended search of the chain of title. Other companies, like Stewart Title Guaranty, will issue Commitments for Title Insurance and subsequent Owner’s and Lender title policies after an extensive title search of the deed records has been performed and the real estate has been conveyed AND recorded in the public registry of property. Some of these companies can also provide escrow services for earnest money. A foreign buyer does not have to rely solely on the notario publico’s title search which is customarily very short in the conveyance history of the property or merely the examination of the current escritura (deed).

Buyers should always ask the developer, or more often the sales agent/broker, if a bank trust can be obtained at the time of closing on the residential acquisition. Listen closely to the answer buying public! More times than not, the reply will be yes but **not** at closing. Often, purchasers get possession of their respective condo, lot or house before legal beneficiary interest is conveyed. And why is that you ask? Because the developer has not obtained the necessary subdivision approvals, or the condominium regime has not been filed of record, or the land has not been properly regularized for bank trust entitlement. There are a number of developments in Puerto Peñasco that fit this criteria!

It is worth noting though, buying public, that the market is rapidly changing and all for the better. New projects that are coming on line and out of the ground are not being developed in the “old school” manner. Obtaining the required approvals and permits prior to beginning the sales effort is more in evidence. Properties being offered for sale with title insurance policies, enforceable contracts of indemnity under a U.S. state jurisdiction, are becoming more readily available. Some Mexican projects sell their properties with a title policy just as if they were being developed in the U.S. Moreover, real estate professionals in Mexico are going to be required to be licensed in order to sell real estate. Full disclosure of all pertinent property facts, something sorely missing in most Mexico markets, is becoming more the norm. Like in the U.S., Mexican sales agents must become a reliable and accurate source of information for the benefit of you, the buying public. The mentality of “if it’s going to kill the deal, don’t tell ’em” and “you don’t need title insurance, we don’t have title problems” can no longer be tolerated in Mexico.

Lastly, anyone contemplating or desiring to buy property south of the border, needs to be informed. One should always consult the many resources that are now available to help educate a prospective foreign purchaser. Consulting an attorney, calling a title company, reviewing web sites that have pertinent information, or even reading the various articles and books that have been published, can all provide valuable insight into the Mexican real estate conveyance process. And most importantly buying public, never leave your common sense at the border. Too often, American buyers become gullible when they cross into Mexico and wind up relying on the advice of those that are trying to make a sale or get a deal closed. Ask the appropriate questions, do your homework, and always trust your better judgement. If the information your given doesn’t sound right, or you don’t have a “good feeling” about the property, then be prepared to walk away from it. In the long run, it will serve you better and give you more peace of mind. The purchase of real estate in Mexico can be a happy and profitable experience. Just make sure you make it that way.

Mitch Creekmore is the Director of Business Development for the Mexico Division of Stewart Title Guaranty Company in Houston and may be contacted at (800) 729-1900, ext. 8753 or (713) 625-8753.