

“SUBDIVISIONS IN SONORA NOT UNLIKE ARIZONA”

By Mitch Creekmore, Stewart Title Guaranty Company
Mexico Division



Several years ago when I first came to Arizona to begin Stewart Title Guaranty's promotion of title insurance on Mexican real estate, I was greeted the day before by an article in your local paper entitled "Bad Day at Rocky Point." The issue at hand and reason for the publication was that Arizonans were unhappy that they were having to pay significant sums of money to the Sonoran government and the Mexican developer of a well known "Rocky Point" subdivision in order to have legal "title" to their residences. In essence, they were being required to purchase the single family lots that they had leased in years past as part of the local governments attempt to bring the residential subdivision into mandated development law compliance. Arizona homeowners (although the term would be misleading in this particular subdivision) simply could not understand why they had to buy the lots and establish Mexican bank trusts ("fideicomisos") when they had been allowed to lease the lots and build their houses in years past. The fact of the matter was that the Mexican developer had not complied with the established state government procedures for subdivision development and, as a result, foreign purchasers could not acquire legally recorded beneficiary interest on their residential properties. Unfortunately, this same issue has affected many other Arizona purchasers in other Sonoran projects and the problem continues today.

I have learned during my Mexico tenure that many Americans think our neighbors to the south just throw lots on the ground and start selling because "that's the way it's done in Mexico". I must admit, that *has* been the case in some of the residential projects I've been exposed to. But it is my observation that this is the fault of the developers and gullible, uninformed American purchasers and not the Mexican system. The "margarita syndrome" (as it is often referred to) or "trust me, everything will get done but it takes time in Mexico" should not be used as a prudent basis of acquisition by foreign buyers. Mexico is not unlike the United States (or Arizona for that matter) when it comes to the development of real estate. There is formality in law, approval of intended development, requirements of compliance with authorization by local municipalities and the state government. In order to be a more informed buying public, and to avoid future acquisition nightmares, I think it is beneficial to know and understand in particular what the state government of Sonora mandates for the development of residential subdivisions.

Under Article 27 of the Mexican Constitution, there are three (3) recognized property types in the country. Article 27 defines them as private, social and public property. In 1976, the government of Mexico established the Human Settlement Law for the regularization of land development and, in essence, eliminate property development chaos. Each state in Mexico has its own development law and subsequent requirements. In the case of Sonora, there is the Law of Urban Development for the State of Sonora (*La Ley de Desarrollo Urbano Para el Estado de Sonora*). It is commonly referred to as Urban Development Law 101. The procedure to authorize the development of a subdivision ("fraccionamiento") is specified by the Office of Urban Administration, Secretary of Urban Infrastructure and Ecology for the State Government of Sonora (*Direccion de Administracion Urbana, Secretaria de Infraestructura Urbana y Ecologia* ("SIUE"), *Gobierno del Estado de Sonora*). Typically, the process to receive approval for an intended residential subdivision is as follows:

Initially, the developer must take the necessary steps to obtain a land use license from the city council (“ayuntamiento”) or local municipal authority. This process includes (1) submission of an environmental impact study on the land to be developed, (2) deeds of ownership on the property (“escrituras”), (3) a land plan of the tract, and (4) a location map of the overall property.

The developer must also submit a draft or blueprint (“anteproyecto”) of the proposed development. The city council will then present the draft of the proposed project along with the land use certificate, deeds, location map and land use plan, including a layout of the lots and blocks of the subdivision to SIUE. At the same time, the city council or municipality will facilitate and obtain the feasibility of potable water service, drainage and electrical service for the proposed subdivision from the appropriate municipal agencies by presenting the land use license and the land plan of lots and blocks to the respective authorities. The developer will then receive initial approval for the intended subdivision from the city council or municipality.

Once initial authorization is granted, the developer must then submit a formal executive development plan and all required documents to the city council or municipality according to Article 129 of Urban Development Law 101 of Sonora. The local authorities will present the project again to SIUE with the calculations of water and sewer use for review, revision and approval. Additionally, the municipality will submit the calculations for electrical usage and street lighting to Mexico’s Federal Electricity Commission (“Comision Federal de Electricidad”) for their possible revision and subsequent approval. After a satisfactory review of the general project plan by the authorities, the developer will be authorized by way of formal agreement with the municipal president or mayor which will establish the obligations and the time period required to complete the proposed subdivision. After the developer donates 15% of the overall land as required to the local municipality (which is generally utilized for common areas, green belts and/or schools) and pays the development fees as mandated, they must publish the subdivision approval in the “Boletin Oficial” (official bulletin). The Boletin gives the public notification and government approval of the intended development. Lastly, the developer must record the agreement in the Public Registry of Property along with the unilateral declarations of intention to develop the property with copies going to the local tax assessor office, the treasury department and to SIUE.

It has been the experience of Stewart Title over the past three years that residential development in Sonora has made a significant change for the better. No longer are *most* developers starting subdivisions without first obtaining the necessary approvals. Some have even gone to the point of having complete authorization and publication of the intended project prior to beginning their lot sale process (lots can not be conveyed to foreign purchasers until bank trusts can be obtained). And though development considerations continue to improve in Mexico, it should be a prudent and informed buyer that knows what to look for in residential acquisitions. There should never be any reason why a buyer does not ask certain basic questions that can provide more comfort and security when contemplating a residential purchase. In short, ask the developer if they have an approved subdivision and ask for a copy of the published authorization. Also ask them if the property (lot or residence) will be conveyed to a fideicomiso at the time of sale. If not, one should inquire as to why and try to better understand the outstanding development issues that may exist on the subdivision. In the end, you’ll appreciate the peace of mind that comes with knowing you bought a “legal” piece of Mexican real estate and not being in the uneasy situation of wondering when you’ll acquire good and enforceable title. And oh yeah, two other important points. Insure your Mexican property with a title policy just like you would in Arizona and always consult competent legal counsel on *any* real estate acquisition!

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.