

## BUYING REAL ESTATE IN MEXICO AND THE MEXICAN NOTARY PUBLIC

Even as a tourist you may buy real estate in Mexico. This may be owned through a Mexican bank trust or in your own name. With a bank trust (*fideicomiso*) it is simple to transfer title upon sale through a Mexican notary public. Beneficiaries may be named in case of death. A Mexican will is not required.

Should you decide to own property in your own name, a deed called an *escritura*, **must be prepared by a Mexican notary public**. In some states in Mexico it is now possible to name beneficiaries in the deed, but if this is not the case it is well to have a Mexican will prepared to avoid expensive legal fees and probate at the time of death.

There are great differences between the United States notary public and Mexican notary public. In the United States the notary public may be the local butcher, the new accounts clerk at the bank, the secretary at the office, or practice any other occupation.

In Mexico, the notary public (*notario publico*) is a public official appointed by the State Governor. He has the capacity to attest and certify documents and business and legal transactions that require authenticity. He also provides for strict security of original records and documents.

Some of the requirements for becoming a Mexican notary public are as follows:

1. must be a Mexican citizen;
2. must be thirty-five years of age;
3. have a law degree;
4. three years experience working in a notary public office;
5. must take and pass an examination and;
6. if he passes, in time the governor will give him an appointment.

There is supposed to be one notary for each 30,000 people.

In Mexico, every legal document, such as deeds, wills, powers of attorney, constitution of corporations, establishment of trusts and other legal transactions must be made before a notary public in order to be valid. If the document is not notarized by a Mexican notary public it is not legal!

When buying real estate and you reach an agreement, go to the notary public first. The buyer chooses the notary public. **For real estate transactions you do not need an attorney**. The notary public is completely capable and legally authorized to carry out the transaction.

In many cases an attorney will delay the transaction, charge you unnecessary high fees, and have absolutely no bearing on the situation, as it is not of his competence. Before giving any type of down payment or committing yourself to a deal, take a copy of the actual *escritura* (which should be given to you by the seller with no argument if everything is in order) to the notary public to check the deed's validity.

If buying property from a developer, have the notary public check to see that he has his permits for the development and for construction. A beautifully engraved certificate or formal letter promising a deed at some future time is not a deed, but merely a sales contract.

Have the notary public determine that the land is not *ejido* land (communal agricultural land). The right to use this type of land can be purchased, but always a risky deal, as it is not your property, you are only allowed to **use** it.

Insist on making all real estate transfer agreements before a notary public. Do not be pressured by someone who says that you need to put money down right away.

The notary public will need from both parties to the transaction: proof of full names, marriage certificates, proof of dates and place of birth, official identification with a photograph, such as passport or driver's license, and your visa to prove that you are in Mexico legally.

The notary public will need from the seller: 1. his deed; 2. Up-to-date tax receipts, water bills, subdivision (*fraccionamiento*) fees, and any other public utilities bill, paid up to the date of sale. The notary public will determine capital gains taxes through an official appraisal (*Avaluo*).

The capital gains tax, if any, is paid by the seller. However, through mutual agreement, it may be paid by the buyer. Make sure you know how much this will be--the notary will inform you of the cost before the transaction, almost to the cent. Cash or money changes hands the minute the seller signs over the deed, usually in the notary public's office. The buyer ordinarily pays notary fees incurred, which also must be paid when the title is signed over.

The process is not over yet -- the notary public must register the *escritura* in the *Registro Público de la Propiedad* (Public Registry of Properties). This should be done promptly, as the transaction is not valid until registered. A normal time frame for this is around two weeks.

Property within sixty-two miles (100 kilometers) of the border and thirty-one miles (fifty kilometers) of the coast must be held in a bank trust. You will need a permit from the Secretary of Foreign Affairs.

The buyer may choose the bank that will handle his trust, and may want to shop around to determine where he can get the lowest fees.

Most real estate transactions in Mexico are not fraudulent. The fraudulent deals are fairly rare and definitely not the norm. Any transaction done with a notary public should not have any problems, as **he or she** is legally responsible that everything is in order. People who buy real estate in Mexico often invest their life savings in their "dream" retirement home, and everyone should be aware of Mexican laws and be cautious.

Sometimes people are so impressed with the natural beauty and climate of Mexico that they "throw caution to the wind" or "leave their brains at the border." This has been referred to as "margarita fever."

Another consideration: Is the property you are thinking of buying, readily marketable should you decide to return to the United States or your native country?

We have found that most real estate brokers and developers are honest and above board. Should their sales techniques be like those of a "time share" salesman pressing for "an impending happening close" for the transaction, be careful.

Basic safeguards on real estate purchase do not yet exist in Mexico as in the United States or Canada. There is no credit bureau to check on the developer's financial condition.

For the typical person off the street, you **need** a notary public to hold your hand right from the first steps of the transaction--a title search takes him at the most a few days. If there is any potential problem, the notary public will not foul his good name and will let you know immediately.

Chances are that you will never have a problem when buying real estate in Mexico. Just be diligent in doing your "homework".