

## ***Building in Baja, Mexico Part 5***

The "to build or not to build" series of construction in Baja was begun because of my own experiences and desire to help people avoid those problems that are avoidable. Well as you can see below this series is being read and does apply to construction in Mexico in general. You will see the question asked of our engineer friend Jorge Ayala are being asked by someone from Puerto Vallarta.

Jorge,

We are enjoying the very helpful info on building in Mexico. I'm wondering if you could advise us on how best to evaluate an existing commercial building in Puerto Vallarta. Specifically, I'm curious to know if the buyer of an older structure is libel for any inferior work and/or unpaid workman's comp?

We understand that you are primarily concerned with working in exotic Baja, however, since the only person I know in PV is the realtor representing the property, it occurred to me you might give us some initial "real world" direction.

Jorge's answers and suggestions follow:

Tricky, tricky questions. Let's see if I can help you here.

About evaluating an existing commercial building in Puerto Vallarta, I have the following suggestions:

1. Have a Civil Engineer do a visual inspection of the structure to see if it's sound or needs any repairs, and to give you an idea on how much would it cost if necessary, so you can use this as leverage to negotiate a final price of sale. If the building is relatively new. I would still recommend having a Professional (engineer) Certified in the area, to give his opinion. Same for the electrical and all mechanical installations.
2. The realtor is obligated to show you a letter from "Catastro" (Town planning department) and from "Registro Publico de la Propiedad" (Town recording department) where it should say "Libertad de Gravamen" this letter means that there is no lean against the property, nor is the property is in a court battle.
3. Ask the realtor to get a copy of the Construction Permit or License of the entire Building that you intend to buy. This will show you if the construction was done in a legal manner. There should have been, an Engineer of Records, who signed off on the plans and inspected the construction during its process. In this case he is responsible in first order of the construction liability for quality of workmanship of the structure. This is not so for the finishes nor for materials. For inferior workmanship the contractor is the only one liable in a court suit, unless his client ordered him to use an inferior material or ordered him to do something of inferior quality.
4. About Workers compensation (Social Security ~ **Instituto Mexicano del Seguro Social**) the original owner is the only one liable for this evasion of responsibility. This is only if you **DO NOT CHANGE ANYTHING TO THE EXISTING BUILDING**. If you make any modifications to the building (in the case of a remodel) then you are the one responsible from this point and on. Here I would recommend that the Realtor solicits the existing owner for a copy of a letter from **IMSS** saying that the building has no penalties or liens against it and that the owners complied with all of their obligations.
5. **One very important issue** is to have the building recorded with the actual sale value, this case when and if you sell it in the future you will not get hard with the Capital Gains Taxes, a lot of people think is a cheap way to pay less taxes for the transaction, but then they are stuck with the CGT at the end. I've seen this happen many times here in the Eastcape area. And these taxes can be considerable; I think they are about 28% to 35% your Public Notary (notorio publico) should know for a fact.

In summary:

Ask for original or certified copies of the following paper work, besides all of the other papers needed to process a purchase a lot. These papers that I mention are hardly ever asked for until there is a problem.

- ? A visual inspection by a Certified Civil Engineer whom can evaluate the structure and mechanical installations of the building.
- ? The letter of "Libertad de Gravamen". **Have the notary state this information in the fideicomiso or deed of the property. This way it's locked in for any future possible trouble.**
- ? Construction Permit of the entire building, plus the Certificate of Occupancy (Oficio de terminacion de Obra) and the Manifestation of the building recorded on the lot. **Have the notary state this information in the fideicomiso or deed of the property. This way it's locked in for any future possible trouble.**
- ? The letter from Mexican Institute for Social Security ~ IMSS stating the seller/owner/builder has complied with this obligation. **Have the notary state this information in the fideicomiso or deed of the property. This way it's locked in for any future possible trouble.**

Jorge has once again pointed out some of the ways you can be surer of what you are buying or dealing with as far as the government and the liabilities of those involved. Please heed this advice as you may avoid some major nightmares in the future.

I have heard some people say not to go to all the hassle. Well I have been investing in properties for awhile in Mexico as well as the state and almost always check the Building and Planning departments and twice have avoided "buying a lawsuit" as I like to call it. Yes there are laws to protect you but anywhere in the world the best protection is to do your homework and not just rely on Real Estate agents or friends as they will not be there when things go wrong.

I hope once again you find this information helpful and appreciate any questions or comments you may have. Thank you Jorge and Happy building in Mexico to you all.

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