

## **Using American Financing and Title Insurance**

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### **Using American Financing and Title Insurance**

#### **To Purchase Property in Mexico**

With the changing of the Mexican Foreign Investment Law over the last few decades, many foreigners are now taking advantage of the opportunity to purchase real estate in Mexico. Homes and undeveloped land are being purchased at a rapidly increasing rate by citizens of the USA, Canada and other foreign countries. And with the ability to now obtain both financing and title insurance from American based companies, the transaction is much easier and less risky.

An American (or any foreign national) can acquire land almost anywhere in Mexico with the permission of the Foreign Affairs Ministry. An important exception in the Foreign Investment Law is that foreigners may not directly acquire real property in the "**restricted zone**". The restricted zone is the strip of land within 100 km of the border and within 50 km of the beach. If a foreigner wishes to acquire land in the restricted zone, he or she may enter into a trust agreement with a Mexican bank in order to make their purchase. Since all of the Los Cabos and San Jose del Cabo areas of Baja Sur fall into this location, how does one purchase and finance their home or condominium or future building site in Baja Sur?

#### **Property Acquisition with a Bank Trust**

A Foreigner may not hold fee simple title (in other words the actual title itself) to any land in the restricted zone. To purchase land in the restricted zone, a trust is necessary. In a trust, a Mexican bank holds actual title to the land while a foreign beneficiary, the purchaser, has the right to use, enjoy, or even sell the land, and receive the future proceeds. Certain requirements such as obtaining the trust permits and entering into the trust agreement, as well as paying required fees, must be undertaken in order to follow these laws.

#### **The Acquisition Process**

Aside from the use of a Mexican bank trust (fideicomiso) and the requirements of a Mexican *Notario Publico*, the process of buying either raw land or a house/condo in Mexico is similar to that typically found in the USA in terms of the ability to obtain both financing and title insurance.

Recently, several large companies have begun to offer financing in Mexico. These loans are typically collateralized by the real estate held in the trust, and usually do not exceed 70% of the value of the property. As with traditional purchases, a buyer should utilize the services of

qualified and knowledgeable Mexico licensed lawyers, real estate brokers, lenders and title insurance companies.

Lenders will typically require that the property be appraised and that the title be searched to insure that the ownership is correct in terms of the Seller and any possible liens or other encumbrances. This is where having competent legal counsel comes into play. Also, the written documents used to sell real estate in Mexico are different than those used in the United States and elsewhere, so a competent real estate agent can help with those initial explanations when the process is first begun.

As mentioned above, American lenders will typically offer up to a 70% loan to value mortgage on a property in the Los Cabos and Baja Sur area, with shorter terms such as 2 – 5 years, although they may be amortized over 20 or 30 years, and may require minimum FICO credit scores. Different lenders have varying maximum loan amounts, with some lenders going as high as up to USD\$2,000,000 or more depending on the borrower.

Loans do have fees and potentially other pre-payment penalties or required documentation, so it is best to consider the qualifications and references of potential lenders to make sure they understand the Los Cabos market and have done business in that market previously. That way, you are hopefully avoiding potential pitfalls.

The advent of title insurance has been a real positive for foreigners buying property in Mexico. Many Americans want to have title insurance on the property as a way to reduce liability. While it is not common for Mexicans to purchase title insurance, many Americans, and their lenders, will require this added insurance. The use of a title company is also important in that it can provide escrow services so that the money paid for the purchase of a property is not distributed until the appropriate time, and after the appropriate due diligence and written documentation has taken place.

Also, when buying a condominium or a timeshare or other fractional ownership of real property, it is very important to make sure you and your lawyer have properly reviewed all condominium regimes, rules and regulations and related documents as these will typically affect your legal and ownership rights. Many lenders and title companies will not be able to finance and insure your purchase until these documents have been finalized and filed of record into the public registry in Mexico.

### **Important Factors to Consider**

Other areas of possible concern to be aware of when purchasing real property are:

1. Make sure the Seller has the valid legal right to sell the real estate you are considering to buy;
2. Use a well respected real estate agent that is familiar with the Baja Sur area so they can tell you the pluses and minuses of your proposed purchase;
3. Use a lawyer that is licensed in the country of Mexico so that you can be sure that they understand all of the required processes to be followed when purchasing real estate, and that they are authorized to make all of the required government filings and other representations;

4. Use a lawyer that is fluent in both English and Spanish so as to save time and money during the process, as this will allow them to both interact with all required government officials as well as being able to properly and timely keep you informed as to the progress of your transaction;
5. Utilize the services of a title company, for both escrow services and title insurance, so as to protect your funds and your property both before, during and after your purchase;
6. Make sure the written sales documents state the full purchase price that you are paying for the real estate, otherwise you run the potential risk of violating the Mexican tax laws, and having possible tax complications and tax code violations when you later sell the property. A qualified lawyer, licensed in Mexico, can help explain this to you;
7. Ask about fees and expenses, of both your lawyer, real estate agent and other parties assisting you, as well as the required fees for filings, registrations and tax payments, etc. so that you can budget accordingly. Required government fees in Mexico tend to be higher than those in other countries such as the USA and Canada; and
8. Use both the internet and later personal references for anyone that you might consider utilizing to help you in the transaction. While many people have been working successfully in the Los Cabos and Baja Sur markets for many years, others are rather recent arrivals and may not know their way around as well as others.

Buying real estate in Mexico can be a fun, exciting and profitable venture, if you utilize the services of qualified people and companies to help you achieve your goals. And remember, when it is all said and done, you'll have your own place to call home in paradise.

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