

ANCILLARY CLOSING PROCESS COMES TO MEXICO

By Mitch Creekmore, Stewart Title Guaranty de Mexico



Notarios Publicos are responsible for the real estate closing process in Mexico. They provide a “cradle to grave” service for the establishment of real property rights in this nation. Not unlike other civil code jurisdictions throughout the world, these highly-specialized Mexican attorneys create judicial certainty in the conveyance of realty and they **will not** be replaced. In essence, public notaries in Mexico are the equivalent of the title company (or attorney) we utilize in the United States to close property transactions. *Notarios*, however, do not control the development of real estate nor what a developer does in its legal entitlement process to insure good title to the property. Mexico’s public notaries are neutral and work for the benefit of the parties in any property conveyance. Development law is normally mandated by the respective state, along with compliance at the city or municipal level. It is incumbent upon the developer to adhere to procedures and requirements as prescribed by law. It is not the responsibility of the *notario* to enforce or “police” the development process in any given state.

Foreign purchasers may establish beneficiary trust rights (*a fideicomiso*) for residential real estate located in Mexico’s “restricted zone.” As is often the case in the Mexican Republic, developers pre-sell properties under a promissory agreement with the provision that the *fideicomiso* (Mexican bank trust) will be provided once the residential lot subdivision is legally authorized or the condominium regime is filed of record. Too often, this can take months after a purchaser has paid the full purchase price for the real estate. Foreign buyers are given the right to “possess” or occupy the property but do not have title to it. Once the required documentation is finally in place, the developer must begin the process to convey the realty and establish the bank trust for each non-Mexican purchaser. This can be a daunting task for even the most sophisticated development company. There are many logistical matters, procedures and documentation issues that must be satisfied to establish the *fideicomiso*.

In order to acquire beneficiary trust rights at the time of closing, among other requirements, a foreign purchaser is required to obtain a bank trust permit issued by Mexico’s Ministry of Foreign Relations, (generally costing approximately \$1,200). There is also a requirement for payment of the annual trust fee, a letter of trust acceptance fee, and a fee for the trust letter to be filed of record with the bank acting as trustee, as well as other requirements related to the specific transaction. In addition, the foreign buyer must pay the applicable transfer tax to the federal government of Mexico at closing (approx. 2 percent of the declared value of the operation), a notary fee, a fee for an appraisal required by the trust bank on the subject property, a lien certificate fee, a tax debt certificate fee, recordation fees and other closing costs. Some documents must be “apostilled” in order for them to be accepted by the *notario publico* –including verification of citizenship, a process which provides certification by the respective buyer’s Secretary of State. As one can see, these closing matters and required documents can create a paper process that is logistically difficult for most Mexican developers, especially when dealing with a buying public in the United States or Canada.

Today, an ancillary turn-key closing service from a U.S. title insurance company is available and is being rolled out in Mexico to help facilitate the real estate closing process. This centralized service can be provided for any type of Mexican development, property or project. The heart of the process is that it is coordinated from the United States with a U.S. title insurance company acting in a fiduciary capacity as escrow agent. That title company will provide escrow and funding services, closing package origination to the respective buyers and wire transfer capabilities to anywhere in Mexico – basically applying a U.S.

standard of closing assurance on Mexican real estate. A purchaser using this service will have the comfort and security of knowing that their funds are being held in the United States and ultimately disbursed by a title company. Those funds will be tied to a fully-executed escrow agreement with disbursement instructions as agreed by the parties to the transaction. The company will send a letter of instruction in the closing package, setting out the requirements and procedures, in addition to a settlement statement for the release and payment of the various fees, permits, closing costs and appraisal. Additionally, it will include the necessary forms required by the trust bank that need to be executed by the respective buyer to initiate the *fidiecomiso* process. Once the package and required information is complete – along with receipt of the needed funds into the escrow account – it is forwarded to the developer for processing, deed preparation and ultimately funding to the various entities.

Investment of any type is a choice. Purchasing real estate in Mexico can be one such alternative that provides enjoyment and hopefully monetary appreciation. A Mexican real estate acquisition should be a safe and secure process. A turn-key closing service provided by a U.S. title insurance company is one more creative step in an evolutionary process that provides greater certainty and protection for buyers of realty in Mexico.

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