

**Buying Real Estate  
in  
Mexico  
  
(A Consumer's Guide)**

A publication of the  
Arizona Department of Real Estate (ADRE)

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Janice K. Brewer  
Governor

April 2011

Greetings!

Arizonans and Sonorans have long been neighbors, and share a deep respect for the region's unique combination of Sonoran Desert, lush highlands and sandy beaches. It's little wonder, then, that Arizonans have purchased and continue to pursue real estate investments in Mexico's rapidly growing real estate market – most notably in Sonora.

For more than half a century, Arizona and Sonora – through the Arizona-Mexico Commission and the Comisión Arizona Sonora – have worked to promote an era of cooperation that has yielded strong business opportunities, tourism and economic prospects with foreign investors.

Research shows that many of the investors and future homeowners in Sonora come from Arizona. But home purchases can be daunting even under the most familiar circumstances. So, if you are contemplating buying a second home or looking for a retirement getaway in Mexico, the first step is to understand how real estate transactions are made in Mexico.

That's why *Buying Real Estate in Mexico-A Consumer Guide* is such a vital and important publication. It is made available by the Arizona Department of Real Estate.

I would like to extend a personal "thank you" to the Department for working with experts from both Arizona and Mexico in developing this guide. I believe consumers will find it a valuable tool. May our citizens continue to enjoy the beauty of both Arizona and Mexico.

Sincerely,

Janice K. Brewer  
Governor



Judy Lowe  
Commissioner

Welcome!

Have your travels in Sonora, Mexico stimulated your dreams of owning property in this incredible locale?? Have the beautiful ocean, the landscape, the weather and the overall culture of this beautiful country enveloped you?? Let's remember, investments, especially in Mexican real estate, should never be made solely from an emotional perspective.

In recent years there has been a tremendous growth in the Mexican real estate market. This growth has been fueled by the strengthened relationship of foreign investors, realizing the strong positive forces of both Arizona and Sonora governments and stakeholders in promoting cross border business/trade and economic development, as well as, the increased focus on tourism. The improved securitization of property and the initiation of education for those professionals involved in real estate ownership have enhanced the trust and success of the real estate investment.

When you're dreaming of buying a second home, to enjoy the surf and turf near the white sand and crystal waters of the beach communities, or to join the relaxed ambience of the quaint colonial villages, our "Buying Property in Mexico Consumer Guide" will provide the initial helpful advice needed as you begin your search and eventual purchase for that special property. The consumer guide, along with the assistance of a team of real estate professionals of your choice, will remove some of the mystery from the real estate transaction process in Mexico, and allow for a successful purchase.

Thanks to the Arizona Department of Real Estate for collaborating with the Arizona/Mexico Commission, Real Estate Committee members from Arizona and Sonora, in preparing this Guide.

Sincerely,

Judy Lowe  
Commissioner  
ADRE

# Chapter 1

## How to Use this Book

Most of us buy or sell a home only a few times during our lifetime. Often we buy or sell in different states, and we find that the procedures involving real estate transactions differ widely from what we experienced in other locations.

In 2004, the Arizona Department of Real Estate published Arizona Real Estate and You (a consumer's guide), for the purpose of assisting individuals considering the purchase or sale of Arizona real estate.

With recent changes in the laws of Mexico, with increasing political stability and with the economic situation in Mexico improving, more and more consumers are making (or considering) investments in real estate for vacation or retirement homes in Mexico.

The purpose of this book is to provide basic information on how real estate transactions are conducted in Mexico.

It is expected that those buying or selling real estate in Mexico will seek knowledge and advice from professionals experienced in the legal, accounting, tax, and other aspects of investing in real estate in Mexico.

Seeking this knowledge and advice is particularly important when considering differences between countries in language, culture, legal procedures and processes. Unless one is well versed in all of the above, as they apply to real estate in Mexico, one would more than likely need additional help in a real estate transaction in Mexico, than if one is purchasing real estate in another country.

Although this guide is beneficial to Buyers from throughout the world, many of us are more familiar with Arizona real estate transactions. This book will often contrast aspects of an Arizona real estate transaction with similar aspects of a Mexican real estate transaction.



**IMPORTANT!** The Arizona Department of Real Estate (ADRE) cannot offer legal advice and nothing in this book should be construed as being legal advice. The Arizona Department of Real Estate is not responsible for reliance on material in this guide. Because real estate transactions in Mexico may be very different from, and more complex than transactions in Arizona, the Arizona Department of Real Estate strongly recommends that all potential purchasers or sellers of real estate seek professional advice when buying or selling property in Mexico.

**Chapter 2** is a brief overview of the real estate laws of Mexico. When considering the purchase of real estate along the border, or a coastline, the Buyer will want to pay particular attention to those provisions dealing with the *fideicomiso*, or bank trust.

**Chapter 3** discusses the Arizona Department of Real Estate (ADRE) and the extent to which the ADRE is allowed by law to protect Arizonans buying or selling real estate in Mexico.

**Chapter 4** concerns the role of the real estate salesperson in Mexico. To provide a familiar frame of reference, the real estate salesperson in Mexico will be referred to as an “agent.” There are, however, significant differences between an “agent” in the United States and an “agent” in Mexico.

It would not be correct to assume that the same standards and requirements that legally apply to real estate agents in the United States also apply to real estate agents in Mexico. Buyers or sellers of properties in Mexico should be aware of the differences.

**Chapter 5** discusses the role of the attorney in a real estate transaction in Mexico.

**Chapter 6** discusses the first steps in buying property in Mexico

**Chapter 7** introduces the *notario publico* and the main differences between this professional and the U.S. notary public.

**Chapter 8** reviews a number of steps in an Arizona transaction that may, or may not; take place in a real estate transaction in Mexico. There is also a short discussion of the estimated costs of closing a real estate transaction in Mexico.

**Appendix A** is a buyer's checklist based on a similar checklist prepared by the Arizona-Mexico-Commission. Use of this checklist in considering the purchase of Mexican real estate is highly recommended.

**Appendix B** is a checklist for selling real estate in Mexico.

**Appendix C** is a discussion of Mexico's consumer Protection Laws.

# Chapter 2

## Real Estate Laws of Mexico

Many non-Mexicans have stayed away from purchasing or investing in the real estate of Mexico because of real or perceived risks to the stability of their government.

During recent years, the importance and the value of foreign investment to the economy of Mexico has led that country to make a number of revisions in its real estate laws.

Today, foreigners have expanded opportunities to purchase or invest in Mexican real estate. In much of the in-land portion of Mexico, the purchase of real property by foreigners has the same legal basis as in the United States.

The Mexican constitution of 1917, prohibited foreign ownership of residential real property within approximately 31 miles (approximately 50 km) of any coastline and 62 miles (approximately 100 km) of its natural borders. All of Baja California is included in this “restricted zone.”

Since many second and/or vacation home purchases are likely to be within this “restricted zone”, further discussion is in order.

In 1971 (further expanded in 1989 and 1993) provisions were made for a mechanism that would allow foreigners to own property in the “restricted zone.”

Within the “restricted zone,” a foreigner purchases the beneficial interest in real property through a bank trust or “*fideicomiso*.” In this bank trust, the buyer of the property is designed as the “*fideicomisario*” or the beneficiary of the trust. While legal title is held by the bank, (specifically the trustee of the trust or the “*fiduciario*,”) the trustee must administer the property in accordance with the instructions of the buyer (the beneficiary of the trust). The property is not an asset of the bank and the trustee is obligated to follow every lawful instruction given by the beneficiary to perform legal actions, i.e. rent it, make improvements, sell it, etc.

The Bank Trust is also very effective for Estate Planning because, as with any other trust, the Trustor can designate who will be the beneficiary in case of death.

As the beneficiary of the trust, the buyer may have substitute beneficiaries who would assume beneficiary status upon the death or incapacity of the buyer without the need of probate proceedings.

All new trusts have a time period of 50 years and these trusts are almost always renewable for another 50 years.

As long as the foreign buyer of the property adheres to laws and ordinances of Mexico and agrees not to invoke the protection of the government of his country, he may exercise the same rights as a Mexican national with regard to the use of his property.

In summary, virtually all property in Mexico is available for purchase by foreigners, keeping in mind that the *fideicomiso*, or bank trust, must be used when acquiring property within the restricted zone.

In the United States, it is common for individuals or a group of individuals to form corporations for the purpose of real estate. While the laws of Mexico allow corporations to own real property, it is

not possible for a foreign owned Mexican corporation to own a vacation or a retirement home for residential purposes (as opposed to business activities).

One final observation. In exchange for the ability to invest in real estate in Mexico, the Buyer must agree that only the laws of Mexico will apply to any real estate transactions. In the courts of Mexico the international buyer will be treated the same as if he were a citizen of Mexico.

The legal system of any other country may not be used in the event of disputes or adverse rulings.

The legal system of either the Arizona state government or any other government may not be used in the event of disputes or adverse rulings.

# Chapter 3

## Arizona Department of Real Estate (ADRE)

The Arizona Department of Real Estate (ADRE) is primarily charged with administering and regulating the practice of real estate in Arizona.

There are, however, two major areas in which the ADRE can be a resource to Arizonans considering the purchase of Mexican real estate.

First, the Department has established reporting requirements for entities promoting or selling in Arizona certain types of subdivided land or selling land, houses, and commercial property in planned communities. These requirements apply to the selling entity, **even if the property offered for sale is not in Arizona**. If property outside of Arizona is being offered or advertised in Arizona, and it consists of 6 or more lots, with or without improvements, or 6 or more individual interests in a property, a Public Report issued by ADRE is required.

The Public Report is a comprehensive document covering a number of disclosures such as:

- Characteristics of the subdivision
- Nearby airports
- Utilities
- Streets, roads and drainage
- Common and community facilities
- Local services such as schools, public transportation, medical, police, fire protection and ambulance service
- Taxes and assessments
- Property owners' associations
- Adjacent land uses

A Public Report does not issue a guarantee or recommendation, or offer an opinion on the value of the property.

A developer can be denied issuance of the Public Report for a number of reasons, including being in poor financial condition.

Second, individuals licensed to practice real estate in Arizona are subject to the laws and rules of the ADRE, regardless of where the property is located. Arizona Statutes dictate that real estate licensees must maintain and demonstrate standards of ethics, integrity and professionalism in all real estate transactions and adhere to the laws of the locale in which the property is located. ADRE rules and regulations require that agents be competent in the areas (product type, location, etc.) in which they are working.

The implication in this paragraph is that there are Arizona real estate Licensees working in Mexico. If that is the case it should also be spelled out that these licensees must have a Mexican license if practicing in the State of Sonora and more importantly that they are reporting income earned in Mexico to the Mexican tax authority. They should be taxpayers in Mexico and adhere to the real estate laws of Mexico.

# Chapter 4

## The Real Estate Agent

Internationally, there are a number of ways to identify property that can be purchased.

These include driving around, talking to friends and colleagues, checking the newspapers, and, increasingly, using the Internet to identify potential new or second homes and other real estate.

However, most people use a professional licensed real estate agent. While each country or state sets its own regulations and controls on the practice of real estate, buyers and sellers have come to rely on the professionalism and expertise of licensed real estate practitioners.

This is where there is a major difference in buying and selling real estate in Mexico.

In 2007, the State of Sonora passed a real estate law which requires all real estate agents selling property in the State of Sonora to be a licensed registered agent. A listing of licensed agents can be located at the ICRESON website: [www.icreson.gob.mx](http://www.icreson.gob.mx) . Many international Buyers and Sellers ask every agent if “they’re on the Registry...”

There are also labor and tax laws which regulate the daily activities of all persons conducting business within the Mexico’s borders. These laws require, among other things, the collection of taxes on wages, fees or commissions earned in Mexico, and in the case of non Mexican workers, the possession of proper migratory and work permit documentation.

In Mexico, many legally established and qualified real estate agents are professionals, employed through established and reputable Mexican corporations, whose principal business is the listing and sale of real property to the public. These real estate companies are also subject to strict compliance with all Mexican laws, including the legal status of their employees and the collection and payment of any taxes owed.

In addition, there is a voluntary association for real estate professionals in Mexico. The Asociacion Mexicana de Profesionales Inmobiliarios, A.C. (more commonly known as A.M.P.I.) is an association of real estate professionals in more than 68 Chapters. AMPI members must sign an annual pledge agreeing to operate by the Code of Ethics of the association. The National Association of REALTORS® (NAR) in the U.S. now recognizes all AMPI members as REALTORS, who contract and adhere to the Code of Ethics of NAR.

There are many excellent real estate agents in Mexico and these real estate agents do play a role in many Mexican real estate transactions. The role of an agent selling property in Mexico is different, though, from the role of an agent in Arizona.

In a transaction taking place in Arizona, the licensed real estate agent provides services that fall into two broad categories. First, he or she helps the Buyer find a property (or find a buyer for a property if a seller is selling). Then, the agent helps facilitate through the activities and the paperwork involved in completing the real estate transaction.



In Arizona, persons holding a valid Arizona real estate license have a responsibility and authority greater than their colleagues in many other states. In fact, Article 26 of the Arizona Constitution specifically grants licensees the legal authority to fill out and complete any and all

documents pertaining to virtually all real estate transactions. Things are VERY DIFFERENT for transactions in Mexico!!!

The first service, that of helping find property in Mexico has a number of similarities with stateside transactions. An experienced agent will know the area, the types of construction, accessibility to shopping, medical care, etc. The agent should also have an idea of the approximate market value of a property. Because there will be a number of individuals and firms to deal with before the purchase is complete, the agent will most likely maintain a listing of competent and professional individuals and companies for consideration as the purchase or sale progresses.



Bear in mind, though, that while Arizona real estate licensees can have their licenses suspended or revoked for misinforming clients or misrepresenting aspects of a real estate transaction, real estate agents in Mexico are not as tightly regulated. Buyers are advised to “Trust but Verify” representations made by real estate agents, and other professionals in Mexico.

As the real estate industry in Mexico grows, so do the number of real estate agents from the United States and Canada doing business in Mexico. Many have moved to Mexico and sell real estate on a full-time basis. While a good number of these real estate agents are representing subdivisions, or planned communities, an experienced and knowledgeable agent of all types of real estate opportunities should be chosen.

On the other hand, just because there is an American selling real estate in Mexico, it should not be assumed that he/she is a licensed real estate agent in the United States, or that they are legally involved in real estate actions in Mexico. Some American salespeople may have no U.S. real estate experience prior to selling real estate in Mexico. Many may have no Mexican real estate license. So the question is, Do they have experience selling real estate in Mexico and understand the laws of Mexico? Much more important than having a license from out of country.

Regarding the second service, that of helping the Buyer through the activities and the paperwork, real estate agents play a somewhat lesser role than they do in the United States. There are other players, most notably attorneys, fewer and more far-between, as well as the Notario Publico, (whose duties we will discuss in a later chapter) performing many of the duties that a real estate agent (and Escrow company) would perform in an Arizona transaction. Keep this in mind as you choose the professionals to work with.

On the other hand, because buying and selling real estate in Mexico is not something the average international Buyer does every day, the services of a well chosen real estate agent as a counselor and “guide” should never be underestimated.

For example, as we will discuss in a later chapter, “down payments” and/or “putting money into escrow” is significantly different in Mexico. The money may be at a considerably higher risk than it would be in the United States. A professional real estate agent can help recommend safe custodians for that money (i.e. an escrow company) pending the closing of a property. Remember, should a Mexican escrow company be required, there are very few and there are no specific regulations covering escrow officers. There are escrow companies from the United States familiar with property transactions in Mexico; however the use of escrow companies is not yet the standard practice. In fact, Mexican law stipulates that deposit monies go to the seller. Most escrow companies are American owned.

The large foreign franchises, including Coldwell Banker, Realty Executives and REMAX require their franchisees to maintain “trust” accounts to hold deposit monies.

A real estate professional will assist in preparation of the purchase offer, negotiating price and other terms, as well as the contract of sale.

Finally, the multiple listing systems (cooperative ventures between real estate companies where all real estate listings are combined into a single, easily accessible database) in Mexico are not yet as sophisticated or as common as in the United States. Many of the more popular tourist markets do have an MLS system in place. Using a real estate professional in Mexico who has access to combined listings can expand your range of property choices.

When a real estate broker in the United States obtains a listing to sell real estate on behalf of a client, it is fairly standard for that broker to offer a commission split with the broker that provides the buyer. This isn't always the case in Mexico. There may also be a few cases, (new developments, for example) in which agents are not compensated by the seller when there is an agent representing the Buyer. Ask the on-site agent who they work for in the transaction.

If truly interested in having a motivated real estate agent working exclusively for the Buyer, consider a "Buyer-Broker" arrangement. Typically the real estate agent is paid an amount by the Buyer if the agent is successful in finding a property. Many times, that amount can be reduced by any amounts subsequently paid to the buyer's agent by the seller or the listing agent.

For some of the reasons listed, it is more efficient to use the services of an experienced licensed real estate agent when making a purchase or sale of real estate in Mexico. It is important to remember, though, that there is a lack of mandatory licensing and regulation in most parts of Mexico, even though Sonora has adopted this.

This is one area where a recommendation from a trusted source would be most valuable.

# Chapter 5

## Using an Attorney

In many areas, attorneys are not used in residential real estate transactions. Therefore, it follows that one might think that they don't need an attorney to purchase real estate in Mexico.

Before deciding this, consider taking a look at Appendix A at the back of this book. This appendix—a **Mexico Property Buyer's Checklist**—is taken in part from the website, [www.azmc.org](http://www.azmc.org) of the Arizona-Mexico Commission, a cooperative effort of the State of Arizona and the State of Sonora, Mexico.

As the items on the checklist are reviewed, it should be readily apparent to most, that as individuals, they have little or no experience or expertise in many of the areas on the checklist. The checklist is further evidence that while purchasing real estate in other areas follows strict statutory procedures, purchasing real estate in Mexico is an entirely different matter. There are strict statutory procedures in Mexico. They are just quite different than what is done elsewhere.

There may be comfort with a real estate transaction in Mexico knowing that there is at least one individual/firm that is “on your side.” As we've already discussed, many real estate agents in Mexico are not licensed or regulated, and certainly do not have the disclosure responsibilities or the responsibilities under “the law of agency” that real estate agents in Arizona have. The seller, and his associated parties, only has the interest of the seller to look out for. Depending on the state in Mexico where the property is being acquired there may be licensed agents who will work solely on the buyer's behalf and therefore only have the Buyer's interests at heart. Alternatively, an attorney legally responsible for protecting the Buyer's best interests may be well worth their cost.

When making a selection, however, be aware that, attorneys may specialize. It might be a good idea to ask prospective attorneys about their experience in representing foreigners buying real estate in Mexico.



Check the Arizona Bar Association website at <http://www.azbar.org/findalawyer> for attorneys or foreign legal consultants licensed in Mexico and admitted by the Arizona Supreme Court who are fully bilingual and are regulated by the ethics and rules of the Arizona Bar. Be advised that they also charge fees for their “expertise”.

# Chapter 6

## Buying a Property-First Steps

OK!! You've decided to check out real estate in Mexico. You've made an exploratory trip or two and have a general feel for the areas and what each has to offer. You've checked out availability of transportation, shopping, dining, and medical services.

You've talked to a number of people and have interviewed several candidates for a real estate agent and an attorney to represent you in the transaction. Your selection of professionals has been made.

Your selected agent goes to work for you, shows you a number of properties and you find the property you've always dreamed of owning. You show the first few signs of "Margarita fever."

This is where your knowledge of real estate transactions in Arizona, or elsewhere, is of limited value.

First, you will need to remind yourself, not just once, but time and time again, that consumer protection laws in Mexico are less encompassing than those in the United States. The concept of "buyers beware" will never be of more importance to you than in purchasing real estate in another country! **You are responsible for becoming an informed buyer.** If you don't know, ask. If you don't like the answers, don't sign. If it doesn't make sense, it may not be good for you.



A short explanation of Mexico's consumer protection laws can be found in Appendix C. In addition, before committing to signing a contract and before making a down payment, have the seller provide an **evidence of ownership**. Your real estate agent will write the offer to purchase and promise of a bank trust contract.

What is common practice in today's marketplace is for sellers to put their homes for sale without having title yet. If they do have title, they offer sales terms that will only convey title upon payment in full of the purchase price- which may be several years down the road. In addition, some buyers are expected to buy the membership interest of a United States limited liability company, or similar entity that is the beneficiary under a bank trust.

The following practices or sales scenarios present several issues that must be carefully evaluated before committing any earnest monies.

1. **Buying from a Seller without Title.** Many of the listings in today's marketplace are from sellers that do not yet have title. This usually happens from the fact that the sellers themselves are paying a developer/previous seller, or have failed to obtain a bank trust. Any earnest monies should not be paid until a buyer has confirmed that a seller has title to the property, or that title will be conveyed to the buyer at the closing, and includes the appropriate mechanisms in the promissory agreement to assure performance by the seller (i.e., that the seller will be able to convey title). In this scenario, it is also important to obtain written confirmation from the owner of record, or the developer on the third party sale, and, include such owner of record as a party to any agreement to confirm the sales price and closing costs (there will be tax implications based on the lower purchase price). This is a bad idea and ought not to be addressed, except to say, "Don't do this!"

2. Buying in Installments. Another common practice involves sellers granting payment terms to buyers via private promissory contracts, with title not being conveyed until payment in full is received. This scenario creates several issues for the buyer that should be carefully evaluated. First, in the event the seller dies during the process, and there is no bank trust, the buyer would have to wait until the estate of the deceased disposes of the real estate, or the trustee bank recognizes the substitute beneficiary (assuming those were designated). Second, the buyer becomes immediately an unsecured buyer in the event a seller does not fulfill his or her obligations. Third, a seller's creditor could attach the real property, as the owner of record at the Public Registry has not changed. And fourth, taxes are not paid at the time the private promissory contract is executed and should have been paid. It is strongly advised to use a Guaranty Trust whereby a seller is a secured party to collect on the balance of the purchase price. The buyer should have the legal certainty that upon paying in full, the trustee bank will hold title for his or her benefit, without the need of further actions by the seller.

3. Buying the Membership Interest of a U.S. Entity. Selling a LLC, or any other foreign entity, (whose assets are comprised in more than 50% by Mexican real estate) to a foreign buyer, in another country, is in fact a transaction that is taxable in Mexico at the current tax rate of 30%. Related thereto, the private assignment of promissory rights, not done through a notary and usually involving an irrevocable power of attorney, is also a transaction subject to income tax in Mexico, at the 30% rate. Both of these transactions raise two main issues: (a) the buyer will have a lower base for a future sale of the property; and (b) the seller, as an individual, is obligated to pay the 30% income tax, within 30 days, to the Mexican government. Buyers should carefully evaluate with Mexican counsel and their counsel "back home", the legal and tax implications, and, get some type of guarantee that taxes will be paid.

The next difference is regarding the purchase offer. In Arizona, virtually all offers to purchase residential real estate are recorded on the "Residential Resale Real Estate Purchase Contract", a form produced by the Arizona Association of REALTORS® for the benefit of its members. Anyone interested in this form may easily obtain one, and can quickly become familiar with its terms and provisions.

The various states in Mexico have not yet adopted standard purchase contracts. In mature tourist real estate markets, however, some professional agents have adopted standardized documents.

In those areas in which there are not standardized documents, a typical transaction might generally include the following steps:

First, the offer and acceptance document, the oferta, is the preliminary agreement containing basic information about the transaction. This contract does not transfer title.

Once there is a written acceptance of the oferta, the next step is to draw up the promissory purchase-sale agreement (if the property is outside of the restricted zone) or a "promise of agreement (inside the restricted zone). Again, there is no standard form for this contract. **This document is the single most important document in the purchase process, as it will set forth the terms and conditions of the transaction.** In virtually all cases, the buyer would be wise to have their real estate agent draw up the appropriate agreement.

The third and final document is the purchase-sale agreement, or bank trust contract. This document is executed before a notario publico, or by a power of attorney, which authorizes the agent to close the transaction on the Buyer's behalf.

In Arizona, real estate buyers are accustomed to making a “deposit” or “earnest money payment” at the time an offer is made to purchase property. These payments almost always go into an escrow account, generally maintained by the title company selected by the buyer. Entities holding money in escrow for others are held strictly accountable for safeguarding and appropriately distributing escrow payments.

In contrast in Mexico, earnest money or other considerations for entering into a contract are often given directly to the seller. The risk, of course, is that if the transaction does not work out as planned, the buyer may be forced to either, give up the earnest money or seek redress through the Mexican court system. Stipulate in the offer contract how the earnest money will be held, and how it will be handled should the closing not occur.

When purchasing property along the border, or a coastline—properties in the “restricted zone”—remember the purchase must be done through a *fideicomiso*, or bank trust. If acquiring the property from a foreigner the property already has an existing trust. In most cases the rights of the property are transferred from the seller to the buyer within the existing trust. It is most likely cheaper to transfer the rights of a trust, than to start a new trust. In the case of a Mexican owned property, the buyer is free to “shop around” for the best bank to handle the trust.

It’s now time to meet the *notario publico*.

# Chapter 7

## The “Notario Publico”

Translate it as “notary public” (with the same connotations as is used in the U.S.) and you couldn’t be more wrong.

*Notario publicos* in Mexico are attorneys with at least five years experience, who have passed two rigorous examinations. They are appointed by the Governor of the State and by the Executive branch of the federal government, and as such, represent the governor in all real estate transactions. There is approximately one notario publico per 30,000 citizens.

In Mexico, a number of legal documents—wills, deeds, powers of attorney, forming corporations, establishing trusts, etc.—must be formalized before a notario publico in order to be valid.

Once the promissory purchase-sale or trust has been prepared (see previous chapter) the buyer has the right to choose a notario publico in order to close the transaction. In some planned communities or developments the buyer may want to consider using the seller’s *notario* because the *notario* will, from experience with other properties in the development, be familiar with many aspects of the transaction.

One of the steps the *notario publico* will take is to make sure the land is not communal agricultural land (*ejido*). If it is, the right to use this type of land may be purchased, however, the buyer, does not own the land...only allowed to use it. In recent years the federal government has encouraged the Ejidatorios to apply for the certificado parcelario in order to create private title and therefore be able to sell the property with fee simple or trust deed. The key here is to ensure that the correct documentation has been completed.

There are a number of documents that must be prepared to bring to the *notario publico*. Proof of full names, places of birth and a passport; and, the ability to **prove legal presence in Mexico, (VISA), if in Mexico to execute the closing documents oneself.**

The seller will also have to provide documents for examination and verification by the *notario publico*: the deed to the property and items such as up-to-date receipts for taxes, subdivision fees, water and any other public utilities. The notario publico will then determine the capital gains tax to be paid by the seller based on the purchase price and the price that the seller paid for that particular property. If the seller is a Mexican corporation, capital gains taxes are paid on its annual corporate tax filings. If the property is owned by a Mexican National who can provide 6 months of electricity bills for the property, he is not subject to Capital Gains to a certain limit.

(The seller normally pays the capital gains tax, unless there has been an agreement that it be paid by the buyer.)

The *notario publico* also verifies the title and searches public records to determine the status of that title, as well as search for liens against the property.

When everything is in order, the *notario publico* prepares the deed of conveyance subject to the terms of the promissory agreement.

A “closing” takes place in which the seller signs the deed in favor of the buyer, and the buyer pays the seller for the property.

However, if the property is purchased in the restricted zone, the civil closing takes place when the seller signs the letter of instruction to the bank to transfer the rights of the property. Formal closing occurs when the trust comes back from the bank to the notario for signature by both the buyer and the seller.

The buyer pays the fees of the *notario publico*.

Before the process is complete, the *notario publico* has a final task of registering, the deed in the Property tax office and then the Public Registry of Property. This generally takes about two weeks, but time frames may vary significantly by location. The transaction is not perfected until it is registered. The notario publico will also withhold taxes from both parties and will make corresponding payments to the taxing authorities.



It is important to note that even though the buyer selects the *notario publico*, it does not mean that the notario publico “works for the buyer.” The *notario* is an unbiased party in the real estate transaction, legally responsible for ensuring that all essential legal formalities are followed. These include identifying the property, the names of the buyers and sellers, the capacity in which any signatory is acting and incorporating this information into the public deed.

# Chapter 8

## But, what about....?

Those familiar with real estate transactions in Arizona will notice that a number of key steps in a real estate sale elsewhere do not appear to have a place in the purchase of real estate in Mexico. For example:

**Financing**—Real estate financing for a foreign national is not as common as it is elsewhere. Often, financing is difficult to obtain, and where it can be obtained, is often more expensive or slow. In fact, most real estate transactions are either “all cash” or seller’s carry –back financing where title is not conveyed. Use of a Guaranty Trust is the best alternative.

As more non-citizens of Mexico begin investing in real estate in Mexico, a market is growing for a means to provide financing for those investments. Using equity from a property elsewhere, to pay cash for real estate in Mexico, is also a popular method of financing. However, a growing number of both Mexican and U.S. firms are beginning to offer financing based on the equity of the property involved in the transaction.

Potential buyers of real estate in Mexico should make inquiries into financing opportunities before entering into a purchase agreement.

**The Loan Status Report**—In Arizona, buyers must provide the seller with evidence that they have the financial resources to complete their real estate purchase. There is no equivalent step in the purchase of real estate in Mexico. It is expected that, having entered into a contract to purchase real estate, the buyer will have the ability to financially complete the transaction.

**The “Seller’s Property Disclosure Statement (SPDS)”** which Arizonans selling their properties almost always provide buyers, with disclosures around a fairly lengthy series of questions about the condition of the property, is not a customary in Mexico. Some areas of Mexico, with large numbers of foreign buyers, have begun using seller’s disclosure statements. This is not yet a standard practice.

**The Inspection Period**—Arizona real estate transactions provide for a period of time, generally ten days, in which the buyer can have the property inspected and can present the seller with a list of items the buyer would like to have the seller correct before closing. This step does not formally exist in a transaction in Mexico. Therefore, it is important for a potential buyer to do the “homework” on the condition of the property before entering into the transaction. Make inspections a contingency in the offer to purchase. Use a specific and reasonable time line for this contingency to be met.

**Termite Inspection**—not required in a Mexico real estate transaction. Most construction in Mexico is based on concrete, cement, bricks or other termite resistant materials. However, the buyer may want to consider having an inspection done.

**Title Insurance**—Title insurance is not required in a real estate transaction in Mexico. Even though the *notario publico* is charged with verifying the title, mistakes can take place and the *notario publico*, as a quasi-governmental official, is difficult to sue. Most property in Mexico is not covered by title insurance.

Title insurance, therefore, is a product aimed mainly at foreign real estate buyers. Both Mexican, and U.S. companies, have, in recent years, begun offering title insurance for real estate purchased in Mexico. As in the United States, policies are available for both buyers and lenders.

**Homeowner's Insurance**—Homeowner's insurance is available for property purchased in Mexico. As is the case with title insurance, both Mexican and U.S. companies offer homeowner's insurance.

**Closing Costs**—Costs of closing on a real estate transaction in Mexico are varied. Examples of cost items could include:

Traslado de Dominio  
Impuestos Sobre La Renta (usually paid by the seller)  
Honorarios to Notario  
IVA (Value added tax on the honorariums)  
Registró Público  
Folio Fiscal  
Folio de Hacienda  
Copias de Escritura  
Copias de valúes  
Certificado de libertad de Gravamen  
Certificado de no adeudo  
Expedición de Segundo Testimonio  
Avaluó Bancario

(Potential buyers should consider these amounts to be rough estimates, as in some locations the fees are considerably higher.

**Cost of an attorney**—This cost will vary depending on location and on the experience of the attorney.

**Cost of a real estate agent**— If the property being purchased is listed by a real estate agent, and if that real estate broker has an arrangement with other agents who bring qualified buyers, there may be no costs to the Buyer for the services of the Buyer's real estate agent

If, for whatever reason, the Buyer's real estate agent is not compensated by the seller (or the seller's agent) then the Buyer will have to negotiate an arrangement with Buyer's real estate agent.

**Notario Publico**— Generally 2% to 3% of the appraised value of the home. Some notarios will work on a flat fee basis.

**Appraisal fee** —This fee depends on the value of the property. In addition, the rate varies from state to state. Generally between \$100 and \$500.

**Title Insurance** – About \$5 per each \$1000 of coverage.

**Transfer Taxes** – This Buyer fee is generally 2% to 3% of the higher of the bank value, sales price or the property tax assessed value.

**Deed recording fees** – Varies by location.

**Property tax (predial)** – Property taxes in Mexico vary, but are generally quite low compared to property taxes in the United States.

# Appendix A

## Mexico Property Buyer's Checklist

### *A Guide for Foreigners Purchasing Property in Sonora*

Consult this checklist prior to committing to purchase. This checklist is based primarily on a checklist provided by the website of the Arizona-Mexico Commission (AMC) - [www.azmc.org](http://www.azmc.org)

1. Understand and follow the Mexican law concerning real estate purchases.
2. Obtain the advice and services of a Mexican attorney, a registered and Mexican licensed real estate agent, a title insurance company and/or an appraiser. Look for consultants with demonstrated experience in both the geographic area and the type of transaction being considered.
3. Obtain a property disclosure statement from the seller, as available.
4. Obtain a copy of existing public deed (*escritura publica*) complete with recording information, and a current copy of the lien certificate (*certificado de libertad de gravamen*).
5. Request a copy of any existing commitment for title insurance on the subject property. Obtain current commitment for title insurance on the specific property.
6. When dealing with residential developments advertised in Arizona, obtain a copy of the Arizona Public Report issued by ADRE.
7. Obtain a copy of applicable Mexican state/municipal development authorizations.
8. Obtain a copy of any Covenants, Conditions or Restrictions for the property and any owners' Association Bylaws, budgets and financial statements.
9. Analyze all risks, including financial, associated with purchasing property where any infrastructure, building or other improvements have not been fully completed. Ensure that the condominium regime has been completed.
10. Analyze all risks associated with seller financing.
11. Estimate closing costs associated with seller financing.
12. Complete due diligence, including investigations of title and value, prior to committing to purchase, or make the purchase contingent on those investigations.
13. Enter into a written purchase contract (in Spanish and English) that defines the details and contingencies of the agreement with the seller.
14. Place all deposits in a neutral, third party escrow account, pursuant to a fully executed escrow agreement.
15. Obtain title through a Mexican Notario Publico, and title insurance, at the time of full payment.
16. Ensure proper recordation of the title transfer with all applicable municipal and federal registries at time of title transfer.

Disclaimer: This checklist is intended for use by foreigners purchasing property in Mexico. This information and recommendations are intended to be used in conjunction with the BUYER'S ADVISORY available at [www.azre.gov](http://www.azre.gov), and with other private and/or governmental assistance obtained by buyer, and is subject to change without notice. Neither the Arizona Department of Real Estate, nor the Arizona-Mexico Commission is responsible for reliance on any of the information provided.

# Appendix B

# Selling Mexican Real Estate

The following document is in part also from the website of the Arizona-Mexico Commission. Although it specifically mentions real estate transactions in Sonora, it is a good guide for selling real estate anywhere in Mexico.

## MEXICO PROPERTY SELLER'S CHECKLIST

### A Guide for Selling Property in Sonora

Prior to engaging in a sales transaction consult this Checklist for the basics on how to protect your Sonoran real estate.

1. Understand and follow the Mexican Law governing real estate transactions.
2. Obtain the advice and services of a Mexican attorney, a Mexico registered and licensed real estate agent, a title insurance company and an appraiser. Look for consultants with demonstrated experience in both the geographic area and the type of transaction being considered.
3. Complete a Seller's Property Disclosure Statement if provided one by the real estate agent.
4. Consider entering into an exclusive right-to-sell listing agreement with a Mexico registered and licensed real estate agent who will share commission with other registered agents and is a member of AMPI. Only Sonora has licensing requirements.
5. If "6 or more" improved or unimproved lots are owned by an individual/entity in the **same** development, an Arizona Public Report must be obtained prior to advertising the property in Arizona.
6. A licensed real estate agent in Arizona may be used to offer the property for sale in Arizona, unless are offering it "For Sale by Owner".
7. Have copies of any Covenants, Conditions, or Restrictions, along with any owner's association bylaws, budget and financial statements ready for the prospective purchaser.
8. Locate and obtain an original copy of the ownership document (the public instrument issued through a Mexican notario publico-(also commonly known as the deed, trust agreement or title); evidence that the payments to the trustee/fiduciary bank (if title is held in a title trust) is up-to-date; evidence of payment of the property taxes for the last five years (or certificate from the local authorities stating no property tax) is owed; and a certificate from the local Public Registry of Property showing the ownership and no encumbrances or liens.
9. Obtain a commitment for title insurance on the property through a Title Insurance Company that is active in the local market place.
10. Collect all receipts pertaining to any improvements done to the property.
11. Obtain an estimate of closing costs from a Mexican notario publico based on an estimated sales price.
12. Negotiate the purchase agreement in writing.
13. Obtain a sufficient amount of earnest money and have the buyer, if negotiated in the contract, deposit it with a neutral escrow company pursuant to a fully executed escrow agreement.
14. Transfer title to the buyer through a Mexican Notario Publico.
15. Buyer may require an offer that full payment of the purchase price not be paid until title has been transferred.

# Appendix C

## Consumer Protection in Mexico

The following information is primarily based on a similar presentation on the website of the Arizona-Mexico Commission. The general website address is <http://www.azmc.org> where you can select “Real Estate” and the “General Info” on the left hand side. The document will download as a Word file with many helpful links.

### **Consumer Protection Remedies and Procedures**

When dealing with foreign investment in Mexican real estate, Mexican Law provides several different legal actions to compensate for possible fraud or other damage. The above-mentioned document provides a brief description of one of these remedies: the consumer protection action pursuant to the Mexican Federal Law on Consumer Protection [*Ley Federal de Protección al Consumidor*, hereinafter Consumer Protection Law]

Injured parties must file a consumer protection action with the Mexican Federal Consumer Protection Agency [*Procuraduría Federal del Consumidor*, hereinafter “PROFECO” at [www.profeco.gov.mx](http://www.profeco.gov.mx) ]. Complaints should be filed with the PROFECO office in which the property subject to the dispute is located. Alternatively, complaints may be filed in the jurisdiction in which the complaining party or the defendant is located. In addition, PROFECO provides a specialized helpdesk and complaint form for foreigners. Once a complaint is filed, PROFECO mediates and prosecutes the complaint against the mentioned party or parties for all actions covered under the Consumer Protection Law.

The Consumer Protection Law is designed to promote and protect consumer rights and to procure equity and legal certainty between consumers and commercial suppliers (the terms are defined below). Consequently, it provides actions exclusively to parties who purchased real property from a builder, developer or other institutional seller, or through a broker, agent or real estate professional. Parties injured in the purchase of real estate from another individual (non-commercial party) are precluded from using the Consumer Protection Law.

[Note: The Consumer Protection Law defines the term Consumer as an individual or corporation that acquires or enjoys property, products or services as the end-user and it defines the term supplier as an individual or corporation that customarily or periodically offers, distributes, sells, rents or concedes the use or enjoyment of property, products or services.]

For a more detailed outline of the PROFECO procedures and policies, please visit the Arizona-Mexico Commission website: [www.azmc.org](http://www.azmc.org).

# Glossary and Index

## A

Asociacion Mexicana de Profesionales Inmobiliarios, A.C. (AMPI) – an association of real estate professionals in Mexico. See page 14

Arizona Department of Real Estate (ADRE) – role in transactions involving real estate in Mexico. See pp. 11-12.

Arizona-Mexico Commission (AMC) – a cross border organization, founded in 1949, that fosters cooperative initiatives in trade and other areas, including transportation, education, health, the arts, real estate, agriculture, tourism and the environment. See page 7 .

Avaluo – an appraisal.

## C

Comisión Sonora-Arizona-counterpart to the Arizona-Mexico Commission.

Contrato de compraventa -The purchase sale agreement.

## E

Ejido – “community” land. An individual can own the use of ejido land, but the land cannot be sold to another. Only the right of use may be sold. See page 27 .

## F

Fideicomisario – the beneficiary of a fideicomiso, or bank trust; i.e., the buyer of the parcel of real estate. See page 9.

Fideicomiso – the bank trust mechanism that allows foreigners to own land along Mexico’s coast and borders. See pp. 6,9,25

Fiduciario – the bank trustee of a fideicomiso. See page 9.

## I

ICRESON- Institute of cadastral and registry of the State of Sonora, is an administrative body decentralized, with legal personality and technical and operational autonomy under the State Ministry of finance.

## N

Notario Publico – an appointed government representative, always an attorney who plays a key role in all real estate transactions. See pages 27-29.

## O

Oferta – An Offer- a document that contains basic information about a real estate transaction. While a contract, this document does not transfer title. See page 24.

## P

Prediales – property taxes. See page 33.

## R

Restricted zone – that part of Mexico within 31 miles of any coastline or 62 miles of Mexico’s natural borders. A special method of purchasing the beneficial use of real estate is required within the restricted zone. See pp. 8-10.