

“TITLE INSURANCE IN MEXICO MORE THAN JUST A POLICY”

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There is a well-known adage that goes “the more things change, the more they remain the same.” After six years since our introduction into the title insurance market in Mexico, one statement still remains constant with many Mexican attorneys and real estate agents. “You don’t need title insurance in Mexico.” With growing acknowledgment of the inherent benefit its provides coupled with its gradual acceptance in the market, title insurance issued on Mexican real estate has increased dramatically over this period of time. However, it is still a weekly occurrence that an individual having a fiduciary responsibility for safeguarding the well being of their client in a property acquisition will advise them, “I don’t think title insurance is necessary.” Or often times they simply do not even mention that the product is available. Over these six years, we have gained a greater understanding of why this attitude prevails with some in the market place.

The real property conveyance process in Mexico, like any other civil code system in South and Central America, and many other countries in the world, is reliant upon individuals to transfer ownership rights. These highly educated and “hand picked” public notary’s have the obligation, right and privilege to consummate all real estate transactions within their given territorial jurisdiction. Their acknowledgment and certification procedure provides “judicial certainty” to the authenticity of the process. As we have said many times before, the land conveyance and notarial system in Mexico is a good one, one that we as a company have confidence in. However, we must never lose sight of the fact that it is a system reliant on the performance of various people, not just the public notary. Sellers, buyers, agents, surveyors, property recorders and municipal employees all come into the mix. As we have all learned throughout the annals of time, human beings, though not intending to do so, make mistakes. Errors are made. **We are not infallible.** In real estate matters though, mistakes can be costly and create significant losses. For that reason alone, we as a buying public must have reliance upon a monetary indemnification that guarantees remuneration in the event of loss to due a title defect or error. Suing the seller to recover property or money, whether in the United States or in a foreign jurisdiction, is a tough alternative to the viability of title insurance. We as a prudent buying populous learned this grim fact over a 130 years ago here in the U.S.

Title insurance on Mexican real estate is more than just a title insurance policy. It is a process of in-depth examination concerning title documents, development permits, municipality approvals, paid taxes, plat and survey issues, recordation and registry compliance, along with the overall conveyance or “protocolization” procedure of the public notary. In order to issue an Owner’s Policy of Title Insurance, and assume the inherent monetary liability that comes with the policy issuance, the insuring company must be as certain as possible regarding all of the various elements in the property transfer. We hear all the time that this is the responsibility of the notario, that they have the same requirement of certification, and we certainly agree. However, it is not often understood in Mexico that not only does a title policy protect against recording errors, liens, encumbrances, encroachments, taxes and boundary line disputes, but also against

fraud, misrepresentation, impersonation, secret marriages, incapacity of parties and undisclosed heirs. Even the best of notarios or attorneys may be unable to discover these title problems. Title insurance policies have the ability to provide affirmative coverage and endorsements that protect the purchaser against risks that may be discovered in the title search process. Since title policies are fully negotiable contracts of indemnity, a title company can consider and insure a variety of title matters for the benefit of the proposed insured. A title insurance policy can provide a monetary indemnification on granted rights of “cession” or permitted use from the government. An example would be having a concessionary right from the government to construct a swimming pool and deck area that is built on land within Mexico’s federal maritime zone. Though one can not own this property, Mexico can grant the right to use it. How can any one individual, even a notario publico, give these types of assurances that have real dollars standing behind the assurance and that ultimately will protect a buyer in the event of a loss. Our process, that of the title insurance company, is to eliminate a future loss by examining all of the relevant issues today. If given the opportunity, a title insurance company should be able to advise both buyer and seller of the relevant concerns that may be outstanding or in process prior to the consummation of the property conveyance. Too often though, title insurance becomes a “last minute” debacle because the buyer wasn’t informed ahead of time. Again, too often, it appears that’s a primary reason for a real estate agent not telling a buyer about the availability of obtaining a title insurance policy. The obvious, it would seem, is the fear that the transaction may be delayed and not close as quickly. Or more importantly, having the title company advise that certain documents or approvals have not been granted or are not of record. **Possession of real estate is NOT tantamount to having good and recorded title to it!**

The real estate market in Mexico is booming. It is an extremely dynamic market growing in both the resort/residential sectors as well as in the industrial and commercial areas. Millions of dollars are being invested in new developments from Los Cabos to Cancun, Tijuana to Reynosa. And with this increased activity is the increased awareness of what can be provided with the title insurance process. It can enhance the salability of property and expedite the closing process. It gives the non-Mexican purchaser of real estate comfort and security knowing that a company with over 100 years of expertise has examined all of the title matters and issues a title policy with enforcement in the United States. When compared to the other “closing costs” associated with real property conveyances in Mexico, i.e., transfer taxes and notary fees, an Owner’s Policy of Title Insurance will for the most part be cheaper. And never forget one thing, buying public. No matter who tells you that title insurance isn’t necessary, just remember that it is the **ONLY** monetary indemnification that you will receive protecting your ownership rights. Some things do change!

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