

The Role of the Closing Agent in a Mexican Property Transaction

by Linda Neil

MYTH: *You need to hire an attorney when you buy property in Mexico.*

NOT SO! Since every transfer of a Mexican property **MUST**, by law, be made before a Mexican notary public, another attorney in *NOT* an essential ingredient for a successful real estate transaction.

The Mexican notary public is required to have a degree in law. He must have a minimum of five years of legal practice, pass a rigorous examination and then be appointed by the governor of the state in which he/she resides. The notary is legally responsible for the review of the prior deed and the tax and lien certificates. The notary must draft the new deed, calculate the taxes due and pay them.

For this reason, it may make more sense to seek out a **CLOSING AGENT** to handle the many details of the transfer, such as:

1. ordering and reviewing the title investigation,
2. obtaining the certificates and trust permits,
3. interfacing with the buyer and seller, answering their questions and concerns in their native language, explaining the nuances of the transfer process,
4. overseeing the payment of funds for these services and expenses,
5. reviewing the deed to be sure names and addresses are correct,
6. being sure it is registered in the public registry of property
7. making sure it is delivered to the buyer
8. providing tax receipts to the seller.....and more!

When these matters are left with the Notary Public to handle, they may not all get done, or get done slowly due to the work load of most Notaries Public.

When these matters are handed to another attorney to perform, they may be sandwiched in between criminal complaints, court appearances and other more remunerative activities.

A good Closing Agent can be an attorney with expertise in title transfers, or it can be a company with experienced closing officers and attorneys on its staff for consultations in the event there are title issues. More and more there are closing agents throughout Mexico. They are specialists in titles and transfers. Attorneys handle civil and criminal matters but not always title transfers..

The role of the closing agent

An experienced Closing Agent is a key person in the real estate purchasing process. Hiring a good Closing Agent who understands the ins and outs of the Mexican legal system and the requirements of the law as it relates to foreign investment will make the real estate transaction go much smoother.

The closing agent should be involved in drawing up a promise contract and reviewing all documents including title, certificate of no encumbrances, and permits. A closing agent can also order a complete title search before the transaction reaches the notary public, which will save the buyer valuable time and money should there be a problem with the title.

The prudent buyer will always insist upon using a neutral third party closing agent to protect his or her interests.

Many developers wish to have the title transfers “in house”.. *Beware!* The developer’s interest is to sell the property which may or may not be free and clear of liens and potential problems. Although the notary’s job is to confirm the validity of all sale documents and to confirm the validity of title, there have been instances where the Notary Public overlooks details. .

For example: A foreigner purchases a property that was privatized from *ejido* land ten years earlier. The essential legal steps including the notification and the right of first refusal were not a part of the first deed from the *ejido* group. The notary does not review each and every prior deed, generally only the last one. As a result, the title is deemed clean and transferred to the new buyer. However years later members or heirs of the *ejido* group come back to reclaim the land. It is found that when the land was privatized, necessary legal proceedings cannot be shown and the privatization process is incomplete. The buyer faces a legal battle to defend the property and may indeed lose it.. Even though the notary public is responsible for reviewing the certificates, it is quite a challenge to hold him/her responsible if the title has issues.. This is where enlisting the services of an independent closing agent who should always recommend title investigation and a title policy, as well supervise the transfer can be extremely beneficial. It also saves money, time, hassle and possibly, heartbreak in the long run.

Professional Closing Agents will have bi-lingual and experienced closing officers on staff to review the legalities of the transaction and to ensure that all the documents received are in order. Prudent buyers also enlist the help of the Closing Agent, who can oversee the permit process, review the draft of the deed being used in the transfer of title and order the title investigation, identifying any problems before the title has been transferred and money exchanged.

Finding a Trustworthy Closing agent

Clients should never hesitate to ask for details of the professional experience and references. This is even more important when the real estate agent in the transaction is representing BOTH buyer and seller. This is dual agency which is still common in Mexico. In this case the buyer should definitely seek out his/her closing agent.

Top Ten Questions to Ask a CLOSING AGENT:

1. What exact services will you provide?
2. Do you work for a firm or do you practice on your own?
3. What areas of law or real estate are your specialties?
4. Can you provide an estimate of taxes and closing cost expenses?
5. Will you order or conduct a title search?
6. Can you provide at least three references?
7. Do you have experience with transfers to foreigners, Mexican bank trusts and foreign investment?
8. How long have you been offering Closing Services to the public?
9. How do you handle the funds you receive for closing expenses?
10. Do you prepare specific instructions for the disbursement of funds?

Closing Agents do not have to be specifically licensed in Mexico to be able to advise the buyer on a real estate purchase. It is important to be cautious and do the same homework as when researching a real estate agent. Ask for credentials and references. The more experienced the staff and in-house counsel the company has in handling foreign investment transactions, the more protection and safety the buyer should have in a Mexican property purchase.

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about the author

LINDA NEIL is the founder of The Settlement Company®, which specializes in real estate transfers and escrows, **specializing in the Virtual Closing®**. Licensed as a California real estate broker, Ms. Neil has pursued her profession in Mexico for more than thirty years. Her skills in negotiating contracts between parties from three distinct cultures have placed her services in demand as a consultant and for speaking engagements on Mexican law and customs in Mexico, the United States and Canada. She has been widely published on the subject of real property in Mexico. Memberships; FIABCI, AMPI and NAR. Linda is a former member of the National Advisory Council of AMPI and has served as AMPI Coordinator for the state of Baja California Sur.

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