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THE LEGAL ASPECTS OF LIVING IN A CONDOMINIUM

or what to expect when you buy a condominium in Mexico!

The cottage on a tiny individual lot or the mansion built on a grand expanse of land. This type of home ownership has been the dream of many in the Western world where land has been plentiful and where the family lived in ONE home and did not have other properties for vacations, recreation and retirement.

Changing life styles have changed ownership patterns over the past fifty years. Two working parents, single parent families and the rising popularity of multiple family homes have created a great demand for ownership in condominium. In these cases the individual free-standing dwelling on a lot has been exchanged for shared walls, shared entryways, communal recreational facilities and shared maintenance.

When many live closely together rules and regulations become important. In Europe and the East coast of the United States, condominium ownership has been regulated for many years. In the west the first laws were enacted in 1965, in Canada in 1975 and Mexico's first condominium laws were published in 1972, the same year as the bank trust (fideicomiso) law was enacted. In 1985 California's Davis-Stirling Common Interest Development Act became a model for the rest of the western world. In the same year Mexico updated its condominium law and enacted the establishment and operation of common interest developments.

This step was highly important for Mexico City but also for vacationers in Acapulco, Cancun, Manzanillo, Puerto Vallarta, Mazatlan and Los Cabos. *Because of built in maintenance provisions it has become the preferred ownership for vacationers in Mexico who may spend only a few weeks a year at their homes and prefer to spend the time in fun rather than in maintenance duties.*

In the common interest development, it may be either commonly owned property or common rights that may be enforced as restrictions against separately owned property.

For example the pool, hallways, gardens and other public areas are commonly owned property at the Las Mañanitas project in San Jose del Cabo. Owners of the individual condominium units acquire a proportional ownership interest in all the recreational facilities, as well as in the service areas, bearing walls and utility features at the project.

In other developments such as La Jolla and Terrasol, the developers retained ownership of certain areas destined for recreational use by the condominium owners and common areas are limited to the sidewalks, utilities, ducts and other construction features of the properties.

An example of rights and restrictions against separately owned property would be the building or design codes which are built into the condominium regime which prohibit for sale signs in windows, or drapes and window coverings different from those of the other units.

The presence of either element; rights or commonly owned property, makes the project a common interest development.

In Mexico direct ownership of the common property is the general rule. This means that certain property in the complex is owned in common in undivided interests by the individual homeowners. As an example, 25 condominium units and a common swimming pool and tennis court, in direct ownership each condominium owner owns his private space and a percentage of the the common areas.

SWISS CHEESE: When the owner sells, leases, mortgages his own lot or condominium his or her percentage of the common area must be included. The common property cannot be severed from the individual lot or unit! It is rather like Swiss cheese: The owners own a separate interest in the holes and an undivided interest in common in the cheese itself.

The common interest in the building normally will include: the foundation, roof, exterior walls, bearing walls even if located within the unit, common hallways, chimneys, exterior doors, windows and all utilities and the pipes, ducts and wiring for same.

The individual owner's unit will generally include all interior fixtures, improvements and personal property which is located within the three dimensional block of airspace. This will include built-in cabinets, plumbing fixtures, lighting fixtures and interior doors.

THE CONDOMINIUM REGIME:

This is the legal document which must be completed before an individual title can be granted out of the development. It must be made before a Mexican Notary Public and registered in the Property Tax office and Public Registry of Property.

By law it will contain the Descriptive Memory of the project. This means the measurements and description of the land, of each and every private unit and a description of the common property for the entire project.

It also must include the **Condominium Rules and Regulations.**

This part outlines the rights and obligations of the condominium owners, it defines the type of administration to be in place and contains the necessary rules and regulations to promote the well-being of the community.

Article 27 of the law provides for a annual meeting of homeowners. Homeowners are to be notified of the time and date of the meetings through registered mail ten days prior to the date of the meeting. This notification should also be published in a local newspaper and posted in a prominent place in the condominium project. If 90% of the homeowners are not present, **subsequent meetings can be called for the same day and decisions can be made on important issues by those present which will affect every owner in the complex.**

Articles 27 of the Law of the Condominium Regime also provides for voting in proportion to the percentage of common property held by each owner. Voting must be direct and personal unless otherwise provided in the Regime of the individual project. In other words, no proxies are permitted unless specifically stated in the law.

A surveillance committee consisting of one to three parties must be elected at an annual meeting and is composed of owners who oversee the work of the administrators.

A reserve fund must be established with funds invested in securities and readily available for required long – term repairs.

Maintenance fees must be paid for all common areas (swiss cheese) and failure to pay can result in loss of the unit. The law- provides that legal action may be taken against homeowners who fail to make THREE payments of monthly maintenance fees. Repeated failure to pay fees can result in putting the unit up for auction. Even if the homeowner is not happy with the administration of the complex, monthly maintenance fees must be paid.

Absentee owners with property in a foreign country should spend a few minutes to review the financial reports for their complex on a regular basis. When staying in the unit, they should open their eyes and review the condition of the complex. Is it well maintained? Or is maintenance being deferred? This will affect the value of the complex, and the value of the unit. More and more, absentee owners are selecting professional management companies to perform all administration and maintenance services rather than having these services performed by the Homeowner Association or its Board of Directors. This makes sense especially when properties represent a second or third home for the owners who are busy and wish to spend their limited time at the unit enjoying it...not managing it!



Linda Neil is founder and CEO of **the settlement company**®, consultants and land use professionals specializing in legal and tax matters affecting real properties in Mexico. The company provides escrow services and supervises the transfer of titles on Mexican properties located anywhere in the country. Ms. Neil, a California-licensed real estate broker with 30 years of experience in Mexican real estate, is a member of AMPI, NAR and FIABCI. For further information on these subjects, e-mail: info@settlement-co.com.