



the settlement company[®]
escrow & title insurance in Mexico

the settlement company[®] **TITLE SEARCH AND INSURANCE IN MEXICO**

by Linda Neil

Title insurance, so common in many parts of the United States and Canada, is in its infancy in Mexico. While the Public Registry system operates in much the same manner as in other parts of the world, the actual work is still performed manually in many places in Mexico. Deeds are handwritten into large books, a computerized system is still a dream and title plants are non-existent. Maps of subdivisions and properties are often uncommon or incomplete.

Thus, information available to create a chain of title for a specific property requires a visit to the local public registry office in the municipality where the property is located, and may require hours of laborious research and investigation to determine if the property is private property, who the sellers are, and if there are liens or encumbrances on the property. Several major United States title insurance companies are doing searches in certain parts of the country and are offering title policies. For those who wish title insurance, it is necessary to provide a general description of the property, the name of the current holder of title, preferably a copy of the deed, and the approximate amount to be insured. With this information, we are able to investigate the existence of any existing title data and confirm whether or not title insurance will be available for the specific property.

Many people have said that title insurance is unnecessary in Mexico. This is not correct. Those who acquire title in fee simple - in the interior of the country, rely upon the Notary Public to search title. Title search, in this case, consists of requesting and receiving a Certificate of No-Liens on the property, which is issued by the Public Registry Department. This certificate, plus the Seller's declaration in the deed that the property is being delivered free and clear of liens and encumbrances, are the only assurances that title is valid. Should the Certificate of No-Liens be issued in error or due to oversight, or should the seller misrepresent the property, a civil suit against the seller may be the only legal remedy for resolving problems.

Those who acquire property in the Mexican Bank Trust (*fideicomiso*) have felt comfortable in relying upon the trustee bank to research title. This is also inappropriate. The standard *fideicomiso* (bank trust) document will have a disclaimer in which the bank will supply a power of attorney to the legal representative of the beneficiary of the trust in order to settle title matters or problems, but the trustee bank will not be the responsible party if, indeed, title problems arise.

A title insurance policy will guarantee four important matters:

1. That title to the estate or interest described in the policy is as stated therein;
2. That there are no defects, liens, or encumbrances (*registered easements, etc.*) other than those stated in the policy;
3. That title is marketable;
4. That there is right of access to and from the land.

The standard exclusions from coverage in both the U.S. and Mexico are:

1. Laws, ordinances or regulations restricting the usage of land (zoning, construction, environmental protection - contamination)
2. Rights of eminent domain - unless recorded prior to date of policy
3. Defects, liens, encumbrances, adverse claims
 - a. Created, suffered or agreed to by claimant
 - b. Not a matter of public record but known to claimant
 - c. Created subsequent to date of policy
4. Taxes or assessments not shown as existing liens
5. Facts, rights, interests or claims not shown by the public records but which could be ascertained by an inspection of the land or by making an inquiry of persons in possession thereof.
6. Easements, liens or encumbrances, or claims thereof not shown by public records but could be discovered by a physical inspection thereof,
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachment or other facts in which a correct survey would disclose.

Exclusions from coverage (Mexico only)

1. Water rights or claims or title to *water* (*All water rights are owned by the Mexican government*);
2. All substances and deposits described in article 27 of the Mexican constitution, the dominion of which is reserved to the Mexican government; (i.e.) minerals, petroleum and related hydrocarbons, salt and precious gems;
3. Confiscation or expropriation by insurrection, rebellion, revolution, civil war, military or usurped power, through the efforts of a political, revolutionary constituted government of the nation or one of its sub-entities;

The powerful reasons for obtaining a policy of title insurance are to insure against error by searchers, fraud and forgery in deeds. If a mortgage or pledge guarantee is involved and the lender is a foreign institution, a policy of title insurance will generally be required in order to make the loan.

copyright, April, 2003 Consultores Phoenix, S.C., reproduction prohibited without permission



*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.

E-mail info@settlement-co.com, website: <http://www.settlement-co.com>