

**PAMPHLET ON THE "A B CS" OF REAL ESTATE
TRANSACTIONS IN MEXICO FOR FOREIGNERS**

(Line-Up of the Players and Elements)

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1. INTRODUCTION. This pamphlet is designed to assist the English speaking person (foreigner to Mexico) unaware of the basic elements involved in the transacting of real estate in Mexico. This pamphlet will a): identify the parties that are normally associated with real estate transactions in Mexico and b): the steps that are normally performed in completing real estate transactions in Mexico.

2. PARTIES NORMALLY INVOLVED. Customarily you will find that the parties involved in a real estate transaction may be some or all of the following: Seller, Buyer, Real Estate Agent, Notary Public, Attorney, Fiduciary (Trust) Bank, Taxing Authorities, Ministry of Foreign Affairs, National Registry of Foreign Investment, appraiser and others.

2.1 SELLER ("Vendedor"). This is the person that holds ownership title to the real estate in question that should be in the private realm (vs. public realm like government). This person can prove his or her ownership by showing an original testimony of a Public Instrument issued by a Notary Public (see ~~section 3.1.1~~), an original of a final Court Order (see section 3.3) or an original of a Presidential Decree (see ~~section 3.4~~). TAs well the corresponding document should show the registry of title at the corresponding public registry of property, when held in a public instrument.

The seller may sell his or her title to ownership of the real estate, subject to the restrictions of law, those contained in his or her title document and those registered at the public registry of property wherein the real estate is registered (example lien, subject to any restrictions on the seller's civil rights to obligate himself or herself) (three examples are: i) the loss of right to sign due to being declared incompetent by court, ii) being found guilty of a criminal act and sentenced to a criminal penalty (while this penalty exists) and iii) the restrictions on performing business in Mexico by a foreigner without the proper immigration document). The simple sale of one's real estate or purchase of real estate for one's self does not in itself constitute a business act but acting on behalf of a company or other person selling does (The first case requires only a tourist status document where the second requires more since it is an act of agency).

2.2. BUYER ("Comprador"). This is the person that wishes to purchase real estate for himself, in his own name, through a title transfer trust (see section 2.6 Fiduciary/Trust Bank) or via a Mexican corporation. Due to foreign investment restrictions on real estate ownership by foreigners in the Restricted Zone, foreign buyers may opt to acquire title to real estate in Mexico's Restricted Zone via a Mexican corporation (to do so it must qualify as commercial or business property). The person purchasing should pay for the title to the

real estate upon receipt of the title, in those terms agreed upon contractually. This person will normally receive his or her title through a Public Instrument issued by a Notary Public (see section 3.4) and registered at the local Public Registry of Property.

This buyer may purchase his or her title to ownership of the real estate, subject to the restrictions of law, those set forth in the corresponding Public Registry of Property, those agreed upon in the Public Instrument of acquisition and subject to any restrictions on the buyer's civil rights to obligate himself or herself (see the second paragraph of section 2.1 for examples).

2.3 REAL ESTATE AGENT ("Agente de Ventas" or "Corredor de Bienes Inmuebles"). This is the person that receives some kind of a fee or commission for rendering the service of finding a buyer for a seller or a property for a buyer of real estate. (Please do not mix this concept with the term "Corredor commercial" which is set forth in the Federal Commercial Code of Mexico which is a business facilitator with authority similar to that of a notary public in Mexico).

In Mexico, there is no licensing requirement for these real estate agents, no centralized or decentralized government office or private organization that specifically rules over the practice of this specific real estate intermediary agency or the actions of the real estate agents. Through the efforts of the author and other persons, there is a (voluntary) registry process for real estate agents in the state of Sonora (with request education). The only law applicable to the action of real estate agents is that of "generic" agency contract in the Civil Codes of each state of Mexico. The only recourse against a real estate agent in Mexico is through court. In other words, any person may represent himself or herself as a real estate agent in Mexico, subject only to restrictions of the agents' civil rights (see examples in the second paragraph of section 2.1) and in the case of foreigners to Mexico, subject to immigration status.

The normal manner in which a real estate agent is authorized to act on behalf of another person is through a contract of agency or a power of attorney (see section 5).

In the choosing of a real estate agent, it may be advisable to ascertain the personal and business reputation of the proposed agent in the locality where he or she lives and/or works.

It also may be wise to set in writing what exactly the real estate agent will do for you and how he will receive his fees and expenses, if any (signed by both the principal and the agent). There are attorneys that can assist with the transaction and/or with the preparation of contracts in Mexico (the author of this pamphlet can do so).

2.4 NOTARY PUBLIC ("Notario Público"). This is the person that will prepare the final sales/title document wherein the terms of the sales contract will be restated (there should already exist, either in writing or verbally, an agreement on the sale/purchase and this agreement is either provided or informed to the notary public). The generic term for the document in which the Notary Public will establish the final sale/title to the buyer is the "Public Instrument" (Escritura Publica), and the buyer will receive a final original duplicate of this document in the form of a testimony. It is possible to acquire many original reproductions of the title document (i.e. the 1st, 2nd, 3rd etc. testimony of the Public Instrument). The process of creating the public instrument is known as the protocolization of the public instrument. A testimony

(normally the 1st testimony) is registered at the Public Registry of Property corresponding to the location of the property, to produce effects against good faith third parties that may also wish to act as owners thereof (see section 2.10).

The Notary Public is an attorney at law, appointed as a Notary Public for a specific city in Mexico by the governor of the state wherein he or she practices this specialty. This person first does an apprenticeship of the activities of a Notary Public with another practicing Notary Public. When he can provide evidence of his ability to act knowledgeable in Notary Law and there is a vacancy, he will seek appointment by the Governor of the state wherein he/she wishes to practice this specialty (the Notaryship law is state law and normally the apprenticeship is in the state wherein he/she wishes to practice it). Only the governor of the state can grant the right to act as a Notary Public (the granting of a notaryship is normally given only when there is a need for an additional or replacement Notary Public in the local sought). Once appointed as a Notary Public he or she is given the right to use the "public faith" granted government, for those acts set forth in the Notary Law.

The Notary Public in Mexico can give public faith to the full content of a document, solely the signature therein, or assert to the actuality of an event or act which he or she witnessed. This element of public faith when used, holds the document as self evident in Mexico (i.e., not necessary to prove by other means, but automatically considered as the truth)(evidence to the falsity of a public instrument or certification therein can be given in court to counteract the "public faith").

The Notary Public, in order to perfect the transfer of title, will normally need to receive a testimony of the seller's title, an appraisal of value, payment receipt of land taxes (impuesto predial), certificate of non-encumbrances/certificate of ownership and in cases of title transfer trusts, the Notary Public will need the original of the permit to create the trust (see section 4.4.1). A certain set of taxes will also need to be paid (see section 2.7), as well as the Notary Public's fees and expenses. The Notary Public is the party that normally calculates and collects the taxes and then distributes them to the offices of government.

At the time of closing (all parties signing the Public Instrument of title transfer)(see section 3.1) or some time prior thereto, the Notary Public will demand that he be given the money to pay the different taxes, charges and rights that are payable due to the title transfer. Don't forget to get a receipt.

The Notary Public does not normally act as an agent of any of the parties and normally does not hold the purchase price (he is not normally an escrow agent).

2.5 ATTORNEY ("Licenciado en Derecho"). This is the person that will represent the parties in the transaction in order to get them through the titling process.

The attorney is a person which has finished five years of law school in Mexico, passed his or her "professional examination" in Mexico and registered at the Federal Mexican Ministry of Education as a practicing attorney. Thereafter, this person must file his or her formal education documents with the Federal Ministry of Public Education of Mexico, who will issue a license to the person to practice law in all of Mexico, in

both federal and state levels. It is the Federal Ministry of Education who determines whether the professional can perform his duties as a licensed professional in Mexico.

Like most attorneys at law worldwide, those in Mexico will normally specialize in certain areas of law over a period of time and through personal study, additional courses and/or practice (or apprenticeship) will become very effective in their certain areas of practice. Reputation is also important.

The use of attorneys at law in real estate transactions may vary depending upon the special needs of the client. Much depends on the sophistication of the buyer and the value of the transaction (a buyer may not take the same precautions on a \$5,000.00 dollar lot as he would on a \$150,000.00 dollar house.) Nevertheless, attorneys commonly are used to determine the present status of the title of the real estate (i.e., who owns it, what liens it may have, what kind of title it is, what the legal description is, and how good is the chain of title), as well as the preparation of possible content of any preliminary sales agreement (see XXXXXXXXXX the final sales contract of title and any negotiations.

The Notary Public can provide service in some of these areas, although it is not their job to be involved in the negotiation of the terms and conditions of title transfer but only the formalization thereof. Wherefore the attorney is the proper party to handle them.

Although there are bar associations for attorneys at law in Mexico, they are fraternal in nature and registry therein is only optional and the majority of the attorneys do not belong to them.

The person seeking the services of an attorney at law in Mexico may be wise to ascertain the professional reputation of the attorney he or she is considering hiring.

2.6 FIDUCIARY/TRUST BANK ("Banco Fiduciario"). This is a federally licensed banking institution in Mexico that has specific authority to also act as a fiduciary agent in the holding of title to, among other items, real estate in any part of Mexico on behalf of a beneficiary. Some banks do hold authority from the federal licensing agency to act as a fiduciary agent, while others may not.

Where the foreigner (buyer) wishes or otherwise needs, due to legal restrictions, that the bank hold title for him or her in this trust title arrangement (most commonly for residential real estate in the Restricted Zone), he or she will contact the bank, via its fiduciary department and request the bank act as its titleholder. Thus, once title is transferred to the bank, the foreigner will become the beneficiary of the title trust, and hold the right to instruct the bank to perform those activities that he or she deems at his or her best interest (i.e., lease, encumber, sell). It is common that the delegate of the fiduciary department of these banks speak English, in order to better assist their clients.

These fiduciary banks will normally assist in the acquisition of the federal trust permit from the Ministry of Foreign Affairs (see section 2.8) to perfect the title transfer trust in favor of the foreigner. These banks will charge a fee for the acquisition of the trust permit, a one-time fee for their acceptance to act as fiduciary and a yearly fee for administration (or holding) of the trust title for

each year the trust continues to exist. Technically these fees may be negotiable, but in most cases the banks have set fees for set services.

2.7 TAXING AUTHORITIES ("Autoridades Fiscales"). These are the federal, state and municipal authorities that will place certain taxes and/or registry costs on the title transfer of real estate, as well as on the assignment of rights of beneficiary of a trust that holds title to real estate. There are also other taxes that may be incurred in favor of these authorities due to acts such as lease or mortgage.

Some of the concepts that may be encountered are for: federal income tax of the seller (not normally considered part of the title transfer costs), federal real estate transfer tax, state tax, value added tax on commercial constructions, fees for registry of the title at the Public Registry of Property, tax for public works, tax for social assistance, and tax for medium and superior education. It is normally the Notary Public that calculates and collects these taxes.

Do remember that there are other costs in the transfer of title (which are not taxation) such as notary fees and costs, bank fees and costs (for trusts), appraisals, certificates of non-encumbrances (issued by the Public Registry of Property), attorney fees and costs and registry at the National Registry of Foreign Investment (in certain cases - see section 2.9). It is common to see closing costs vary between 8% to 10% of the sales Price of the real estate, depending on the circumstances. (see section 9.)

2.8 MINISTRY OF FOREIGN AFFAIRS ("Secretaría de Relaciones Exteriores"). This is the ministry of federal government that among many other activities, issues permits to execute title transfer trusts on real estate in the Restricted Zone (see section 4.4.1) or outside this zone, to Mexican fiduciary banks (acting as fiduciary - titleholder) and in favor of foreign nationality persons (foreign nationality individuals or entities) acting as beneficiary of these trusts.

These trusts are required when the purpose of use of the real estate is residential and it is in the Restricted Zone or where the real estate is located outside this zone but the foreign does not qualify to take fee simple due to a reason other than location (most likely immigration issue, size issue or use issue). If the use is for business then a Mexican company can be created (with permit obtained from this ministry for the incorporation) and the company then can hold fee simple title to the real estate, whether inside or out of the Restricted Zone.

There were short term trusts (i.e., 2 years duration - basically on rural real estate - which are no longer used) and medium to long term trusts (i.e., maximum of 50 years duration on urban and sub-urban - there are really no medium term trusts per se, but since the trust permits can be so expensive at times - I have seen in the past where they were over \$2,000.00 U.S. for 50 year permits, the Ministry has given lesser duration permits for lesser cost where the real estate would otherwise qualify for the 50 years, but the buyer does not have the money for the trust permit). All the trusts that qualify for any term other than short term (2 years) may be renewed for another 50 years under certain circumstances. (see section 4.4), (As a note of interest, the long term trusts were for a period of 30 years renewable, prior to the new Foreign Investment Law which entered into effect on December 28, 1993).

2.9 NATIONAL REGISTRY OF FOREIGN INVESTMENT ("Registro Nacional de Inversiones Extranjeras"). This is the national registry wherein those

trusts regulated by the Foreign Investment Law of Mexico (Ley de Inversión Extranjera) are registered. These are those trusts wherein beneficiary rights are derived to foreign investment (i.e. foreign entities or individuals). The classic example is that of a 50 year touristic title transfer trust on real estate located along the ocean front, in favor of a foreigner. All of these title transfer real estate touristic trusts are to be registered therein.

It is customary that the fiduciary bank (see Section 2.6) do the foreign investment registry for the beneficiary. Of course, the bank will charge the beneficiary a modest fee for this service.

2.10. PUBLIC REGISTRY OF PROPERTY ("Registro Publico de la Propiedad"). This is the public registry that is located in most all cities and towns of Mexico, wherein the titles to real estate are registered in order to produce legal effects against good faith (and bad faith) third parties. In other words, you will need to register your direct/fee simple title or trust title in the public registry of property corresponding to the physical location of the real estate you purchase, in order to secure that your title is giving public notice that you are the owner and creating priority of title registry.

It is customary that the Notary Public that executes the Public Instrument holding your title, will register the title document in this registry and deliver the registered document to you or your fiduciary bank if you ask the notary to do so (in the case of a title trust you should ask for a second testimony for yourself). There will be a fee for the Notary Public's services of registry (as well as for issuance of a second testimony) and there will also be a registry tax charged by the registry offices for the registry. It is advisable that you confirm with the Notary Public that he or she will perform this registry.

In many parts of Mexico (maybe all parts), the Notary Public that issued the Public Instrument containing the title, has the right to send a notice to the offices of the local public registry of property advising them of the completion of the title transfer and that he or she will be sending the title document to the public registry of property for its registry "in the next few days" (this notice is called a preventive notice). The purpose of this is to produce the same effects as registry for a maximum of 30 days as from the presentation of the preventive notice, during which time, if the title document is filed as promised, the title registry will be effective as from the date the letter was presented. You should strongly consider asking the Notary Public to send this notice if there will be a lapse of time between signing and registering the title document.

2.11 IMMIGRATION. ("Secretaría de Gobernación, Dirección de Migración"). This is the federal Mexican government office that is charged with, among other items, that of issuing immigration statuses to foreigners in Mexico or that wish to enter Mexico.

2.12 APPRAISERS. There is no licensing or formal schooling required of real estate appraisers in Mexico. The only two places you will normally find real estate appraisers are the official appraiser of the state governments (one per state and which is a state employee) that appraise all real estate in the corresponding state for real property holding tax purposes (impuesto predial) and then there are those that work for Mexican banks or are accepted by Mexican banks. This latter case is an effort to formalize and control, to some extent, the activity of appraising real estate value on which banks do their transactions. These bank accepted appraisers are most likely the ones that will become

involved in any real estate deal that is accomplished by a foreigner (the notary publics do accept these appraisals, subject to rules of tax calculations).

2.13 OTHERS. Other authorities that may become involved in the transaction of real estate, are the Federal Ministry of Agrarian Reform, Federal Ministry of Tourism, Federal Ministry of Ecology (SEDESOL), The National Commission on Foreign Investment, the different state Departments of Tourism, the different state Departments of Infrastructure and Urban Development, and the different city offices of Planning and Zoning.

The Federal Ministry of Agrarian Reform is the federal government agency that sets up communal farms ("Ejidos") for the farmers that are unable to do it for themselves (no resources). These "Ejidos" many times may look like a small town, where a foreigner may wish to purchase, lease or take a mortgage on real estate therein, however this can become complicated due to the nature of the "Ejido" wherefore I recommend you get professional help before you proceed (the "Ejido" land is not owned by the members of the "Ejido" but rather the Federal Mexican Government which permits them to use it only for agricultural/ranching purposes). This agency also becomes involved in many other aspects of the agrarian life of the Mexican people where it can provide land for use. It is recommendable that the foreigner not become involved in the holding, leasing, purchasing or taking of a mortgage on the land that is considered directly subject to the "Ejido" or other programs similar thereto, unless advised by his or her own legal counsel, since in many cases the title can not be transferred or encumbered, except by direct intervention of the Federal Ministry of Agrarian Reform.

The Federal Ministry of Agrarian Reform is the federal government agency that also becomes involved when there is rural privately owned land (outside a city -not urban- and not subject to the "Ejido" or similar program). This rural land is normally used for farming and ranching by private parties. When a real estate development (hotel, condominium, subdivision, etc.) is sought, this ministry must relinquish its rights of affectability (expropriation for agrarian needs) against the land and state that it authorizes the land in question to be used for touristic purposes. If this is done, then we are half way to qualifying the rural land for a long term touristic trust (residential, vacation, hotel or related type real estate use) (see section 4.4). (The politics in Mexico are such that they are trying -slowly- to dissolve the Ministry of Agrarian Reform and eventually the "Ejidos" - also there is now the possibility to des-incorporate "Ejidos" and thusly process the change of the land regime to that of private ownership).

The other half of qualifying for the long term trust (see sections 2.8 & 4.4) is for the Federal Ministry of Tourism to review the projected use (via a feasibility review) of the rural land in question to give its approval of the proposed project of use. Once the preceding authorizations are obtained, the owner may request the long term title transfer trust from the Ministry of Foreign Affairs (see section 2.8).

Where the owner of land adjacent to the beach front (the beach is the Federal Maritime Land Zone up to 20 meters inland at mean-high-tide) wishes to use, in an exclusive manner, all or part of the beach between his or her land and the ocean, he or she must request authorization from the Federal Ministry of Ecology ("SEDESOL"), which will approve said use after having received certain documents and money for the application (i.e., photographs of the area, identification of the intended use,

ecological impact on the area and payment of certain use fees). This authorization is given in the form of a lease.

The National Commission on Foreign Investment, under the umbrella of the Federal Ministry of Commerce and Industrial Development, is charged with interpreting and enforcing the Federal Foreign Investment Law, as well as care taking of the National Registry of Foreign Investment, wherein acts relative to: i) touristic title trusts and their foreigner participants, ii) Mexican companies and their foreigner owners and iii) foreign persons (individuals and entities) that continuously perform acts of commerce in Mexico, are to be registered.

When the real property in question will be used for a touristic development (examples, sub-divisions, hotels), the local State Department of Tourism of the corresponding state where it is located will want to review the terms of the project as it affects the touristic business in the state.

The State Department of Infrastructure and Urban Development (or similar name, depending on the state of Mexico) is that office of the state government that is charged with applying Laws on Human Settlements (Leyes de Asentamientos Humanos), assuring that there is a minimum of services and other amenities as deemed necessary for humans to live there (many times seen through subdivision regulations).

The city (and town) offices of planning, zoning and construction authorization, if the real estate is located in a city or town, will determine over issues such as zoning and construction codes and grant construction permits. The mixture of city and state overseeing may vary from state to state, but the net result is there.

2.14 ESCROW. The concept/institution of escrow does not exist "per se" in Mexico. The closest Mexico comes is a conditional deposit entered into with a Mexican bank. The Notary Public in Mexico does not normally act as agent of parties nor as escrow holder. The purchase price is normally delivered by the buyer to the seller at the time of closing (when the seller is at the Notary Public's office signing the finalized Public Instrument).

2.15 FOREIGN INVESTMENT DEFINITION. Foreign Investment is defined as that investment performed by: a) foreign nationals (individuals or entities) in the capital of Mexican companies; b) Mexican companies which have majority foreign capital (held by foreigners); and c: foreign nationals (individuals and entities) in activities and acts contemplated by the Mexican Foreign Investment Law. There is a some times exception when the foreigner is immigrated ("inmigrado") to Mexico. Here the foreigner may be considered as Mexican investment. Unfortunately, when dealing with real estate and many of the business activities foreseen in the Foreign Investment Law (Titles I and II of the law) this exception does not apply.

3. TITLE DOCUMENTS ("Título de Propiedad"). These are the types of documents that are used to show evidence that a person is the owner of a certain parcel of real property (real estate and chattels affixed thereto permanently). The most common type of title document is that of a Notary Public's Public Instrument.

3.1 PUBLIC INSTRUMENT ISSUED BY NOTARY PUBLIC ("Escritura Pública"). This is the most common document that a person can use to show that he or she is the owner of real estate in Mexico. Since the Public Instrument is located in the protocol book of the Notary Public that

executed (formalized/certified) it (the seller and buyer also having signed it) and the Notary Public must keep the protocol book (until he turns it over to the state archive), it is customary that the Notary Public issue testimonies ("testimonios" - original reproductions) of the Public Instrument (The notary public can issue as many testimonies of the public instrument as requested, each of which will be an exact reproduction of the Public Instrument and validly evidence its content). The first issued testimony will normally be used (any number testimony may be used) to register the title transfer at the local Public Registry of Property (see section 2.10). (The terms public instrument and testimony are generic in nature, wherefore we must verify that the content thereof is what we want).

If ever another testimony is wanted (i.e., testimony number two, testimony number three, etc.), the owner may request it from the issuing Notary Public, provided he still has the protocol book in which it is located, or the owner may request it from the central archives of the state, if the book has already been sent there.

The content of the Public Instrument will normally consist of the following:

i. The first section is where the participating parties (Notary Public, seller, fiduciary bank, buyer/beneficiary) are identified, the property is identified, the type of transaction is identified (i.e., sale, assignment, court judgment, etc.), and the attached corresponding documents (see section 2.4) and any permits that may be required (i.e., trust permit, immigration permit, other) are all mentioned.

ii. The second section will set forth the terms of the sale, assignment or court order (instructing title to be given to a certain person - see section 3.2) and in the case of creating a title trust with this, then also the terms of the trust contract.

iii. The third section will contain certain certifications by the Notary Public in performing the use of his "public faith".

3.2 CERTIFICATE OF OWNERSHIP REGISTRY. It is possible to acquire a certificate of title registry and non-encumbrances (or encumbrances in its case) from the Public Registry of Property of the city wherein the real estate is located. This document will state, after a search in the registry's books, which is the recorded owner of the property and whether there are any liens on it. This certificate does not act as a title document, but simply states that title document was registered in the registry.

3.3 COURT ORDER ("Orden Judicial"). This may be the order that is sent by a court to a Notary Public instructing him or her to perfect a Public Instrument wherein evidence is set forth that this court ruled, in final judgment, that a certain person was determined as owner of certain real property.

The Notary Public, upon receipt of such an order will execute the formalization of the order in his protocol book (creating a Public Instrument - see section 3.1), stipulating therein that there is a court ruling that title belongs to a certain person. The Notary Public will request transfer costs from the new owner to perfect (finalize and issue) the title document. If not received, the Notary Public will not perfect the title document.

It is also possible that a court order be directed to the director of a Public Registry of Property, ordering him or her to register a lien or encumbrance on the real property in question. There is no Public Instrument in this case.

3.4 PRESIDENTIAL, GOVERNOR OR AGRARIAN TITLE ("Título de la Presidencia, Gobernador o Reforma Agraria"). In isolated cases, it is possible to find that the Presidency of Mexico, a governor of a state in Mexico or the Federal Ministry of Agrarian Reform of Mexico may issue a title to land its holds, determining that a person is the titleholder thereto. Normally this is in regard to rural land, but in the case of the Presidency or a Governor it may be urban. These issues may be registered at the Public Registry of Property corresponding to the location of the real estate, thusly producing effects of priority of title. Do remember that the state and federal governments hold title to portions of land as well as buildings for the performance of their duties or solely in passing and that they may hold it in public domain or private domain. In order to pass title of this property to private parties it must be un-incorporated from the public domain and converted to the private domain.

Foreigners should normally be careful if they become involved in the taking of title to real estate that is issued by the Federal Ministry of Agrarian Reform of Mexico (see section 2.13).

4. TYPES OF TRANSACTIONS AND COSTS. The most common types of transactions are where the seller sells direct title or sells his or her rights as a beneficiary of a title transfer trust which holds real estate. In the latter case it is called an assignment, but the document formalities are still the same, the costs are basically the same and the resulting document (i.e., Public Instrument) is basically the same (see section 3.1). There may be documents that are preliminary or subsequent to this Public Instrument, but they are not title documents, solely private contracts of obligations and rights.

The most common costs involved in a sale/transfer of real estate in Mexico, as previously mentioned, are the commission to the real estate agent, fees to an attorney, fees and expenses to the Notary Public, taxes and government rights for the transfer and bank costs/fees (on title trusts), as well as federal income tax on transfer (not technically a closing cost to be shared), transfer tax, added value tax on commercial constructions, rights of registry at the Public Registry of Property, acquisition of bank appraisal, acquisition of certificate of no debt for land holding tax, acquisition of certificate of non encumbrances, acquisition of permit from the Ministry of Foreign Affairs (on title trusts), Public Instrument expenses and last but not least the purchase price. I have assisted in several cases where the transfer tax itself amounted to almost a net adjusted 10% (now there is an option of a straight 4% which people are using to lower costs - recommended) calculated on the appraised value (or operation value, whichever is higher). The appraised value these days comes close to the commercial value. It is the job of the Notary Public to calculate all the taxes and rights that are chargeable by the government, since it will be the Notary Public that will demand that he be given this money at closing so that he can pay the sums to the corresponding government offices. Don't forget to get a receipt for any and all money given to the Notary Public or anyone else. The person you should ask "What will the costs be to take title?" is the notary public involved in the transaction. He will have to make several calculations, once he has the appraisal and determined which is the higher of the sales price and the appraised value.

Each of the Civil Codes of the different states of Mexico may be consulted to determine who is to pay the closing costs if no agreement is reached. You will probably find that the code will state that absent agreement, the costs are to be paid in equal shares by the seller and buyer.

In the personal opinion of the author of this pamphlet, the personal income tax that is incurred by the seller is not a closing cost of title since the tax is originated due to an income of the seller, not the transfer of title. Nevertheless, it is lawful for the buyer to pay this, if he or she so agrees. If the Mexican taxation authority finds out that the buyer paid the sellers income tax on the capital gain, it will consider said payment as taxable income to the seller and thusly also be subject to income taxation.

4.1 PRELIMINARY SALES AGREEMENTS ("Contrato de Promesa de Venta"). This is a contract that can be signed between the prospective seller and the prospective buyer, wherein they agree to complete the sale/ purchase of certain real estate when a certain event takes place. The most common contingent occurrences are the buyer's acquiring the trust permit (see section 2.8), the buyer and seller appear before the chosen notary public in Mexico to sign the final transfer document and the buyer paying the seller the purchase price.

If the buyer does decide to sign a preliminary sales agreement, he would be wise to remember that this is not a title document, not a Public Instrument, not registerable at the local Public Registry of Property (where the real estate is located) and will hold no priority to other buyers. Therefore, it may be wise to not make a large down payment under this kind of contract.

If the buyer does find himself in this case and the seller does not want to go through with the sale later on, it is recommendable to contact a Mexico attorney to determine the buyer's rights. Usually the buyer can sue for either i) both the return of the money he deposited (with the seller or a bank) and cancellation of the contract due to non-performance of the seller or ii) he may sue for specific performance demanding that the seller go through with it. In either case, it will not be easy or cheap to go through court to enforce the terms of the contract, and meanwhile the seller could be selling the real estate to someone else who registers his testimony of Public Instrument at the Public Registry of Property before you get final judgment. In this case, you may never get the registered title unless you get the court to order the director of the Public Registry of Property to make a marginal notation of "litis pendece") on the title registry. If the facts support it, another alternative might be to seek a criminal procedure of fraud against the seller.

4.2 STRAIGHT TITLE TRANSFER SALE ("Venta a Título Directo"). This is simply the sale of the real estate by the seller directly to the buyer in direct title (fee simple concept), where both of them sign the Public Instrument prepared and executed by a Notary Public which contains the sales contract and title transfer. The first testimony of the Public Instrument is registered at the Public Registry of Property corresponding to the location of the real estate.

4.2.1 DIRECT TITLE FOR FOREIGNERS. Where foreigners wish to acquire title to real estate in Mexico through direct title they have certain options (also see section 4.5):

a) They can personally acquire direct title to qualified privately held real estate located outside the Restricted Zone, if they have one of a certain number of immigration statuses (see section 2.11) (this not including agricultural areas or other restricted lands, which have special rules).

b) They can acquire title to qualified privately held commercial real estate inside or outside the Restricted Zone through a qualified Mexican company which they hold the stock of, without necessity of a prior permit from the Ministry of Foreign Affairs (there are limits of size/location/purpose set for agrarian related matters)(there is limitation on the ownership of the company based upon the corporate purpose). In the case of foreigners using a Mexican company for the acquisition, both the company and the acquisition are to be registered at the National Registry of Foreign Investment, in addition to the title at the local Public Registry of Property where the real estate is located).

4.3 TITLE RETENTION SALE OR MORTGAGE ("Venta Condicional o con Hipoteca"). On title retention, the seller and buyer both sign the Public Instrument prepared and executed by a Mexican Notary Public, which contains the sales contract and retention of title until a certain event transpires. The most common contingent event is that final title will be passed when final full purchase payment is received. This document is registerable at the corresponding Public Registry of Property (wherein the real estate is registered). When final payment is made to the seller, the seller then must once again go before a Notary Public and sign another Public Instrument, which will state that full payment has been made and that title is fully transferred. This latter document will also need to be registered at the corresponding Public Registry of Property (corresponding to where the property is located). This case is not common. Trust banks in Mexico do not like to get involved with this kind of scenario due to the commercial issue (not a legal restriction) that if the buyer does not make full payment, there is a likelihood of disagreement over the return of money given to the seller by the buyer.

In the case of a mortgage (to secure a debt, such as the purchase price), the title will have been placed in the name of the buyer and have been registered at the corresponding Public Registry of Property. It is possible to prepare the title document and the mortgage document at the same time with the Notary Public registering the title document first and then the mortgage document. Please do remember that a mortgage document is prepared in a Public Instrument just like a title transfer document and that the registry (in some states just the execution) of the mortgage will be expensive. In the case of a title trust holding ownership, if the trust bank knows the intention of the buyer as that of financing with an immediate subsequent mortgage, the bank may not want to get involved in this title case (commercial decision on the bank's part). Each bank makes its' own internal commercial decisions.

4.4 TRUSTS ("Fideicomiso"). In this case the title is transferred just as in a normal situation (see section 4.2) with the only exception that in the title document the title is held by a Mexican fiduciary bank (authorized to act as a fiduciary bank by the Mexican Federal Government) where a permit to create the specific trust was acquired and where the bank will act on behalf of the beneficiary (buyer) therein designated. The title document will contain, in addition to all other normal components, a section that sets forth the terms and conditions of how the trust will work between the fiduciary bank and the beneficiary. The seller will irrevocably deliver title to the trust bank and the

beneficiary will retain the right to sell, mortgage, lease, etc. but through the bank. These trusts are also known as irrevocable, long term, title transfer, touristic, bank trusts.

These trusts are required for foreign nationality buyers when the purpose of use of the real estate is residential and it is in the Restricted Zone or where the real estate is located outside this zone but the foreigner does not qualify to take fee simple due to a reason other than location (most likely immigration issue, size issue or use issue). In the case of a title trust you should ask the notary public for a second testimony for yourself, since the trust bank will want to keep the first testimony.

In order to execute a title transfer in trust where a foreigner will be the beneficiary and the real estate is located in the Restricted Zone, it is necessary to acquire a prior trust permit from the Ministry of Foreign Affairs (see section 2.8). When the real estate is outside the Restricted Zone (see section 4.4.1) this permit may or may not be required to set up the title transfer trust (check with the notary or your attorney).

Where the private property is located in an urban area (within a city or township) inside or outside of the Restricted Zone or located in a designated touristic zone (see section 2.13), then the property will normally qualify for a 50 year title trust. If the trust property is not in the mentioned areas (and direct title can not be taken by the foreigner), it may not qualify for a trust or it may only qualify for a short term title trust. Certain additional approvals may be required from governmental authorities (examples: the Federal Agrarian Reform and Tourism Ministries, Urban Development Authorities - see section 2.13).

At the end of the trust period the beneficiary may order the property sold and keep the net proceeds or in the case of a 50 year trust the beneficiary may request to have the trust rolled over (renewed) once (presumably into a second 50 year term), after which it will then need to be sold and the beneficiary keeping the net proceeds of the sale. If the roll over is not sought (wherever possible) nor the property sold, prior to termination, then the fiduciary bank must advise the Federal Mexican Government of this fact and then proceed to permit the property to revert to the Mexican Federal Government.

Please remember that inside or outside the Restricted Zone, foreigners can acquire title to commercial real estate through Mexican companies they hold stock in, without restriction of commercial use except that for the company's business purpose - see section 4.2.1.

4.4.1 THE RESTRICTED ZONE. The Federal Mexican Constitution determines that there is an area known as the restricted zone (previous known as the "prohibited" zone) inside which zone foreigners may not acquire direct title to real estate (see exception - section 4.2.1-b)

The Restricted Zone is that strip of land 50 kilometers wide along the ocean fronts of Mexico and 100 kilometers wide along the international land borders of Mexico (with the U.S. and Guatemala/Belize).

The prior Federal Foreign Investment Law of Mexico had determined that Mexican companies, which had or could then have foreign investment (shareholders/partners) were considered as foreigners for the purpose of the Restricted Zone, which meant these companies could not hold this real estate in direct title. This has changed under the present Foreign Investment Law of Mexico to the extent that these Mexican companies can

now have foreign investment in them and still acquire direct title in the Restricted Zone, provided the real estate acquired is not for residential purposes (but only for commercial use) and that the company and the acquisition are registered at the National Registry of Foreign Investment (see section 4.2.1.).

These foreigners and Mexican companies that have or may have foreign investment, may also acquire title to the real estate in the Restricted Zone via an irrevocable title transfer trust (see section 4.4) (if the property is for residential purposes, then the trust is required in the Restricted Zone).

Outside the Restricted Zone (in the interior), foreigners may qualify to acquire direct title or use the mentioned title trust. Where foreigners wish to acquire direct title, immigration status becomes a determining factor (see section 2.11). The foreigner may also acquire this real estate outside the Restricted Zone by using the mentioned irrevocable title transfer trust (see section 4.4) with the understanding that when the property is outside this zone there may be no need to acquire a permit from the Ministry of Foreign Affairs to constitute it (Since rules do change in Mexico, you will need to verify this with the Mexican Notary Public).

5. POWERS OF ATTORNEY ("Poder"). Powers of attorney are general or special (specific) in powers and general or special (specific) in purpose (thusly making four possible combinations). It is possible to give someone a power of attorney for one or more of the three general categories of power (authority) which are : first - domain (ownership), second - administration and third - lawsuits and collections, thusly making it general in power. In the last thirty years there are two more categories of authority that have become very important (although not directly related to real estate), which are powers of attorney for labor matters and powers of attorney for executing credit instruments.

It is possible to give only specific power (example - "just lease my properties"). It is possible to give a power of attorney to perform acts relative to all matters of a person (general purpose) or only relative to certain property (specific purpose). (If no purpose is mentioned then it is understood to be general in purpose).

A classic example of a power of attorney with specific authority and purpose is for a seller to authorize a person to offer his or her house for sale in certain terms and when the agent has a buyer, to notify the seller in order for the seller to sign the title document against the receipt of the sales price. This power of attorney is commonly called a listing agreement or also known as a mandate or agency.

In other words a contract of agency or mandate is a contract by which a power of attorney is given another person to perform certain acts. Therefore it is wise to be certain of the terms and conditions that one agrees to when he or she signs a listing contract.

As an additional note, in order for certain powers of attorney to be effective (example, authority to sign the title document of transfer of ownership of real estate on behalf of the owner), the agent must be granted the authority in a Public Instrument executed through a Notary Public. In this case, the formalities of granting authority to transfer title are the same as that of transferring title.

Giving authority to another to act on one's behalf is a serious matter, wherefore it should not be entered into lightly. Consult an attorney, if you have any doubts.

6. POSSIBLE CASE SCENARIO OF SALE. The seller will assure himself or herself that he or she has a testimony of the Public Instrument which contains the title to the real estate in question. The seller will then determine that the Public Instrument is properly registered at the local Public Registry of Property (and the National Registry of Foreign Investment in the case of a title trust), it has no title encumbrances and that the land holding taxes (impuesto predial) and water consumption are paid and up to date (the Notary Public to perfect the title transfer will request the parties acquire an appraisal and a trust permit in the case of a trust). The seller then puts up a "for sale" sign and/or contacts (authorizes) a real estate agent who will go out and look for a potential buyers for the real property.

The buyer will either go out and look for property on his or her own and/or contact (authorize) a real estate agent to help him or her to look for the real property. When the buyer locates the property he/she wants, he/she will contact an attorney specializing in this type of matters to have the title checked out and to review the terms of the final title document content.

Once the seller and buyer have determined that they want to do the sale/purchase and have come to an agreement on the terms and conditions, they will proceed to meet with the Notary Public of their choice (and the buyer will contact his trust bank, in the case there will be a title trust). They will advise the Notary Public of the terms and conditions of the sale/purchase and request that the notary public prepare the final Public Instrument (agreeable to all parties to the transaction) to contain the sale and title transfer (as well as the trust terms and conditions, in the event of a trust). Once the Public Instrument is completed, the seller and buyer will most likely sign it together (at the Notary Public's offices) (in the event of a trust, the trust bank will also sign the title document) and the buyer will deliver the purchase price to the seller at the moment of signing. The Notary Public will usually request the closing costs either, before starting the preparation of the Public Instrument (to be sure that the sale is serious) or, at the very latest, at the time of the parties signing the Public Instrument. After the seller and buyer (and the trust bank in the case of a trust) have signed, the Notary Public will sign in approval and will prepare the first testimony of the resulting Public Instrument. Then the Notary Public will (if asked to do so) take the first testimony to the local Public Registry of Property for its registry. After its registry, the Notary Public will deliver the first testimony to the buyer (in the case of the trust, then to the trust bank - and the foreigner should ask for a second testimony for himself), which document will act as the buyer's title document. While the buyer is waiting for the registry of the Public Instrument, he can ask the Notary Public to notify the Public Registry of a pending sale (preventive notice), and also ask the Notary Public to give him a certified copy of the instrument, to act as a temporary receipt/evidence of transfer. There is the possibility that the trust bank and the beneficiary enter into a private trust contract prior to title closing (exactly in the terms and conditions of the trust contract that will go into the title document), in which case it may not be necessary for the buyer/beneficiary to sign the title document before the Notary Public.

In the case of a title transfer trust, the fiduciary bank will be actively involved along with the buyer and it will be the bank that

signs the Public Instrument to take title and the buyer to agree to the terms of the trust (since the latter will be the beneficiary of the title trust and not the titleholder). The bank will act as the titleholder/fiduciary. Also in the case of the title trust, a permit for the trust will most likely be required to and it will be necessary to register the resulting testimony of the title document at the National Registry of Foreign Investment (see section 4.4).

There are many other case scenarios that are possible, depending on many factors, among which might be where the property is located and what the property will be used for. It is advisable to consult an attorney that specializes in these matters.

7. SUB-SOIL RIGHTS. It is to be noted that in Mexico to be the owner of title to the real estate does not include holding title to the minerals or petroleum (oil) that are in the ground under the surface.

To acquire the right to the minerals, one must deal with the Federal Mining Authority, and even then there are requirements. Foreigners can not become involved in the petroleum industry since this is strictly run by the Mexican Federal Government (mineral mining - yes).

As for treasures, the owner of the land is the owner of the treasure found in the real estate (subject to archeological regulations). Treasure is that object or artifact that, independent of what it is made of, has been touched/processed/transformed by human kind. If the treasure is of historical, cultural or social importance to Mexico, then it also belongs to Mexico (An Aztec Ceremonial Mask would be a treasure owned by the Mexican Government, even if found on your property in Mexico).

8. TITLE INSURANCE. For some time now there has been a title insurance company agency in Florida (First American Title) and a title company in Texas (Stewart Title) offering U.S. title insurance on real estate in Mexico. It appears that they act as agents for U.S. insurance companies which issue title insurance policies on the Mexican real estate. Also, I have just recently been advised by the Stewart Title Company representative in Texas that they have set up a Mexican company through which they will be offering title insurance on real estate in Mexico. We are unaware of the content of the policies.

It has also been brought to our attention that there is a relatively new title insurance policy being brought out by a Mexican insurance company and will be offered by a Mexican company agency with offices in the U.S. We have conversed with them personally, wherein they have assured us that this policy is made with U.S. and Mexican guidelines in mind to attempt to provide ample policy. Once again, we are unaware of the content of the policy.

9. OTHER PUBLICATIONS BY THE AUTHOR.

BOOKS Price \$35.00 each + \$7.00 S&H

The author has written three specialty books on legal matters as relative to Mexico. These books are on litigation "Remedies for Creditors in Mexico" 62 pages; on real estate "Real Estate in Mexico and the Foreigner" 171 pages and on labor "Labor Law in Mexico and Business" 77 Pages.

PAMPHLETS (2006) Price: \$15.00 each + \$4.00 S&H

A, B, Cs OF BUSINESS IN MEXICO FOR THE FOREIGNER

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