

Buying
Real Estate
in
Mexico

(A Consumer's Guide)

a publication of
the Arizona Department of Real Estate

First Edition © 2005.

Published by the Arizona Department of Real Estate
Phoenix, Arizona

Portions of this book may be reproduced or otherwise used provided the publisher is notified and acknowledgment is given. Commercial uses are prohibited.

This guide is made possible by funding from the Public Education Fund of the Arizona Department of Real Estate at no cost to Arizona taxpayers. Consumers should be aware that rules and laws pertaining to real estate are subject to change at any time.

**STATE OF ARIZONA
DEPARTMENT OF REAL ESTATE**



Elaine Richardson
Commissioner of Real Estate

Dear Friend,

Many of you may have traveled to Mexico and been mesmerized and charmed by her beauty. You may have returned from your travel with thoughts of purchasing a second home or investing in real estate in Mexico.

Investments, however, should never be made on an emotional level. This is a particularly difficult obstacle to overcome as many investments in Mexico are made based on the beautiful ocean, landscape, weather and overall ambiance of the country.

Further, the real estate transaction process in Mexico may have mystified you. This consumer guide is invaluable in making the process clear. It is not meant to replace seeking professional assistance but rather to help you navigate the process so that you can obtain appropriate professional help that will benefit you the most!

Use this consumer guide as a tool to learn as much information as you can about purchasing and selling real estate in Mexico. By doing so, you will stay ahead of the game and be a better and more informed consumer.



STATE OF ARIZONA

Janet Napolitano
Governor

During the past few years I have had the opportunity to witness the burgeoning real estate market in Mexico, specifically Sonora. Through the Arizona-Mexico Commission and under the direction and leadership of Governor Eduardo Bours, there has been a positive movement towards promoting an era of business, tourism and a strengthened relationship with foreign investors. Many of those investors and future homeowners come from Arizona.

Whether you are contemplating buying a second home to enjoy the surf and turf in Rocky Point or simply wanting the quiet, quaint atmosphere of Alamos, you have taken the first right step to understanding real estate transactions in Mexico by obtaining this Consumer Guide.

Congratulations to the Arizona Department of Real Estate for undertaking the paramount task of getting experts from both Arizona and Mexico to collaborate on the project of producing the *Buying Property in Mexico Consumer Guide*. The Guide is written in an easy to understand manner and has very important information if you are considering buying real estate in Mexico.

I wish you the best in your future real estate endeavors and may you enjoy the beauty of Mexico.

Yours very truly,

Janet Napolitano
Governor

Chapter 1

How to Use this Book

Most of us buy or sell a home only a few times during our lifetime. Often we buy or sell in different states, and we find that the procedures involving real estate transactions differ widely from what we experienced in other locations.

In 2004, the Arizona Department of Real Estate published Arizona Real Estate and You (a consumer's guide), for the purpose of assisting individuals considering the purchase or sale of Arizona real estate.

With recent changes in the laws of Mexico, with increasing political stability and with the economic situation in Mexico improving, more and more Arizonans are making (or considering) investments in real estate for vacation or retirement homes in Mexico.

The purpose of this book is to provide basic information on how real estate transactions are conducted in Mexico.

It is expected that those buying or selling real estate in Mexico will seek knowledge and advice from professionals experienced in the legal, accounting, tax, and other aspects of investing in real estate in Mexico.

Seeking this knowledge and advice is particularly important when considering the differences between the two countries in language, culture, legal procedures and processes. Unless you are well versed in all of the above as they apply to real estate in Mexico, you will most likely need more help in a real estate transaction in Mexico than if you are purchasing Arizona real estate.

In general, the format of this book follows the format that you may be familiar with in Arizona Real Estate and You.

Because most of us are more familiar with Arizona real estate transactions, this book will often contrast aspects of an Arizona real estate transaction with similar aspects of a Mexican real estate transaction.



IMPORTANT!! The Department of Real Estate cannot offer legal advice. Nothing in this book should be construed as being in the nature of legal advice. All purchasers or sellers of real estate should seek professional advice if questions arise during the course of a real estate transaction.

Chapter 2 is a brief overview of the real estate laws of Mexico. If you are considering the purchase of real estate along the border or a coastline, you might want to pay particular attention to those provisions dealing with the *fideicomiso*, or bank trust.

Chapter 3 discusses the Arizona Department of Real Estate and the extent to which the Department is allowed

by law to protect Arizonans buying or selling real estate in Mexico.

Chapter 4 concerns the role of the real estate salesperson in Mexico. To provide a familiar frame of reference, the real estate salesperson in Mexico will be referred to as an “agent.” There are, however, significant differences between an “agent” in the United States and an “agent” in Mexico. It would not be correct to assume that the same standards and requirements that legally apply to real estate agents in the United States also apply to agents in real estate agents in Mexico. Buyers or sellers of properties in Mexico should be aware of the differences.

Chapter 5 discusses the role of the attorney in a real estate transaction in Mexico.

Chapter 6 discusses the first steps in buying a home in Mexico.

Chapter 7 introduces you to the *notario publico* and the main differences between this professional and the U.S. notary public.

Chapter 8 reviews a number of steps in an Arizona transaction that may, or may not, take place in a real estate transaction in Mexico. There is also a short discussion of the estimated costs of closing a real estate transaction in Mexico.

Appendices following the final section are designed to provide sources and references for various steps in the real estate process.

Appendix A is a buyer's checklist based on a similar checklist prepared by the Arizona-Mexico Commission. Use of this checklist in considering the purchase of Mexican real estate is highly recommended.

Appendix B is a checklist for selling real estate in Mexico.

Appendix C is a discussion of Mexico's Consumer Protection Laws.

Chapter 2

Real Estate Laws of Mexico

Many non-Mexicans have stayed away from purchasing or investing in the real estate of Mexico because of real or perceived risks to the stability of their investment.

During recent years, the importance and the value of foreign investment to the economy of Mexico has led that country to make a number of revisions in its real estate laws.

Today, foreigners have expanded opportunities to purchase or invest in Mexican real estate. In much of the inland portion of Mexico, the purchase of real property by foreigners has the same legal basis as in the United States.

The Mexican Constitution of 1917, however, prohibited foreign ownership of residential real property within approximately 31 miles of any coastline and 62 miles of its natural borders. All of Baja California is included in this “restricted zone.”

Because most second or vacation home purchases by Arizona residents are likely to be within this “restricted zone,” further discussion is in order.

In 1971 (further expanded in 1989 and 1993) provisions were made for a mechanism that would allow foreigners to own property in the “restricted zone.”

Within the “restricted zone,” a foreigner purchases the beneficial interest in real property through a bank trust or “*fideicomiso*.” In this bank trust, the buyer of the property is designated as the “*fideicomisario*” or the beneficiary of the trust. While legal title is held by the bank, (specifically the trustee of the trust or the “*fiduciario*,”) the trustee must administer the property in accordance with the instructions of the buyer (the beneficiary of the trust). The property is not an asset of the bank and the trustee is obligated to follow every lawful instruction given by the beneficiary to perform legal actions, i.e., rent it, make improvements, sell it, etc.

The Bank Trust is also very effective for Estate Planning because, as with any other trust, the Trustor can designate who will be the beneficiary in case of death.

As the beneficiary of the trust, the buyer may have substitute beneficiaries who would assume beneficiary status upon the death of the buyer without the need of probate proceedings.

Most new trusts have a time period of 50 years. But, these trusts are almost always renewable for another 50 years.

As long as the buyer of the property adheres to laws and ordinances of Mexico and agrees not to invoke the pro-

tection of the government of his country, he may exercise the same rights as a Mexican national with regard to the use of his property.

In summary, then, virtually all property in Mexico is available for purchase by foreigners, keeping in mind that the *fideicomiso*, or bank trust, must be used when acquiring property within the restricted zone.

In the United States, it is common for individuals or a group of individuals to form corporations for the purchase of real estate. While the laws of Mexico allow corporations to own real property, it is not possible for a foreign owned Mexican corporation to own a vacation or a retirement home for residential purposes (as opposed to business activities).

One final observation. In exchange for the ability to invest in real estate in Mexico, you agree that only the laws of Mexico will apply to any of your real estate transactions. In the courts of Mexico you will be treated the same as if you were a citizen of Mexico. You cannot use the legal system of either the Arizona state government or the United States federal government in the event of disputes or adverse rulings.

Chapter 3

The Arizona Department of Real Estate

The Arizona Department of Real Estate is primarily charged with administering and regulating the practice of real estate in Arizona.

There are, however, two major areas in which the ADRE can be a resource to Arizonans considering the purchase of Mexican real estate.

First, the Department has established reporting requirements for entities selling certain types of subdivided land or selling land in planned communities. These requirements apply to the selling entity **even if the property offered for sale is not in Arizona**. If property outside of Arizona is being offered or advertised in Arizona, a Public Report is required.

The Public Report is a comprehensive document covering a number of disclosures such as:

- characteristics of the subdivision
- nearby airports
- utilities
- streets, roads and drainage
- common and community facilities

- local services such as schools, public transportation, medical, police, fire protection and ambulance service
- taxes and assessments
- property owners' associations
- adjacent land uses

A Public Report does not issue a recommendation or otherwise offer an opinion on the value of the property.

A developer can be denied issuance of the Public Report for a number of reasons, including being in poor financial condition.

Second, individuals licensed to practice real estate in Arizona are subject to the laws and rules of the Department of Real Estate, regardless of where the property is located. Arizona Statutes dictate that real estate licensees must maintain and demonstrate standards of ethics, integrity and professionalism in all real estate transactions wherever the real estate is located.

Chapter 4

The Real Estate Agent

In the United States, there are a number of ways to identify a home that you might want to purchase.

They include driving around, talking to friends and colleagues, checking the newspapers, and, increasingly, using the Internet to identify potential new or second homes.

However, most people in the United States use a professional licensed real estate agent. While each state sets its own regulations and controls on the practice of real estate, buyers and sellers throughout the country have come to rely on the professionalism of real estate practitioners.

This is where there is a major difference in buying and selling real estate in Mexico.

While some states and cities in Mexico are working towards licensing, there is no mandatory licensing for real estate agents in Mexico. Mandatory licensing would require legislation at the federal level in Mexico and the process could well take years to accomplish.

There are, however, labor and tax laws which regulate the daily activities of all persons conducting business within

the country's borders. These laws require, among other things, the collection of taxes on wages, fees or commissions earned in Mexico and in the case of non Mexican workers, the possession of proper migratory and work permit documentation.

In Mexico, most legally established and qualified real estate agents are professionals employed through established and reputable Mexican corporations whose principal business is the listing and sale of real property to the public. These real estate companies are also subject to strict compliance with all Mexican laws, including the legal status of their employees and the collection and payment of any taxes owed.

The state of Sonora has established a voluntary real estate agent "registry," but, while a welcome start, this is a voluntary registry and a long way from mandatory licensing.

In addition, there is a voluntary association for real estate professionals in Mexico. The Asociación Mexicana de Profesionales Inmobiliarios, A.C. (more commonly known as AMPI) is an association of real estate professionals. It was formed in 1956 and has members in more than 22 cities. AMPI members must sign an annual pledge agreeing to operate by the Code of Ethics of the association.

There are many excellent real estate agents in Mexico and these real estate agents do play a role in many Mexican real estate transactions. The role of an agent selling

property in Mexico is different, though, from the role of an agent in Arizona.

In a transaction taking place in Arizona, your licensed real estate agent provides services that fall into two broad categories. First, he or she helps you find a home (or find a buyer for your home if you are selling). Then, your agent helps you through the activities and the paperwork involved in completing the real estate transaction.



In Arizona, persons holding a valid license to engage in the practice of real estate in Arizona have responsibility and authority greater than their colleagues in many other states. In fact, Article 26 of the Arizona Constitution specifically grants licensees the legal authority to fill out and complete any and all documents pertaining to virtually all real estate transactions. Things may be **VERY DIFFERENT** for your transaction in Mexico!!!

The first service, that of helping you find a home in Mexico, has a number of similarities with stateside transactions. An experienced agent will know the area, the types of construction, accessibility to shopping, medical care, etc. Your agent should also have an idea of the approximate market value of a property. Because you will deal with a number of individuals and firms before your purchase is complete, your agent will most likely maintain a listing of competent and professional people and companies for you to consider as you complete the purchase or sale process.



Bear in mind, though, that while Arizona real estate licensees can have their licenses suspended or revoked for misinforming clients or misrepresenting aspects of a real estate transaction, Real estate agents in Mexico are not as tightly regulated. Buyers are advised to “Trust but Verify” representations made by real estate agents in Mexico.

As the real estate industry in Mexico grows, so do the number of real estate agents from the United States and Canada doing business in Mexico. Many have moved to Mexico and sell real estate on a full-time basis. While a good number of these real estate agents are representing subdivisions or planned communities, you should be able to find agents knowledgeable of all types of housing opportunities.

On the other hand, just because you meet an American selling real estate in Mexico, you should not assume that he/she is a licensed real estate agent in the United States. Some American salespeople may have no U. S. real estate experience prior to selling real estate in Mexico.

Regarding the second service, that of helping you through the activities and the paperwork, real estate agents play a somewhat lesser role than they do in the United States. There are other players, most notably attorneys and the Notario Publico, (whose duties we will discuss in a later chapter) performing many of the duties that a real estate agent would perform for you in an Arizona transaction.

On the other hand, because buying and selling real estate in Mexico is not something the average Arizonan does every day, the services of a real estate agent as a counselor and “guide” should not be underestimated.

For example, as we will discuss in a later chapter, “down payments” and/or “putting money into escrow” is significantly different in Mexico. Your money is at considerably higher risk than it would be in the United States. A professional real estate agent can help recommend safe custodians for your money (i.e., an escrow company) pending closing on your property. You should evaluate any recommendations, however, because there are no specific regulations covering escrow agents. There are escrow agents from the United States familiar with property transactions in Mexico.

A real estate professional can also assist in preparation of the purchase offer, negotiating price and other terms, acquiring title insurance, etc.

Finally, while the multiple listing systems (cooperative ventures between real estate companies where all real estate listings are combined into a single, easily accessible database) in Mexico are not yet as sophisticated or as common as in the United States, many of the more popular tourist markets do have some sort of system in place. Using a real estate professional in Mexico who has access to combined listings can expand your range of property choices.

When a real estate broker in the United States obtains a listing to sell real estate on behalf of a client, it is fairly

standard for that broker to offer a commission split with the broker that provides the buyer. This isn't always the case in Mexico. There may also be a few cases, (new developments, for example) in which agents are not compensated by the seller.

If you are truly interested in having a motivated real estate agent working for you, you might want to consider a "Buyer-Broker" arrangement. Typically you promise to pay the real estate agent a certain amount if he is successful in finding you a home. It is common for that amount to be reduced by any amounts subsequently paid to the buyers agent by the seller or the listing agent.

For some of the reasons listed, it is probably more efficient to use the services of an experienced real estate agent when making your purchase or sale of real estate in Mexico. It is important to remember, though, that there is a lack of mandatory licensing and regulation.

This is one area where a recommendation from someone you trust would be most valuable.

Chapter 5

Using an Attorney

In Arizona, attorneys are not used in many residential real estate transactions. Therefore, it follows that you might think that you don't need an attorney to purchase real estate in Mexico.

Before you decide, you might want to take a look at Appendix A at the back of this book. This appendix-- a Mexico Property Buyer's Checklist -- is taken from the web site of the Arizona-Mexico Commission, a cooperative effort of the State of Arizona and the State of Sonora, Mexico.

As you review the items on the checklist, it should be readily apparent to most people that, as individuals, they have little or no experience or expertise in many of the areas on the checklist. The checklist is further evidence that while purchasing real estate in Arizona follows strict statutory procedures, purchasing real estate in Mexico is an entirely different matter.

Further, you might be more comfortable with your real estate transaction in Mexico knowing that there is at least one individual/firm that is "on your side." As we've

already discussed, real estate agents in Mexico are not licensed or regulated and certainly do not have the disclosure responsibilities or the responsibilities under “the law of agency” that real estate agents in Arizona have. The seller, and his associated parties, only have the interest of the seller to look out for. An attorney of your choosing, legally responsible for protecting your best interests, may be well worth what you would pay him/her as you purchase that special home in Mexico.

When making a selection, though, be aware that, just as is the case in Arizona, attorneys may specialize. It would be a good idea to ask prospective attorneys about their experience in representing foreigners buying real estate in Mexico.



You might want to check the Arizona Bar Association web site at <http://azbar.org/LegalResources/findlawyer/cfm> for attorneys or foreign legal consultants licensed in Mexico and admitted by the Arizona Supreme Court who are fully bilingual and are regulated by the ethics and rules of the Arizona bar.

Chapter 6

Buying a Home-- First Steps

OK!! You've decided to check out real estate in Mexico. You've made an exploratory trip or two and have a general feel for the areas and what each has to offer. You've checked out availability of transportation, shopping, dining, and medical services.

You've talked to a number of people and have interviewed several candidates for a real estate agents and for an attorney to represent you in the transaction. You make selections in both areas.

Your newly selected agent goes to work for you, shows you a number of homes and you find the home you've always dreamed of owning. You show the first few signs of "Margarita fever."

Here is where your knowledge of real estate transactions in Arizona or elsewhere in the United States is of limited value.

First, you will need to remind yourself, not just once, but time and time again, that consumer protection laws in Mexico are less encompassing than those in the United States. The concept of "buyer beware" will never be of

more importance to you than in purchasing real estate in another country! You are responsible for becoming an informed buyer. If you don't know, ask. If you don't like the answers, don't sign. If it doesn't make sense, it may not be good for you.



You can find a short explanation of Mexico's consumer protection laws in Appendix C.

In addition, before committing yourself to signing a contract, and before making a down payment, you might want to consider having the seller provide you with a copy of the promissory purchase agreement. You can then have a *notario publico* or your attorney check the validity of the agreement.

The next big difference is with the purchase offer. In Arizona, virtually all offers to purchase residential real estate are recorded on the “Residential Resale Real Estate Purchase Contract”, a form produced by the Arizona Association of REALTORS® for the benefit of its members. Anyone interested in the form can easily obtain one, and can quickly become familiar with its terms and provisions.

The various states of Mexico have not yet adopted standard purchase contracts. In mature tourist real estate markets, however, some members of the real estate community have adopted standardized documents.

In those areas in which there are not standardized documents, a typical transaction might generally include the following steps:

The first is an offer and acceptance document, the *oferta*. This is a preliminary agreement containing basic information about the transaction. This contract does not transfer title.

Once you have written acceptance of the *oferta*, the next step is to draw up the promissory purchase-sale agreement (if the property is outside the restricted zone) or a “promise of agreement (inside the restricted zone). Again, there is no standard form for this contract. This document is the single most important document in the purchase process as it will set forth the terms and conditions of the transaction. In virtually all cases, the buyer would be wise to have his attorney draw up the appropriate agreement.

The third and final document will be the purchase-sale agreement or bank trust contract. This document is executed before a notary public or by power of attorney. It authorizes your attorney to close the transaction on your behalf.

In Arizona, home buyers are used to making a “deposit” or “earnest money payment” at the time an offer is made to purchase a resale home or a condominium. These payments almost always go into an escrow account, generally maintained by the title company selected by the buyer. Entities holding money in escrow for others are held strictly accountable for safeguarding and appropriately distributing escrow payments. (For new home sales, earnest money deposits may go directly into the builders account with less accountability to the consumer.)

In Mexico, earnest money or other considerations for entering into a contract are often given directly to the seller. The risk, of course, is that if the transaction does not work out as planned, the buyer will oftentimes have to either give up the earnest money or seek redress through the Mexican court system.

The use of escrow accounts in Mexico has increased considerably in recent years, but accountability is not as strictly maintained as in Arizona. The use of escrow accounts where real estate agents hold funds is not recommended because, as we have previously discussed, real estate agents are not licensed or regulated in Mexico. There are title companies in Mexico or the U. S. that will use U.S. bank accounts for earnest money payments, and there are a growing number of U.S. title companies that have opened offices in Mexico.

If you are purchasing property along the border or a coastline -- property in the “restricted zone”-- remember that you need to accomplish your purchase through a *fideicomiso*, or bank trust. As the buyer you are free to “shop around” for the best bank to handle the trust.

It's time to meet the *notario publico*.

Chapter 7

The “Notario Publico”

Translate it as “notary public” (with the same connotations as we use it in the U.S.) and you couldn’t be more wrong.

Notario publicos in Mexico are attorneys with at least five years experience and who have passed two rigorous examinations. In some states they are appointed, for life, by the Governor of the State and by the Executive branch of the federal government. In other states the Notario license can be obtained only in an open and public contest where candidates pass a rigorous law examination conducted by the local Notary Bar Association. There is approximately one *notario publico* per 30,000 citizens.

In Mexico, a number of legal documents -- wills, deeds, powers of attorney, forming corporations, establishing trusts, etc. -- must be formalized before a *notario publico* in order to be valid.

Once the promissory purchase-sale or trust has been prepared (see previous chapter) the buyer has the right to choose a *notario publico* in order to close the transaction. (In some planned communities or developments the buyer

may want to consider using the seller's *notario* because the *notario* will, from experience with other properties in the development, be familiar with many aspects of the transaction.

One of the steps the *notario publico* will take is to make sure the land is not communal agricultural land (*ejido*.) If it is, the right to use this type of land may be purchased, but you, the buyer, do not own the land -- you are only allowed to use it.

There are a number of documents that you should be prepared to bring to the *notario publico*. You will need proof of full names, any applicable marriage certificate, proof of dates and places of birth, official identification with a photograph (driver's license or passport) and you will need to be able to prove that you are in Mexico legally.

The seller will also have to provide documents for examination and verification by the *notario publico*: the deed to the property and items such as up-to-date receipts for taxes, subdivision fees, water and any other public utilities. The *notario publico* will then determine the capital gains tax to be paid by the seller based on the purchase price and the price that the seller paid for that particular property. If the seller is a Mexican corporation, capital gains taxes are paid on its annual corporate tax filings.

(The seller normally pays the capital gains tax, unless there has been an agreement that it be paid by the buyer.)


The *notario publico* also has other duties. He will verify the title and he will search public records to determine the status of that title. He will search for liens against the property.

If everything is in order, the *notario publico* prepares the deed of conveyance subject to the terms of the promissory agreement.

A “closing” takes place in which the seller signs the deed in favor of the buyer and the buyer pays the seller for the property.

The buyer generally pays the fees of the *notario publico*.

Before the process is complete, the *notario publico* has a final task: he must register the deed in the Public Registry of Property. This generally takes about two weeks, but time frames may vary significantly by location. The transaction is not perfected until it is registered. He will also withhold taxes from both parties and will make corresponding payments to the taxing authorities.

 It is important to note that even though the buyer selects the *notario publico*, this does not mean that he “works for the buyer.” The *notario* is an unbiased party in the real estate transaction. He is legally responsible for ensuring that all essential legal formalities are followed. These include identifying the property, the names of the buyers and sellers, the capacity in which any signatory is acting and incorporating this information into the public deed.

Chapter 8

But, what about...?

Those familiar with real estate transactions in Arizona will notice that a number of key steps in a real estate sale in our state do not appear to have a place in the purchase of real estate in Mexico. For example:

Financing -- Real estate financing for foreign nationals is not as common as it is in Arizona. Often, financing is difficult to obtain and where it can be obtained, it is often very expensive. In fact, most real estate transactions are either for cash or seller's carry-back financing where title is not conveyed.

As more non-citizens of Mexico begin investing in real estate in Mexico, a market is growing for means to provide financing for those investments. Using equity from property in the United States to pay cash for real estate in Mexico is one of the most popular methods of financing, however a growing number of both Mexican and U.S. firms are starting to offer financing based on the equity of the property involved in the transaction.

Potential buyers of real estate in Mexico should make inquiries into financing opportunities before entering into a purchase agreement.

The Loan Status Report -- In Arizona, buyers must provide the seller with evidence that they have the financial resources to complete their real estate purchase. There is no equivalent step in the purchase of real estate in Mexico. It is expected that, having entered into a contract to purchase real estate, the buyer will have the ability to financially and otherwise complete the transaction.

The Seller's Property Disclosure Statement (SPDS) or "spuds" -- Arizonans selling their homes almost always provide buyers with responses to a fairly lengthy series of questions about the condition of their homes. Some areas of Mexico with large numbers of foreign buyers have begun using seller's disclosure statements.

The Inspection Period -- Arizona real estate transactions provide for a period of time, generally ten days, in which the buyer can have the property inspected and can present the seller with a list of items the buyer would like to have the seller correct before closing. This step does not formally exist in a transaction in Mexico. Therefore, it is important for a potential buyer to do his "homework" on the condition of the property before entering into the transaction.

Termite Inspection -- Not required in a Mexican real estate transaction. Most construction in Mexico is based on concrete, cement, bricks or other termite resistant materials. However, for your peace of mind, especially if the house is made of wood, you, the buyer, may want to consider having an inspection done.

Title Insurance -- Title insurance is not required in a real estate transaction in Mexico. Even though the *notario publico* is charged with verifying the title, mistakes can take place and the *notario publico*, as a quasi-governmental official, is difficult to sue. Most property in Mexico is not covered by title insurance.

Title insurance, therefore, is a product aimed mainly at foreign real estate buyers. Both Mexican and U.S. companies have, in recent years, begun offering title insurance for real estate purchased in Mexico. As in the United States, policies are available for both buyers and lenders.

Homeowner's Insurance -- Homeowner's insurance is also available for property purchased in Mexico. As is the case with title insurance, both Mexican and U.S. companies offer homeowner's insurance.

Closing Costs -- Costs of closing on a real estate transaction in Mexico are varied. Examples of costs include:

Costs of the bank trust (*fideicomiso*) -- this amount varies depending on the estimated value of the property. This fee is generally about \$2500 and includes an opening fee, permits and the first annual fee (paid in advance.) Once all contracts and negotiations are done, the cost to process a bank trust is normally about \$2500 to \$3000.

(Potential buyers should consider these amounts to be rough estimates, as in some locations the fees are considerably higher.

Cost of an attorney -- As in any other place, this cost will vary depending on location and on the experience of the attorney.

Cost of a real estate agent -- If the property you are buying is listed by a real estate agent, and if that real estate broker has an arrangement with other agents who bring him qualified buyers, there may be no cost to you for the services of your real estate agent. In other words, similar to a real estate transaction in Arizona.

If, for whatever reason, your real estate agent is not compensated by the seller (or the seller's agent) then you will have to negotiate an arrangement with your real estate agent. See page 13.

Notario Publico fees -- Generally 2% to 3% of the appraised value of the home. Some *notarios*, though, will work on a flat fee basis.

Appraisal fee -- This fee depends on the value of the property. In addition, the rate varies from state to state. Generally between \$100 and \$500.

Title insurance -- About \$5 per each \$1000 of coverage.

Transfer taxes -- This fee is generally 2% to 3% of the higher of the sale price or the assessed value.

Deed recording fees -- Varies by location.

Property taxes (*predial*) -- Property taxes in Mexico vary but are generally quite low compared to property taxes in the United States.

Appendix A

Mexico Property Buyer's Checklist

A Guide for Foreigners Purchasing Property in Sonora

Consult this checklist prior to committing to purchase, for the basics on how to protect your investment in Sonoran real estate. This checklist is based on a checklist provided by the web site of the Arizona-Mexico Commission (www.azmc.org).

1. Understand and follow the Mexican law concerning real estate purchases.
2. Obtain the advice and services of a U.S and/or Mexican attorney, a registered Mexican real estate agent, a title insurance company and/or an appraiser. Look for consultants with demonstrated experience in both the geographic area and the type of transaction you are considering.
3. Obtain a property disclosure statement from the seller, as available.
4. Obtain a copy of existing public deed (*escritura pública*) complete with recording information, and a current copy of the lien certificate (*certificado de libertad de gravámen*).

5. Request a copy of any existing commitment for title insurance on the subject property. Obtain a current commitment for title insurance on your specific property.
6. When dealing with residential developments advertised in Arizona, obtain a copy of the Arizona Public Report.
7. Obtain a copy of applicable Mexican state/ municipal development authorizations.
8. Obtain a copy of any Covenants, Conditions or Restrictions for the property and any homeowners' association bylaws, budget and financial statements.
9. Analyze all risks associated with purchasing property where any infrastructure, building or other improvements have not been fully completed.
10. Analyze all risks associated with seller financing.
11. Estimate closing costs associated with your purchase.
12. Complete due diligence, including investigations of title and value, prior to committing to purchase, or make the purchase contingent on those investigations.
13. Enter into a written purchase contract (in Spanish and English) that defines the details and contingencies of the agreement with the seller.

14. Place all deposits in a neutral, third party escrow account, pursuant to a fully executed escrow agreement.
15. Obtain title through a Mexican Notary Public, and title insurance, at the time of full payment.
16. Ensure proper recordation of the title transfer with all applicable municipal and federal registries at time of title transfer.

Disclaimer: This checklist is intended for use by foreigners purchasing property in Mexico. This information and recommendations are intended to be used in conjunction with the BUYER'S ADVISORY and other private and/or governmental assistance obtained by buyer and is subject to change without notice. Neither the Arizona Department of Real Estate nor the Arizona Mexico Commission is responsible for reliance on any of the information provided.

Appendix B

Selling Mexican Real Estate

The following document is also from the web site of the Arizona-Mexico commission. Although it specifically mentions real estate transactions in Sonora, it is a good guide for selling real estate anywhere in Mexico.

MEXICO PROPERTY SELLER'S CHECKLIST

A Guide for Selling Property in Sonora

Consult this Checklist prior to engaging in a sale transaction for the basics on how to protect your Sonoran real estate.

1. Understand and follow the Mexican Law governing real estate transactions.
2. Obtain the advice and services of a U.S and/ or Mexican attorney, a registered Mexican real estate agent, a title insurance company and an appraiser. Look for consultants with demonstrated experience in both the geographic area and the type of transaction you are considering.

3. Complete a Seller's Property Disclosure Statement.
4. Consider entering an exclusive right-to-sell listing agreement with a registered real estate agent who will share commission with other registered agents.
5. If you own more than five improved or unimproved lots in the same development, obtain an Arizona Public Report prior to advertising the property in Arizona.
6. Use a licensed real estate agent in Arizona to offer the property for sale in Arizona, unless you are offering it "For Sale By Owner".
7. Have copies of any Covenants, Conditions, or Restrictions, along with any homeowner's association bylaws, budget and financial statement ready for the prospective purchaser.
8. Locate and obtain an original copy of your ownership document (the public instrument issued through a Mexican notary public – also commonly known as the deed, trust agreement or title); evidence that you are up to date in payments to your trustee/fiduciary bank (if title is held in a title trust); evidence of payment of your property taxes for the last five years (or certificate from the local authorities stating you owe no property tax); and a certificate from the local Public Registry of Property showing your ownership and no encumbrances or liens.

9. Obtain a commitment for title insurance on your property through a Title Insurance Company that is active in the market place.
10. Collect all official receipts pertaining to any improvements done to the property.
11. Obtain an estimate of closing costs from a Mexican notary public based on an estimated sales price.
12. Negotiate your purchase agreement in writing.
13. Obtain a sufficient amount of earnest money and have the buyer deposit it with a neutral escrow company pursuant to a fully executed escrow agreement.
14. Transfer title to the buyer through a Mexican Notary Public.
15. Do not expect full payment of the purchase price until title has been transferred.

Appendix C

Consumer Protection in Mexico

The following information is based on a similar presentation on the web site of the Arizona-Mexico Commission. The general web site address is <http://www.azmc.org> where you can select “Real Estate” and then “General Info” on the left hand side. The document will download as a Word file with many helpful links.

CONSUMER PROTECTION REMEDIES AND PROCEDURES

When dealing with foreign investment in Mexican real estate, Mexican Law provides several different legal actions to compensate for possible fraud or other damage. The document provides a brief description of one of these remedies: the consumer protection action pursuant to the Mexican Federal Law on Consumer Protection [*Ley Federal de Protección al Consumidor*, hereinafter Consumer Protection Law.

Injured parties must file a consumer protection action with the Mexican Federal Consumer Protection Agency [*Procuraduría Federal de Protección al Consumidor*, hereinafter “PROFECO.”] Complaints should be filed with the PROFECO office in which the property subject to the

dispute is located. Alternatively, complaints may be filed in the jurisdiction in which the complaining party or the defendant is located. In addition, PROFECO provides a specialized helpdesk and complaint form for foreigners. Once a complaint is filed, PROFECO mediates and prosecutes the complaint against the mentioned party or parties for all actions covered under the Consumer Protection Law.

The Consumer Protection Law is designed to promote and protect consumer rights and to procure equity and legal certainty between consumers and commercial suppliers (these terms are defined below). Consequently, it provides actions exclusively to parties who purchased real property from a builder, developer or other institutional seller, or through a broker, agent or real estate professional. Parties injured in the purchase of real estate from another individual (non-commercial party) are precluded from using the Consumer Protection Law.

[Note: The Consumer Protection Law defines the term Consumer as an individual or corporation that acquires or enjoys property, products or services as the end-user and it defines the term Supplier as an individual or corporation that customarily or periodically offers, distributes, sells, rents or concedes the use or enjoyment of property, products or services.]

For a more detailed outline of the PROFECO procedures and policies, please visit the Arizona-Mexico Commission website.

Glossary and Index

A

Asociación Mexicana de Profesionales Inmobiliarios, A.C. (AMPI) -- an association of real estate professionals in Mexico. See page 11.

Arizona Department of Real Estate -- role in transactions involving real estate in Mexico. See pp. 8-9.

Arizona-Mexico Commission -- a cross border organization, founded in 1949, that fosters cooperative initiatives in trade and other areas, including transportation, education, health, the arts, agriculture, tourism and the environment. See pages 3-4,

Avuluo -- an appraisal.

C

contrato de compraventa -- the purchase sale agreement.

E

Ejido -- “community” land. An individual can own the use of ejido land, but the land cannot be sold to another. Only the right of use may be sold. See page 23.

Escritura -- deed.

F

Fideicomisario -- the beneficiary of a fideicomiso, or bank trust; i.e., the buyer of the parcel of real estate. See page 6.

Fideicomiso -- the bank trust mechanism that allows foreigners to own land along Mexico's coast and borders. See pp. 2, 6, 21.

Fiduciario -- the bank trustee of a fideicomiso. See page 6.

N

Notario publico -- a quasi governmental official, an attorney who plays a key role in all real estate transactions. See pages 7, 18, 20-23.

O

Oferta -- a document containing basic information about a real estate transaction. While a contract, this document does not transfer title. See page 20.

P

Predial -- property taxes. See page 29.

R

Restricted zone-- that part of Mexico within 31 miles of any coastline or 62 miles of Mexico's natural borders. A special method of purchasing the beneficial use of real estate is required within the restricted zone. See pp. 5-7.