

# DO FOREIGNERS NEED TITLE INSURANCE IN MEXICO?

## **An Analysis of U.S. Title Insurance and Mexican Real Estate Law**

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## **Abstract**

This paper analyzes the title insurance industry in the United States and comparable institutions in Mexico. It begins with an overview of the history of title in both countries, followed by a description of their respective real estate systems. Finally, a summary of the laws that affect holding title to property in Mexico reveals that, although title insurance may provide other benefits for foreign investors, it provides duplicitous coverage for property in Mexico.

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## **Introduction**

The interest of U.S. investors in Mexican real estate has steadily increased as Mexico has improved its climate for foreign investment. Mexico's vast coastline and its large labor force have increasingly attracted both foreign individuals and companies to make real estate investments in Mexico. An estimated 700,000 U.S. and Canadian Citizens currently live in Mexico.<sup>1</sup>

However the different legal systems of the United States and Mexico have produced different processes for acquiring title to property.

In the U.S., title insurance has become a part of almost every real estate transaction. However, until U.S. title insurance companies began offering policies in Mexico, title insurance did not exist in Mexico.<sup>2</sup> It is the purpose of this paper to analyze title insurance and its comparable Mexican institutions, as well as produce a conclusion regarding the necessity of title insurance for individual purchasers of property in Mexico in the present and the near future.

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<sup>1</sup> Meya, Angleynn, *Reverse Migration: Americans in Mexico* 18-AUG Prob. & Prop. 57, 57 (2004).

<sup>2</sup> Braubach, Robert P. and Robert M. Barnett, *NAFTA: New Opportunities in Mexican Real Estate* 9-DEC Prob. & Prop. 54, 55 (1995).

## Development of U.S. Title Insurance

Title insurance is the only form of insurance that was invented in the United States.<sup>3</sup> Before title insurance, banks and lending institutions involved in real estate transactions would either employ abstractors to conduct personal searches of title at the local Hall of Records or hire lawyer abstractors to conduct these searches.<sup>4</sup> It was common practice to hire a lawyer abstractor to conduct a title search and form a legal opinion concerning the title of a property.<sup>5</sup> This is still common practice in some states today. In these states, title insurance is used to cover the risks that the attorney's opinion does not.<sup>6</sup>

Searches entailed researching ownership of the property, one name at a time, until an entire chain of title was formed. If any gaps in title appeared, other records, such as wills, liens, and judgments, were checked.<sup>7</sup> This process was slow and often did not produce a complete or accurate history of title.<sup>8</sup> These title opinions often did not include events that were outside the direct chain of title.<sup>9</sup>

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<sup>3</sup> Title Resources Guaranty Company, *A Brief History of the Title Insurance Industry* (last modified Dec. 4, 1996), available at <http://www.trgc.com/center/history.htm>.

<sup>4</sup> American Land Title Association, *Title Insurance: A Comprehensive overview*, p. 3 available at <http://www.alta.org/press/TitleInsuranceOverview.pdf> (Nov. 20, 2005).

<sup>5</sup> *A Brief History of the Title Insurance Industry* at <http://www.trgc.com/center/history.htm>.

<sup>6</sup> Pedowitz, James M., *Title Insurance 1990: The Basics and Beyond* 105-106 (Practicing Law Institute 1990).

<sup>7</sup> Pedowitz, James M., *Title Insurance and You: What Every Lawyer Should Know!* 35 (American Bar Association 1979).

<sup>8</sup> *Id.* at 35.

<sup>9</sup> *Id.*

In the instance of a title defect, the abstractor was only liable to the purchaser of the opinion for losses resulting from his negligence. He was not liable for honest mistakes, inaccuracies, or hidden defects.<sup>10</sup> The seminal case that applied this standard, and ultimately led to the creation of title insurance, is Watson v. Muirhead.

In 1868, The Pennsylvania Supreme Court held that the defendant abstractor was not liable to the plaintiff purchaser where the defendant gave the plaintiff his opinion of clear title, the plaintiff purchased the property, and the property was then sold in order to satisfy a pre-existing default judgment against the seller of the property.<sup>11</sup> The court found that the abstractor was not negligent.<sup>12</sup>

The court held that the defendant was not liable for the plaintiff's loss because an abstractor was not responsible for the absolute correctness of his opinion, only for error caused by his negligence.<sup>13</sup> It should be noted that even if a lawyer or abstractor were found to be negligent, the amount of the judgment would often exceed the value of his or her assets.<sup>14</sup>

Three years later, in 1871, Pennsylvania enacted the first statutes authorizing title insurance to fill this "negligence"

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<sup>10</sup> *Id.*

<sup>11</sup> *Watson v. Muirhead*, 57 Pa. 161, 1 (Pa. 1868).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> Pedowitz *supra* note 5, at 35.

gap in protection.<sup>15</sup> In 1876 the first title insurance company was formed.<sup>16</sup> It was called the Lawyers' Title Insurance Corporation and was formed with the purpose of insuring "the purchasers of real estate and mortgages against losses from defective title, liens and encumbrances."<sup>17</sup> Within ten years, title insurance companies were operating in many of the major U.S. cities.<sup>18</sup>

Through the early part of the twentieth century, title insurance companies competed with land registration systems. However, by the end of the World War II, title insurance companies convinced third-party lenders that title insurance was necessary to securely finance property purchases.<sup>19</sup> The partnership of title insurance companies with lenders, in conjunction with the large increase in construction and purchasing of residential homes that followed the second World War, cemented the role of title insurance in the U.S. real estate transaction and propelled it to the level of use that exists today.

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<sup>15</sup> *A Brief History of the Title Insurance Industry* at <http://www.trgc.com/center/history.htm>.

<sup>16</sup> *Title Insurance: A Comprehensive overview* *supra* note 2, at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *A Brief History of the Title Insurance Industry* at, <http://www.trgc.com/center/history.htm>.

<sup>19</sup> *Id.*

## **Mexican History of Foreign Title**

### A. Constitutional Limitations

#### 1. Article 27

The last 100 years of Mexican history has shaped the climate in which foreigners can hold title to Mexican real estate.

A turbulent 19<sup>th</sup> century of revolutions and war culminated in the 1917 Constitution of Mexico. This Constitution was inspired by the resentment of the working class for the accumulation of wealth in the hands of a few.<sup>20</sup> Consequently, this Constitution is unique in that it explains property rights in a social law context.

Article 27 is the article that affects foreign ownership of property. It states that original title of all land and natural resources in Mexico rests first with the nation.<sup>21</sup> The state then has the right to transmit title to private parties.<sup>22</sup> Therefore private property is a secondary form of land ownership in Mexico. This differs from the U.S. Constitution in that there is no default provision in the U.S. Constitution that

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<sup>20</sup> Vargas, Jorge A., Mexican Law: A Treatise for Legal Practitioners and International Investors, Volume 1 41 (West Group 1998).

<sup>21</sup> Mex. Const. art. 27, *available at* <http://www.ilstu.edu/class/hist263/docs/1917const.html>.

<sup>22</sup> *Id.*



vests original title of land with the government prior to any other party.<sup>23</sup>

Article 27 also states that land can be expropriated for reasons of public use subject to payment of indemnity.<sup>24</sup> This is much like the U.S. concept of eminent domain.

Article 27 also gives the state the power to impose restrictions on private property in order to protect public interests and ensure an equitable distribution of wealth.<sup>25</sup> Within this power is the ability to “divide up large landed estates” and take natural resources from properties to redistribute to neighboring territories.<sup>26</sup> In short, the Mexican Constitution limits private property rights in situations where they come into conflict with the good of the collective interest of the nation.<sup>27</sup>

The power of original ownership has enabled the Mexican government to make many land acquisitions and distributions in the last century. The Mexican government distributed 84,081,897 acres of land from 1915-1940.<sup>28</sup> Most of these distributions did not go to private individuals, but to communal collectives known

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<sup>23</sup> Martin, Patrick W., *Comparative Analysis of U.S. vs. Mexican Commercial Real Estate Transactions (With Tax Considerations Commentary)*, 7 L. & Bus. Rev. Am. 507, 510 (2001).

<sup>24</sup> Mex. Const. art. 27, available at <http://www.ilstu.edu/class/hist263/docs/1917const.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Gil, Emilio Portes, *Historical Evolution of the Territorial Property of Mexico* 35 (Ateneo Nacional de Ciencias y Artes de Mexico 1948).

<sup>28</sup> Meyer, Michael K. & William L. Sherman, *The Course of Mexican History*, 599, 5<sup>th</sup> ed. (Oxford University Press 1995).

as ejidos.<sup>29</sup> In addition to distributing large amounts of land, the Mexican government has also made acquisitions through the expropriation of many of its industries.<sup>30</sup>

Article 27 also limits where foreigners can obtain title to land. It states that only Mexicans by birth or naturalization can acquire title to land.<sup>31</sup> However, it provides that the State may grant this right to foreigners on the condition that they agree to be treated as Mexican nationals and not invoke the protection of their government. If such an invocation is made, the foreigner's property automatically reverts back to the nation.<sup>32</sup> This agreement is also known as the "Calvo Clause".<sup>33</sup> Foreigners are also prohibited from obtaining title to land within 100km of the border and 50km of the coast.<sup>34</sup> This area is known as the Restricted Zone and is still in effect today.

## 2. The Ejido

The ejido has a prominent place in Mexican constitutional and real estate law, making it an important consideration when acquiring Mexican real estate. The ejido is a parcel of communal property, given to a group of people to own and manage as a

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<sup>29</sup> *Id.*

<sup>30</sup> Marrero, Guillermo, *What Foreigners Should Know About the Mexican Market* 699 PLI/Comm 117, 119 (1994).

<sup>31</sup> Mex. Const., art 27, § I.

<sup>32</sup> *Id.*

<sup>33</sup> Chayet, V. and Leonard v.B. Sutton, *Mexican Real Estate Transactions by Foreigners* 4 Denv. J. Int'l L. & Pol'y 15 (1974).

<sup>34</sup> Mex. Const., art 27, § 1.

collective.<sup>35</sup> Originally, ejido members were not allowed to obtain private ownership of their land. However a 1992 agrarian law now allows ejido members to establish procedures through which the land can be privatized and sold.<sup>36</sup>

The ejido has a prominent place of constitutional power in terms of land use and title. Article 27 states that all land transfers by federal authority from 1876 to the present that encroaches or illegally occupies ejido land is null and void.<sup>37</sup> It further states that centers of population that lack ejidos, or are unable to restore them due to lack of title, shall be granted sufficient land. That land may be expropriated at the expense of the federal government.<sup>38</sup> People affected by these expropriations have one year to apply for payment of expropriated land. After that year has passed, their claim for indemnity is dead.<sup>39</sup>

### 3. 1973 & 1993 Foreign Investment Acts & 1989 Regulations

In 1973, 1989, and 1999, the Mexican government passed legislation in an effort to liberalize its restrictions on foreign investment. The 1989 Regulations and the 1973 and 1993 Foreign Investment Acts cover a wide range of topics. However,

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<sup>35</sup> Vargas, *supra* note 18 at 41.

<sup>36</sup> Martin, W. Patrick and Enrique Hernandez-Pulido, *Law and Business Review of the Americas* 18 (Kluwer Law International 2001).

<sup>37</sup> Mex. Const., art 27, § VIII(b).

<sup>38</sup> *Id.* at § X.

<sup>39</sup> *Id.* at § XIV.

discussion will be limited to the sections that affect the ability of foreign individuals to hold title to property in Mexico.

In 1973 Mexico passed the 1973 Foreign Investment Act. This act relaxed many requirements for foreign investment. However it put a large restriction on the only way foreigners could gain access to land in the Restricted Zone.

To avoid the Article 27 restrictions that prohibit foreign ownership of land in the Restricted Zone, many foreigners set up legal trusts with Mexican banks.<sup>40</sup> These trusts, in which a bank holds title to a property in trust for a foreigner, are called "fideicomisos." However, Article 20 of the 1973 Act restricted the duration of fideicomisos to no more than thirty years and did not provide specific guidelines concerning renewal of the trust.<sup>41</sup>

In 1989 the Mexican government passed the 1989 Regulations. These regulations were intended to further promote foreign investment and reduce or remove many of the restrictions and uncertainties of the 1973 Foreign Investment Act.<sup>42</sup> The most important addition of the 1989 Regulations in terms of the acquisition of real estate by foreigners was the extension of the fideicomiso.

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<sup>40</sup> Menchetti, D. Geno, *Mexico Real Estate investing Part II (What Every Gringo Ought to Know, But is Afraid to Ask)* 3-JUN Nev. Law. 28 (1995).

<sup>41</sup> Vargas, *supra* note 18 at 133.

<sup>42</sup> *Id.* at 119.

The 1989 Regulations allowed a foreigner to apply to renew a fideicomiso for another thirty years at the end of its thirty-year duration.<sup>43</sup> Approval was automatic 45 days after the application was made if the Secretary of Foreign Relations took no action against the renewal.<sup>44</sup> The fideicomiso has become the common vehicle through which foreign individuals acquire Mexican real estate in the Restricted Zone.

In 1993, the Mexican government passed a new Foreign Investment Act to provide more security and certainty for foreign investors. While retaining certain areas for the Mexican government, the 1993 Foreign Investment Act continued the trend of making foreign investment more simple and secure.<sup>45</sup>

The most important development of this act for the individual real estate investor was the simplification and extension of the fideicomiso. The 1993 Act extends the maximum period of the fideicomiso to fifty years, making it renewable on request of the interested party.<sup>46</sup> Thus, a Mexican bank still holds the title in trust for the foreigner, but that trust can be renewed every 50 years and is transferable.<sup>47</sup>

The 1993 Act also allows Mexican corporations that subject themselves to the "Calvo Clause" to obtain title to property

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<sup>43</sup> *Id.* at 124.

<sup>44</sup> DuMars, Charles T., *Liberalization of Foreign Investment Policies in Mexico: Legal Changes Encouraging New Direct Foreign Investment* 21 N.M.L. Rev. 251, 161 (1991).

<sup>45</sup> Vargas, *supra* note 18 at 127.

<sup>46</sup> *Id.* at 127.

<sup>47</sup> *Id.* at 134; Meya *supra* note 1 at 58 (2004).

within the Restricted Zone as long as the property is used for non-residential activities.<sup>48</sup> This development is relevant to larger foreign investors because the 1989 Regulations allow foreigners to obtain 100% ownership of a Mexican corporation, subject to some restrictions.

Despite these modifications of foreign investment law, it should be noted that the "Calvo Clause" of the Constitution still applies to all foreigners holding title through fideicomisos and for residential purposes.<sup>49</sup>

### **Real Estate Systems in the U.S. and Mexico**

The real estate systems of both Mexico and the United States have similarities and differences. However the major difference in the two systems is the transfer of title. U.S. real estate transactions involve title and escrow services to act as an impartial third party to research, transfer, and guarantee title while the public offices of the Public Notary and Public Registry handle these services in Mexico.

#### **A. Finding a Property to Buy/Sell - Real Estate Agents**

Real estate agents exist in both Mexico and United States. However real estate agents have come under regulation in the

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

United States, requiring agents to obtain state licenses among other requirements.<sup>50</sup> Mexico does not license real estate agents and there is no regulatory department at any governmental level.<sup>51</sup>

## B. Real Estate Transactions and Documents - Lawyers

Lawyers used to play a larger role in U.S. real estate transactions. Before there was title insurance, real estate purchasers would pay a lawyer to conduct a title search and produce a legal opinion about the status of the property's title.<sup>52</sup> Today lawyers play less of role in real estate transactions.

Most of the forms used today in U.S. real estate transactions are standardized and modeled after the forms produced by the American Land Title Association.<sup>53</sup> Real estate transactions generally involve a buyer, a seller, a bank to finance the property, and a title insurance and escrow company. U.S. lawyers are still used to analyze title in some states. However, title insurance is normally used to cover the risks that a lawyer's title opinion does not.<sup>54</sup>

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<sup>50</sup> Cal B and P code § 10130.

<sup>51</sup> Meya *supra* note 1 at 58 (2004).

<sup>52</sup> *A Brief History of the Title Insurance Industry*, <http://www.trgc.com/center/history.htm>

<sup>53</sup> Blyth, John E., *International Title Insurance* 484 PLI/Real 635, 638 (2002); <http://www.alta.org/standards/index.cfm>.

<sup>54</sup> Pedowitz, *supra* note 4 at 105-106.

Lawyers play a more active role in Mexican real estate transactions. Mexican real estate agents can employ a lawyer to draw up the necessary transactional documents.<sup>55</sup> Despite the fact that all the participants of the real estate transaction may speak English, all documents governing the transaction must be in Spanish.<sup>56</sup>

Additionally, if a purchaser wants a title search for a property, the accepted method is to hire a lawyer to conduct the search and provide a title opinion, much like what was done in the U.S. before title insurance.<sup>57</sup> The price of the search is directly related to its thoroughness due to its potential complexity. As such, the purchaser's certainty of title could be limited to his financial resources.

### C. Financing a Property - Banks

A Basic knowledge concerning banks, mortgages, and trusts is beneficial to a foreign investor in Mexico because the financial agreements can differ between the two countries and affect an individual's rights to purchased real estate.

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<sup>55</sup> Folsom, Janet L., *Mexican Real Property Ownership Implications for Colorado Estate Planning*, 32-APR Colo. Law. 51, 54. (2003).

<sup>56</sup> Meya, *supra* note 1 at 59.

<sup>57</sup> Folsom *supra* note 50 at 54.



## 1. Mortgages - Hipotecas

Mexican banks can be used to finance the purchase of real estate. However, due to their higher interest rates and shorter terms, foreigners do not commonly use mortgages from Mexican sources to finance real estate acquisitions in Mexico.<sup>58</sup> The Mexican equivalent of a U.S. mortgage is a "hipoteca". A hipoteca is a transaction where a creditor secures real estate as collateral for a mortgage agreement with a debtor.<sup>59</sup> If the debtor defaults, the creditor has the right to obtain the sales price of the property.<sup>60</sup>

A U.S. mortgage is similar to a hipoteca. The major difference between the two is the creditor's right of possession upon default. A hipoteca does not give the creditor the right to take possession if the debtor defaults.<sup>61</sup> The creditor of a Mexican hipoteca must enforce the foreclosure of the property through a judicial proceeding, called the "juicio especial hipotecario". This differs from a U.S. mortgage agreement in which the creditor can be contractually granted the power of sale upon default.<sup>62</sup> In addition, all mortgages that deal with property must be recorded in the Public Registry to be effective

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<sup>58</sup> Chayet *supra* note 31.

<sup>59</sup> C.C.D.F. art. 2893.

<sup>60</sup> *Id.* at art. 2856.

<sup>61</sup> Martin *supra* note 21 at 526.

<sup>62</sup> *Id.* at 529; C.C.D.F art. 2981.

against third parties.<sup>63</sup> Hipotecas last up to 10 years unless a longer time frame has been specified.<sup>64</sup>

U.S. financial institutions are following title insurance companies into Mexico and are beginning to finance individual purchases of Mexican property. These loans generally require larger down payments and higher interest rates.<sup>65</sup> However, as foreign investment and the purchasing of Mexican real estate increase and become more secure, the financial characteristics of U.S. loans for Mexican property may converge to resemble those for U.S. property.

## 2. Trusts - Fideicomisos and Guaranty Trusts

### a. Fideicomiso

If a foreigner wishes to acquire real estate in the restricted zone he or she must enter into a trust, or fideicomiso. Mexican law requires that all trusts have a legally designated Mexican bank as the trustee.<sup>66</sup> These trusts have a maximum duration of 50 years but are renewable at the will of the owner. All trusts concerning real property must be recorded in the public registry where the property is located.<sup>67</sup>

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<sup>63</sup> C.C.D.F. art 3042 (I).

<sup>64</sup> *Id.* at art. 2927.

<sup>65</sup> Chayet *supra* note 31 at 5.

<sup>66</sup> Banowsky, David W., *Possibilities for Cross-Border Asset-Based Lending in Mexico* L. & Bus. Rev. Am. 20, 34 (1995)

<sup>67</sup> *Id.* at 32.

In order for a Mexican bank to set up a trust, a certificate of title must be obtained from the Public Registry of Property, a certificate of Freedom of Encumbrances must be obtained, a corporate charter must be provided if an incorporated company is involved, and an appraisal of the real estate must be done for tax purposes.<sup>68</sup> Foreigners must also obtain permission from the Secretary of Foreign Relations to set up trusts or acquire any real property in Mexico.<sup>69</sup> A permit is considered approved if the Secretary does not respond within five business days of the permit application.<sup>70</sup>

Banks usually charge an annual handling fee between 0.3% and 0.7% of the value of the assets in the trust.<sup>71</sup> The Public Notary generally charges up to 1% of the property value to administer the trust. Set-up fees can range between \$200 and \$500 dollars.<sup>72</sup> However the cost of a trust may depend on the size, improvements, and value of the realty.<sup>73</sup> Additionally, the purchase price of the property that is to be put in a trust must be paid in full upon the purchase because the title must be transferred free and clear to the Trustee, or Mexican bank.<sup>74</sup>

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<sup>68</sup>Chayet *supra* note 31 at 5.

<sup>69</sup>*Id.* at 3.

<sup>70</sup>World Trade Executive Inv., Mexico Business and Legal Briefing: 2000-2001 32 (World Trade Executive 2000).

<sup>71</sup>*Id.* at 34

<sup>72</sup>*Id.* at 34

<sup>73</sup>Chayet *supra* note 31 at 5.

<sup>74</sup>*Id.*

#### b. Guaranty Trust

A trust may be used to guarantee performance or payment. This type of trust is called a guaranty trust.<sup>75</sup> A foreign investor should be familiar with this financial instrument because some creditors may prefer a guaranty trust to a secured mortgage.<sup>76</sup> With a guarantee trust concerning a real estate transaction, a Mexican bank holds the assets in trust for the lender, the primary beneficiary of the trust, and the debtor, or settlor. The important characteristic of the guaranty trust is that the parties may contract around the judicial foreclosure requirement of the hipoteca.<sup>77</sup>

#### D. Escrow Services

In U.S. real estate transactions buyers and sellers usually employ an escrow service to act as an impartial third party. These services handle the exchange of money, documents, and ultimately the transfer of title if all parties agree and perform the contracted obligations.<sup>78</sup> The company from which the buyer purchases title insurance usually provides escrow services. There is no parallel, private service in Mexico.<sup>79</sup> The

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<sup>75</sup> Banowsky *supra* note 60 at 34.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Martin *supra* note 21 at 516.

<sup>79</sup> *Id.*

third party intermediary that performs these services in Mexico is the Public Notary.<sup>80</sup>

### **US Title Insurance vs. The Public Notary and Public Registry**

The most important concern of a foreign investor when purchasing property in Mexico should be gaining clear title to the property. Without clear title, the purchaser does not really own the property, or may lose his entire investment to prior claims, liens, encumbrances, or other claimants.

The largest difference in purchasing real estate in Mexico and the U.S. is title transfer. In the U.S., title insurance companies research and insure title as well as indemnify the owner in the event of a loss. The comparable entities in Mexico are the Public Notary and Public Registry. These public offices research, record, and provide legal protection for individuals who purchase title to property in Mexico.

#### **A. U.S. Title Insurance**

In the last 100 years, title insurance has become the norm in most U.S. real estate transactions.<sup>81</sup> Over 15 billion dollars in premiums were collected in 2004, with the top 4 title

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<sup>80</sup> *Id.*

<sup>81</sup> Pedowitz *supra* note 5 at 1.

insurance companies collecting more than 90% of the industry's total revenue.<sup>82</sup>

Most U.S. purchasers of real estate will not buy real estate with uninsured title. Most, if not all, American financial institutions will not finance real estate unless it has title insurance.<sup>83</sup> In a few words, title insurance has become a part of every real estate transaction that occurs in the United States.

Title insurance is not a normal insurance policy where a premium is paid for a policy that protects a person from the future risk of potential damage or monetary loss. Title insurance is an indemnity contract against actual monetary loss suffered from defects in title, or by liens or encumbrances on the property that were not excluded in the policy.<sup>84</sup> Title insurance is unique in that it is designed to protect against past defects in title rather than future occurrences.<sup>85</sup>

The purchaser pays a one-time fee for a title policy that insures the title of the property up until the date the policy is issued.<sup>86</sup> The policy is indefinite but only covers defects and matters that occurred up to the date of issue.<sup>87</sup> It does not

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<sup>82</sup> See Appendix A and Appendix B; Source - [www.alta.org](http://www.alta.org)

<sup>83</sup> Pedowitz *supra* note 5 at 1.

<sup>84</sup> Insurance XVI Risks or Causes of Loss.

<sup>85</sup> Gosdin, James L., Title Insurance: a comprehensive overview 35, (Alan J. Robin ed. , American Bar Association 1996) (1951).

<sup>86</sup> Pedowitz *supra* note 4 at 103.

<sup>87</sup> *Id.* at 14.

insure future actions of the owner or future status of the title to the property.<sup>88</sup> If a defect in title arises, the title company will pay to have the problem fixed or compensate the policyholder for any loss incurred.<sup>89</sup>

Title insurance serves two basic functions; risk spreading and risk elimination.<sup>90</sup> Title insurance companies spread risk by accepting premiums from their policyholders and agreeing to compensate individuals according to their policy should any loss occur.<sup>91</sup> The company assumes the risk of individuals and spreads it among the policyholders. In this regard, title insurance is much like normal insurance policies.

The unique aspect of title insurance is that it not only assumes risk, but that it works to eliminate it. Before issuing a title insurance policy, a title company will research a property's title in the public records or its own records in order to find any defects in title.<sup>92</sup> Any defects that are found will be cured, brought to the attention of the policyholder, and/or listed as coverage exceptions in the policy. Even if the defects are not cured, title insurance can be useful to real estate purchasers because it provides a researched picture of the property's title. The purchaser is

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<sup>88</sup> *Id.* at 113.

<sup>89</sup> *Id.* at 18.

<sup>90</sup> Gosdin *supra* note 77 at 3.

<sup>91</sup> *Id.*

<sup>92</sup> Pedowitz *supra* note 5 at 3.

able to see the exceptions in his policy as potential title problems that might arise in the future while being insured for any other unlisted problems that might result in future loss.<sup>93</sup>

### 1. Title Insurance Coverage

Title insurance policies have become highly standardized in the U.S. Most title companies use the standard contracts provided by the American Land Title Association.<sup>94</sup> The two important types of coverage that title insurance covers is protection against loss for reasons set forth in the policy and expenses of litigation, regardless of the validity of a claim.<sup>95</sup>

The four insured areas are protection from title being vested in a party other than the policyholder, any defects, liens, or encumbrances on the title, protection from unmarketable title, and lack of a right of access to and from the land.<sup>96</sup> In addition to these areas, title insurance companies offer additional coverage to lenders that ensure the validity and priority of the mortgage on the property.<sup>97</sup>

Standard title insurance policies contain three main exceptions to coverage. These exceptions are any law that affects the property that was not recorded as of the date of the

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<sup>93</sup> The author worked for First American Title and observed this extra use for title insurance policies for the residential homebuyer.

<sup>94</sup> *Title Insurance: a comprehensive overview supra* note 2 at 1

<sup>95</sup> Pedowitz *supra* note 4 at 103.

<sup>96</sup> Pedowitz *supra* note 4 at 108.

<sup>97</sup> *Id.* at 109-110.



policy, eminent domain unless it is recorded before the issuance of the policy, and defects in title created by the insured or known by the insured and not disclosed to the title company.<sup>98</sup>

#### B. The Public Notary (Notaría Pública)

A Mexican Public Notary is very different from its U.S. counterpart. The status of Public Notary is the highest achievement that a Mexican lawyer can obtain.<sup>99</sup> A Mexican lawyer becomes a Public Notary by passing a series of exams covering different areas of law and getting an authorization, or a "patent", for life from the state government.<sup>100</sup> Because of their stature and education, Mexican Public Notaries can be regarded as "super" attorneys. They have the authority to attest documents, draft documents, verify the validity of acts and facts in a transaction, and record documents with the Public Registry.<sup>101</sup>

Just as U.S. title insurance is involved in almost every U.S. real estate transaction, a Public Notary is involved in almost every Mexican real estate transaction.<sup>102</sup> The Federal Civil Code of Mexico requires that the purchase and sale agreement of property that is worth more than 365 times the

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<sup>98</sup> *Title Insurance: a comprehensive overview supra* note 2 at 17-22.

<sup>99</sup> Folsom *supra* note 50 at 52.

<sup>100</sup> Martin *supra* note 21 at 517; Martin & Hernandez *supra* note 34 at 16.

<sup>101</sup> Martin *supra* note 21 at 517.

<sup>102</sup> Meya *supra* note 1 at 58-59.

minimum wage must be in writing, formalized before a Public Notary, and recorded in the Public Registry of Property.<sup>103</sup> Most real estate transactions exceed this amount and consequently require an "Escritura Pública" (Public Deed) to be valid.<sup>104</sup>

The Public Notary performs the services of a U.S. escrow service by providing an impartial third party to handle the transfer of title. Title is transferred through the Public Notary and then recorded in the Public Registry.<sup>105</sup>

The buyer and seller of real estate can negotiate the terms of the sale, prepare the documents with the assistance of a Mexican lawyer, and then have the Public Notary formalize the transaction, or, they can negotiate the deal and have the Public Notary draft the documents and formalize the agreement.<sup>106</sup>

A Public Notary will investigate the aspects of a transaction before notarizing it as valid. Any transaction regarding title to realty requires the Public Notary to request a certificate from the Public Registry stating that the property is free from encumbrances.<sup>107</sup> Once the Public Notary is satisfied with the legality of the transaction, the purchase price is paid and title is transferred in his presence.<sup>108</sup> He then drafts an Escritura that is recorded in the Public

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<sup>103</sup> Martin *supra* note 21 at 517, note 60; C.C.D.F §2248, Art. 2249.

<sup>104</sup> Martin & Hernandez *supra* note 34 p. 16; C.C.D.F. Art. 2320.

<sup>105</sup> Martin *supra* note 21 at 516.

<sup>106</sup> *Id.* at 517.

<sup>107</sup> C.C.D.F. Art. 3016.

<sup>108</sup> Martin *supra* note 21 at 516.

Registry.<sup>109</sup> This document is a valid, public document, whose validity cannot be objected to. It is considered as true and legal in Mexican courts.<sup>110</sup>

### C. Registry System

The Registry System is the most important source of information when it comes to title. It is also one of the most important steps in transferring title to real estate in Mexico due to the legal effect of a recorded transaction.<sup>111</sup>

Any instrument that affects rights to a property must be recorded in the Public Registry of Realty.<sup>112</sup> Additionally, any sale of realty is not effective until it is recorded.<sup>113</sup> Therefore evidence of all valid title transfers will be recorded in a Public Registry.

There are three types of registries in Mexico; Civil Registries, Commercial Registries, and Public Registries of Realty.<sup>114</sup> Every local jurisdiction has a Public Registry of Realty.<sup>115</sup> Like the U.S., public registries are open to the public.<sup>116</sup> Registries are required, by law, to issue certified copies of their information and certifications as to whether or

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<sup>109</sup> Folsom *supra* note 50 at 54.

<sup>110</sup> Martin *supra* note 21 at 517.

<sup>111</sup> C.C.D.F. art. 3007, 2322.

<sup>112</sup> C.C.D.F. art. 3042.

<sup>113</sup> *Id.* at 2322.

<sup>114</sup> Folsom *supra* note 50 at 54.

<sup>115</sup> *Id.*

<sup>116</sup> C.C.D.F. art. 3001.

not there information relating to a specific property exists.<sup>117</sup> All documents that are not in Spanish must be translated by an official translator and certified by a Public Notary in order to be recordable.<sup>118</sup>

## 1. Recording Process

One of the required documents in a real estate transaction is a certificate of clean title from the Public Registry.<sup>119</sup> The Public Notary must obtain this certificate in order to formalize a real estate transaction.<sup>120</sup> The Public Notary's request for this certificate must contain the nature of the transaction, a description of the property, the names of the contracting parties, and any previously recorded information about the property.<sup>121</sup>

This request starts the process for the completion of a real estate transaction in Mexico. Once this document has been requested, the Registry will enter the request in the margin of the page where the property is registered. This entry is a *preliminary notice of presentation* that is effective for 30 days.<sup>122</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at art. 3006.

<sup>119</sup> *Id.* at art. 3016.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

Once the Public Notary has signed the Escritura, the Registry is given a *second preventative notice* within 48 hours. This notice contains the date of the transaction and its signatures.<sup>123</sup> The Registry will then enter a notice of presentation on the record that is good for 90 days from the date of its filing. If this notice is filed within 30 days of the preliminary notice of presentation, the complete transaction becomes effective on the day the preliminary notice of presentation was recorded. However, if this notice is given after the original 30 days, the transaction will only be effective on the day the second preventative notice was filed.<sup>124</sup>

The final step in the formalization of a real estate transaction is the recording of the Escritura in the Public Registry. The Escritura becomes effective against third parties from the date of presentation of the notice if it is filed within the 30 or 90 day time frames mentioned above. If it is filed after those timeframes it is effective from the date that it is filed.<sup>125</sup>

## 2. Effect of Recording

Once a transaction is recorded, the rights of a purchaser are protected in good faith even if the rights of the seller are

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at art. 3016.

later annulled or modified.<sup>126</sup> The purchaser is presumed to have title and that title can't be impeached unless an action is previously or simultaneously brought to nullify the record that supports the purchaser's title.<sup>127</sup> Additionally, once title has been recorded or noticed, no other title claim for the same or earlier date can be recorded.<sup>128</sup> In other words, recorded right to title can only be lost through a court action for a right that was recorded before the date of the latest right.<sup>129</sup>

Despite the protection that recording title provides, purchasers of Mexican real estate may still be liable for previous problems with the property. The buyer is responsible for any notices put on the property prior to his acquisition.<sup>130</sup> Additionally, real estate can be conveyed and encumbered without affecting the rights of a person who has a previous notice on the property.<sup>131</sup>

If a problem does arise concerning the title to the property, the Federal Civil Code states that all sellers warrantee the title of the property that they sell.<sup>132</sup> The recording Registry and its officials are also civilly liable in certain circumstances. These circumstances include wrongful

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<sup>126</sup> *Id.* at art. 3009.

<sup>127</sup> *Id.* at art. 3010.

<sup>128</sup> *Id.* at art. 3020.

<sup>129</sup> *Id.* at art. 3014.

<sup>130</sup> *Id.* at art. 3044.

<sup>131</sup> *Id.* at art. 3045.

<sup>132</sup> *Id.* at art. 4212(iv).

entries, delayed entries, and errors or omissions of entries or certifications.<sup>133</sup> Registrars are also personally responsible for finding discrepancies between the information in a recordable document and the Registry entries.<sup>134</sup>

If a Registry employee is responsible for any of these mistakes, he is barred from work until he has paid for the damages caused by his mistake.<sup>135</sup> If a discrepancy alters the meaning of the document or transaction, a change can only be made with unanimous consent from all parties or a judicial intervention.<sup>136</sup>

### **Do Foreign Investors Need Title Insurance when Acquiring Property In Mexico?**

A. Do Individuals need Title Insurance in the U.S.?

Title insurance is accepted as a cost of buying or selling real estate in the U.S. In 2004, U.S. Title Insurance companies collected over \$15,000,000,000 in premiums, with 98% coming from the 50 U.S. states.<sup>137</sup> The average income per state was \$300,100,106, with California as the highest contributing state with \$1,507,038,011.<sup>138</sup>

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<sup>133</sup> *Id.* at art. 3003.

<sup>134</sup> *Id.* at art. 3021.

<sup>135</sup> *Id.* at art. 3004.

<sup>136</sup> *Id.* at art. 3025, 3026.

<sup>137</sup> See Appendix A & Appendix C, p. 2

<sup>138</sup> See Appendix C

The top five title companies collected 91% of the total revenue.<sup>139</sup> These companies include First American Title, Stewart Title, Fidelity Title, Landamerica Title, and Old Republic.<sup>140</sup> These companies also have presences in the Virgin Islands, Puerto Rico, Guam, Canada, and most recently, Mexico.<sup>141</sup> However, premiums from these countries only accounted for the remaining 2% of total industry revenue. Therefore the title industry is almost completely concentrated in U.S., dominated by 5 title companies, and may be starting to spread to other countries.

The question is do all of these people who are buying title insurance really need it? According to the 2005 Industry Income Statement of the American Land Title Association, and as seen in the table below, roughly 92% of the \$16,355,883,657 of revenue

<b>Operating Income</b>	<b>\$</b>	<b>%</b>
<b>Title Ins. Premiums earned</b>	\$15,108,289,659.00	<b>92.37%</b>
Escrow and Settlement Services	\$535,135,542.00	3.27%
<b>Other Fees and Charges</b>	<b>\$651,680,916.00</b>	<b>3.98%</b>
<b>Total Operating Income</b>	\$16,355,883,657.00	100.00%
<b>Expenses</b>		
<b>Losses and loss adj expenses</b>	\$699,052,397.00	<b>4.48%</b>
<b>Losses paid</b>	\$635,658,827.00	<b>90.93%</b>
<b>Operating expenses</b>	\$14,901,715,491.00	<b>95.52%</b>
Write in for other operating expense	\$114,616.00	0.00%
<b>Total Operating deductions</b>	\$15,600,882,504.00	100.00%

<sup>139</sup> See Appendix B, p. 2

<sup>140</sup> *Id.*

<sup>141</sup> See Appendix C, p. 2



earned came from title insurance premiums. The other 8% came from escrow and settlement services and other charges.<sup>142</sup>

In 2004, \$14,901,715,491 was deducted as expenses. However, just 4.48% of these expenses were due to payments and losses. The other 96% of the expenses that title insurance companies incurred were due to operating expenses.<sup>143</sup> These expenses included advertising, production services, and rent, with personnel costs accounting for 46% of total expense.<sup>144</sup>

Two conclusions can be drawn from this analysis of the title insurance industry's financial data. The first is that the vast majority of title insurance companies' revenue is from premiums for title insurance policies issued in the U.S.

The second is that the smallest expense that title insurance companies incur is paying money to settle claims that their policies cover. It appears that costs of keeping the business running are by far the greatest expense that title insurance companies incur.

Additionally, the 4% of revenue that title insurance companies pay to satisfy claims indicates that relatively few problems with title actually occur. Consequently, it can be inferred that individuals in the U.S. can be relatively certain of the validity of title in most U.S. real estate transactions,

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<sup>142</sup> See Appendix A & Appendix D for data sources

<sup>143</sup> See Appendix A

<sup>144</sup> See Appendix E & F; 46% = dividing the total personnel costs into the total expenses incurred.

and could most likely perform an effective title search themselves, given the availability of public records and the advanced recording infrastructure and technology in the U.S.

Therefore, it seems that title transfer in the U.S. has become so efficient that the need for title insurance does not justify its involvement in the majority of U.S. real estate transactions.

## B. Do Individuals need Title Insurance in Mexico?

### 1. Liability

In Mexican real estate transactions, there are three places where liability can fall in the event of a title discrepancy. These places are the Public Registry, the Public Notary, and the seller of the property.

In the case of an omission or error, the Registry and its officials are liable for the mistake.<sup>145</sup> Therefore, if the certificate of clean title that a Registry issues to the Public Notary for a real estate transaction is incorrect, the Registry will be liable for any problems that arise concerning title to that property. Additionally, the Federal Civil Code charges the Registry with the responsibility of ensuring that there are no

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<sup>145</sup> C.C.D.F. art. 3003.

discrepancies between recorded documents and existing entries.<sup>146</sup> Therefore the Registry is the first institution that has the responsibility of determining clear title in Mexican real estate transactions.

After the Registry issues a certificate stating that the title is clear of encumbrances, the Public Notary is then charged with determining the legal accuracy and completeness of the documents in a transaction.<sup>147</sup> After the Public Notary determines that the transaction and its documents, including the certificate of clear title, are valid, he issues the Escritura, which is a public deed whose validity is generally not objected to.<sup>148</sup> Therefore, even if a title discrepancy is overlooked, a purchaser of real estate receives a presumptive validity of title from the Public Notary's formalization of the transaction. If a mistake in the transaction results in a loss, the Public Notary is responsible to fix the mistake.<sup>149</sup> Most Public Notaries in civil law countries are required to carry insurance for these situations.<sup>150</sup>

Finally, sellers are required to warranty title of property they sell unless the title problem is included in the

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<sup>146</sup> *Id.* at art 3021.

<sup>147</sup> Martin *supra* note 21 at 518.

<sup>148</sup> *Id.* at 517; F.C.P.C. 129, 130.

<sup>149</sup> Blyth *supra* note 49 at 651.

<sup>150</sup> *Id.*

transaction.<sup>151</sup> This provides a third layer of protection for a buyer of real estate in Mexico.

## 2. Analysis

With these three layers of legal protection, a foreigner does not need to purchase title insurance for a property in Mexico as long as the real estate transaction is formalized by the Public Notary and recorded in the Public Registry. The “negligence gap” in U.S. law that created the need for title insurance does not exist in Mexican law. It is accounted for because the Registry, the Public Notary, and the seller are all civilly liable for any defects in title as well as errors, inaccuracies, or negligence involved in the transaction.

If a purchaser wanted further assurance of title, he or she could hire a Mexican lawyer to conduct a title search and produce an opinion. This process is not inferior to purchasing title insurance and having a title company research the title because most title insurance companies rely on the opinions of local counsel or local agents that they employ.<sup>152</sup> Therefore in a civil system, such as Mexico, where registering and formalizing a real estate transaction gives the registering party presumptive rights and certified validity of title, title

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<sup>151</sup> C.C.D.F. art. 2412(iv).

<sup>152</sup> Blyth *supra* note 141 at 648.

insurance would be duplicitous coverage of liability due to the remedies and provisions that are already provided by Mexican law.

Title insurance companies provide a source of compensation for real estate purchasers for any loss they incur due to title defects. Mexican law provides multiple sources by making seller's warranty the title of their property, Public Notaries responsible for the accuracy and legality of the their transactions, and the Public Registry liable for the accuracy of its information.

### 3. Litigation and Absent Property Owners

A distinction should be made between a foreigner who wishes to reside in Mexico and a foreigner who wishes to purchase property in Mexico as a second residence or vacation home.

Foreigners who wish to purchase property in Mexico but do not intend to reside there, consistently employ reliable, local counsel, or educate themselves about the civil legal system should consider title insurance as a cheaper, simpler, and less time intensive way of resolving a problem, should one occur.

There is no guarantee in either Mexico or the U.S. that a problem will not occur with title to a property. The certificate produced by the Registry is only as good as the Registry itself. Recorded and formalized transactions produce presumptive legal

rights, but they do not guarantee that a property is free and clear of encumbrances.<sup>153</sup> An encumbrance on title could be recorded in the Public Registry of Property, the Civil Registry, the Public Registry of Commerce, or a number of other specialty registries in Mexico.<sup>154</sup>

Additionally, a formalized Mexican real estate purchase creates legal rights, but neither the certificate of title issued by the Public Registry, the Escritura issued by the Public Notary, nor a title policy issued from a title company absolutely guarantees that legal problems will not occur.<sup>155</sup> Therefore, even though Mexican law provides protection and compensation for mistakes and losses of title in real estate transactions, this does not mean that a problem will not arise and have to be litigated.

Title insurance not only indemnifies policyholders for losses incurred due to defective title, but also covers litigation expenses and efforts to fix title problems that arise.<sup>156</sup> This is a reason why a foreigner should consider purchasing title insurance for a property in Mexico, especially if that property is located in a constitutionally complex area, such as the Restricted Zone or near an ejido.

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<sup>153</sup> Chayet *supra* note 31 at 3.

<sup>154</sup> Folsom *supra* note 50 at 55.

<sup>155</sup> Gosdin *supra* note 78 at 1.

<sup>156</sup> Pedowitz *supra* note 4 at 103.

If the policy issued is a standard policy, a title company will use its resources to litigate a problem or claim with the property. Therefore, since most title companies employ local counsel, local counsel will use the rights provided by Mexican law to dispel the claim.

If a foreigner has the resources to litigate in Mexico and/or knows reliable Mexican counsel, purchasing title insurance for the purpose of gaining access to local litigation services would add no value to the transaction. However, foreigners that do not fit these qualifications and wish to purchase property in Mexico may benefit from the local litigious resources that title insurance companies can provide.

### **Title Insurance in the Future**

The 24% increase of premiums collected from properties in Mexico from the first six months of 2004, along with U.S. citizens' increased interest in purchasing Mexican real estate indicate that the number of title insurance policies in Mexico is increasing.<sup>157</sup>

However, an analysis of the financial data for the U.S. title insurance industry indicates that title insurance companies have transformed from a necessary insurer of a legal gap in liability, to a self-propelling business that dedicates

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<sup>157</sup> See Appendix G for calculations of increase in premiums collected for Mexico.

much of its costs to maintaining operations. It has also been shown that Mexican law provides ample legal protection to ensure that purchasers of real estate in Mexico will be able to receive legal title and will be compensated in the event that a defect occurs.

There are two possible explanations for the increase in title insurance in Mexico. The first is the complacency of U.S. citizens in accepting title insurance as a part of every real estate transaction. Title insurance's 126-year presence has changed its appearance from an optional insurance policy to a mandatory tax. Even though Mexican title insurance policies can be more expensive than U.S. policies, U.S. citizens perceive them as a cost of owning real estate because they are not informed of the rights and remedies that Mexican law affords them in relation to title problems with real estate.

The second possible explanation is an unwarranted fear of instability created by media coverage of recent takings of property from U.S. investors in cases like Punta Banda.

In 1987, U.S. citizens bought property in Punta Banda that allegedly belonged to an ejido.<sup>158</sup> However, due to an exclusion made to the ejido's lands, the site on which the properties were developed did not belong to the ejido. Although some were led

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<sup>158</sup> Patrick Osio, *Secrets of Punta Banda*, San Diego Metropolitan, February 2001 available at <http://www.sandiegometro.com/2001/feb/connection.html>.



to believe that the claims on the property were frivolous, there is evidence that many purchasers knew there was a title problem when they bought the land, and that the true owners gave public notice that the ejido did not own the property.<sup>159</sup> The true owners confiscated the property pursuant to a court order.

However rare this occurrence may be, it has received wide coverage throughout the Southwestern U.S. and has created an unwarranted fear of the Mexican government and owning property in Mexico.<sup>160</sup> U.S. investors buy title insurance for Mexican properties to ease this fear even though Mexico provides a secure legal framework for foreign ownership of property.<sup>161</sup>

The need for title insurance in Mexico will most likely diminish in the future as foreign investment in Mexico increases, Mexico becomes a more technologically advanced country, and foreign investors become more familiar with Mexico's legal system and rights.

As Mexico develops technologically, the recording infrastructure of the Public Registry and Public Notary will be become more accurate and efficient, resulting in progressively fewer problems with conflicting title. Additionally, as foreign ownership of Mexican land increases, U.S. citizens will become more familiar with Mexico's real estate processes and relevant

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<sup>159</sup> Mitch Creekmore, *Investing in Mexico Not a "Punta Banda" Story*, Arizona Journal of Real Estate and Business, December 2000 available at [http://www.baja-relocation.com/investing\\_in\\_mexico.htm](http://www.baja-relocation.com/investing_in_mexico.htm).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

law. They will realize that Mexican law already provides the coverage offered by title insurance. Consequently, as Mexico becomes a more advanced and integrated nation, the need for title insurance will most likely decline.

# Appendix A

Annual Statement for the year 2024 of the Amazon Landfill Reclamation Industry

OPERATIONS AND INVESTMENT EXHIBIT STATEMENT OF INCOME			1	2
			Current Year	Prior Year
<b>OPERATING INCOME</b>				
1	Title insurance and related income (Part 1)			
1.1	Title insurance premiums earned (Part 13, Line 3, Col. 1)		15,100,209,009	15,100,750,100
1.2	License and settlement services (Part 14, Line 4, Col. 4)		889,131,844	889,131,844
1.3	Other title fees and service charges (Part 14, Line 4, Col. 4)		261,880,079	276,392,471
2	Aggregate write-ins for other operating income		80,777,830	88,243,228
3	Total Operating Income (Lines through 2)		16,032,087,657	16,354,297,383
<b>DEDUCT:</b>				
4	Losses and loss adjustment expenses incurred (Part 20, Line 7E, Col. 7)		989,951,591	991,614,970
5	Operating expenses incurred (Part 1, Line 20, Col. 4 and 6)		7,401,733,949	7,894,021,881
6	Aggregate write-ins for other operating deductions		14,803	98,673
7	Total Operating Deductions		8,406,687,423	8,986,735,524
8	Net operating gain or loss (Lines 3 minus 7)		7,625,400,234	7,367,561,859
<b>INVESTMENT INCOME</b>				
9	Net investment income earned (Part 6 of Part 10 minus income, Line 17)		415,640,784	477,781,753
10	Net realized capital gains (losses) (Detail of Capital Gains, Losses)		300,770,303	90,803,072
11	Net investment gain (loss) (Lines 9 + 10)		716,411,087	568,584,825
<b>OTHER INCOME</b>				
12	Aggregate write-ins for miscellaneous income (loss)		15,320,114	1,046,661
13	Net income, before federal income taxes (Lines 8 + 11 + 12)		1,471,044,300	1,397,193,735
14	Federal and foreign income taxes incurred		385,466,628	421,335,482
15	Net income (Lines 13 minus 14)		1,085,577,672	975,858,253
<b>CAPITAL AND SURPLUS ACCOUNT</b>				
16	Surplus as regards policyholders, December 31 prior year (Page 1, Line 30, Column 2)		3,191,190,917	2,028,617,171
<b>GAINS AND (LOSSES) IN SURPLUS</b>				
17	Net income from Line 15		1,085,577,672	975,858,253
18	Net unrealized capital gains or losses		(457,383,711)	366,940,368
19	Change in reinsurance - foreign reinsurance capital gain (loss)		379,313	(7,287,714)
20	Change in reinsurance - domestic reinsurance		41,735,451	24,327,299
21	Change in reinsurance - other reinsurance (Part 10, Line 1, Col. 3)		25,422,190	(270,155,778)
22	Change in provision for unaffiliated reinsurance (Page 8, Line 16, Col. 2 minus 1)			
23	Change in supplemental reserves (Page 2, Line 4, Col. 2 minus 1)		1,969,295	317,871,468
24	Change in surplus notes		(800,000)	
25	Cumulative effect of changes in accounting principles			3,100,291
26	Capital Changes			
26.1	Paid in		3,599,107	4,678,478
26.2	Transferred from surplus (Stock Dividend)		7,662,213	
26.3	Transferred to surplus			300,300
27	Surplus Adjustments			
27.1	Paid in		77,321,848	710,468,077
27.2	Transferred to capital (Stock Dividend)		7,329,213	
27.3	Transferred from capital			
28	Dividends to stockholders		(601,079,100)	(521,254,917)
29	Change in treasury stock (Page 7, Lines 29-31) plus (29-31), Col. 3 minus 4)		(25,691)	(74,280)
30	Aggregate write-ins for gains and losses in surplus		6,064,734	(13,729,197)
31	Change in surplus as regards policyholders for the year (Lines 17 through 30)		16,767,248	788,638,648
32	Surplus as regards policyholders, December 31 current year (Lines 16 plus 31) (Page 3, Line 30)		3,207,958,165	2,817,255,819

DETAILS OF WRITE-INS				
1201			6,074,714	17,000,409
1202			29,274,201	(9,874,809)
1203			9,881,917	7,622,348
1204	Summary of remaining write-ins for Line 2 from overflow page		15,171,801	23,018,245
1205	Total (Lines 1201 through 1203 plus 1204) (Line 2 above)		50,322,633	37,766,293
1206			20,219	788,919
1207			84,341	(7,521)
1208				
1209				
1210	Summary of remaining write-ins for Line 6 from overflow page			
1211	Total (Lines 1206 through 1208 plus 1210) (Line 6 above)		114,569	813,398
1212			(5,129,407)	(1,967,181)
1213			57,429	78,740
1214				
1215	Summary of remaining write-ins for Line 12 from overflow page			
1216	Total (Lines 1212 through 1214) (Line 12 above)		(5,071,978)	(1,888,441)
1217	Aggregate write-ins, total adjustments		22,727,264	14,979,566
1218	Reversal of write-ins		(7,189,325)	(8,487,231)
1219			73,214,880	2,618,287
1220	Summary of remaining write-ins for Line 16 from overflow page			
1221	Total (Lines 1217 through 1219 plus 1220) (Line 16 above)		88,642,819	(13,729,197)

## Appendix B

2004 Family/Company Market Share Summary		
Company Name	Total Premiums Written	Market Share
FIDELITY FAMILY	\$4,738,924,634	30.51%
FIRST AMERICAN FAMILY	\$4,018,709,749	25.88%
LANDAMERICA FAMILY	\$2,825,573,223	18.19%
STEWART FAMILY	\$1,737,279,600	11.19%
OLD REPUBLIC FAMILY	\$938,234,026	6.04%
<b>FAMILY TOTALS</b>	<b>\$14,258,721,232</b>	<b>91.81%</b>
<b>REGIONAL COMPANIES</b>	<b>\$1,272,435,991</b>	<b>8.19%</b>
TOTAL - ALL COMPANIES	\$15,531,157,223	100.00%

Source: [www.alta.org](http://www.alta.org) "2004 Market Share - Family/Company Summary"

# Appendix C

Source: www.alta.org

Based on 2005 Total Premium as of 6/30/05

State	6/30/2005	6/30/2004	12/31/2004
Alabama	46,603,825	44,729,135	91,706,409
Alaska	18,721,739	15,913,290	34,714,477
Arizona	328,433,411	238,917,152	511,699,494
Arkansas	22,820,317	23,316,428	47,443,089
California	1,507,083,011	1,523,544,588	3,068,170,089
Colorado	162,399,568	169,698,696	338,451,849
Connecticut	83,247,472	84,983,756	173,792,280
Delaware	24,516,580	20,130,136	45,140,540
Dist. Of Columbia	26,176,899	21,163,197	45,242,901
Florida	1,045,412,524	832,071,687	1,804,513,642
Georgia	120,308,524	111,635,874	244,787,827
Hawaii	52,806,339	50,461,455	107,466,153
Idaho	53,674,483	45,357,337	99,399,234
Illinois	168,869,098	163,824,507	332,219,396
Indiana	50,005,072	53,306,513	108,615,348
Iowa	4,163,452	4,070,301	7,601,699
Kansas	22,358,370	26,976,090	50,752,813
Kentucky	28,701,793	29,725,133	60,850,406
Louisiana	44,290,762	40,988,367	91,664,958
Maine	17,286,865	20,744,929	39,843,418
Maryland	167,981,855	143,108,879	313,222,249
Massachusetts	147,657,267	147,228,300	305,968,588
Michigan	193,556,978	217,803,115	447,617,620
Minnesota	79,895,103	98,081,181	186,933,709
Mississippi	18,245,299	17,653,217	37,740,003
Missouri	34,415,900	35,300,491	72,021,206
Montana	22,687,177	25,621,769	51,135,464
Nebraska	20,501,682	29,625,323	55,737,293
Nevada	153,178,685	137,531,191	292,192,203
New Hampshire	23,072,357	25,718,937	52,610,066
New Jersey	261,627,150	258,168,770	531,188,841
New Mexico	55,964,310	55,700,672	112,257,622
New York	565,945,662	551,144,928	1,146,910,747
North Carolina	67,371,389	65,858,450	132,484,381
North Dakota	2,492,380	3,323,779	6,744,855
Ohio	203,916,043	229,444,017	455,474,464
Oklahoma	24,589,961	27,167,795	54,209,405
Oregon	111,668,869	100,696,868	211,121,579
Pennsylvania	266,663,413	298,222,085	592,232,044
Rhode Island	19,923,840	19,214,681	41,982,792
South Carolina	51,361,559	48,743,898	105,084,724
South Dakota	7,714,546	8,218,481	17,212,698
Tennessee	68,506,190	69,220,773	145,056,836
Texas	691,215,309	731,491,541	1,491,295,214
Utah	92,187,276	89,618,841	179,353,511
Vermont	6,973,498	6,947,411	13,731,599
Virginia	224,547,103	198,950,199	414,334,877
Washington	159,443,223	150,731,128	312,720,321
West Virginia	10,111,943	10,831,755	21,591,973
Wisconsin	76,082,864	84,203,359	175,734,484
Wyoming	13,284,710	12,114,162	25,128,011
<b>Totals</b>	<b>7,780,211,248</b>	<b>7,543,577,849</b>	<b>15,572,983,316</b>
<b>Rev from US</b>	<b>15,305,105,401</b>		
<b>% rev from us</b>	<b>98.28%</b>		
<b>State Average</b>	<b>300,100,106</b>		

# Appendix C

<b>International Countries</b>	<b>6/30/2005</b>	<b>6/30/2004</b>	<b>12/31/2004</b>
Guam	1,419,007	1,065,178	2,078,762
Puerto Rico	23,438,827	20,534,682	47,254,758
US Virgin Islands	1,456,822	1,080,027	2,489,411
Canada	55,151,782	76,730,104	164,196,560
Aggregate Other Alien	26,344,851	23,532,133	46,572,124
Mexico	1,736,314	1,391,158	5,286,300
<b>Total</b>			<b>267,877,915</b>
<b>% of Total</b>			<b>1.72%</b>

# Appendix D

Annual Statement for the year 2014 of the American Land Title Association Industry

## OPERATIONS AND INVESTMENT EXHIBIT

### PART 1A - SUMMARY OF TITLE INSURANCE PREMIUMS WRITTEN AND RELATED REVENUES

	1 Direct Operations	Agency Operations		4 Current Year Total (Cols. 1 + 2 + 3)	5 Prior Year Total
		2 Non-Affiliated Agency Operations	3 Affiliated Agency Operations		
1. Direct premiums written	2,014,897,438	4,399,887,098	4,001,111,375	10,415,935,894	15,887,079,493
2. Expense and cession/retention charges	638,136,640	N/A	N/A	638,136,640	687,107,648
3. Other title fees and service charges (Part 1C, Line B)	661,680,916	N/A	N/A	661,680,916	712,026,217
4. Totals (Lines 1 + 2 + 3)	3,304,704,990	4,399,887,098	4,001,111,375	10,705,703,464	16,886,203,358

### PART 1B - PREMIUMS EARNED EXHIBIT

	1 Current Year	2 Prior Year
1. Title premiums written		
1.1 Direct (Part 1A, Line 1)	19,576,514,389	19,261,716,993
1.2 Assumed	30,851,717	68,723,001
1.3 Ceded	73,495,447	68,889,309
1.4 Net title premiums written (Lines 1.1 + 1.2 - 1.3)	19,533,870,659	19,261,550,685
2. Statutory premium reserve		
2.1 Balance at December 31 prior year	5,289,074,589	4,192,241,511
2.2 Additions during the current year	612,216,000	856,422,047
2.3 Withdrawals during the current year	452,501,307	300,100,041
2.4 Other adjustments to statutory premium reserves	98,624	1,241,299
2.5 Balance at December 31 current year	5,547,417,896	4,949,804,898
3. Net title premiums earned during year (Line 1.4 - 2.5)	13,986,452,763	14,311,745,787

### PART 1C - OTHER TITLE FEES AND SERVICE CHARGES

	1 Current Year	2 Prior Year
1. Title examination fees	801,716,078	814,426,009
2. Searches and abstracts	264,877,941	278,675,699
3. Curveys	3,407,660	4,501,879
4. Aggregate title fees for service charges	108,380,520	112,029,526
5. Totals	1,478,382,200	1,409,633,113
<b>DETAILS OF WRITINGS</b>		
3401. Miscellaneous services	177,210,006	207,379,648
3402. ....	2,086,808	3,360,873
3701. ....	1,994,209	1,915,713
3798. Summary of remaining writings for Line 6 from previous page	342,787	
3499. Total (Lines 3401 through 3402 plus 3701 plus 3798)	182,353,810	212,656,234

# Appendix E

Annual Statement for the year ended 31st March 2013 American Land Title Association - Australia

## OPERATIONS AND INVESTMENT EXHIBIT PART 5 - EXPENSES

	Total Direct Current Expenses							TOTAL	2012
	1	2		3	4	5	6		
		Direct Expenses	Indirect Expenses						
1. General office	1,250,000	1,000,000	1,500,000	1,200,000	2,000,000	1,000,000	8,000,000	1,000,000	
2. Depreciation and amortisation	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
3. Financial services	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
4. Insurance	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
5. Marketing and advertising	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
6. Research and development	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
7. Legal and professional fees	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
8. Information systems	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
9. Other	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
10. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
11. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
12. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
13. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
14. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
15. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
16. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
17. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
18. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
19. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
20. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
21. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
22. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
23. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
24. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
25. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
26. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
27. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
28. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
29. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
30. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
31. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
32. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
33. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
34. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
35. Total	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	

10. Under management of the company, the related costs are not entered.



# Appendix F

Annual Statement for the year 2004 of the American Land Title Association Industry

## OPERATIONS AND INVESTMENT EXHIBIT PART 2A - LOSSES PAID AND INCURRED

	1 Direct Operations	Agency Operations		4 Total Current Year (Cols. 1-2-3)	5 Total Prior Year
		2 Non-Affiliated Agency Operations	3 Affiliated Agency Operations		
1. Losses and allocated loss adjustment expenses paid - direct business, less salvage	179,292,058	386,831,749	66,101,025	532,211,832	558,017,646
2. Losses and allocated loss adjustment expenses paid - reinsurance assumed, less salvage	45,404	1,653,861	1,744,730	3,443,995	6,539,655
3. Total (1 line 1 plus line 2)	179,337,462	388,475,510	67,845,755	535,658,807	564,537,301
4. Defunct: Recovered during year from reinsurance	31,232	1,634,683	2,359,470	1,578,395	6,774,214
5. Net payments (Line 3 minus Line 4)	179,263,230	386,840,327	64,386,285	531,680,442	557,763,087
6. Known claims reserve - current year (Page 3, Line 1, Column 1)	139,328,797	354,780,301	55,445,300	549,500,301	504,504,932
7. Known claims reserve - prior year (Page 3, Line 1, Column 2)	136,355,390	346,065,163	63,708,399	506,100,952	499,000,932
8. Losses and allocated Loss Adjustment Expenses Incurred (Ln 5 + Ln 6 - Ln 7)	162,222,697	354,764,289	56,722,119	503,700,651	524,239,077
9. Unallocated loss adjustment expenses incurred (Part 3, Line 24, Column 5)	15,374,922	14,470,571	5,497,652	35,343,546	36,433,833
10. Losses and loss adjustment expenses incurred (line 8 plus line 9)	147,897,559	339,234,766	107,220,871	500,659,397	561,672,910

# Appendix G

Source - www.alta.org

2005 MARKET SHARE - MEXICO						
Company	Six Months 6/30/2005		Six Months 6/30/2004		Year Ending 12/31/2004	
	Total Premiums Written	Market Share	Total Premiums Written	Market Share	Total Premiums Written	Market Share
FIRST AMERICAN TITLE INS. COMPANY	1,018,100	58.6%	969,173	69.7%	3,794,753	71.8%
FIDELITY NATIONAL TITLE INS. COMPANY	361,695	20.8%	245,298	17.6%	625,821	11.8%
ATTORNEYS' TITLE INS. FUND (FL)	193,828	11.2%	0	0.0%	187,859	3.6%
STEWART TITLE GUARANTY COMPANY	160,725	9.3%	168,778	12.1%	230,551	4.4%
LAWYERS TITLE INS. CORPORATION	1,966	0.1%	7,909	0.6%	447,316	8.5%
<b>TOTALS</b>	<b>1,736,314</b>	<b>100.0%</b>	<b>1,391,158</b>	<b>100.0%</b>	<b>5,286,300</b>	<b>100.0%</b>

% increase in 1st 6 months

24.81%