

CROSSING THE TITLE ASSURANCE BORDER in MEXICO

By Mitch Creekmore,



Since man first began claiming and acquiring ownership of land there has never been a time when he has not needed some form of title assurance. The very nature of land induces a need for title assurance because its characteristics differ from other forms of property. Land titles are symbolic because the title is what a purchaser gets when he purchases real estate rather than actual delivery of the property. For this reason, it is highly important that a purchaser have the best assurance possible that his title is good, unencumbered and free of flaws, or that he have an indemnity against loss due to a title defect.

Historically, a purchaser's lack of knowledge of the complexities of land titles have caused him to discount the importance of land title assurance. Knowing little or nothing about titles, real estate buyers have consistently relied on the advice of others. They have been led to believe that it is not necessary to look back into a title beyond a couple of previous ownerships, that the public records contain information with respect to every possible title hazard and that an attorney's opinion gives positive assurance of a safe title. Conditioned as the public has become through traditions and practices, it is inconceivable that a title could be completely lost irrespective of the customary assurances available. Prior to the inception of title insurance, it became obvious in the late 1800s that the U.S. needed a more secure form of title assurance - a form based upon indemnity dollars instead of word of mouth reliability. And now today, over 100 years later, foreign purchasers of real estate in Mexico face the same dilemma.

The land registration and title certification process in Mexico is a good one, a system similar by definition to that of a "Torrens" concept. However, any title defect that can occur in the US can also occur in Mexico with other potential hazards looming on the horizon uncommon in US property conveyances. "Ejido" claims or expansions, labor liens, *fideicomiso* (Mexican bank trust entitlements), property regularization and permitted use issues can pose significantly detrimental problems to unknowing purchasers of Mexican real estate. Moreover, little if no legal recourse is afforded the purchasing public against the public notary who closes all real estate transactions in Mexico or against Mexico's public registry of property concerning title or lien defects, omissions, gaps in ownership or recording errors. A title insurance policy issued on Mexican property provides a comfort and security benefit to foreign purchasers and is the only safeguard against title pitfalls resulting in eventual Mexican lawsuits and monetary losses. When all of the gloss of the notarial certification process is scraped away, no one individual or entity provides a monetary indemnification or guarantee insuring good title in Mexico.

With the eventual creation of a secondary mortgage market and secured lending programs backed by Mexican property as collateral, title insurance will become a mandatory requirement in every transaction. Investors in mortgages, who have no knowledge of conditions in Mexico, will increasingly need the assurance by a financially sound institution that the titles to the real property acting as collateral for various mortgage instruments are marketable. That is, the titles to the real estate backing the mortgage securities are in fact valid. In the absence of absolute certainty, title insurance will be the essential element that will facilitate any foreign lenders entrance into Mexico's residential or commercial mortgage market.

People have always been slow to alter practices or abandon customary ways of doing things. Mores of the public have been difficult to change. Title insurance, however, is the latest step in the evolutionary development of title assurance, whether in the U.S. or Mexico. It displaces reliance upon the infallibility of individuals and substitutes corporate indemnity providing the most secure form of title assurance yet devised. After more than 100 years of developing an integral role in real estate transactions in the United States, title insurance has begun the same arduous process of overcoming public perception on its importance and subsequent benefit when purchasing properties or securitizing mortgages with real estate in Mexico.

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