

“EJIDO LAND VS. PRIVATE PROPERTY – WHAT’S THE DIFFERENCE?”

By Mitch Creekmore, Stewart Title Guaranty Company
Mexico Division



Many Americans recently read headlines from around the country about the looming evictions of U.S. individuals from a seaside development known as the “Baja Beach & Tennis Club,” located in the municipality of Punta Banda near Ensenada., Baja California, Mexico. As each of the stories depicted, the Americans were facing the potential loss of their homes due to a Mexicali tribunal court ruling that overturned the ownership of the land. What the tribunal rendered in the decision was that this land was not an “ejido” and was in fact private property owned by the seven plaintiffs in the lawsuit. Whether the Americans ultimately keep their homes is still undecided. However, this is certainly not the first instance of land title disputes concerning ejido property nor will it be the last. Americans for years have been persuaded to “purchase” ejido parcels or beach front lots without fully understanding that they can’t legally own ejido property nor can the ejidatarios (those individuals that have the beneficiary interest in the land) legally sell it. Hence, all potential buyers of Mexican real estate should know the difference between private property and land denominated as “ejido.”

Article 27 of Mexico’s Constitution allows the federal government of the United Mexican States to create agrarian lands for the benefit of their citizens. With its constitutional inception in 1917, Mexico began the process to provide “campesinos” (farmers) a beneficiary interest to land owned by the government. Entitled under “La Ley Agraria” (the Agrarian Law), these government parcels, known as “ejidos”, are recorded with the Registro Agrario Nacional (National Agrarian Registry) in Mexico City. The ejidatarios can live, farm, homestead and construct dwellings on the property **but** they do not own it. Under Agrarian Law, the ejidatarios **can not** sell, lease, subdivide, joint venture, contribute, mortgage or encumber the property. In essence, they have the use and benefit of the land, but they do not have title to it.

In 1992, recognizing the inherent value ejidos presented due to their geographic, border or coastal location, coupled with the development potential they created, the Mexican government enacted a Constitutional Amendment in order to “regularize” agrarian lands. Under the auspices of the Office of Agrarian Reform, the Mexican government could now provide a process of legal entitlement transforming the ejidal regimen to one of “regimen de domino pleno o privado” (regimen of full dominion or private land). In other words, ejidatarios had the right to take the land that they didn’t own and convert it to private property thereby allowing them to benefit monetarily from the ensuing regularization process. However, there have been numerous cases and examples of Americans, Canadians and other non-Mexicans buying ejido land that has not been properly regularized. You, the buying public, may have paid money for a lot on the beach with the promise that you would receive a bank trust only to find out years later that the land has not been properly privatized. The end result is that you **can not** have a legally recorded and recognized beneficiary interest to the property in a Mexican bank trust, i.e., title vested in a fideicomiso, nor can you have a valid lease as a legal alternative to use the property.

As has been mentioned in other articles, Mexico is not the “wild west” that some Americans believe the story to be. With formality of law, as in other real estate matters, regularization of an ejido is a legal process requiring time, procedure and lots of patience. The ultimate goal is to get private title to each

parcel that can then be conveyed to a trust or Mexican corporation for the benefit of non-Mexican purchasers. However, there are a number of steps along the way that you, the buying public, should be aware of in order for ejido land to be privatized.

- FIRST:** an ejidatario should have the following in order to begin the regularization process; (a) certificate of agrarian rights; (b) certificate of common parcel rights, and (c) an Agrarian Tribunal order or resolution.
- SECOND:** an ejidatario should provide certification with documents or testimonies that he is in quiet and public possession of the property, that as owner, he has title to it and that there are no pending legal actions against the property.
- THIRD:** an ejidatario should provide a plat or other acceptable plans that define the parcel with a metes and bounds description and the total area of the land.
- FOURTH:** an ejidatario should petition the general assembly of the ejido to request approval to convert the ejido parcel to one of full dominion.
- FIFTH:** the general assembly of the ejido should agree, resolve and record in the minutes of the meeting that the ejidatario is allowed to convert the parcel to full dominion.
- SIXTH:** in order to provide the above, the general assembly session should meet the following requirements:
- a) the assembly should be held in a common place inside the ejido.
 - b) there should be a announcement 30 days prior to the meeting.
 - c) the announcement should be a public notice that is placed in the most visible location within the ejido.
 - d) the public notice will indicate the business at hand, the date and location of the meeting.
 - e) the comisariado ejidal (board of directors) of the ejido will be responsible for the public notice until the day of the assembly meeting.
 - f) the meeting requires the assistance of a Notario Publico and a representative of the Office of Agrarian Reform to validate the session.
 - g) if on the day of the meeting there is not the required attendance to validate the session, a second meeting must be scheduled.
 - h) the second assembly meeting must be held within 30 days of the previously scheduled meeting but not before 8 days have passed.
 - i) the second assembly meeting will be valid if half plus one of all of the ejidatarios are in attendance.
 - j) the assembly must receive 2/3 approval from those ejidatarios in attendance for any agreement to be valid.
 - k) the comisariado ejidal must notify the Office of Agrarain Reform and the Notario Publico of the decisions that the assembly reaches.
- SEVENTH:** the ejidatario should request in writing that the National Agrarian Registry extinguish the ejido regimen for the property and at the same time request a new Private Title of Property for the land be issued. Attached to this request should be certified copies from the competent authority of the assembly that recognizes the ejidatarios approval for regimen of full dominion.
- EIGHTH:** once the ejidatario has the private title, he should request in writing that the title be recorded in the Public Registry of Property for the municipality in which the property is located.

The ejido itself is normally a large tract of land that is utilized by all of the ejidatarios for their sustenance. Managed and operated in a similar fashion to that of a farm cooperative, the ejido has no land subdivision or individual parcels. Subdividing the ejido into “parcelas” is what the regularization process

accomplishes. Typically, the privatization of ejido land can take six (6) to twelve (12) months to complete, but it may take longer. Though this time period would appear lengthy, one must keep in mind that there are many individuals involved that must come to a unified and collective decision to privatize the ejido. Negotiations within the ejido on whether to privatize or not could take several months. Then, even when an ejidatario or a group of ejidatarios want to sell, lease or joint venture their particular private parcels to a third party outside the ejido, they must offer a first right of refusal to all of the other ejidatarios. This process, known as “derecho al tanto”, means that the ejidatarios must give notice to the comisariado of the ejido (president) of their intent to sell, lease or joint venture. The president will provide a public disclosure of the intent and if, after thirty (30) days, there are no purchasers or objections, the ejidatarios are permitted to proceed.

There are many examples of ejidos being properly regularized and the subsequent wonderful developments that have come from these once government lands. Whether in Puerto Peñasco, Los Cabos, Puerto Vallarta, Mazatlán, Guadalajara, Reynosa, Querertaro or many other cities in Mexico, residential, resort and industrial developers on both sides of the border have undertaken the process to successfully privatize ejido property knowing the inherent value of the future project. Buying land that was entitled as an ejido can be a safe and prosperous personal or business venture. The caveat, buying public, is to make sure that the land has been fully privatized or is in the process of regularization. And to be doubly certain, purchase an Owner’s Policy of Title Insurance for your property. A title insurance policy, issued on Mexico Land, can insure that the land is **not** ejido. With the title insurance policy in hand, protecting your ownership rights, you’ll probably sleep better at night.

Mitch Creekmore is the Director of Business Development for the Mexico Division of Stewart Title Guaranty Company in Houston and may be contacted at (800) 729-1900, ext. 8753 or (713) 625-8753.