

# **Mexico Real Estate Buyer's Guide**

Let's just imagine the scene: you came here on vacation and fell in love with Puerto Vallarta, Mexico and decided that you never want to leave. Sound familiar? Well, you are not alone. With thousands of expats already having successfully made Banderas Bay, Mexico their home, you can be sure your instincts are spot on when it comes to choosing a prime location. Next, you most probably began looking on-line religiously and now believe you have asked all the right questions, have spent some time looking over the geography and have narrowed down your options and know the difference between Puerto Vallarta, Mexico and Punta Mita, Mexico. Are we good so far? Finally, you have checked your budget and think you are ready to go... yet you still have a lot of questions. Right? That's precisely where this guide is here to help. Read on and hopefully by the end of this article most of your questions will be answered.

## **Your Agent**

The first piece of advice is to make sure that the real estate agent you choose to work with is fully competent to offer you the best service. At the very least, your agent should be an AMPI Member. The local chapters of AMPI (The Mexican Association of Professional Realtors – affiliated with NAR) are some of the most pro-active in Mexico in terms of membership and on-going training requirements. That said, there is no governmental regulatory body that oversees the legal and ethical operation of real estate agents in Mexico. So make sure you are comfortable with the agent you are working with because you are going to be depending upon that agent to cover a lot of ground on your behalf through to the closing.

Not to put too fine a point on this, our agents at Coldwell Banker La Costa undergo thorough training on an ongoing basis and must all pass a rigorous 3-hour exam with a minimum passing grade of 75% before they speak to any of our customers. On-going training and coaching is something that every broker and agent receives at Coldwell Banker La Costa on a continual basis.

The next thing you should be looking for is an agency that has been able to successfully sustain itself through thick and thin over the years and has a strong name in the community. Coldwell Banker La Costa was originally founded in 1986 and was the first of over 75 Coldwell Banker offices in Mexico. While we are locally owned and operated, Coldwell Banker La Costa forms part of the most recognized name in real estate: Coldwell Banker Real Estate Corporation.

## **The Purchase Agreement**

Although the Purchase Agreements used by most Real Estate agencies in Puerto Vallarta have become fairly standardized over the years, they are still custom documents prepared in double column format – English and Spanish – about 12 pages in length. The purchase agreement covers everything that you would normally expect to be in a well written real

estate agreement: the parties, the price, deposit and payment terms, due diligence, boilerplate clauses, default provisions, closing date and signature block.

The question is often asked: What price should be offered relative to the asking price? The answer is that it varies – depending upon the current state of the market and the current price of the property. Your agent should be able to guide you with current market data for real estate trends in Mexico so that your offer is treated seriously while not over-bidding. The local AMPI Chapter owns and manages a FLEXMLS system which is capable of generating a series of statistical information your agent has access to and will share with you.

### **The Deposit**

Once the offer has been accepted, it becomes a ‘bilateral binding agreement’ and there is usually a period of 1 to 4 days within which time the buyer has to make the escrow deposit. Before that can take place, an escrow agreement must be completed and signed by the buyer, seller and escrow agent. The deposit amount generally recommended for the Mexican property market has traditionally been 10% of the final agreed purchase price. Although this percentage is more than what is usually called for in most other North American real estate markets, it lines up with the more traditional notion in Mexico that a large amount of the price should be paid at the contract signing. Usually, the deposit will be refundable until such time as all due diligence items have been satisfied – usually 10 to 20 days, or longer – after which time the deposit becomes non-refundable.

### **The Escrow**

The escrow deposit is managed by independent third party escrow and/or title company. The escrow protects all parties in the transaction and avoids the situation where an interested party, agent or other entity is charged with managing the deposit. For what are pretty obvious reasons, this is critical to any properly written real estate agreement in Mexico or anywhere else in the world. These deposits can accrue interest at the option of the parties. In the event of default or disagreement, the wording in the contract will take precedent; failing that or failing the ability of the parties to negotiate the disposition of the deposit between them, the matter will become the subject of a lawsuit – something that happens only in the most remote cases. There is a cost for the escrow which varies with each escrow company in Mexico. Generally, the escrow cost can range anywhere from \$450US to \$800US depending upon the escrow company. Coldwell Banker La Costa is of the opinion that these costs should be split between the buyer and the seller as they both stand to benefit equally from the escrow; however, these costs are often considered to be the responsibility of the buyer.

### **The Due Diligence**

The real estate purchase agreement may often call for some points of due diligence – everything from boilerplate items such as copy of the deed and copies of the tax and HOA receipts, to a full engineering inspection. Built into the agreement, all due diligence items must be given a clear time frame and either stipulate methods to repair or provisions for

cancellation in the case of catastrophic discoveries. Once the real estate due diligence items have been signed off, the agreement then becomes unconditionally binding for both parties and the closing process can begin.

## **The Closing Costs**

At this point, the agent will provide the buyers, who will be responsible for 100% of the closing costs, with a closing cost estimate. It is an estimate because the exchange rate fluctuates in Mexico and it can have an effect not only on the fees and expenses but, more importantly, upon the value of the property which is often 'sold' in terms of US Dollars **but always registered in Mexican Pesos.**

The buyer will be asked to advance about half of the estimated costs to the notary to cover his out-of-pocket expenses, and the balance is usually paid by personal check to the notary at the closing, or can be deposited into an escrow and disbursed directly to the notary's account at closing.

The Closing Costs in Mexico consist of various fees and expenses and generally total between 4% to 6% of the actual purchase price (higher if there is a mortgage involved). These costs are always the responsibility of the buyer. (The seller will bear the cost of the real estate fees and his capital gains taxes, as applicable). These Closing Costs are generally as follows: (these fees – in USD – are to be used as a guideline only and are approximate. They will vary according to the size of the transaction and the exchange rate at the time).

- Transfer tax – 2% State Tax
- Trust Permit – \$1,000 Department of Foreign Affairs Mexico City
- Foreign Investment Registry - \$700 Department of Foreign Investment Mexico City
- Trustee Bank Acceptance Fee - \$550 Wherever the Trust Division of the Trustee Bank is located in Mexico.
- Trustee Bank First Year's Trust Fee - \$550 Wherever the Trust Division of the Trustee Bank is located in Mexico.
- Appraisal for Future Tax Assessment – The appraisal for Future Tax Assessment in Mexico varies with property size with locally certified appraiser.
- Non-Encumbrance Certificate – The Non-Encumbrance Certificate from the Land Registry Office (LRO) in Jalisco or Nayarit is about \$15.
- Preventative Notice Advice – The Preventative Notice Advice from the LRO are about \$30 (for 2).
- Registration Fees in the LRO – Registration Fees in the Land Registry Office varies from .5% to 1.0% (Jalisco/Nayarit).
- Notary's Fee – The Notary's Fee in Mexico varies from .5% to 1% depending upon transaction size.

## **The Closing**

There is a saying in Mexico that next to God, the notaries are the most important people in the country – and there are some that would even debate that! Notaries must pass the Mexican equivalent of the bar exam, they are then required to take two years of extensive

study while practicing in a notary's office following which they are subjected to a 3 day examination program and finally must be appointed by the state to a specific office in a city of which there are only a predetermined number of "notario" offices appointed. This is very different from the concept of a notary in the US or Canada. Notaries in Mexico are the only entities that are recognized by the Commercial and Land Registry and the taxation authority and they are empowered to collect taxes for all 3 levels of government.

At the appointed time, the buyer, seller and their respective agents will meet to 'close' - or as it is known in Mexico, 'formalize' the real estate transaction in the notary's office. One can get a basic idea of the documentation required and the various entities that are needed in order to generate these documents.

Over the past 8 to 10 years, paralegal closing coordinator offices have opened that are typically owned and operated by ex-employees of notary offices. A few of the larger real estate agencies in Puerto Vallarta (such as Coldwell Banker La Costa) also have their own in-house closing coordinators. The closing coordinators have the skill-set needed to prepare all parts of the required documentation and are fluently bi-lingual (which most of the employees of the notary's offices are not). They perform a lot of the work necessary for the closing on behalf of the notary offices, and they are also able to explain important information and help the real estate buyer and real estate seller, along with their real estate agents, towards an orderly closing. In addition, they review the draft trust deed for approval by the trustee banks. At the closing, the closing coordinator will also appear at the notary's office and will usually walk through and translate the 40 page plus trust deed with the buyer and seller, answering any questions, should they so request. Once the names have been verified as being correct in the document, official IDs have been verified and all taxes have been collected (from buyer and seller), the notary will appear in person to observe the execution of the deed, then very politely thank everyone and excuse him or herself from the room while keys are passed and congratulations are in order.

Once the notary has stamped the trust deed, it will immediately be sent together with copies of the certificate of non-encumbrance and the preventative notice to the escrow company by the notary's office. The escrow company will have previously received a Letter of Disbursements signed by the seller and the buyer setting out exactly to whom and how much is to be wire transferred according to the detailed information set out in the Disbursements Letter. Upon receipt, the escrow company will execute the disbursements and funds are generally received by bank transfer that same day.

While the actual trust deed will not be presented to the LRO for probably several days by the notary, everyone is protected from the possibility of any third party charges from being registered by means of the certificate of non-encumbrance and the preventative notice, both of which are generated by the LRO at the same time. The preventative notice issued by the registrar freezes the title for a period of 45 days and is obtained at the same time as the certificate of non-encumbrance showing that the property is free and clear and is generally renewed at some time during the initial 45 day period for another 45 day period giving everyone sufficient time to close and present the trust deed for registration. The actual registration will take between 30 and 90 days and the buyer will be notified by his agent (typically) as to when it can be collected from the notary's office.

## What Did I Buy?

You are now the proud owner of the beneficial rights of a trust, the body of which is the property. Think of a glass of water – the glass represents the trust and the water is the property. You have complete control of the glass. Same thing with a trust – you control it completely. You can sell the property, rent it, gift it or lend it – just so long as whatever it is you are doing with it is legal. You will also be obliged to maintain it and pay property taxes. Property taxes are .08% of the assessed value – which was established when you purchased the property by way of the tax assessment appraisal that was registered with the assessment office (the ‘Catastro’). Property tax rates in Mexico are extremely low as they do not represent a significant source of governmental income and must be held to the lowest common denominator.

The trust has a 50-year lifespan. Unlike a lease, at the end of the 50-year period it will become renewable for a filing fee of approximately \$1,000US. Thereafter it is renewable in the same manner, for subsequent 50 year periods in perpetuity. The bank acts as trustee – most banks in Mexico have trust departments to manage trusts (fideicomisos). They charge an annual trustee fee of about \$550US and each bank charges vary slightly. The trusts in the banks are ‘off balance sheet assets’ in that in the event of a bank closure or dissolution (there has never been a bank failure in Mexico – ever), the trusts are not considered assets of the bank and would be assigned to another bank under the auspices of the Bank of Mexico.

When you sell the real estate, you will become subject to capital gains tax based upon your cost base – in pesos – in your deed, which was or should have been, your actual purchase price at the exchange rate of that day - and, the sale price. The capital gains tax at the present time is 36% of the gain and is subject to certain deductions, one of which is the real estate commission. If you have a resident visa (Temporary or Permanent), a RFC tax number and have lived in the property as your principal residence you should be exempt from capital gains tax; otherwise you will be subject to this tax.

## Critical Documents

As mentioned earlier, your register deed/escritura will be available for pick-up from the Notary’s office approximately 90 days after closing. In addition to the deed you also need to receive the following important documents from the Notary:

1. **El Boleto de Registro** – (the Registration Letter) from the Registrar that confirms that the deed was registered on a specific date at a specific time.
2. A factura (tax receipt) in xml digital format (via email or delivered on a thumb drive) showing the actual amount in Mexican Pesos of the registered purchase price.
3. A factura also in xml format showing the itemized breakdown of your closing costs.

Items #2 and #3 are particularly important because they are the only documents that will be accepted to evidence your cost base as deductions from future capital gains taxes (36%) upon sale. Failure to be able to produce these digital facturas will mean that the Notary

formalizing the eventual sale of your property will only be able to deduct 10% of the sale price.

If you have any doubts or questions, please contact your Coldwell Banker La Costa agent who will be able to walk you through any parts of the above process with ease and get you quick and concise answers.