

MEXICO LAW REPORTER

Acquiring Ejido land in Mexico for touristic development

By Daniel Gutierrez Topete.

Mail to: dgt@nafta-law.com

Roughly 50% of all the land in Mexico is under “EJIDO” Regime. Most of it located in the vast coastlines of Mexico, or just outside our growing cities and ports.

This Ejido land is apportioned into so-called “Parcels”, which be divided into three different Uses or “Sub-Regimes”: for “Communal Use”, “Human Settlement Use” or for “Individual Use”.

Of the three sub-types, the last two are susceptible to become Private or so-called “Civil” Property. “The Communal Use” land first would have to be “re-destined” to either “Individual” or “Human Settlement Uses”.

In the USA or Canada, analogous types of land can be found in the context of Indian Reservations such as “Tribal Trust Lands” or “Restricted Tribal Fee Land”, whereby the Title to the Land could be vested upon the US Government through the Bureau of Land Management in the Department of the Interior or the Tribe itself, but with specific limitations to sell, encumber or mortgage the land (as supervised by the Department of the Interior).

In February 1992, then President Carlos Salinas de Gortari sent a sweeping Constitutional Reform Package to restrict the

Government powers to expropriate lands it deemed “unused or underused.” In addition, the agency governing land confiscations and distributions, the Secretariat of Agrarian Reform, was reduced in size and practically had all of its confiscatory authority taken away.

Two years later, NAFTA established world-class legal standards of investment protections in favor of Foreigners through Chapter XI.

To spur the privatization of Ejido lands, the Mexican Government, under the aegis of the World Bank also created the **PROCEDE PROGRAM**, which slowly but surely, achieved the following:

- 1 Created an accurate Cadastral Registry based in modern GIS of most, if not all, of the Ejido Parcels’ metes and bounds.
- 2 Forced Ejidos to update their organizational and legal records.
- 3 Helped finalize many (if not all) boundary conflicts between Ejidos, and Ejidos and their private neighbors.

Once an Ejido has been through the **PROCEDE PROGRAM**, then, depending on the sub-regime of Ejido land tenure (as explained above), the land can be privatized through the **DOMINIO PLENO PROCEDURE**, and once such procedure is finished then the Land Title can be readied for registration at the local Public Registry of Property.

By 2006, roughly 84% of the almost One Million Square Kilometers) of Ejido surface in Mexico (more than 247 Million Acres) had already went through the PROCEDE PROGRAM.

In Baja California, about 93% of the 38,602 Square Kilometers of Ejido surface (more than 9.5 Million Acres) had already gone through the PROCEDE PROGRAM.

The total Mexican Ejido areas are equivalent to the area of Texas and California combined.

Now, what are the questions one has to answer in order to buy land in Mexico that **used to be Ejido land?**

- 1 Is the Civil Land Title you are acquiring correctly registered in the Public Registry of Property?
- 2 Is the previous Ejido Land Title correctly CANCELLED at the RAN records (Registro Agrario Nacional).
- 3 Was the DOMINIO PLENO PROCEDURE correctly followed?

If you answer **YES** to all of the questions above, your land transactions would be as normal as any other land transaction in Mexico.

If the land of your **“dreams” is still under Ejido regime**, and then you must make the following questions:

- 1 Has the Ejido where it is located been through the PROCEDE PROCEDURE??
- 2 Is the person selling the land an Individual Ejidatario, or a qualified successor to an individual Ejidatario or an assignee of a correctly assigned SOLAR DE ASENTAMIENTO HUMANO (Human Settlement Parcel)?
- 3 Is the COMISARIADO EJIDAL (Ejido Board) and the JUNTA DE VIGILANCIA (Examining Board) of the Ejido correctly constituted and registered at the appropriate RAN Office?
- 4 Are the seller and the Ejido Boards (at least in principle) in agreement to sell the land by moving along all of the formalistic procedures and waivers of the DOMINIO PLENO PROCEDURE?

If you answer YES to all of the questions above, you are then able to reduce your agreements in writing and make not only the seller, but also the Ejido Boards work to produce a Civil Title in a matter of months, and then you would be able to acquire the land through a DEED OF PURCHASE or DEED OF TRUST.

In the case of Touristic Developments, these are other areas of concern:

- 1 Absence of Environmental, Mining Concession or Cultural-Arqueological site restrictions.
- 2 Appropriate Land Use (if a Plan is in existence), or an expert opinion on the suitability to make this land designated for the development purposes sought.
- 3 Positive Feasibility studies or letters from Mexican Utilities, especially water and sewer.
- 4 Appropriate venture capital resources to finance the development.

Obviously, this article does not address all of the legal, and sometimes the very important social and political questions that such large scale projects entail since it typically affects hundreds of acres of coastal lands, and that could potentially involve local issues related to impacts on the livelihoods of local fishermen, farmers, etc.

However, well thought-out projects in the Desert areas of the Peninsula of Baja California and Sonora, and the tropical paradises of Nayarit and Jalisco, have been successfully brought to fruition through careful planning and DUE DILIGENCE.

Contact Information: TEL. +52 (664) 634-3557
FAX. +52 (664) 634-3562

MISIÓN SAN DIEGO 2937-103 (PRIMER PISO), DESARROLLO URBANO RIO TIJUANA, TIJUANA, B.C. 22010
USA MAILING ADDRESS: 628 1/2 E. SAN YSIDRO BLVD. APT. 577, SAN YSIDRO CA 92173