

INTERNATIONAL LAW REGARDING REAL ESTATE

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There are no universal laws regarding real estate – no uniform set of rules or regulations that apply in all countries with respect to property around the World. Rather, each sovereign country has its own laws regarding the property or real estate situated in that country.

In every country, there are professionals who are trained, qualified and familiar with the laws of that country as they relate to real estate. For example, real estate attorneys in the United States are qualified to work with real estate in the United States – they know the laws of the United States as they relate to real estate in the United States – they usually are not familiar with the laws relating to real estate in other countries. This may not be the case for attorneys that practice in other areas such as litigation. Litigation skills which include the art of public speaking, negotiation, and mediation can be used across borders and indeed litigators are often called from more developed countries to practice in higher courts in less developed countries. For instance, in the Bahamas, when we have cases that are appealed to the Court of Appeal or the Privy Council, many times, we retain English litigators to represent the Bahamian clients in those higher courts.

While there may be no “International Law Regarding Real Estate”, there certainly are “International Real Estate Transactions” – and thus if there are “International Real Estate Transactions” then what laws apply to these transactions?

What is an “International Real Estate Transaction”?

- 1) Transaction when a person/company purchases land in more than one country?
- 2) Transaction when people from several countries purchase land?

Scenario One

Are there any international laws that apply when one person/company purchases land in multiple countries in one transaction?

The simple answer to this question is no – as already outlined. As each country has its own laws regarding its property, for each piece of land that it purchases, the company

will have to deal with closing attorneys and laws for that country. So even though a transaction like this may have international components, there is no “international law” that is applicable.

Scenario Two

When people from several countries purchase a piece of land together. In this scenario, wherever the land is located that is being purchased, the attorneys in that country will do the transaction and the laws of that country will be observed, regardless of the nationality of the purchasers. So again, while there is certainly an international component to the transaction because we have purchasers from several countries, there still is no “international law” that is applicable.

Thus, while I am unable to discuss any international laws regarding real estate or similar principles, I can certainly talk to you for a few minutes about the laws regarding real estate in several countries that I am familiar with, having either studied, practiced or lived in those countries. And that would be of interest to many of you, especially as you may be traveling to some of those countries one day soon and may want to buy real estate there like some of your counterparts have already done.

I will try to educate you a little on some of the more interesting and unique principles and laws relating to real estate in Mexico, Canada, the United States and the Bahamas.

Buying property in any foreign country can seem overwhelming and confusing when you don't speak the language, you don't understand the culture, and you don't know the laws. But this isn't necessarily the case. Buying property in foreign countries can be just as easy as buying property in your home country. Buying property in Mexico or Canada, the United States or the Bahamas, can be just as simple as buying property in Sweden, Germany or Cyprus - if you take the time to hire the professionals in that country that specialize in real estate and let them guide you through the laws and processes.

MEXICO

For the most part, it is easy for foreigners to purchase real estate in Mexico. And there is no limit to how much real estate a foreigner can purchase in terms of how many transactions can be done although trying to buy large tracts of land such as for farming will require further consideration because of Mexico's history. Back in 1910 at the time of the Mexican Revolution, 97% of the land in Mexico was owned by 1% of the people. So when the Constitution was written in 1917, a lot of the land in Mexico was expropriated from those huge landowners and given to the peasants to try to equalize the landholding.

What is not permissible is for a foreigner to purchase land in the proximity of the borders

of Mexico, either on the eastern border – ie, the Atlantic Ocean or the western border – ie, the Pacific Ocean. Nor can you purchase land along the northern border with the United States nor along the southern border with Guatemala. A foreigner cannot own land within 50 kilometers from the coastal borders of the 2 oceans. And a foreigner cannot own land within 100 kilometers from the northern and southern borders. However, ways have been found around this. What is typically done is that foreigners purchase land in these areas and take title in a *fideicomiso* or a bank trust.

A *fideicomiso* or bank trust is when the bank takes the legal title to a property but the foreigner takes the beneficial title. With the beneficial title comes the right to the use of the property and the bank merely holds the property in trust for the foreigner. We see this trust concept used all over the world now for the holding of property as a means of avoiding estate situations and probate, etc. So this is certainly nothing unique to Mexico. And there are very well established principles relating to trusts that are generally recognized and accepted.

At a closing of the purchase of property in Mexico, it is mandatory by law that if both the vendor and the purchaser are not fluent in Spanish, then an interpreter must be present and must translate and read in English the entire *escritura* (deed) before the parties sign and complete the transaction.

As the Mexican economy is still very much a developing economy, most purchases of land there is done with cash. There is very little financing available for land purchases and if financing is available, you will find that the interest rates will be much higher than what is available in more developed countries.

As in many other countries, when property is sold in Mexico there is a transfer tax payable to the government and a capital gains tax. And closing costs will usually include a real estate commission.

Purchasing property in Mexico is easy now as there are many English speaking real estate agents in all of the cities as well as English speaking *notarios*, which are specialized attorneys who work in real estate.

CANADA

Purchasing property in Canada is also relatively straightforward and simple for non-Canadians. Property can be purchased in any province although there are some restrictions on the amount of property that can be purchased in certain provinces. For example, in Alberta, a foreigner can purchase a maximum of 2 tracts of 20 acres each. In Manitoba, a foreigner is not permitted to purchase property unless he/she intends to move there full-time within 2 years. On Prince Edward Island, a foreigner must get special approval from the province if he/she wants to purchase property that has more than 165 feet of shoreline. Provinces like Ontario, British Columbia and Quebec do not

have restrictions on foreigners purchasing property although if you intend to live in Canada more than 6 months out of the year, you will need to apply for residency status.

As with purchasing property in Mexico, there is a transfer tax payable to the government when property is purchased in Canada. This tax is approximately 2% of the value of the property. However, there are an assortment of other taxes that are payable in a property transaction in Canada that can be of major significance. For example, there is the following:

- 1) GST - Goods and Services Tax - which is 7% of the value of the property in Ontario
- 2) PST - Provincial Sales Tax - 8%
- 3) Capital Gains Tax - 22% - 44%
- 4) Real Estate Commission - 3% - 7%

Another major consideration when purchasing property in Canada, especially rental property, is the tax that must be paid on rental income to the Revenue Canada Agency each month. The management company is obligated by law to pay 25% of the rent to the Government every month although the tax rate is only 22%. To get that extra 3% back, you have to file a tax return the following year and the Government does not pay any interest on the extra money it took from you. However, if Canada has a tax treaty with the foreigner's home country, any taxes paid to the Canadian government may reduce the tax liability in the purchaser's home country.

One emerging rental property market in Canada at present is the winter ski resorts. They have long winter seasons, usually from November to June. These resorts cater to the European skiers now that there is cheaper airfare available than previously. In the past, the cost of mid- to long-range flights seemed prohibitive, but now with low-cost carriers such as Canadian Zoom and Air Transat, the Canadian ski towns have become increasingly popular to Europeans – especially in places that have not been as well known in the past such as the Eastern provinces and Quebec. Also, property prices are relatively low in comparison to European ski resorts or popular places in the United States such as Vail, Aspen or resorts in Utah and Idaho.

UNITED STATES

Purchasing property in the United States is quite straightforward and much of the transaction is handled by the real estate agents with the attorneys simply preparing the closing documents and completing the transaction. The main negotiations are usually undertaken by the real estate agents whose commission can range from 3 – 7%. This is quite different from other countries such as Mexico or the Bahamas where attorneys

generally handle the entire real estate transaction – except for the part about introducing seller and purchaser.

The US does not generally prohibit foreigners from owning land in the US except in cases of regarding national security. There may also be some laws prohibiting the sale to foreigners when that person's home country prohibits the sale of their land to Americans. And there are also some reporting requirements to the US government when selling land to foreigners.

As each state in the United States generally has its own laws and tax structure relating to the property situation in that state, for the purposes of this paper and our discussion, instead of reviewing each of the individual state's laws as relates to property, I will focus on buying investment property in the United States.

Even with the collapse of the housing market in places such as Florida, the US still offers property purchasers some strong potential in properly selected markets. As with Canada, top ski resorts are attracting European buyers who are seeing real value with the decline in the US dollar.

Some of the reasons that investing in real estate in the US has been attractive over the years is because of the its economic and political stability. Investment properties such as commercial shopping centers and residential apartment buildings can enjoy high occupancy rates and rising rents and investing in the US permits you to diversify your portfolio. And particularly now, investing in the US could be a good idea as the exchange rate to the US dollar makes owning property in the US a good investment.

Also, the market involving apartments, townhouses and condominiums has not seen the decline that the single home market has in many communities in the US particularly in the larger cities. With the increasing cost of fuel and living in general, there may have been a shift from single stand-alone home ownership to smaller apartments and townhomes in order to control costs, energy and fuel, particularly as the Baby Boomer generation is moving toward retirement and empty nester status and their need for larger homes and the costs associated with them decreases.

BAHAMAS

As with Mexico, Canada and the United States, foreigners can also purchase property in the Bahamas. If you simply wish to purchase a vacation home, in most instances, you can find your home, retain a good attorney, make sure the title is valid for the property, and buy the home. You do not need any type of government permission to purchase a vacation home like this.

In a situation where a foreigner may want to purchase a rental property or property on which to build a hotel or do another type of development, then they will first need to

submit their project idea to the government.

The Bahamas does have one significant tax in real estate transactions which is called a "Stamp Tax". This is similar to the transfer tax in Mexico. The Stamp Tax in the Bahamas on properties being sold with a value in excess of \$250,000.00 is presently 10% and when the other closing costs are added such as the real estate commission and attorney fees, total closing costs in a real estate transaction in the Bahamas can be as high as 24% of the value of the property.

However, due to its proximity to the United States, its stable government, its climate and good economic situation, property in the Bahamas appears to be a good investment for any portfolio for the foreseeable future.

CONCLUSION

There are international real estate transactions happening around the world everyday. However, there are no international laws per se governing these transactions. Indeed there are no international laws regarding real estate. This distinction is very important. There is no one set of laws that apply to property situated in different countries. Every country has its own laws that apply to its property. While the origin of some of the laws of some countries may be similar, as time progresses and countries become more individualized, they enact more and more laws that apply only to the land situated within their own borders. For example, both Jamaica and the Bahamas as former British colonies, originally used the pre-1909 English laws relating to real estate. But over the years, each of those countries has enacted new legislation that is quite different and only applies to property within its borders.