



the settlement company ®

EJIDAL PROPERTY..... *Is it a bargain? Or a problem?*
by Linda Neil

EJIDAL (EEEE-heee-doll) properties were established in Article 27 of the Mexican Constitution of 1917 as an outcome of the revolution and represent probably 50% of all the land in Mexico.

After the revolution hundreds of millions of acres from the original Spanish land grants were expropriated by the government and classified as "ejidal" properties. The state retains ownership of these lands and the peasants, or farmers, have the right to use them, to live on and to grow their crops on them. The rights of usage pass from father to son, but ejidal properties cannot be sold as private property.

In Baja California Sur alone, there were 100 ejido groups occupying 5 million 375 thousand hectares, according to the Ejidal Census made in 1991 by INEGI, the federal government statistical bureau. Only six other states in the entire country have more ejidal land.

The average amount of land for each ejido in BCS is 53,758 hectares. That's about 134,395 acres for each ejido or almost 210 SQUARE MILES of land for each ejidal group!

Per decree published on February 26, 1992 in Diario Oficial, Mexico's Official Newspaper, certain ejidal lands can now be converted to private property through a process known, in Spanish, as the PROCEDE, (the procedure).

This is a seven step process that may take as much as five years to accomplish, and consists of the following:

1. Resolution within the ejido. A two-thirds majority must decide to convert parcel lands to private property. This does not pertain to human settlement or communal property, also a part of ejidal land. This pertains only to the individual parcels.
2. Mapping, allowing for streets, gardens, other donated lands, human settlements and communal lands
3. Allotment of a parcel to each ejiditario (farmer).
4. Application to Agrarian Reform, Mexico City
5. Approval by the Agrarian Reform
6. Transfer of parcels to the individual ejiditarios.

After this process is completed and registered with the Agrarian Reform, the ejiditario who wishes to sell to an outsider must first notify other family members, those who have worked the property for more than one year, then other ejiditarios in the group, neighbors, and the ejidal government before completing a sale to the outsider. These parties have the right of first refusal and notifications must be made following a specific procedure.

ONLY after all correct notifications have been made does the EJIDITARIO receive a deed. ONLY then may he in turn transfer in fee simple to third parties, nationals or foreigners. If the property is in the restricted zone ONLY then can an ejidal property be acquired by a foreigner, PROVIDED the Secretary of Foreign Relations will grant a permit for same.

THIS IS FOR PROPERTIES WHERE THE EJIDAL group agrees in an assembly to convert its parcel property to private property.

What about the ejidal group who chooses NOT to convert its parcel land to private property? Can it be used by outsiders?

Article 45 of the law states that ejidal properties may be the object of any type of contract in association or use contract made by the ejidal group, or by individual ejiditarios on common lands or parcel lands. Contracts made with third parties may be granted for a term up to thirty years and can be renewed.

Under the Mexican Civil Code the maximum lease for residential property is ten years. Thus it can be said that the ejidal properties have an important advantage over private RESIDENTIAL property when it comes to leasing.

There is, however, a substantial difference between OWNERSHIP and LEASING. It is important not to confuse the two.

OWNERSHIP, even in the prohibited zone, where ownership is a PERSONAL right of use and enjoyment, permits indefinite usage through multiple renewals (every fifty years) of trust permits, and a clear-cut right to rent those rights, to sell those rights, and to collect a profit therefore. Annual costs under a trust (fideicomiso) are limited to bank administration fees and property taxes and the owner has full rights to all improvements on the land.

LEASE RIGHTS from an ejidal group can be for a maximum term of thirty years and can be renewable. The annual lease cost, however, is often a monthly or annual payment and, while it may be fixed for the first lease term, (up to thirty years) costs upon renewal are not usually negotiated for the following lease term, and may be increased to any amount that the leaseholder, the ejido, requests. Failure to pay the amount requested by the holder of the lease means that lessee (the tenant under the lease) must vacate the property and, of course, must leave behind ALL improvements affixed to the property.

In a rental situation, the tenant never owns the improvements and the amount of the rental will probably be determined by market conditions.

about the author:

LINDA NEIL is the founder of The Settlement Company, which specializes in real estate transfers and escrows. Licensed as a California real estate broker, she has pursued her profession in Mexico for over thirty years. Her skills in negotiating contracts between parties from three distinct cultures have placed her services in demand as a consultant and for speaking engagements on Mexican law and customs in Mexico, the United States and Canada. She has been widely published on the subject of real property in Mexico. Memberships; FIABCI, AMPI and NAR. Linda is a former member of the National Advisory Council of AMPI and has served as AMPI Coordinator for the state of Baja California Sur.

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