

PERSPECTIVAS 2010
2010 PERSPECTIVES

INMOBILIARE®

MAGAZINE



FIDELITY NATIONAL TITLE DE MEXICO

LÍDERES EN ESCROW Y
SEGUROS DE TÍTULO
DE PROPIEDAD

LEADERS IN ESCROW AND TITLE INSURANCE

FINANCIAMIENTO AL ALZA

REAL ESTATE FINANCING IS RISING

NUEVO INSTRUMENTO DE INVERSIÓN CKDs

CKDs NEW INVESTMENT TOOL

DESARROLLO INMOBILIARIO: ALTERNATIVA PARA LA RECUPERACIÓN

REAL ESTATE DEVELOPMENT: ALTERNATIVE FOR THE ECONOMIC RECOVERY

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Equipo de Fidelity National Title de México

Fidelity National Title is the company that provides title insurance and escrow services, with a participation of around 50% of world market. In our country, the affiliate of the insurance company, Fidelity National Title de Mexico, has rapidly been positioned in the real estate sector due to the quality of its services, its efficiency, speed and financial strength. Its experience in real estate transactions around the world and the highest financial back-up in the industry, guarantee the success of its transactions.

When Fidelity National Financial started operations in Mexico through an affiliate, Fidelity National Title de Mexico, its officers understood that Mexico offers and has become an important business place for real estate businesses, worldwide. In fact, the transactions recorded by the insurance company in the country, are backed up by a claim reserve which rises to US\$2.7 billion dollars.

For Fidelity, Mexico is one of the countries with more recorded transactions, in such a way that it has established, as commented by the CEO of the insurance company in the country, Mr. Juan Pablo Arroyuelo, a direct sales effort without precedent in Mexico, and they have taken advantage of the sales network of the company existing in the United States. "We have focused on granting our clients the best quality services, reasonable insurance, timely and trustworthy performance and an unequal financial strength."

This company has been incorporated under Mexican laws as an affiliate of Fidelity National Financial, Inc. (NYSE:FNF) and is governed by the Ministry of Treasury and Public Credit – SHCP and the National Insurance and Bonds Commission- CNSF.

Products and Services of Fidelity Mexico

There are three stages in the process of acquiring title insurance. First, Fidelity National Title de Mexico carries out an investigation, this is a preventive work which is crucial for real estate transactions.

In this process, we carry out a thorough search before the Public Registries of Property (RPP), as well as before Cadastral offices and the National Agrarian Registry, as well as before any other instance which needs to be visited, as the case may be, with respect to the recorded antecedents of the property. After this physical review of books, no lien certificates and property tax certificates, we prepare a report or title opinion, including the terms and conditions of the specific property.

The second step is the purchase of title insurance. The importance of this, for the one who acquires it, is that this will protect it against any losses derived from risks or defects existing in the title chain. Juan Pablo Arroyuelo, CEO of the entity in Mexico expresses: "this insurance is characterized by the payment of a one-time premium, unlike other types of insurance. The term of the policy is for an indefinite period of time and will remain valid until the ownership of the property is transferred."

The person who acquires title insurance, may also hire escrow services, this form is only a custody fund. Specifically, in Fidelity National Financial, they have broad experience and, in its Mexican affiliate, this is a product which may be acquired after the second half of 2009. The Escrow is an element which has positioned Fidelity National de Mexico as the most important company in the country with respect to title insurance, since it is the only company which provides Escrow services in Mexico.

"The Escrow is an agreement whereby an agent – in this case Fidelity- obtains custody of the funds deposited by a third party. The purpose we have pursued, is for the agreement to

“As transactions become more sophisticated, the need for an Escrow is higher, before it was very difficult to work only with Banks and foreign companies, since they did not adapt to the needs of each transaction. The service of Fidelity is extraordinary, its capacity to respond couldn’t be better.”

Rodrigo Conesa,
partner at Ritch Mueller, S.C.

have a legally recognized form and governed by Mexican laws. The agreement is a commercial agency agreement which may be subject to, as the case may be, Mexican courts”, as indicated by Lucía Treviño, Head of Escrow.

The agent in this case is a Mexican company, with all the available legal locks in order to offer a transparent and safe transaction. Therefore, all the internal mechanisms adopted and the guaranty of bank accounts in Escrow, assure the protection and release of funds according to the needs of the client.

Escrow Services

The purchase of a property is an investment which demands care, most of all, when the parties do not know each other, and unquestionably certain questions arise, for example: is seller the legal owner of the property?, or also, will purchaser have the sufficient funds to pay for the property at the time it is transferred?, in summary, the questions are several and the Escrow grants total safety and confidence for all the parties.

The funds in Escrow is a concept which, even though it has been used in a lot of real estate transactions, is still unknown by others and, therefore, not trustworthy.

Therefore, since August, 2009, Fidelity National Escrow initiated its services, granting its clients more transparency and safety. “It is a fact that in the country it is the first time that a Mexican company grants this service with a guaranty and the back-up of being a subsidiary of one of the most prestigious world companies in the title insurance market”, is emphasized by Lucía Treviño, Head of Escrow

“We noticed that our clients needed to obtain services guaranteed by Escrow, since there are a high number of experiences, where real estate brokers, without any guaranty or support, acted as agents and at the time of releasing the funds, they disappeared and the clients were left with-

“Title insurance and Escrow, services provided by Fidelity, have become indispensable tools for all real estate transactions, since they provide certainty and a guaranty to all the parties involved.”

Victor Lachica,
CEO Cushman & Wakefield Mexico



Gerardo León y Gabriel Torres, del equipo de Suscriptores de Fidelity

“Once we had purchased the property, we noticed there was a donation of a portion of the land which would affect the development of the store and Fidelity National Title de Mexico, in a very friendly and efficient manner, immediately helped us to cure the defect. Today, the store is open and Fidelity has faithfully complied with its contractual obligation, by indemnifying us.”

Monica Bichara, Chief Legal Officer, Home Depot

out any protection since they had no company to claim for the illegal act” affirms Treviño.

The Escrow, in fact, is not only used in real estate transactions, since it insures funds for many other business transactions where it is necessary for a third party to receive goods. For example, one of the first Escrow services granted by Fidelity de Mexico, arose from a services agreement where, subject to the performance of a show, the company would release the funds in favor of the service provider.

On the other hand, when there is a purchase of a property, there is always the problem of what will be first, the payment or the delivery of the asset, which causes that the parties deny to sign, until the other party may dispose of the funds or otherwise, as the case may be. What Fidelity makes, through the Escrow, is to assure the funds, therefore, the transaction is guaranteed and all the process is transparent.

The answer of the clients has been favorable, as informed by Lucía Treviño, Head of Escrow: “I have been surprised by the interest we have had, we appreciate that Mexico lacked a form like this, which offers transparency and safety, but, most of all, what is more valued by our clients is the efficiency, since in the most sophisticated transactions the parties usually chose the guaranty trust as an option to deposit the funds to be released when certain obliga-

tions were fulfilled, which is more costly, takes more time and its incorporation demands more requirements than the Escrow. With our available accounts, there is no delay in the execution of the transactions, our relationship with our clients is personal and this gives them confidence; they are certain that their instructions will be followed exactly and both parties appreciate our neutral position in the transaction.

Juan Bernardo Garcia Garza, a partner at the firm Baker & McKenzie Abogados, S.C., expresses his opinion on the Escrow: “In addition to the excellent services provided currently by Fidelity in title insurance matters, the new Escrow service now offered positions them in an avant-garde position in the Mexican market. This service makes real estate transactions in Mexico easier in an extraordinary way, merging simplicity, confidence and legal certainty in a versatile instrument, with a rapid execution and at a reasonable cost, which undoubtedly helps lawyers to close the transactions of our clients, either national or international, in a more effective manner.”

In addition to transmitting certainty to seller and buyer, the other parties involved in the transaction receive benefits and their rights are preserved, as for example, the payment of fees for the notary public, the brokers’ commissions and the payment of duties, taxes and registra-



Lic. Gerardo León, Gerente de Suscriptoras y Juan Pablo Arroyuelo, Director de Fidelity en México

tion of the public deed before the Public Registry of Commerce is assured. With the foregoing, the parties guaranty, from the beginning, a successful closing and the due transfer of ownership of the property in question.

"The Escrow is not only for real estate transactions. We have had as well deposits originated from other types of agreements or

DEFECTS, ERRORS AND/OR LIENS WHICH MIGHT BE FOUND IN TITLE TO A PROPERTY

- Documents executed under false, revoked or expired powers of attorney.
- False assumption of the personality of the legal owner.
- Covered heirs.
- Legal documents poorly recorded.
- Loopholes in title chain.
- False deeds, mortgages, wills, mortgage releases and other instruments.
- Undue exercise of assets held jointly.
- Public service or right of way easements.
- False declaration of death or inheritance.
- Intestate succession.
- Agrarian encumbrances.
- Meets and bounds which are not the same as the ones recorded in the Public Registry and Cadastral Offices.
- Among others.

transactions, furthermore, it has more uses in the real estate market, one in particular that we identify as a need in the sector is for the advance sale (pre-venta) of residential units, in order to guaranty that the advance payment is kept in deposit and is a security for a loan and, in this way, the purchaser of the private unit is certain that its advance will not be applied to the development of the condominium or resort, as the case may be", concludes Lucía Treviño.

Fidelity grants the best Escrow service

There are several advantages that make the Escrow of Fidelity National Escrow Services, the best service offered in the country. Let's see.

Bank accounts in Mexico: The company has Escrow type accounts in pesos and dollars with Banamex and these have infinite sub-accounts for each transaction, therefore, each client has an individual account. This allows to directly and constantly supervise the deposited funds. On the other hand, for foreign clients or for those who prefer to carry out transfers in US accounts, Fidelity has an account with Citibank, which is operated by its representatives in Mexico, and this allows it to have more control and efficiency.

Disbursement of funds on the same day. In Fidelity, we are convinced that the client is looking for the due custody of its funds, therefore, unlike what most banks do when offering the service, Fidelity protects the funds and these are not used for any other purpose. They will always be available for the client; in this case, with a simple notice by the parties, Fidelity may release and distribute the funds on the same day.

"In addition to the excellent services provided currently by Fidelity in title insurance matters, the new Escrow service now offered positions them in an avant-garde position in the Mexican market. This service makes real estate transactions in Mexico easier in an extraordinary way, merging simplicity, confidence and legal certainty in a versatile instrument, with a rapid execution and at a reasonable cost, which undoubtedly helps lawyers to close the transactions of our clients, either national or international, in a more effective manner."

Juan Bernardo Garcia Garza, Baker & McKenzie Abogados, S.C.

"For the Touristic Real Estate Market, this tool is fundamental for the purchase of huge properties in destinations such as Cancun, furthermore, we have a large inventory and the financial sources have demonstrated that insurance is an indispensable requirement, it gives certainty to the International market and to obtain of funds. Fidelity plays a material role and its professionalism, as well as its knowledge of the matter, will materially assist the industry."

Rodrigo de la Peña, President of the Cancun Hotels Association and Developer

The best protection of disbursement of funds:

Fidelity Mexico is a safe and efficient company to operate. Their representatives only act pursuant to the joint, written instructions of the parties, therefore, the client has certainty that its funds are safe and may only be disposed of by the consent of the parties. In this sense, Fidelity acts as trustee, at a price not comparable to the one of a trust, and without the bank procedures which take a lot of time.

Negotiable agreements and suitable for the specific needs of the client: In Fidelity they understand that each transaction is different and that each client has different needs and interests. Therefore, they take their time to review each agreement and they adapt it to the particular needs of each business.

Title Insurance

Undoubtedly, any real estate transaction may have the risk of transforming into a headache and more, when a claim is filed against the owner or lessor of the property, therefore, title insurance has a lot of meaning in the real estate market. For Pablo Marti, Head of Sales and Business Development, this concept is materialized and operates as an indemnity, since it protects the rights of the owner of a property.

Title insurance provides other benefits, as explained by the officer: "The insurance grants legal and economic certainty to the investment, it is, furthermore, a tool which speeds the transfer of ownership procedure and, on the other hand, it allows and promotes real estate investment which has become an essential requirement for the securitization of a mortgage portfolio."

There are several reasons why title insurance makes sense. Juan Pablo Arroyuelo, CEO of Fidelity National Title de Mexico, cites some

BENEFITS OF TITLE INSURANCE

Indemnity Agreement.

If the insured party is affected, it only needs to immediately deliver a notice of the claim, and the company will assume the legal expenses and, in the event of a loss or lien, the company will proceed to pay the corresponding indemnity.

Financial Security.

A legal opinion, especially in a complex transaction, is basically a disclosure of facts. An expert lawyer carefully defines the situation of title of the property and related matters, identifies uncertain or irregular areas and explains exceptions (for example, fraud), in this way, he/she makes the investor or lender "value" such risks. Title insurance provides a financial security of support to the legal opinion.

Costs of legal defense.

In the event of a claim by a third party, claiming title of the owner or of the mortgage lender, Fidelity

will be liable for the defense of the claim and its cost. If the result of the legal proceeding is unfavorable, Fidelity will indemnify the insured party for the loss, for up to the insured amount, in addition to the payment of procedural costs.

Scope of an expert opinion.

With an approved expert opinion, title insurance may provide insurance against unknown defects related to surface (meets and bounds) of the property and potential invasions.

Possession by the parties.

These policies guarantee that no lessor or person in possession has any rights with respect to the property.

Affirmative insurance.

Title insurance may cover certain defects of the title or risks by means of an affirmative coverage with endorsements which expressly insure known risks.

Endorsements.

Fidelity National Title de Mexico offers more additional endorsements to its policies, similar to the standard forms available in the United States. The foregoing means that the policies offered by Fidelity may include, as requested by the client, additional coverage for specific characteristics of the property to be insured.

Representations and warranties.

Occasionally, a bank or lender in distress may not provide confidence, based on the result of prior investigations, or provide representations and warranties due to insolvency risks. Title insurance may replace certain representations and warranties, which might speed up the transaction and reduce costs.

Clean Title.

Before insurance transactions, a lot of the properties insured

by Fidelity were not insured or reviewed by specialists on title to real estate properties. The subscribers of the company work with the seller's lawyer, to eliminate any defect in title or to insure unusual defects or errors in the title chain, as well as to facilitate a safe and quick business closing.

Reserves.

Fidelity National Title de Mexico is a part of the biggest insurance group of title insurance in the world, with an investment portfolio of approximately US\$4.7 billion dollars, a reserve for claims which is in excess of US\$2.7 billion dollars and with the highest financial rates granted by Standard & Poor's, Moody's and Fitch. Such financial strength, which is unequalled by any of our competitors, is crucial to cover any risk of our clients by means of title insurance.

Sourcee: Fidelity National de México

cases where the insurance protects the owner and, therefore, the transaction. "The insurance is effective when, for example, the documents are executed under false, revoked or cancelled powers of attorney, also when there is a false assumption of the personality of the legal owner, legal documents poorly recorded, omission of the persons which are necessary in certain judicial procedures, loopholes in the title chain and of course, when public deeds, mortgages, meets and bounds disputes, wills, mortgage releases and other instruments are false."

Furthermore, title insurance is also effective when there are deeds entered into by minors, when there are transfers by divorced spouses undercover, questions of legal possession of land, erroneous civil status and for public service easements, among other cases.

Therefore, what title insurance looks for is to guarantee real estate transactions. Fidelity National Financial and its affiliate in Mexico, with their products and services, intend to protect and perfect real estate transactions in the world.

Worldwide Experience

Fidelity has more than 160 years of experience and has transactions recorded not only in the United States and Mexico, but also in several countries in the Caribbean, Europe, Canada, Central America, South America and Asia, and its expansion plan continues around the world.

Moreover, it maintains the highest rates in payment capacity for the claims of the insured.

They also offer an integral service which allows to reinsure and extend its scope of services and products through six more insurance companies of its ownership, which are well known around the world and are the following:

"We have insured more than 25 properties with Fidelity and the experience has always been exceptional, since its team has a deep experience; its product, service and response timeframes are the best in the industry. MRP will continue investing in Mexico, developing commercial projects, which we will continue insuring with Fidelity."

Pedro Morera, Chief Legal Officer, MRP



Alamo Title Insurance Company
Commonwealth Land Title Insurance Company
Chicago Title
Lawyers Title Insurance Corporation
Security Union Title Insurance Company
Ticor Title

This makes it a company which may be involved in any real estate transaction, offering a suitable option according to the type of property and transaction, notwithstanding the size or sophistication of the same.

In fact, "the insurance may be hired by both individuals and entities, foreign and national, which are owners or who are purchasing real estate properties within Mexico", as expressed by Pablo Martí, Head of Sales and Business Development of Fidelity National Title de Mexico.

Fidelity National Financial is nowadays the worldwide company with more available reserves in the event of accidents or breaches and, with respect to its affiliate in Mexico, the services of the insurance company have been extended throughout the country several

months ago, which has transformed Fidelity Mexico in to the leading company to offer title insurance, with Escrow service, which no other company of the same line of business had offered before.

Fidelity de Mexico is a synonym of certainty, confidence, service, support and strength, in any type of real estate transaction.

Fidelity, besides understanding the real estate business in Mexico, understands the complexity in which the agreements may be negotiated and the type of conditions for closing. They have adapted to the type of release instructions which the client may deliver, they are, in summary, a company which makes things easier. ■

For more information Fidelity National de México

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