

## DEFAULT OF REAL ESTATE PAYMENT OBLIGATIONS UNDER MEXICAN LAW

One of the main differences between the US and Mexican legal systems is that the Mexican system is much more formalistic, meaning for example that contracting parties must comply with certain formalities imposed by law to create, preserve and enforce contract terms. These formal requirements also apply to payment obligations in real estate transactions.

Over the years of providing legal advice to my non-Mexican clients, I have seen that they are naturally inclined to interpret contracts they have executed in Mexico according to the customs of interpretation of the US and Canada, forgetting that the agreements are governed by the laws of Mexico. The US or Canadian client is generally used to entering agreements with others where there are few formal requirements imposed from outside the transaction itself. They are simply unfamiliar with the rigid formality imposed by Mexican law on the interpretation and enforcement of private agreements, and they often base decisions on false assumptions about their rights and duties under the contracts.

The last six years of economic stress have made it difficult for many foreign buyers to meet payment obligations on real estate purchase contracts executed in Mexico, so it is crucial for the buyers to understand the rules of interpretation for these agreements to determine whether they are in technical default of their payment obligations or not. I regularly meet with buyers confronted by sellers in Mexico who seek to rescind agreements, repossess the subject real estate and keep the buyer's money all without judicial process based on their reliance on "foreign" (non-Mexican) principles of contract interpretation and enforcement. Often both parties are making decisions in this context based on their failure to appreciate the enforceability requirements imposed by Mexican law.

After carefully analyzing many of these transactions, I have found that quite often the mandatory formal requirements to declare the buyer in default of his payment obligations under Mexican law have not been met, and therefore the buyer could not have been properly determined to have breached his agreement. Contract rescissions and real estate repossessions based on such 'false' defaults are unlawful.

As an example, many real estate purchase contracts do not specify an address for delivery of payment to the seller, and therefore the payment obligations cannot be considered a domiciled obligation. This lack of specificity shifts the burden to the seller to prove that he complied with the formal requirement to personally request payment from the debtor at the *debtor's* domicile as a condition precedent to establishing his default. This request for payment must be done in the precise form provided by law, which is usually through the use of a Notary Public and the court. The debtor cannot be declared to be in default for his failure to make payments unless the seller has complied with this burdensome formality.

As it can be seen, it is very important for one to seek legal advice from a qualified Mexican attorney who can review the contract, analyze the specific situation and determine if there is an actual default, even when one might simply assume that he has lost his right to contest a matter. Surprisingly often, even when buyers have missed scheduled payments, they are not actually in default under the

strict formalities imposed by Mexican law. It may even be that they have unknowingly acquiesced to an unlawful rescission of their contract, or even worse, an unlawful repossession of their property.