

## **The State; Homes Gone, Fight Goes On; Retirees who were evicted from seaside houses in Mexico are making a novel use of NAFTA to seek redress of their claims.**

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Seven months after they were booted out of their seaside homes near Ensenada by an army of Mexican police, scores of American retirees cling to hope that they will be repaid for the loss of property that, for many, represented life savings.

Their initial disbelief has given way to indignation, and hopes that the U.S. government would somehow ride to the rescue ended in disappointment. A few evictees managed to keep their homes by paying huge sums--in one case, \$270,000--to the new landholders, who took over after winning a long court battle in which the Americans were mainly hapless spectators.

Most of the residents, though, returned to the United States, bunking with friends and relatives while hunting for a new place to live north of the border.

The retirees, many of whom built on the sliver of land called Punta Banda more than a decade earlier, vow to fight on. About 20 of them gathered at the border crossing at San Ysidro on Friday, decrying their treatment by Mexico and seeking the help of U.S. officials they say have been largely indifferent.

"We're asking for a full investigation by both governments of Mexico's real estate scam," said Kathryn Haning.

"I want people not to go to Baja California and invest," said Nita Evans. "I invested for 20 years and I lost \$350,000."

In an unusual use of the North American Free Trade Agreement, a group of more than 130 homeowners is seeking \$75 million in compensation from the Mexican government on grounds that they were treated unfairly as foreign investors when kicked off land that had been leased from a peasant collective.

The evictions came after Mexico's Supreme Court ruled that the land did not belong to the collective, but to several private parties who for years had claimed ownership. The episode gained national attention on both sides of the border and offered a cautionary tale on the risks to foreigners of investing in real estate in Mexico.

The NAFTA claim, filed in February, is based on a treaty provision requiring each of the three signers--the United States, Mexico and Canada--to treat investors from the other two countries fairly. The NAFTA provision, known as Chapter 11, has been the basis of complaints by corporations. But the Punta Banda petition is the first seeking redress in a real estate dispute.

"It's going to be a very important test . . . [that asks] is NAFTA only in protection of big corporations, or does it protect everybody?" said **Dennis John Peyton**, a Tijuana-based lawyer who filed the NAFTA petition on behalf of the homeowners.

A central question is likely to be whether the retirees are considered investors under NAFTA. David Gantz, a law professor at the University of Arizona and a NAFTA expert, said that real estate must have been acquired for "economic benefit or other business purpose" to be considered an investment under NAFTA rules. "Presumably, some of the land owners will be able to demonstrate a business purpose, but others may not, and the latter may have difficulty in obtaining treatment as 'investors,'" Gantz said.

The Mexican government has asserted that the NAFTA complaint is flawed because it fails to lay out the claims individually. In a May 17 letter, an official from Mexico's economy ministry said his government is not subject to arbitration until those issues are addressed.

**Peyton** discounts the objections as foot-dragging. He said he will ask an international mediation agency affiliated with the World Bank to name a second member if Mexico does not.

A separate appeal in Mexican court by a second group of the retirees failed earlier this month. While a few other people are pressing individual appeals, others hold out hope they can persuade the two governments to negotiate a settlement.

Pat McIntyre, a retired mortgage broker, figures she and her husband lost \$130,000 when they were evicted from their 4,000-square-foot home. After spending six months in a spare room at their daughter's home in Chula Vista, the couple rented a house in Riverside County. McIntyre said loved ones have suggested that she quit the battle and move on. She says no.

"If they want to keep the place down there, more power to them," said McIntyre, 66. "We just want our money."

Credit: TIMES STAFF WRITER