

***EJIDO* PROPERTY**

THIS ARTICLE IS FROM A MODIFIED CHAPTER FROM THE BOOK “HOW TO BUY REAL ESTATE IN MEXICO” AND IT EXAMINES THE BACKGROUND OF *EJIDOS*, THE DEFINITION OF AN *EJIDO*, AND THE LEGAL REGULATION OF *EJIDOS*, THE CURRENT AGRARIAN LAW PASSED IN 1992, CLASSIFICATION OF *EJIDO* PROPERTY.

AMENDMENTS TO ARTICLE 27 OF THE CONSTITUTION

In January of 1992 a very important decree was published in the Official Gazette (*Diario Oficial De La Federación*) stating that Article 27 of the Mexican Constitution was amended. The most important changes to Article 27, as far as real estate is concerned, have to do with the possibility of selling “*ejido*” property.

Before examining the amendments to Article 27, this section will quickly review the background of *ejidos*, the definition of an *ejido*, and the legal regulation of *ejidos*.

The Mexican Revolution inspired the idea for the *ejidos*. One of the main objectives of the revolution, reflected in the revolutionary 1917 Mexican Constitution, was to break up large tracts of privately owned land, “*latifundios*,” into smaller holdings and return the land to the peasants. The *ejidos* were agricultural land grants. The new Mexican government issued grants to use federally owned property to farming and ranching cooperatives, whose membership was largely peasant. Members of the *ejidos* were entitled to use and work the land to their benefit but they did not own the property. The government issued the peasants a limited title to the land; the peasant could not sell the land or use it for collateral. The peasant had to continue to work the land or the title would be revoked. The idea was to help the peasant farmers at that time get a start in life, and at the same time, bring about an equitable distribution and use of property. With the Amendment to Article 27, it appears that after nearly 75 years, the dreams of the peasant may become a reality.

REGULATION OF *EJIDOS* BEFORE 1992

Until the new Agrarian Law was passed in February of 1992 *ejidos* were regulated by the Agrarian Reform Law, which strictly prohibited the sale or even the lease of *ejido* property. Article 52 of the Agrarian Reform Law states the following:

The rights acquired by *ejidos* over agrarian property shall be inalienable, imprescriptible, non-attachable, and non-transferable, and therefore, one may not, in any case or form whatsoever, dispose of, cede, assign, lease, mortgage, or encumber, (such rights) in whole or in part. All operations, acts or contracts executed or that seek to do the same in violation of this provision are null and void.

In other words, a foreigner presently living in Mexico on land leased from an *ejido* before 1992 is doing so illegally.

The new Agrarian Law allows for the lease of *ejido* properties under certain circumstances. However, if a Lessee leased from an *ejido* before the law was changed, he will need to execute a new agreement with the *ejido* for the agreement to be legal. Later, this chapter takes a closer look at leasing *ejido* property.

So, what does all this mean for the foreign investor in Mexico? The answer to this question depends on whether the foreign investor is presently leasing from an *ejido*, or is just interested in

purchasing property in Mexico. For anyone interested in purchasing property in Mexico, the changes to Article 27 could be the best news to hit the Mexican real estate market.

The amendments to Article 27 clearly provide for the leasing and sale of *ejido* property in subsection VII. The following is a portion of that subsection:

...The law... shall regulate the rights of every *ejido* member in relation to his parcel of *ejido* property by establishing the procedures by which they may form partnerships among themselves, with the State, or with third parties, and for the granting of the use of their properties... as well as establish the requirements and procedures by which the *ejidos* may grant its members ownership to their parcel of *ejido* property.

It is clear that *ejido* property may now be sold, and that the *ejido* shall have the right to determine how its property is parceled off and made available for sale.

To better understand these changes one needs to remember that previously *ejidos* did not own their property, rather they only had the right to use federally owned property. Now, with the amendments to Article 27, not only does the law recognize the *ejidos*' property rights, but it also provides for the possibility that individual members of the *ejido* may sell their parcels of the *ejido* property.

An *ejido* can be described as a form of corporation in order to clarify the above possibilities. The *ejido* is not exactly the same as a corporation, but it is very similar. For example, an *ejido* is a legal entity governed by something much like a shareholder meeting and administrated by a board consisting of a president, a secretary and a treasurer. Each member of the *ejido* has voting rights with regard to the use of the property owned by the *ejido*. However, unless the *ejido* property has been legally parceled off to an individual member, all the property is owned by the *ejido* as a distinct legal entity separate from its members.

It is now possible for an individual member of the *ejido* to acquire property rights over a parcel of the *ejido* property. Under the provisions of the amendment, the *ejido* members, meeting as the governing body of the *ejido*, are empowered to grant the property rights for each individual member's parcel of land.

AGRARIAN LAW OF 1992

With the changes to the Constitution and the publication of the Agrarian Law, *ejidos* now own the land granted to them under the provisions of the old law. Article 9 of the law states that *ejidos* own all real property granted to them as well as any property that they may have acquired title to by any other means.

The individual members of the *ejido* can acquire property rights over a parcel of the *ejido* property. Under the provisions of the amendment, the *Asamblea de Ejidatarios*, as the governing body of the *ejido*, is empowered to grant each individual member property rights over his parcel of land.

The real property of the *ejidos* is divided into three categories:

1. Individual parcels
2. Property for common use
3. Property for community development

Property for community development is intended to meet the needs of the *ejido* community for urban development. Property for common use is that which is not specifically designated by the *Asamblea de Ejidatarios* for community property or individual parcels. Individual parcels are

those for which parcel certificates have been issued to individual *ejido* members and sanctioned by the National Agrarian Registry.

INDIVIDUAL *EJIDO* PARCELS

Each member of an *ejido* may not have title to parcels of more than five percent of the *ejido*'s property, or a parcel that is larger than a small land holding, or a "*pequeña propiedad*." These range from 100 to 800 hectares, depending upon the type of property.

Once an *ejido* member legally acquires his parcel certificate he has the right to determine how his parcel shall be used. Neither the *ejido*'s *Asamblea* nor the *Comisariado* may use or restrict the use of parceled properties.

Each parcel owner may lease his property or contribute the use of his property to partnerships or corporations, without prior authorization of the *ejido*'s *Asamblea*. Article 81 of the law states that "when the majority of the parcels of an *ejido* have been delineated and assigned... the *Asamblea* may resolve that the *ejido* members may assume direct ownership over said parcels..."

Once the *Asamblea* adopts the resolution to convey ownership to individual *ejido* members, the members are then free to petition for the cancellation of their respective parcels in the National Agrarian Registry. A deed for the property is issued which would then be filed with the Public Registry of Property (*Registro Público de la Propiedad*). From the moment the deed for the parcel is filed with the Public Registry of Property, that property considered private property and may be bought and sold as any other private property.

COMMON USE *EJIDO* PROPERTY

Article 73 of the law defines common use properties (*tierras de uso comun*) as those which "...constitute the economic support of the *ejido* community..." and consist of the properties which have not been specifically reserved by the *ejido Asamblea* for urban development or individual parcels. Such properties cannot be sold or encumbered in any way except for case set forth in the law. (See "Joint Ventures with Ejidos" <http://lawmexico.com/publications.htm>)

The use and exploitation of common use properties is regulated by the *ejido*'s internal regulations including all rights of *ejido* members as well as non-*ejido* interests. The rights associated with common use properties are documented by certificates of common use property in accordance with Article 56 of the Agrarian Law.