

# Resort Title Insurance in Mexico: The Legacy of Punta Banda

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Americans should no longer shy away from buying or building homes in resort areas of Mexico because of concerns about property rights. Title insurance is now available from selected American and Mexican title companies to protect foreigners if their ownership is challenged. First American Title is one of the leading companies offering title insurance on properties in Mexico.

Ever since the Punta Banda incident three years ago, Americans have been leery of acquiring property in what are known as the restricted zones in Baja California. Those zones are along the Pacific Coast of the Baja peninsula and on the California-Mexico border.

Punta Banda is a beach resort community south of Ensenada. In a widely publicized incident in 2000, about 85 American families were evicted from their homes. As a result of this action, many Americans have had the impression that property rights mean nothing in Mexico.

That impression is false. The fact is that the Mexican nationals who leased the Punta Banda property to Americans and others were not the legal owners of the property. The

evictions in Punta Banda came after the Mexican Supreme Court ruled that a false land map was used two decades ago to take the Baja California property from its rightful owners and give it to a peasant commune, or ejido. The peasants then authorized a Mexican developer to market 30-year leases on the property.

The Punta Banda decision, however, evidenced the saying that "It is not reality but the perception of reality that matters." The fact that the court decision actually upheld and protected private property rights was quickly lost in the publicity whirlwind surrounding the eviction of Americans from the resort land on which they had built and then occupied for years.

Faced with a public relations nightmare, and with sales skidding almost to a halt, resort developers turned to First American and other U.S. title insurers for help.

To address the concerns of the American buyer of property in another country, the insurers created the International Owner's Policy of Title Insurance. This policy, when combined with recently developed Mexican endorsements, provides title-risk coverage on property in Mexico—coverage similar to that provided by the American Land Title Association (ALTA) Owner's Policy available in the United States.

Risks covered by the International Owner's Policy include more than the customary issues of ownership (including liens and other encumbrances), fraud, forgery, and other documentation problems, right of access, and other physical site matters. The policy also covers claims of ejido ownership or rights to possession, errors in the Mexican Public Registry, and defective Mexican judicial or administrative proceedings.

Perhaps the most important aspects of the International Owner's Policy, from the standpoint of U.S.

residents, are that the issuing title company commits to defending the insured's title against claims brought by third parties in Mexico, and that the insured has access to U.S. courts to enforce his or her rights under a policy governed by U.S. law.

Real property transactions in Mexico are complicated and materially different in many ways from similar transactions in the United States. Mexican laws, regulations, and practices relating to taxes, trust agreements, and permits are unique and necessitate the involvement of experienced teams to handle the many issues confronted. Title insurers providing international policies of title insurance are and will be integral parts of those teams. 

