

Title Insurance in Mexico: A Necessary Protection, Duplicative Expense, or Something in Between?

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I. INTRODUCTION

One of the greatest fears of homeowners is being thrown out of their home by another person who claims to be the true owner of the property. This prospect is especially frightening for those who invest their life savings in Mexican property, like the retirees involved in the misfortune

at Baja Beach Club in 1989.¹ Sadly, this fear has materialized for many people who have purchased property in Mexico without understanding Mexican law beforehand. In one especially dramatic case, members of an American family lost their Rosarito beachfront home and were arrested and shackled in a Tijuana prison because of a property dispute.² Several title insurance companies offer policies in Mexico and argue that they can protect purchasers from such traumatic experiences. While no agency in Mexico or the United States keeps statistics on the number of Americans who have run into problems with property in Mexico,³ estimates of the number of Americans living in Mexico range from less than 700,000 to one million.⁴ Over 150,000 of those people are retirees.⁵ Additionally, the evictions in Punta Banda stand as a clear reminder of the danger of investing in Mexican land without being fully informed.⁶

However, professionals in the real estate industry question whether title insurance really solves any of the problems related to buying

1. Marietta Morris Maxfield, *Why You Need Title Insurance*, PROB. & PROP., May-June 2001, at 8, 8 ("On October 23, 2000, Mexico's Supreme Court ordered Agrarian Reform Minister Eduardo Robledo Rincon . . . to return 23 home-sites located at the Baja Beach and Tennis Club to a Mexican private company, the legally recognized owner. On October 30, 400 police . . . accompanied Agrarian Reform Ministry officials to evict American residents from their homes located on leased land. . . . Mexican officials entered these homes, ordered the Americans to vacate within hours, changed locks and sealed doors. Many of these Americans were retirees who had invested their life savings to build full-time residences that range in value from \$50,000 to more than \$1 million. The Baja property losses included the 23 homesites and the adjoining 96 room resort hotel at the 44 acre Baja Beach and Tennis Club. These losses totaled \$25 million."). The error involved twice titled land and "Mexico's Supreme Court[']s reject[ion] [of] the argument that the properties were leased . . . in good faith, based on a government map approval, and h[olding] that the leases were void from inception." *Id.* at 10; *see also* PURUA PUNTA ESTERO, S.A. V. EJIDO CORONEL ESTEBAN CANTÚ, BAJA CALIFORNIA, NORTE Y OTROS, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], File No. 00163/1997-00, Junio de 1997 (Mex.). *See* Stephanie B. Gordon, Comment, *Application of NAFTA's Investor-State Provisions: Is there a Remedy for the Punta Banda Eviction Chaos?*, 9 SW. J. L. & TRADE AM. 173, 175-77 (2002) for another account of the evictions.

2. Marla Dickerson, *Dreams Shattered in Mexico*, L.A. TIMES, May 10, 2006, at

A1.

3. *Id.*

4. Kemba J. Dunham, *Builders Bet on Mexico—Will U.S. Baby Boomers Cross the Border to Retire?*, WALL ST. J., Jan. 18, 2006, at B1; Angleynn Meya, *Reverse Migration: Americans in Mexico*, PROB. & PROP., July-Aug. 2004, at 57, 57.

5. Dunham, *supra* note 4.

6. Maxfield, *supra* note 1, at 9; *but see* E-mail from Jorge A. Vargas, Professor of Law, Univ. of San Diego School of Law, to author (Oct. 6, 2006) (on file with author) (stating that the Punta Banda problem has little to do with title insurance but derives from the unlawful manner in which the real estate was taken).

property in Mexico. First, buyers considering purchasing property in Mexico and those giving them advice need to consider whether title insurance really alleviates any of the problems surrounding property ownership in Mexico. Second, they should consider whether title insurance is worth the price. Those involved in Mexican real estate transactions need to determine whether title insurance is necessary for transactions in Mexico or whether Mexican law provides adequate safeguards.

Although many people in the real estate industry are skeptical about the utility of title insurance in Mexico, purchasing a policy is at least a prudent decision for a foreign investor buying property there. This is especially true for an investor who will not live in Mexico full time. This is because title insurance in Mexican transactions serves two primary purposes. It acts as an additional check on the work of the Mexican notary or attorney, and it may save a purchaser time and money in the event of competing claims of ownership.

II. SUMMARY

This Comment is written for those interested in buying property in Mexico and for the professionals who advise them. It begins by analyzing whether title insurance companies provide a necessary service for those purchasing property in Mexico. This section of the Comment addresses issues related to the protections afforded by Mexican law and whether title insurance is duplicative in light of those protections. It also discusses another option for a buyer, obtaining an opinion from a Mexican attorney. It goes on to analyze whether having a title insurance company maneuver the Mexican courts is a justification for its purchase. It also discusses the differences between American and Mexican property law that make knowledge of the laws, if not title insurance, necessary before moving forward with a real estate transaction. Next, the Comment provides information regarding the types, cost, and payout rates of title insurance in Mexico and addresses how useful title insurance is in the United States. Lastly, the Comment discusses why title insurance in Mexico may continue to grow despite its questionable utility.

III. WHY TITLE INSURANCE MAY BE IMPORTANT: DESPITE ITS QUESTIONABLE UTILITY, TITLE INSURANCE COMPANIES PROVIDE A VALUABLE SERVICE TO INVESTORS IN MEXICAN REAL ESTATE TRANSACTIONS

First, the various restrictions under Mexican law concerning ownership and development rights can cause problems in land ownership and can be a maze for the uneducated investor. These restrictions include: (a) the prohibition of foreign ownership of property in the restricted zone; (b) the inalienability of non-privatized *ejido* land; and (c) the restrictions on public use of federal maritime land.⁷ Second, The Mexican Registry of Property or *Registro Publico de la Propiedad* suffers from a variety of problems that call into question the reliability of its data. Third, while Mexican notaries perform title searches and are involved in various aspects of the real estate transaction, they do not indemnify purchasers of Mexican property.⁸ Fourth, the foreign investment in Mexico, including mortgage securitization in Mexico, will only expand if the property secured is covered by a title insurance policy.⁹ Lastly, title insurance provides several valuable incidental benefits to foreign investors. Title insurance helps provide peace of mind to real estate investors, simplifies the claims process for buyers who do run into title issues, and may facilitate resale.

IV. ARE TITLE INSURANCE COMPANIES PROVIDING A NECESSARY SERVICE TO AMERICANS BUYING PROPERTY IN MEXICO?

Mexican law affords several significant protections to those buying property in Mexico. However, understandably, many title insurance professionals are quick to claim those safeguards are inadequate. They repeat the claim that Mexican notaries, Mexican civil law, and the Mexican Registry do not indemnify or insure against losses that may

7. See 1 JORGE A. VARGAS, *Fideicomisos: Real Estate Trusts in Mexico's Restricted Zone*, in MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 352-53, 384-86 (1998); see *infra* notes 68-73 and accompanying text for information regarding what *ejido* land is and what restrictions Mexican law places on its ownership.

8. David Wiesley, A Summary Background of the Mexican Legal, Foreign Investment, Land Registration, Real Property Transfer and Tax System 10 (2003) (unpublished summary, on file with First Mexico Group and author).

9. See Maxfield, *supra* note 1, at 13.

accompany clouded title. Yet, several areas of Mexican law provide a significant amount of protection for those purchasing property in Mexico. As such, the true advantage of title insurance may come from its simplification of the claims process.

A. Mexican Law Protects Buyers in Three Ways

The disagreement regarding whether title insurance is necessary in Mexico lends credibility to the idea that confusion exists about the true level of protection afforded by Mexican law. Additionally, some professionals argue that while there may be protections in place, they are not enforced. According to Rafael Gama, a Tijuana attorney, “it is the most redundant business that these (title insurance) companies are doing . . . I honestly will tell you that if someone has really gone over the (list of previous legal owners) and has found that the title of the person who is selling is very solid, title insurance is not necessary; it’s an unnecessary expense.”¹⁰ Russ Schreier, founder and chief executive officer of the Del Mar based Finance North America, says that his clients are not prone to use title insurance: “Less than half of those who do loans will take [it] . . . They trust the notario system.”¹¹ These statements reflect the sentiment of many people familiar with Mexican law who work in the real estate industry. However, others including those at title insurance companies urge that there are gaps in protection afforded by Mexican law that can be covered by a title insurance policy.

Mexican law affords three main protections to someone buying property in Mexico. First, Mexican sellers are required by law to warrant the property they sell. Second, Mexican notaries must certify the completeness and legal accuracy of all documents in a real estate transaction. Additionally, notaries are vested with the public faith—their certifications carry a presumption of legal validity—and they help freeze property files in the registry. Lastly, employees of the Public Registry may be civilly or criminally liable for any errors they commit.

1. Mexico’s Civil Law Requirement that Sellers Warrant Title

Several sections of the Mexican Civil Code require a seller to warrant the product he is selling. Article 2142 requires a seller to “warrant

10. Lori Weisberg, *Title Insurance Can Provide Peace of Mind in Mexico*, SAN DIEGO UNION TRIB., Oct. 2, 2005, at 11.

11. Pat Broderick, *Homes With Million Dollar Views Selling for \$300,000 in Mexico But San Diegans Might Need Title Insurance To Avoid Vacation Housing Nightmares*, SAN DIEGO BUS. J., Aug. 7, 2006.

against hidden defects . . . so that had the buyer known of such defect he would not have bought it or offered a lower price.”¹² If this occurs, Article 2144 grants the buyer the right to demand rescission of the contract and the return of his payment or the diminution in price caused by the defect.¹³ Additionally, Article 2145 provides that if the seller knew of the defect and failed to tell the buyer, the buyer is entitled to indemnification for all damages and losses related to rescission of the contract.¹⁴ If the seller did not know of the defect, he need only make restitution to the buyer for the purchase price and expenses of the contract.¹⁵

However, some provisions in the Mexican Civil Code seem to limit the protection afforded to the purchaser. First, for the buyer to be fully indemnified for all losses, the seller must have knowingly failed to disclose the defects.¹⁶ Additionally, the buyer must bring a claim against the seller within six months of delivery of the sale or within a year of discovering a hidden encumbrance.¹⁷ Buyers also need to be cautious as to the content of their purchase and sale agreements as the parties may limit their liability for defects for which a sale can be rescinded.¹⁸ Moreover, the buyer has the burden of proving the defect existed at the time of the purchase.¹⁹ If he cannot do so, it is presumed the defect occurred after the sale.²⁰ This may not be as difficult to prove when issues arise as to the state of title, because presumably the buyer would not be suing for any liens or encumbrances he placed on the land after purchasing it. However, there may be situations in which a lien from a previous owner attaches after the new owner takes possession of the land. Nevertheless, the buyer is by no means without any remedy. The code states that what the seller must rectify the wrong and that the buyer has remedies under the law.

12. Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, art. 2142, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex), *translated in* JULIO ROMANACH, *FEDERAL CIVIL CODE OF MEXICO* (2003).

13. *Id.* art. 2144.

14. *Id.* art. 2145.

15. *Id.* art. 2148.

16. *Id.* art. 2145.

17. *Id.* art. 2149; *id.* art. 2139 (stating actions for rescission or indemnification due to hidden encumbrances must be filed one year from the effective date of the contract or the date the buyer became aware of the lien).

18. *Id.* art. 2158.

19. *Id.* art. 2159.

20. *Id.*

Another argument against the protections afforded by Mexican law is that a seller may be hard to locate and sue. As discussed *infra*, for someone inexperienced with the Mexican legal system, bringing a claim against the seller may be a daunting task. The practical problems associated with enforcing a right of indemnification in Mexico are largely the same as in the United States, but they are more difficult for someone unfamiliar with the legal system who does not speak Spanish.²¹ These issues include the possibility that the transferor has disappeared, has no assets, or is otherwise unreachable by the court system.²²

2. *The Mexican Notary's Legal Responsibility and Additional Formalities*

Mexican notaries play an essential role in Mexican property transactions. Mexican notaries are very different from American notaries²³ and serve many of the same purposes as a title insurance company in the United States. Mexican notaries organize all major aspects of a Mexican real estate deal, including verifying the buyer, seller, and deed and often serving as an escrow agent.²⁴ Additionally, the notary must complete a title search and secure a certificate of freedom from liens before issuing

21. Patrick W. Martin, *Comparative Analysis of U.S. vs. Mexican Commercial Real Estate Transactions*, 7 LAW & BUS. REV. AM. 507, 515 (2001).

22. *Id.*

23. Mexican notaries are attorneys who perform quasi-public functions, are appointed by State Governors for Federal Districts after an application and examination process, and hold office for life unless removed for cause. *Id.* at 516-17; Manuel F. Pasero & Hector Torres, *Foreign Investment in Mexico's Real Estate: An Introduction to Legal Aspects of Real Estate Transactions*, 35 SAN DIEGO L. REV. 783, 797 (1998); Pedro A. Malavet, *Counsel for the Situation: The Latin Notary a Historical and Comparative Model*, 19 HASTINGS INT'L & COMP. L. REV. 389, 440 (1996); Janet L. Folsom, *Mexican Real Property Ownership Implications for Colorado Estate Planning*, 32 COLO. LAW. 51, 53 (2003). Mexican notaries are so different from American notaries that officials have gone out of their way to prohibit the literal translation of "Notary Public" into Spanish. The use of the term in advertisement is deceptive because of the increased training and responsibilities of a Mexican notary. See, e.g., TEX. GOV'T CODE ANN. § 406.017(a)(4) (Vernon 1994) ("A person commits an offense if the person is a notary public and the person . . . uses the phrase 'notario' or 'notario publico' to advertise the services of a notary public"); see also *Florida Bar v. Fuentes*, 190 So. 2d 748, 750-51 (Fla. 1966) (enjoining the literal translation of "Notary Public" to the Spanish "Notario Publico" or "Notario" because of its misleading effect); Milagros Cisneros, *H.B. 2659: Notorious Notaries-How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287, 298 (2000). For more information on Latin notaries see Malavet, *supra*; see also Jonathan A. Pikoff & Charles J. Crimmins, *Lost in Translation: Texas Notary Public v. Mexico Notario Publico*, TEX. SEC'Y OF STATE STATUTORY DOCUMENTS, <http://www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml> (last visited May 13, 2008) (comparing the qualifications, powers and duties, and fees charged by Mexican and Texan notaries).

24. DENNIS JOHN PEYTON, *HOW TO BUY REAL ESTATE IN MEXICO* 93-94 (3rd ed. 2006); Pasero & Torres, *supra* note 23, at 799.

a deed for the property.²⁵ Because the certificate states that there are no competing ownership rights or debts left to be paid off, there may be no need to purchase title insurance to indemnify a buyer. If a title search has been conducted and a notary is willing to go forward with the transaction, it may be duplicative to pay thousands of dollars for additional protection.

In addition, notaries are vested with the public faith. As result, all documents they review are presumptively valid.²⁶ Not only must the notary certify the legal accuracy and completeness of the documents in the transaction, but these documents are also considered true and legal in Mexican courts.²⁷ Notaries also help facilitate the freezing of the registry file while a real estate transaction is taking place.²⁸ The process begins when a notary requests the certificate of freedom from liens.²⁹ After this is done, the registrar makes a series of notations in the registry file preventing others from recording competing rights while the notary is finalizing the transaction.³⁰ Additionally, if the transaction is completed quickly enough, the effective date of the property right relates back to the date either when the notary requested the certificate of freedom from liens or when the second notation was made.³¹ This process seems to insulate those in the transaction from having to deal with competing rights that may be recorded during the same period.

25. Código Federal de Procedimientos Civiles [C.F.P.C.] [Federal Civil Procedure Code], arts. 129-30, Diario Oficial de la Federación [D.O.], 24 de Febrero de 1942 (Mex.); C.C.F. art. 3016; PEYTON, *supra* note 24, at 94; TOM KELLY & MITCH CREEKMORE, CASHING IN ON A SECOND HOME IN MEXICO 35-36, 180 (2005).

26. Armando J. Tirado, *Notarial and Other Registration Systems*, 11 FLA. J. INT'L L. 171, 172 n.3 (1996); *see also* Malavet, *supra* note 23, at 444 (stating that a document executed by a notary is deemed authentic, executory, proof of the facts asserted therein and cannot easily be challenged).

27. Martin, *supra* note 21, at 518; Rona R. Mears, *Contracting in Mexico: A Legal and Practical Guide to Negotiating and Drafting*, 24 ST. MARY'S L.J. 737, 753-54 (1993).

28. C.C.F. art. 3016 (stating that after the notary has requested the Certificate of Freedom from Liens, the registrar shall "immediately make a presentation notation on the corresponding page of the registry book, which notation shall be effective for a term of thirty calendar days from the date of the presentation of the request").

29. *Id.*

30. *Id.*

31. *Id.* ("If the notification is given within the term of thirty days . . . its precautionary effects shall be retroactive to the date of presentation of the request . . . in the contrary case, it shall produce effect from the date on which it was presented, and in accordance with the entry number corresponding thereto.").

Nevertheless, some people in the title insurance industry claim that problems still occur, that no one sues notaries, and that notaries have no legal obligation to pay for damages they cause.³² Additionally, those in the industry state that when the registry and the notary are in conflict, despite the notary's power of public faith, the registry will prevail because the notary's power only extends to the events that take place before him.³³ Those in the industry argue that this means that notaries cannot and do not cure title and that the Mexican Supreme Court has made this clear.³⁴ Additionally, freezing the property file may not prevent all problems the buyer may face, as problems with the property may have occurred before the buyer began the process of acquiring the property. In that case, the buyer would still have a legal duty to pay lien holders.

Furthermore, Carlos Ibarra-Fernandez, an American real estate attorney, and Jose Ognacio Moreno-Ortiz, a Mexican real estate attorney, note that Article 3009 of the Mexican Civil Code may have decreased the legitimacy of the *Registro Publico*, as well as the public faith.³⁵ They point out that the provision only gives "bona fide" purchasers a weak presumption of a right to property if rights of the person who granted him the property are invalidated.³⁶ This is because the bona fide purchaser has a right to title only after his right has been recorded and only if the grantor's right is not later annulled by a defect in the inscription. They also argue that while a purchaser may be protected by a notary's good faith search of the Public Registry, the public faith applies only to the notary's legal act of perfecting any agreements and transfers and not to

32. Telephone Interview with Mitch Creekmore, Senior Vice President—Bus. Dev., Stewart Int'l, in Houston, Tex. (Nov. 11, 2006) (stating that because notaries are governor-appointed and have a legal obligation to determine the property rights of the parties, they are never sued; that notaries have no legal responsibility to pay a buyer back for losses on a transaction; and that a buyer could go after the *collegio* or bond fund of the notaries, however, it is unclear what one would have to prove to get a remedy).

33. C.F.P.C. art. 202; Telephone Interview with Bill Signet, President LandAmerica Serv. of Mex., S.A. de C.V. & Country Dir.-Mex., LandAmerica Fin. Group, Inc. in L.A., Cal. (Jan. 11, 2007) (stating that notaries may assert the public faith as to events they witnessed, the existence of documents, the content of a contract, signatures of the parties, the existence of official acts, and due representation of an agent on behalf of a principal).

34. Telephone Interview with Bill Signet, *supra* note 33.

35. C.C.F. art 3009 ("Recordation protects the rights acquired by third parties acting in good faith, once recorded, even if the rights of the transferor are thereafter annulled or dissolved, except when the ground for nullity clearly results from the recorded instrument itself. The provisions of this article shall not be applied to gratuitous contracts, nor to acts or contracts that are executed or made in violation of law."); Carlos Ibarra-Fernández & José Ignacio Moreno-Ortiz, *Current Trends in Real Estate Title Insurance in Mexico*, 2005 A.B.A. SEC. INT'L L. MEX. COMM. 1, 4 n.10.

36. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 4 n.10.

the process in which the documents were created.³⁷ Therefore, the public faith does not protect buyers against documents executed by fraud or undue influence.

To summarize, because Mexican real estate transactions require significantly more formality than those in the United States, purchasers of Mexican property are more protected than purchasers in the United States who do not purchase title insurance. The notary serves as a neutral intermediary between the parties and certifies the validity of all the documents relating to the transaction.³⁸ The notary also helps freeze the property file which prevents competing rights from being recorded during the transaction. However, the buyer must still contend with any rights recorded before the transaction was initiated. Additionally, according to the title insurance companies, there are some questions about whether a notary will be personally liable for damages he causes and about how far the public faith extends to protect real estate purchasers. These gaps in protection may cause problems for purchasers.

3. *Civil Remedies Against and Criminal Sanctions for Public Registry Officials and Employees Who Make Errors*

Moreover, Mexican law provides a third level of protection for those who buy property there: the liability of workers of the Public Registry. Under Mexican law, both officials and employees charged with the management of the Public Registry are civilly liable and may be criminally liable if they abuse the property registration system.³⁹ Article 3003 of the Mexican Civil Code provides that members of the registry will be liable if they: (1) refuse to accept a title document or fail to enter it in the order of its presentation; (2) make a wrongful entry or refuse to make an entry without just cause; (3) delay without good cause the making of a required entry; (4) commit errors, distortions, or omissions in the entries or on the certifications that they issue; or (5) fail to issue a certification within the required timeframe.⁴⁰ If a mistake is made, Article 3004 bars the guilty employee from returning to work at the

37. *Id.*

38. KELLY & CREEKMORE, *supra* note 25, at 186; *see generally* Malavet, *supra* note 23 (comparing the Latin notary to Justice Louis D. Brandeis' "counsel for the situation"); Meya, *supra* note 4, at 58 (stating that it is uncommon in Mexico for both parties to have counsel in a land transfer).

39. C.C.F. art. 3003.

40. *Id.*

registry until he has paid for the damages he has caused. Additionally, if a buyer believes the registrar has incorrectly assessed the conformity and sufficiency of the documents he presents to be recorded, he may apply for review by the director of the Public Registry.⁴¹ If the director affirms the determination, the injured party may also seek judicial review of the assessment.⁴²

The protection afforded by the liability of employees of the registry is arguably the strongest protection for foreign buyers. However, a purchaser may find it difficult to recover against the employee or registry official because he is hard to find, has no assets, or is unreachable by the courts. Additionally, the idea that the registry worker may not return to work until he has paid his debt to the injured party cuts both for and against the value of title insurance. A corrupt employee, once caught, will not be able to return to work and will be prevented from causing additional harm to other property owners. Additionally, the provision may have a deterrent effect on workers who are tempted to commit dishonest acts or likely to be careless. On the other hand, it seems to be an odd solution to prevent the worker from earning an income because the injured party will likely have to wait longer to receive restitution. Because the worker may not return to work until his debt is paid, but may not make money until he returns to work, it seems to be a distinct possibility that a wronged buyer will never be made whole.

Finally, there is some concern about the validity of information found in the registry as discussed *infra*. If the data in the registry is incorrect, it may not be the fault of the employee that the purchaser faces an adverse claim on his property. In such cases, the remedy under Article 3003 is useless to the buyer. Further, those in the title insurance industry argue that the certificate of freedom from liens, which is based on the data in the registry, provides the buyer with little protection. They assert that the title search used to support the certificate may go back only about 5-10 years.⁴³ Moreover, they argue that the document has no legal effect and will not protect a buyer when the information included therein is incorrect.⁴⁴

In conclusion, it seems that while there may be gaps in the protection afforded by Mexican law, the existence of three independent layers of protection indicates that title insurance in Mexico may be superfluous.

41. *Id.* art. 3022.

42. *Id.*

43. *But see* Telephone Interview with Bill Signet, *supra* note 33 (stating that the certificate of freedom from liens can be procured, depending on the state, to go back to various periods of time).

44. *Id.* (stating that Mexico is not a "Torrens" jurisdiction and, as such, a *certificado* does not bestow or guaranty title).

The strongest argument against the protections afforded by Mexican law is that the buyer will not be able to successfully recover against a Mexican seller or registry employee because he cannot be found or lacks assets. Additionally, he may not be able to recovery from a notary who was incorrect about the state of title. Moreover, the buyer may have a difficult time having the provisions of Mexican law enforced in the country. However, it is not likely that the buyer will run into these problems in all transactions, and it seems that buyers are afforded some level of protection by the three levels of safeguards provided by Mexican law.

*B. Hiring a Mexican Law Firm to Perform
a Title Search Instead of Purchasing Title Insurance*

Because there is some uncertainty about the protections afforded by Mexican law, American investors and those advising them should consider obtaining a title opinion from a Mexican attorney if they do not purchase title insurance. Attorneys at Mexican law firms can and often do perform title searches for prospective buyers and provide their legal opinion as to the state of title.⁴⁵ This practice is common when the buyer has purchased title insurance but can be used when the buyer has not purchased title insurance.⁴⁶ Many title insurance companies require a law firm to examine the title history back to 1917 or to the sovereign of the land, thereby insuring that issues not necessarily covered by the notary's search are investigated.⁴⁷ Many argue that a notary's search typically does not go back that far. Since this measure is already being employed by many title insurance companies, a buyer could "cut out the middleman" and personally hire the Mexican law firm.

Having a law firm conduct an extensive search is a significant protection for a buyer. By reviewing the Mexican attorney's opinion,

45. Mitch Creekmore & Hector Barraza, *Real Estate Title Protection in Mexico*, NAT'L L. CTR. FOR INTER-AM. FREE TRADE, 1997, <http://natlaw.com/interam/ar/rp/sp/sparrp2.htm>.

46. See Meya, *supra* note 4, at 59 (arguing (1) that depth of a title search will depend on the value of the transaction, the history of the land, and whether the Mexican attorney knows the seller; and (2) that the Mexican attorney's personal knowledge of the history of the land and the seller can be invaluable).

47. Creekmore & Barraza, *supra* note 45; see Wiesley, *supra* note 8 (stating that an attorney's search often includes items that a notary will not cover, such as an agrarian search to verify that the property is not *ejido*, a search for the presence of utilities and lack of public improvement surcharges on the property, a visit to the property to determine the existence of squatters, and supervising other external factors).

the buyer can be sure that the various elements of the property transfer, such as title documents, development permits, municipal approvals, survey issues, recordation and registry compliance, taxes, and the conveyance procedure of the public notary are all in order. Mexican law firms can typically complete the examination process within 30 days.⁴⁸ Such an opinion provides an additional layer of protection from adverse claims to those who are interested in purchasing Mexican property and may serve as a viable alternative to title insurance.

*C. The Difficulty in Maneuvering Mexican Courts a
Justification for Buying Title Insurance?*

Despite the protection afforded by Mexican law, a buyer who encounters a problem regarding the title of his property will have to argue his claim in a Mexican court. However, if he buys a title insurance policy, not only will the title insurance company argue in a Mexican court on his behalf, but the rights and obligations of the title insurance company can be decided in America. This reason alone may provide justification for a foreigner to buy title insurance for his Mexican property.⁴⁹ A property owner may find it much easier to file a claim with his title insurance company and avoid navigating the maze of an unfamiliar legal system, so much so that this may be enough to justify the purchase of title insurance.

In addition to the difficulty associated with the language barrier and foreign judicial system, the short statute of limitations in Mexico is also an obstacle to recovery there. The statute of limitations for a buyer to bring a claim for hidden defects is six months from delivery of the property.⁵⁰ Additionally, if a buyer encounters hidden liens or mortgages, he must institute his claim within either one year of the date the contract was perfected or one year from the date he learned the property was subject to the encumbrance.⁵¹ If a buyer is not aware of the statute of limitations and does not file a claim within the appropriate period, he may be barred from recovery, even if he did not receive a fair deal.

48. Creekmore & Barraza, *supra* note 45.

49. But see Jeffery G. Boman, *Do Foreigners Need Title Insurance in Mexico?—An Analysis of U.S. Title Insurance and Mexican Real Estate Law* 33 (Berkeley Electronic Press, Working Paper No. 1836, 2006) (arguing that those planning to live in Mexico do not need title insurance so long as the transaction is formalized by a Public Notary and recorded in the Public Registry but that those who do not plan to live in Mexico may need title insurance because if an issue arises they will be less familiar with the court system and there will be more practical problems associated with bringing a claim).

50. Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, art. 2149, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex).

51. *Id.* arts. 2138, 2139; Wiesley, *supra* note 8, at 9.

Title insurance on properties in Mexico also simplifies the indemnification process, especially for buyers who do not live permanently in Mexico or speak the language. Instead of maneuvering through the Mexican legal system, the purchaser can file a claim with his insurance company and have the title company's obligations decided under American laws in the United States. Enrique Hernandez, an attorney in San Diego, California with Procopio, Cory, Hargreaves, & Savitch LLP authorized to practice in the United States and Mexico, counsels his clients to obtain title insurance for their properties in Mexico for this reason. He says that to the extent his clients can avoid bringing an action in Mexico against the seller, Mexican notary, or local recorder's office and "know that [they] will get indemnified by the title insurance company in the US . . . [he is] a convert and believer on the benefits of purchasing title insurance for Mexican transactions."⁵² Because the claims process is comparatively simple, if for no other reason, some real estate professionals are recommending to their clients that they buy title insurance in Mexico.

The United States government is also concerned about the prospect of its citizens engaging in legal battles in Mexico. The government states that Americans who purchase property in Mexico may face "property disputes with Mexican citizens [where they are not] treated evenhandedly by Mexican criminal justice authorities and in the courts."⁵³ The Bureau of Consular Affairs warns that American citizens should exercise

52. E-mail from Enrique Hernandez-Pulido, Associate, Procopio, Cory, Hargreaves & Savitch LLP, to author (Nov. 9, 2006) (on file with author).

53. U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, CONSULAR INFO. SHEET, MEX., (Sep. 23, 2007), <http://www.travel.state.gov> (follow "International Travel" hyperlink; then follow "Country Specific Information" hyperlink under "International Travel Information"; then follow "Mexico (09/13/2007)" hyperlink) ("Investors should hire competent Mexican legal counsel when contemplating any real estate investment. Mexican laws and practices regarding real estate differ substantially from those in the United States. Foreigners who purchase property in Mexico may find that property disputes with Mexican citizens may not be treated evenhandedly by Mexican criminal justice authorities and in the courts. Time-share companies cannot be sued in U.S. courts unless they have an office or other business presence in the U.S. Consumers should contact a Mexican attorney, the Mexican consumer protection agency PROFECO, or other consumer information agency for information on companies that operate outside of the U.S. . . . U.S. citizens are vulnerable to title challenges that may result in years of litigation and possible eviction. Although title insurance is available in the Baja Peninsula and in other parts of Mexico, it is virtually unknown and remains untested in most of the country. In addition, Mexican law recognizes squatters' rights, and homeowners can spend thousands of dollars in legal fees and years of frustration in trying to remove squatters who occupy their property.").

“extreme caution” before buying property in Mexico and hire competent legal counsel when contemplating any real estate investment.⁵⁴ They suggest that Americans should be very cautious when investing in property there and be aware of the risks “inherent in purchasing real estate in Mexico.”⁵⁵

However, buyers may not realize what they will actually receive if they file a claim with their title insurance company. While the obligations of the title insurance company will be adjudicated in an American court and the property dispute will be handled by the title insurance company in a Mexican court, there is no guarantee that the title insurance company will prevail in the Mexican court. In fact, although the title insurance companies have experts who handle claims, the success rate will likely be lower in Mexican courts than in American courts because of the title insurance company’s lower level of familiarity with the foreign court system. If the title insurance company loses, buyers will receive compensation from the title insurance company, but they will be evicted from their Mexican home. In terms of being able to keep their property, they may have only a little more protection than they would have had if they had not purchased a policy. This is especially true when considering the potential for monetary compensation under Mexican civil law.

D. Differences in the Mexican Property Law System Suggest the Use of Title Insurance in Mexico Unless a Buyer and His Advisor are Informed and Understand Mexican Law

Mexican property law differs from American property law in several important ways. One of the most important distinctions is that Mexico classifies and regulates its property in a number of different ways. As result, a buyer must be careful to identify the nature of the seller’s title and determine whether the seller can legally transfer his rights in the land.⁵⁶ The most notable types of restricted land are land in the restricted zone, ejido land, and federal maritime land.

54. *Id.*

55. *Id.*

56. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 3.

1. Foreigners Cannot Directly Own Land in the Restricted Zone

The restricted zone is composed of all land located within 100 kilometers of the Mexican border or 50 kilometers of the coastline.⁵⁷ This makes up about 40% of the country's territory.⁵⁸ The restricted zone is significant because Article 27 of Mexican Federal Constitution prohibits any person other than a Mexican citizen from owning property there.⁵⁹ Additionally, the Mexican Foreign Investment Law regulates ownership in the restricted zone.⁶⁰ It states that Mexican corporations can own commercial property within the zone, and may own residential property therein if they limit their shareholders to Mexican citizens in their bylaws.⁶¹

Additionally, foreign investors may purchase residential property and own it indirectly through a *fideicomiso*, or Mexican trust.⁶² This practice

57. Patrick W. Martin & Enrique Hernandez-Pulido, *How Do You Say "FIRPTA" In Spanish? A Comparative International Tax Analysis For Foreign Investors of U.S. & Mexican Real Estate*, 13 CAL. TAX LAW. 8, 15 (2004).

58. VARGAS, *supra* note 7, at 352.

59. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art 27(1), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.) ("Only Mexicans by birth or by naturalization and Mexican commercial societies . . . [may] acquire ownership of lands, waters and their accessions, or to obtain concession of the exploration of mines and waters. The State may grant the same right to foreigners, provided they agree before the Secretariat of Foreign Affairs to consider themselves as national with respect to said properties and not to invoke the protection of their governments in matters relating thereto; under penalty, in case of violation of the agreement, of forfeiting to the benefit of the Nation the properties they had acquired by virtue of said agreement. Under no circumstances may foreigners acquire ownership of lands or waters within a strip of one hundred kilometers along the border and fifty kilometers along the coastline"); VARGAS, *supra* note 7, at 352. Additionally, foreigners may not directly own property in any part of Baja California or Baja California Sur. See Martin & Hernandez-Pulido, *supra* note 57, at 15; VARGAS, *supra* note 7, at 353.

60. Martin & Hernandez-Pulido, *supra* note 57, at 15. See Pasero, *supra* note 23, at 796-803, for information regarding rules for the acquisition of real estate in Mexico; the restricted zone; the new foreign investment law; common real estate contracts used in Mexico; promissory agreements; reserve title and installment sales agreements; real estate trusts; requirements of closing and executing transactions; the certificate of no encumbrances; certificate of no property tax liability; the notary public and recordation system; and taxes.

61. Martin & Hernandez-Pulido, *supra* note 57, at 15.

62. Ley de Inversión Extranjera [L.I.E.] [Foreign Investment Law], art. 11, Diario Oficial de la Federación [D.O.], 27 de Diciembre de 1993 (Mex.); Martin & Hernandez-Pulido, *supra* note 57, at 15; VARGAS, *supra* note 7, at 355-58 (stating banks must first obtain a permit from the Mexican Secretariat of Foreign Affairs before they are able to set up a *fideicomiso* for foreign investors, and that parties to the *fideicomiso*

was not allowed until 1971 when Mexican President, Luis Echeverría, signed an agreement allowing Mexican financial institutions to own property in the restricted zone as fiduciaries for foreign investors.⁶³ *Fideicomisos* typically last 50 years and may be renewed for an additional term, providing foreign investors with approximately 100 years of beneficial ownership.⁶⁴ Foreign beneficiaries may also grant the land in the restricted zone through inheritance, lease it for periods of less than ten years, or cede it to a third party.⁶⁵

Additionally, several types of *fideicomisos* are prohibited by Mexican law, and there are severe penalties associated with violating Mexican law provisions related to the restricted zone.⁶⁶ The Mexican government may sanction those involved in an illegal transaction up to the amount of the value of the investment.⁶⁷ Therefore, potential buyers and their advisors should be aware of this basic difference in Mexican property law.

2. Before 1992, Ejido Land Was Owned by the Mexican Government and Was Not Transferable

Ejido land is notable in that before 1992, the rural property could not be alienated by those who farmed it. The Mexican Federal Government granted agrarian land taken from the wealthy to communal farmers after the Mexican revolution in 1917.⁶⁸ The government retained ownership of agrarian land, however holding it for the benefit of Mexican

are the trust company, the trustor, and the beneficiary—in Spanish, the *fideicomitente*, the *fiduciario*, and the *fideicomisario*, respectively).

63. VARGAS, *supra* note 7, at 355.

64. See *id.* at 355 (stating that a buyer may receive an extension if he submits an application to the Secretariat of Foreign Affairs one year before the expiration of the original land grant). For a detailed list of what is required in a *fideicomisario* application, see Juan F. Moreno, *Closing the Deal: Buying Residential Land in Mexico's "Restricted Zone,"* 38 ARIZ. ATT'Y 30, 31-35 (2002).

65. VARGAS, *supra* note 7, at 355.

66. The Ley General de Títulos y Operaciones de Crédito prohibits secret trusts, those that benefit several successive individuals who must be substituted by the death of the preceding individual, and those that last over 30 years in Mexican mercantile societies. Ley General de Títulos y Operaciones de Crédito [L.G.T.O.C.] [General Law of Negotiable Instruments and Credit Operations], art. 359, Diario Oficial de la Federación [D.O.], 27 de Agosto de 1932 (Mex.); VARGAS, *supra* note 7, at 353, 358; Martín & Hernández-Pulido, *supra* note 57, at 15.

67. Martín & Hernández-Pulido, *supra* note 57, at 15.

68. Roger Magazine, *An Innovative Combination of Neoliberalism and State Corporatism: The Case of a Locally Based NGO in Mexico City*, 590 ANNALS AM. ACAD. POL. & SOC. SCI. 243, 250 (2003); see Jorge A. Vargas, *NAFTA, the Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L.J. 1, 14, 21-22 (1994).

citizens.⁶⁹ As a result, there was no individual property ownership in the *ejido*, and the land could not be transferred.⁷⁰ In 1992, the Mexican government enacted a Constitutional Amendment which enabled those interested in buying and selling *ejido* land to privatize it.⁷¹ This legislation gave holders of the *ejidos* the legal right to purchase, sell, rent, or use their land as collateral and gave private companies the right to purchase land from *ejido* farmers.⁷² Today, interested buyers and their advisors must be certain that if the land in which they are interested is or was *ejido* land that it has been fully privatized.⁷³

3. Federal Maritime Land Zone is Owned by Mexico

Additionally, there is another type of property that cannot be held by individuals in Mexico—the beach. Unlike in the United States where coastal property owners may hold title to the beach near their homes, beachfront land in Mexico belongs to the nation.⁷⁴ Article 27 of the Constitution deems coastal areas to be “inalienable, imprescriptible,”

69. For the background and history of *ejido* land and Mexico's reform of its Agricultural Land System see Guillermo Marreno & Douglas J. Renert, *The Long and Winding Road: An Overview of Legislative Reform on Mexico's Road to a Global Economy*, 1 SW. J. L. & TRADE AM. 77 (1994).

70. See Vargas, *supra* note 68, at 21. See also Marreno & Renert, *supra* note 69, at 91-92 (“The constitutional drafters were so anxious to avoid the reappearance of large land holdings that they prohibited the peasants who owned these *ejidos* from selling, renting, or pledging, the land as collateral for loans. These restrictive policies left the peasants with the options of either using the land themselves or abandoning the land and moving to the city.”).

71. Vargas, *supra* note 68, at 14; Gary D. Thompson & Paul N. Wilson, *Ejido Reforms in Mexico: Conceptual Issues and Potential Outcomes*, 70 LAND ECON. 448, 448 (1994); see KELLY & CREEKMORE, *supra* note 25, at 58-59 (describing the regularization process); see also Mitch Creekmore, *Ejido Land vs. Private Property—What's the Difference?*, ARIZ. J. REAL EST. & BUS., Mar. 2000, at 1, 1-2 (identifying eight steps that the buying public should be aware of in order for *ejido* land to be privatized).

72. Robert Paul Maddoz, “Today We Say, Enough!” *The Zapatista Rebellion, Autonomy, and the San Andres Accords*, 1 REGENT J. INT'L L. 47, 55 (2003); Marreno & Renert, *supra* note 69, at 91 (stating that the reforms allowed individuals and companies to have full ownership rights over what was formerly communal land, to form joint ventures on *ejidos* to develop or farm the land, and allowed direct foreign investment in the *ejido* sector).

73. See KELLY & CREEKMORE, *supra* note 25, at 59 (stating that the regularization process may be difficult to complete and even when an *ejidatario* or group of *ejidatarios* want to transfer their land, they must first offer all other *ejidatarios* the right of first refusal). *Ejido* land was at issue in the Punta Banda evictions. See Maxfield, *supra* note 1.

74. VARGAS, *supra* note 7, at 384.

resources that cannot be used “except through concessions granted by the Federal Executive.”⁷⁵ These coastal areas are part of the Federal Maritime Land Zone that consists of all land within a 20 meter strip of high tide and the lower edge of the sea.⁷⁶ As a result, no private beaches exist in Mexico, and landowners cannot erect any structures on coastal land including fences or walls that would deprive people of access to the beach. Buyers should be wary of this fact before making plans for their coastal properties.

E. Differences in Adverse Possession in Mexico from the United States

Another way that Mexican property laws differ from American laws is on the issue of adverse possession. In Mexico, the period for adverse possession is as little as five years.⁷⁷ In the United States, with the notable exception of California and a few other states, the period is typically much longer.⁷⁸ Further, in the United States, possession must be open, notorious, continuous, and adverse to the interests of the rightful owner. In contrast, someone can acquire land in Mexico by prescription while in good faith possession of it.⁷⁹ Those who act in bad faith acquire title to the property after a longer period of time—ten years.⁸⁰

Moreover, those in Mexico who claim adverse possession to land can have their right recorded in the public registry and obtain title five years after their right was recorded.⁸¹ They can also apply to a judge to establish title by inscription.⁸² However, adverse possession does not apply to *ejido* or federal zone lands; between spouses, parents and children, incapacitated persons and guardians, and co-owners; or against soldiers at war.⁸³ A potential buyer should be aware of these differences.

75. Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art 27, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.); VARGAS, *supra* note 7, at 384.

76. VARGAS, *supra* note 7, at 385.

77. Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, arts. 1151-52, 3048, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex); Gerrit Steenblik, *Mexico Real Estate Law: An Overview*, NAT'L L. CTR. FOR INTER-AM. FREE TRADE, 1997, www.natlaw.com/interam/mx/rp/sp/spmrxp3.htm.

78. See, e.g., CAL. CIV. PROC. CODE §§ 318-319 (West 2006).

79. C.C.F. art. 3048; C.C.F. art. 1135 (“Prescription is a means of acquiring property . . . by the passage of a certain length of time . . .”); C.C.F. art. 1136 (“The acquisition of property by virtue of possession is called positive prescription.”); Steenblik, *supra* note 77 (“In Mexico, the concept of adverse possession is referred to a ‘prescription.’”).

80. Steenblik, *supra* note 77.

81. C.C.F. art. 1156; Steenblik, *supra* note 77.

82. C.C.F. art. 1156.

83. Steenblik, *supra* note 77.

*F. Differences in and Problems with the Registro Publico de la
Propiedad, or Public Registry, Make Title
Insurance More Valuable*

Another major difference between the Mexican and American real property systems is the organization of the *Registro Publico de la Propiedad* in Mexico. Although there are similarities between the two systems, specifically, both are based on notice and the principle of first in time, first in right, there are several differences that make the Mexican system difficult to navigate for a foreign investor.⁸⁴ These include its poor organization, the unreliability of its data, and a lack of pertinent information in the record.

Many people claim that most problems with the Mexican property system relate back to its Public Registry. One of those problems is that the registration system is not centralized. As a result, the organization and rights recorded may differ between states and some records may be unavailable. Additionally, if an area is too small to have a registry, those inquiring about a property may have to travel long distances to obtain pertinent information.

*1. Variance Between States in Organization and When
and How Rights are Recorded*

A major problem with the Mexican property registry system is that public registries often vary between Mexican states. First, only some states have registries that are centralized.⁸⁵ Second, many registries record competing rights to a piece of land.⁸⁶ These differences from the American system can cause problems for those investing in real estate in Mexico.

While each municipality in Mexico usually has an office of the Public Registry, these offices are typically not affiliated with a central office.⁸⁷ A few states such as Baja California, Tamaulipas, and Morelos have

84. C.C.F. art. 3013; Tirado, *supra* note 26, at 183-84; *see also* 66 AM. JUR. 2D *Records and Recording Laws* § 39 (2008) (describing the common law "first in time first in right" idea and noting that "the recording of titles has become so thoroughly imbedded in our system of dealing with lands that a title that cannot be traced and established by some form of public record is practically unmerchantable").

85. PEYTON, *supra* note 24, at 80.

86. Wiesley, *supra* note 8, at 8.

87. C.C.F. art. 2999; PEYTON, *supra* note 24, at 80.

centralized their Public Registries.⁸⁸ However, many other registries are not centralized within their states. Also, Mexico does not have a nationally centralized registry to facilitate the cross checking of information.

Additionally, Mexican states only create new registries when the population within their borders reaches a critical mass.⁸⁹ As such, only when growth in a certain region mandates the creation of a new registry will the state create a new office.⁹⁰ This can cause problems in small, remote, developing areas where there are no registry offices nearby. Those involved in transactions in such locales may have to travel long distances to obtain information about the property which they are interested in purchasing. However, that is not the norm as the majority of Mexican states have multi-recording districts.⁹¹

Another problem with the Mexican land registry system is that different registries may record competing rights to a piece of land or documents may be recorded out of order.⁹² To attempt to remedy this issue, employees of the registries often make notes in the "right hand margin" of the property file to cross-reference title interests in different sections of the registry.⁹³ Unfortunately, these notes are often cryptic, vague, or hard to understand.⁹⁴ If a mistake is made and the buyer is harmed, however, he may seek restitution from the employee who made the mistake.⁹⁵

2. Unreliable Data: Some Pertinent Information is Not Kept in the Registry, Not All Registries are Up to Date, and Access to Data is Sometimes Limited

Another problem with the Mexican Public Registry is that its data may not be reliable. A buyer may go through all the recommended steps for a Mexican transaction and still not be sure if he rightfully owns the property that he purchased. In fact, the American government has

88. These states have main registry offices in their respective state capitals. PEYTON, *supra* note 24, at 80.

89. Telephone Interview with Mitch Creekmore, *supra* note 32 (stating that registries are federal but created at the local level and tied to the state). For example, 20 years ago there was no registry in Puerto Penasco. The nearest registry was in Caborca, four hours to the south. Additionally, there is currently no registry in Todos Santos. The closest registry is in Cabo San Lucas. *Id.*

90. *Id.*

91. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 2 (stating that each municipality within a Mexican state has its own recording clerk).

92. See Wiesley, *supra* note 8, at 8-9.

93. See Código Civil Federal [C.C.F.] [Federal Civil Code], as amended, art. 3001, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex.); Wiesley, *supra* note 8, at 9.

94. Wiesley, *supra* note 8, at 9.

95. C.C.F. art. 3003.

warned buyers about Mexico's system. American officials have called Mexico's land record system "murky" and warned Americans that it may expose them to "complex title dispute[s] in courts that might not give them a fair shake."⁹⁶ The uncertainty of registry data causes a variety of problems. Not only does it impose an unneeded burden on professionals in the real estate industry, but the unreliability of data negatively impacts foreign investment in Mexico.

Those people considering buying property in Mexico represent only a portion of the investors who are worried about the certainty of data in the public registry. Foreign lenders are reluctant to enter the Mexican market because the registry does not contain reliable data for the confirmation of comparable sales.⁹⁷ Further, the market for securitization of mortgages will not expand in Mexico until financial institutions can be sure that the title to the properties in which they have invested is secure.⁹⁸

One factor leading to the unreliability of data is the large amount of pertinent information that is not contained in the record. The public registry generally does not contain any information regarding concessions granted in connection with land.⁹⁹ It also does not contain information regarding ownership rights based on informal deeds or verbal contracts.¹⁰⁰ Further, the protections of the registry do not apply to gratuitous contracts or those made or executed in violation of the law.¹⁰¹ Additionally, the registry is not always up to date in certain areas making information from those areas harder to obtain.¹⁰² Moreover, officials sometimes limit access to certain public records.¹⁰³ These factors increase the chances that information retrieved may be inaccurate. Registry officials do have

96. Dickerson, *supra* note 2.

97. KELLY & CREEKMORE, *supra* note 25, at 212.

98. See Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 7.

99. Steenblik, *supra* note 77.

100. Wiesley, *supra* note 8, at 8.

101. Código Civil Federal [C.C.F.] [Federal Civil Code], *as amended*, art. 3009, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1928 (Mex).

102. PEYTON, *supra* note 24, at 81.

103. See KELLY & CREEKMORE, *supra* note 25, at 214; *but see* C.C.D.F. art. 3001 ("The Registry shall be public. The persons in charge thereof have the obligation of allowing persons requesting it to acquire information of the entries in the pages of the Public Registry as well as of the documents relating to the recordings on file. They shall also have the obligation of extending certified copies of the recorded instruments or notation records in the pages of the Public Registry, as well as certificates of whether or not there are entries relating to the assets that are noted.").

an obligation to allow access to information in the registry,¹⁰⁴ however, this does not always happen. These factors all lead to the notion that the data in the registry may not be reliable.

V. BACKGROUND INFORMATION ON TITLE INSURANCE

A. *The Actual Insurance Policies Offered by the Four Largest Providers*

Four major title insurance companies offer coverage for properties in Mexico: Stewart Title, LandAmerica, Fidelity National, and First American. Each company currently offers a policy that is similar to the 2006 American Land Title Association (ALTA) homeowner's policy issued in the United States.

1. *Stewart Title*

Stewart Title *Guaranty de Mexico, S.A. de C.V.* has been issuing policies on Mexican real estate for over 14 years.¹⁰⁵ The policy issued by Stewart Title *Guaranty de Mexico, S.A. de C.V.* covers losses or damages incurred by the Insured by reason of many of the same issues affecting American title to property. The company offers policies on both commercial and residential land. One difference from Stewart's policy and that of other companies is the inclusion of coverage for loss by reason of an *ejido* or communal land of the United Mexican States.¹⁰⁶ Additionally, three notable exclusions are (1) situations of fact or law, not recorded, that could be ascertained by inspection of the realty; (2) easements and labor liens not recorded in the Public Record; and (3) losses incurred as result of a taking by the Mexican government unless notice of the taking is recorded in the Public Record.¹⁰⁷ The policy in its

104. See C.C.F. art. 3001.

105. Stewart Title is the only title insurance company the Mexican Government has allowed to operate as a Mexican title insurance underwriter. The National Commission on Bonds and Insurance authorized Stewart Title *Guaranty de Mexico, S.A. de C.V.* to incorporate in, issue, and respond to insurance policies in Mexico. Those who buy insurance policies in Mexico from someone not authorized by the Mexican government to issue them may be subject to penalties for violating Mexican insurance law. See Weisberg, *supra* note 10; Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 3; Telephone Interview with Mitch Creekmore, *supra* note 32. Stewart Title *Guaranty de Mexico, S.A. de C.V.* is the only Mexican title insurance underwriter that can issue policies to Mexican citizens, banks, corporations, and the Mexican Government. Telephone Interview with Mitch Creekmore, Senior Vice President—Bus. Dev., Stewart Int'l, in Houston, Tex. (Jan. 3, 2008).

106. CARLOS ODRIÓZOLA MARISCAL, *EL SEGURO DE TÍTULO INMOBILIARIO*, 263 (2006).

107. See *id.* at 267, 269.

entirety can be found in the appendix to Carlos Odriozola Mariscal's 2006 book *El Seguro De Titulo Inmobliario*.¹⁰⁸

One advantage touted by Stewart Title is the issuance of an invoice or *factura* along with its policy.¹⁰⁹ Once the *factura* is presented to a notary and recorded in the Public Record, it is added to the buyer's basis.¹¹⁰ As result, the buyer pays less capital gains tax, which is currently set at a 29% rate in Mexico.¹¹¹ This is something buyers should consider when determining from which company to purchase title insurance.

2. LandAmerica Title Services de Mexico

LandAmerica Title *Services de Mexico* issues title insurance policies only for commercial properties in Mexico. As of November 2006, LandAmerica was changing its cross-border policy to resemble the 2006 ALTA policy.¹¹² When completed, the policy should closely resemble the 2006 ALTA policy with several key differences. The American policy addresses bankruptcy issues under American law while the Mexican policy will make adjustments for Mexican bankruptcy law.¹¹³ Because eminent domain does not exist in Mexico, the Mexican policy removes that coverage from the 2006 ALTA policy.¹¹⁴ As result, the Mexican policy offers one coverage for expropriation at the state and federal level. Except for these differences, the LandAmerica policy for Mexico contains 90% the same content that is found in the 2006 ALTA policy.

108. *Id.*

109. Telephone Interview with Mitch Creekmore, *supra* note 32 (stating that the *factura* does not need to be recorded).

110. *Id.* (noting that there are conflicting opinions about whether a notary will accept a *factura* to increase the basis of residential property but that a basis increase clearly will result on corporate property).

111. *Id.*

112. E-mail from Bill Signet, President of LandAmerica *Serv. of Mex., S.A. de C.V.*, to author (Oct. 30, 2006) (on file with author).

113. Telephone Interview with Bill Signet, *supra* note 33 (stating U.S. bankruptcy laws specific to avoidance of fraudulent transfers are not included in the Mexican policy, neither are M & N liens as they do not exist in Mexico, and that Mexican estate taxes are not an issue in Mexico contrary to the belief of some investors).

114. *Id.*

3. Fidelity National Title Insurance Company

Fidelity National Title Insurance Company bought Chicago Title Insurance Company in 2000.¹¹⁵ Previously in 1996, Chicago Title entered into a re-insurance treaty with *Grupo Nacional Provincial* (G&P). The agreement allowed the company to issue title insurance through G&P's agent, *Title Insurance de Mexico*.¹¹⁶ Fidelity now holds that treaty and issues policies through G&P that are similar to ALTA policies issued in the United States.¹¹⁷ These policies cover only commercial property and insure fee simple estates, leaseholds, or beneficial ownerships. They may be obtained by Mexican nationals, Mexican corporate entities, American citizens, and other foreign citizens.¹¹⁸ Additionally, as discussed in more detail below, Fidelity National makes several notable exceptions to its coverage including *ejido* land.

4. First American Title Insurance Company

First American Title Insurance Company analyzes and assesses title through its representative *Grupo Nacional Provincial* in Mexico.¹¹⁹ First American issues a standard international policy to customers buying property in Mexico but includes an endorsement specifically addressing issues raised by property ownership in Mexico.¹²⁰ The combination of the policy and endorsement is similar to the ALTA policy issued in the United States.¹²¹ The endorsement makes several changes to the international policy mainly centering around *ejido* land. Additionally, with respect to property located in the restricted zones, First American insures the land itself, while many other title insurance companies only provide coverage for the *fideicomiso*. First American's policy also insures against loss from defect in title resulting from errors in the Public Registry or errors in the search of the Public Registry.¹²²

115. *Chicago Title To Be Acquired For \$1.2 Billion*, N.Y. TIMES, Aug. 2, 1999, <http://query.nytimes.com/gst/fullpage.html?res=9D0DEED71031F931A3575BC0A96F958260>. Among Fidelity's other title brands are Alamo Title, Security Union, Global Solutions, and Tigor.

116. Martin, *supra* note 21, at 515.

117. *See id.*

118. *Id.*

119. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 3.

120. *See* Appendix A, International Owner's Policy, Issued by First American Title Insurance Company.

121. *The Remarkable First American Title Coverage You Enjoy in the United States is Also Available in Mexico*, THE FIRST AMERICAN CORPORATION (First American Title Insurance Company), 2006 at 3.

122. *Id.*

This last provision deserves further attention. The policy protects the buyer against mistakes made by those searching the registry and provides broader protection for the buyer than that allowed by an attorney's opinion alone. This provision seemingly would also provide protection against the incorrect search conducted by a notary. However, because the language refers to "errors in the search," it would probably not reach claims that were not included in a notary's limited search which only covers a certain number of years in the record. Although the protection afforded by the language likely gives the buyer protection for errors not caused by Registry employees for which he would otherwise not have a remedy, it does not solve the problem that much of the pertinent information related to a real estate transaction is often absent from the registry.

B. Is Title Insurance in Mexico Worth the Cost?

Several coverage issues exist that may make title insurance in Mexico less beneficial. When deficiencies in title are discovered, they are often excluded from the coverage under the policy.¹²³ Further, title insurance companies commonly except from coverage any matter that is not recorded in the public registry.¹²⁴ This may make a title insurance policy practically useless. If an issue arises which is not recorded in the Public Registry in one of these policies, the purchaser would not be protected from loss.

Stewart Title's policy excludes easements and labor liens not recorded in the public registry as well as situations of fact or law that could be ascertained by an inspection of the realty or by making an inquiry of persons and possessions thereof.¹²⁵ It also excludes losses incurred as result of a taking by the Mexican government unless notice of the taking is recorded in the Public Record.¹²⁶ Moreover, First American's policy excludes right of eminent domain, resumption, or expropriation unless notice thereof is recorded in the registry.¹²⁷ It also excludes liens, defects, encumbrances and adverse claims, whether or not recorded, that were agreed to by the Insured and not known by the company but known

123. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 4.

124. *Id.*

125. ODRIOZOLA MARISCAL, *supra* note 106, at 269.

126. *Id.*

127. See Appendix A, International Owner's Policy Issued by First American Title Insurance Company at 2.

by the Insured.¹²⁸ The First American policy also excludes items that result in no loss to the Insured, attach after the date of the policy, or result in loss that would not have been sustained if the Insured had paid value for the estate or interest.¹²⁹ Because LandAmerica was in the process of changing its cross-border policy at the time of the writing of this Article, the Author did not have a completed policy for review. Fidelity National does not insure against lack of access, unfavorable zoning laws, parties in possession, or survey issues without a specific endorsement.¹³⁰ Additionally, Fidelity National excludes *ejido* land from its coverage unless it finds an *ejido* issue and makes a specific exemption for it.¹³¹

The exclusions for items not in the public record make title insurance less valuable. Since a buyer is already protected from a seller's misrepresentation about the state of title, as well as mistakes made by a registry worker, title insurance would seemingly be most valuable if it covered claims not listed in the public registry. Adverse possession is a threat under the policies examined above especially given the fact that prescription can occur by good faith in Mexico.

Additionally, many people believe that title insurance is not worth much to foreign investors unless it offers protection from *ejido* claims.¹³² Earlier policies did not cover these issues, and *fideicomisos* can be dissolved in the event of an *ejido* claim. If this coverage is missing from a title insurance policy, any incidental benefit gained by being insured may not be worth the premium cost.

However, some people believe that *ejido* claims may not pose as significant a problem as was once believed. Bill Signet of LandAmerica suggests that there may not be any specific reason to address *ejido* claims in a title insurance policy. He asserts that a claim brought by an *ejido* entity is no different than a claim brought by another Mexican or American citizen.¹³³ It would be defended the same way as a claim by anyone else.

128. *Id.*

129. *Id.*

130. Edward L. Heim, Senior Vice President, Int'l Underwriting, Global Solutions, Address at the San Diego County Bar Ass'n Int'l Title Ins. MCLE Seminar (Apr. 3, 2008).

131. *Id.*

132. *See, e.g.*, E-mail from Enrique Hernandez-Pulido, *supra* note 52.

133. *Id.*

C. While the Cost of Obtaining Title Insurance Policies on Mexican Land is Higher than in the United States, So is the Payout

For commercial policies, the cost of obtaining title insurance is estimated at as much as five times as high as it is in the United States.¹³⁴ The average premium cost of an owner's policy for property in Mexico is approximately \$8750 per million dollars of coverage.¹³⁵ To add a lender's policy on the same transaction, companies typically charge around \$300 per million dollars of coverage.¹³⁶ This equates to approximately 1% of the total cost of the transaction. However, policy rates can be as low as \$5 per \$1000 of purchase price.¹³⁷ The typical range for a policy is between .05% and 1% of the value of the transaction.¹³⁸

By comparison, in the United States the average premium for a \$1 million owner's ALTA policy is between \$2800 and \$4000.¹³⁹ These numbers demonstrate that title insurance for properties in Mexico can be much more expensive than policies in the United States—as much as two to three times as expensive. This is especially true when the cost of Mexican policies is compared to the cost of policies in states like California which are much lower than other states in United States.¹⁴⁰ Buyers may be particularly reluctant to purchase a policy on Mexican property when told of the high cost and arguably low protection that they afford. However, title insurance for properties in Mexico may actually be cheaper than comparative policies in regulated premium states, such as Texas.¹⁴¹

134. Martin, *supra* note 21, at 514; Meya, *supra* note 4, at 60.

135. David K. Armstrong, *Sale of Real Estate in Mexico*, NAT'L L. CTR. FOR INTER-AM. FREE TRADE, 1997, <http://natlaw.com/interam/ar/rp/sp/sparrp4.htm>.

136. *Id.*

137. Weisberg, *supra* note 10; Telephone Interview with Mitch Creekmore, *supra* note 32 (stating that on large development deals the cost can be as low as \$3 or \$4 per \$1000 of purchase price because the cost can be negotiated based on the aggregate agreed value).

138. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 7; cf. Pikoff, *supra* note 23 (stating fees paid to Mexican notaries range anywhere from .015% to 1.12% of the cost of the transaction and often reach thousands of U.S. dollars); see also Martin & Hernandez-Pulido, *supra* note 57, at 14 (stating that notary fees are based on a government approved schedule called an *arancel* but that the parties can usually negotiate the fees set out in the schedule, especially in the buyer's favor).

139. Armstrong, *supra* note 135.

140. Telephone Interview with Mitch Creekmore, *supra* note 32.

141. *Id.*

Many people question why premiums for policies on Mexican property are more expensive. The answer is related to the cost of the physical search of the Public Registry. Because title companies do not have title plants for Mexican property, someone must physically investigate title at the Public Registry where the property is located and obtain copies of the documents on file.¹⁴² This involves travel costs to the registry office in the district where the property is located, administrative fees for obtaining the documents, and a fee paid to the investigator. The cost of the title insurance premium equates to about .05% of the cost of the property plus the title investigation fee.¹⁴³ Additionally, the title investigation fee is due upon application for a policy, is nonrefundable, and typically costs \$3000 or more.¹⁴⁴

Because the investigation fee is nonrefundable, the buyer should be careful before submitting a title insurance application. Otherwise, the buyer may needlessly lose thousands of dollars in the application process. While the title insurance company's investigation may delve further into the past than the notary's search, the investigation may not provide a large amount of additional protection beyond that afforded by Mexican law.

Of the four major companies providing title insurance in Mexico, none provided the Author with statistics regarding payout. First American stated that it did not keep information on payouts.¹⁴⁵ LandAmerica declined to disclose specific economic information but claimed to have never had a claim on a policy issued in Mexico.¹⁴⁶ Stewart Title stated that there have been very few times when it has had to assume legal responsibility for the investment of client.¹⁴⁷ Lastly, Fidelity National divulged two outstanding claims in Mexico.¹⁴⁸ Industry wide figures from 2006 stated that by the third quarter, \$5 million in premiums had been collected and close to \$600,000 in claims had been paid out. As discussed *infra*, this payout rate of over 10% is notably higher than that paid under policies issued in the United States.

142. *Id.*

143. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 7.

144. Armstrong, *supra* note 135.

145. E-mail from Turalu Brady Murdock, Vice-President & Counsel, First Am. Title Ins. Co. Latin America/Caribbean Operations, Int'l Div., to author (Nov. 13, 2006) (on file with author).

146. E-mail from Bill Signet, *supra* note 113.

147. E-mail from Joel Rosas, Closing Coordinator, Stewart Title Baja, to author (Oct. 10, 2006) (on file with author).

148. Heim, *supra* note 130.

D. Is Title Insurance Even Necessary in the United States?

Although title insurance is used in almost 100% of transactions in the United States, it may not be a necessity. Bill Signet, President of LandAmerica Services of Mexico S.A. de C.V., argues that if title insurance is necessary in the United States, it is necessary in Mexico.¹⁴⁹ Other real estate professionals share the same idea. They argue the main value of title insurance comes from the additional services that title insurance companies provide in organizing and coordinating real estate transactions. According to data released by the American Land Title Association for the third quarter of 2006, over \$12 billion had been collected that year in title insurance premiums in the United States. The amount of direct losses paid was near \$600 million.¹⁵⁰ Those figures equate to only 5% of premiums collected being paid out as losses.¹⁵¹

While the numbers regarding payout rates in the United States are not very high, they are larger for properties in Mexico. By the third quarter of 2006, \$5 million had been collected in premiums on Mexican property and \$577,000 was paid out.¹⁵² This equates to over 11% of premiums being paid to policy holders. Moreover, the amount collected in 2006 nearly doubled from the prior year. In 2005, only \$2.8 million had been collected and \$110,000 was paid out.¹⁵³ However, 2005 had a higher payout rate at 25%.

Further, besides the low payout rates of the title insurance industry, there may be an additional argument against the use of title insurance in Mexico. Mexican notaries serve many of the same functions as title insurance companies do in the United States. Besides performing title checks, notaries often serve as escrow agents, always serve as the neutral director of the real estate transactions, and finalize and record all documents. If the real value of title insurance in the United States is in

149. Telephone Interview with Bill Signet, *supra* note 33.

150. See Appendix B.

151. *Id.* Comparing that data to information published by the National Association of Insurance Collectors, \$264 billion in premiums was collected in the property casualty insurance industry. Loss expenses for that year were \$56 billion. Payout in that industry was 21%. See Appendix C. Further, \$531 million in premiums were collected by the life insurance industry in 2004 and \$514 million was paid out. Life insurance represents the other extreme of the insurance spectrum where payout is an anticipated fact, and 97% of premiums were paid out to customers. See Appendix D.

152. See Appendix B.

153. See *id.*

the organizational purpose it serves, the role of the notary may make the use of title insurance duplicative in Mexico.

VI. ALTHOUGH ITS UTILITY IS QUESTIONABLE, THE USE OF TITLE INSURANCE IN MEXICO MAY CONTINUE TO GROW

Additionally, despite the high cost and questionable utility of title insurance, its use in Mexico may grow in the coming years. Foreign lenders may require title insurance before lending funds to those buying property in Mexico. Additionally, developers are advertising the availability of title insurance for their project as a means of enticing new buyers.¹⁵⁴ Moreover, as the market in the United States cools, buyers may be inclined to look toward Mexico for their real estate investments and may see title insurance as the extra protection they need to enter Mexico. Whether title insurance provides noteworthy additional protection for buyers' foreign investments is unclear. However, data seems to imply that the market for title insurance in Mexico is growing,¹⁵⁵ and investors who are looking to invest in Mexico may want additional assurance that their investments are safe.

A. Title Insurance is Important for the Growth of the Mexican Mortgage Securitization Market

Title insurance may help expand the mortgage market in Mexico as well. In fact, title insurance may become imperative in real property transactions as the securitization market for mortgages in Mexico grows larger.¹⁵⁶ Investors in mortgages will likely require assurance by a reputable financial institution that title to the property that serves as collateral to their investments is marketable.¹⁵⁷ Additionally, Fannie Mae and Freddie Mac require title insurance in order to include loans in their mortgage pools purchased for the secondary market.¹⁵⁸ Further, title insurance is part of part of the due diligence for mortgage-backed securities in the United States.¹⁵⁹ Similarly, credit agencies that rate real

154. Cf. Nancy Conroy, *Buyers Question Title Insurance in Mexico*, GRINGO GAZETTE NORTH, Mar. 21, 2005 (stating that buyers were misled that title insurance was available on the El Dorado Ranch in San Felipe by the developer and Stewart Title Guaranty Company) available at <http://www.mexidata.info/id428.html>; Heim, *supra* note 130 (stating that sometimes a developer will advertise that they received a commitment from a title insurance company to insure the property and that it is available to buyers but not actually take out a policy).

155. See Appendix B.

156. Ibarra-Fernández & Moreno-Ortiz, *supra* note 35, at 6-7.

157. *Id.* at 7.

158. Maxfield, *supra* note 1, at 12.

159. *Id.*

estate securities also require title insurance endorsements tailored to the character of the property underlying the mortgage.¹⁶⁰ Further, as those involved in the real estate market are better able to obtain certainty regarding title, title insurance policies should assist in the introduction of foreign lenders into the Mexican mortgage market.¹⁶¹ Mexico may even eventually expand its mortgage industry to secondary markets similar to those in the United States. Title insurance is likely to play an integral part of this process.¹⁶²

B. Title Insurance Also Provides Incidental Benefits to Purchasers

The use of title insurance in Mexico may also increase because of the incidental benefits advertised by the title insurance companies. Title insurance companies claim that their product imparts numerous benefits to policy holders that are unrelated to Mexican real estate transactions. First, title insurance policies increase peace of mind for the buyers who own them. Additionally, having title insurance may facilitate the resale of Mexican property for an American owner.

Whether or not its protections are valid, title insurance puts those owners who purchase a policy at ease. Title insurance policies remain in effect as long as the buyer owns the property. They also cover title vested in many different types of owners, including residential owners, commercial owners, *fideicomisos*, Mexican corporations, and foreign corporations.¹⁶³ Title insurance companies also argue that their policies provide peace of mind because they are able to customize their policies to fit the needs of buyers and seller and can tailor a policy in order to ensure it is well suited for the market where the transaction is taking place.¹⁶⁴ Therefore, buyers who have purchased title insurance for their investment can be assured that they will not have to personally fight a confusing, complicated legal battle.

The title insurance industry also claims that an additional advantage of obtaining a title insurance policy is that it may facilitate the resale of

160. *Id.*

161. *Id.*

162. However, given the recent credit crisis related to subprime mortgages, the public may be reluctant to invest in any sort of mortgage-backed securities, let alone those secured by Mexican property.

163. KELLY & CREEKMORE, *supra* note 25, at 43.

164. Telephone Interview with Mitch Creekmore, *supra* note 32.

Mexican property.¹⁶⁵ A new buyer may be more confident that he will receive good title in the transaction if a title insurance company has insured the seller's title and is willing to insure the new buyer's title. Insurance companies claim that purchasing a title insurance policy also serves as a valuable part of a buyer's due diligence.¹⁶⁶ Additionally, the willingness of foreign lenders to finance the buyer's purchase may also make him more apt to buy property in Mexico.

VII. CONCLUSION

Whether the incidental benefits are worth the cost of the policy is uncertain. To those who are extra cautious and do not mind spending a significant amount of money on a service that may not be essential, title insurance is probably a good choice. However, others should weigh the considerable protections afforded by Mexican law against the benefits of owning title insurance. Some buyers may be affected by the unreliability of the data in the public registry or the difficulty of recovery against the seller or a registry employee; however, the question is whether the buyer is willing to pay to minimize that risk.

At a minimum, a properly negotiated title insurance policy is a "good independent filter" to verify the status of title to Mexican property.¹⁶⁷ With the right type of policy, buyers receive extra protection against legal battles or the risk of eviction from their properties. Additionally, even if a claim arises, the title insurance company will pay the claim and navigate the Mexico legal system on behalf of the buyer. Moreover, although Mexican law affords a buyer significant protections, if nothing else, buyers who purchase title insurance are buying themselves some additional peace of mind. Some may think that the cost is too great given the protections already afforded, but that choice is an individual one.

Lastly, the Author would like to introduce a word of caution to the readers of this Article. Because the introduction of title insurance into Mexico is a relatively new phenomenon, a significant amount of information gathered in researching this topic was obtained from the title insurance industry. Although the Author has tried to identify those arguments originating in the title insurance industry, the reader should be advised that some partiality toward that sector may exist in this Comment. As the market for title insurance in Mexico grows, the subject will receive more balanced and closer academic scrutiny.

165. *Acera de Stewart Latin America- Ingles*, Stewart Title Baja, (Stewart Title Guaranty Company-Mexico Division) (on file with author and Stewart Title Baja).

166. *Id.*

167. Weisberg, *supra* note 10.

VIII. APPENDIX

INTERNATIONAL POLICY	
Form 4500 (2/99) International Owner's Policy	Policy Page 1
<h1>Policy of Title Insurance</h1> <p>ISSUED BY</p> <h2>First American Title Insurance Company</h2>	
<p>SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation in the United States of America (herein called the "Company"), insures, as of Date of Policy shown in Schedule A, against actual monetary loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:</p>	
<ol style="list-style-type: none"> 1. Title being vested other than as stated in Schedule A; 2. Any defect in or lien, charge, privilege, mortgage or encumbrance on the Title; 3. Forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation affecting the Title; 4. Lack of a right of access to and from the Land; 5. Restrictive covenants on the Title limiting use of the Land; 6. Others having rights arising out of leases, contracts or options on the Title; 7. An easement or right of way on the Title; 8. Unauthorized transfers or conveyances of the Title by any corporation, partnership, trust, limited liability company or other legal entity; 9. The invalidity of any document upon which the Title is based because it was not properly executed, sealed, acknowledged, recorded, delivered or recorded; 10. The invalidity of any document upon which the Title is based because it was executed under a falsified, expired or otherwise invalid power of attorney; 	<ol style="list-style-type: none"> 11. The invalidity of any conveyance or transfer of the Title because it was derived through a defective judicial or administrative proceeding; 12. The invalidity of any conveyance or transfer of the Title derived through a decedent's estate; 13. Estate or inheritance tax liens on the Title; and 14. An erroneous or inadequate legal description of the Land affecting the Title. <p>The Company will also pay the costs, legal fees and expenses incurred in defense of the Title, as insured, but only to the extent provided in the Conditions and Stipulations.</p> <p>IN WITNESS WHEREOF, First American Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.</p> <p style="text-align: center;">First American Title Insurance Company</p> <p>BY <u>Gary L. Keruecht</u> PRESIDENT</p> <p>ATTEST <u>Mark L. Anderson</u> SECRETARY</p>
©1999 First American Title Insurance Company	
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EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, legal fees or expenses which arise by reason of or are related to:

- (a) Any Law (including, but not limited to, those applicable to building and zoning) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, extensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land; or (iv) a parcel of which the Land is or was a part; or (v) environmental protection, or the effect of any violation of these Laws; and (b) Any governmental power not excluded by (a) above.
- Rights of eminent domain, reversion, espropriation or similar rights conferred under the Laws of the country in which the Land is located, unless notice of the exercise thereof has been Recorded in the Public Records at Date of Policy.
- Defects, flaws, encumbrances, adverse claims or other matters, whether or not Recorded in the Public Records or Date of Policy: (a) created, suffered, assumed or agreed to by the Insured Claimant; (b) not known to the Company but known to the Insured Claimant, and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy; (c) resulting in no loss or damage to the Insured Claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the estate or interest insured by this policy.
- Any claim by reason of the operation of bankruptcy, insolvency or similar creditors' rights Laws.
- Water rights, claims or title to water, whether or not shown by the Public Records.
- Claims or title to natural resources including, but not limited to, timber, minerals of every kind and nature, oil, gas and all other hydrocarbons.
- Claims by indigenous, aboriginal, native or similar groups (or persons) based solely upon their status as a member of one or more of these groups.
- Any claim (a) against the Title listed or asserted by third parties outside of the country where the Land is located; or (b) relating to the interpretation or enforcement of this policy brought in a court or other tribunal except as specified in Section 17(a) of the Conditions and Stipulations of this policy.
- War, insurrection, riot, civil unrest, act of the public enemy, epidemic, quarantine restriction, governmental restriction, nationalization, act of God or other similar causes beyond the reasonable control and without the fault of the Company.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- "Amount of Insurance": the amount of insurance specified in Schedule A.
- "Date of Policy": the date specified in Schedule A.
- "Improvement" or "Improvements": buildings, fixtures, immovables and other improvements affixed to land which by Law form a part of real property.
- "Insured": the party or parties named in paragraph 1 of Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of Law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- "Insured Claimant": an insured claiming loss or damage.
- "Knowledge" or "Known": actual knowledge, not knowledge or notice which may be imputed to an insured by reason of the Public Records as defined in this policy or any other records which impart notice of matters affecting the Land.
- "Land": the land described or referred to in paragraph 4 of Schedule A and improvements. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A nor any right, title, interest, estate or easement in adjoining streets, roads, avenues, alleys, lanes, ways or walkways.
- "Law" or "Laws": law(s), by-law(s), ordinance(s), order(s), code(s), rule(s), decree(s) or governmental regulation(s).
- "Mortgage": mortgage, hypothec, pledge, deed of trust, trust deed, deed to secure debt or other similar security instrument.
- "Public Records": those records maintained by a governmental or quasi-governmental agency in which Mortgages, deeds and other documents that convey title to the Land must be Recorded in order to provide actual, constructive or deemed notice of their contents to purchasers of real property for value and without knowledge.

(4) "Record", "Recording" or "Recorded": record, file and/or register in the Public Records.

(5) "Title": the estate or interest in the Land described in paragraph 2 of Schedule A. Whenever undefined words are used in the language of this policy to describe a risk, claim, interest in the Land or other matter, whether included in or excluded from the coverage of this policy, the fair meaning of the words shall be used to determine the application or non-application of such words with respect to such risk, claim, interest or other matter.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

This policy and the coverage provided by this policy is not assignable or otherwise transferable in any way except as expressly set forth in this policy. The coverage of this policy shall continue in force as of Date of Policy in favor of the Insured so long as the Insured: (a) retains an estate or interest in the Land; (b) holds an indebtedness secured by a purchase money Mortgage given by a purchaser from the Insured; or (c) shall have liability by reason of covenants of warranty made by the Insured in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of other an estate or interest in the Land or an indebtedness secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The Insured shall notify the Company promptly in writing, but in no event later than 14 days from the date when (a) the Insured shall acquire knowledge of any litigation or other proceeding as set forth in Section 4(b) above; or (b) the Insured shall acquire knowledge of any claim adverse to the Title, as Insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy. Time is of the essence in relation to this Section. If general notice shall not be given to the Company, all liability of the Company to the Insured shall terminate with respect to the matter or matters to which general notice is required; provided, however, that failure to notify the Company shall not prejudice the rights of the Insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

- Upon written request by the Insured and subject to the approvals contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of the Insured in litigation or other proceeding in which any third party asserts a claim adverse to the Title, as insured, but only as to those allegations or matter causes of action alleging a defect, lien, encumbrance or other matter insured against by this policy. The Company shall have the right to select lawyer(s) of its choice to represent the Insured as to those allegations or stated causes of action and shall not be liable for and will not pay the fees of any other lawyer(s).
- The Company will not pay any fees, costs or expenses incurred by the Insured (i) in the defense of those allegations or causes of action which allege matters not insured against by this policy; or (ii) which were not authorized by the Company in writing.
- The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation or proceeding to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to accept from any adverse ruling, judgment, decree, order or similar determination.
- In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals related thereto, and permit the Company to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable assistance (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the Title, as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under this policy shall

Form 4500A (2/99)
Insured Owner's Policy
Schedule A

SCHEDULE A

File No.: Sample

Policy No.: Sample

Amount of Insurance: \$ _____ (U.S.)

Date of Policy: _____

1. Name of Insured:

2. The estate or interest in the Land which is covered by this Policy is:

3. The Title is vested in:

4. The Land referred to in this Policy is:

First American Title Insurance Company

SAMPLE

By: _____
Authorized Signatory

File No.: Sample

Policy No.: Sample

SCHEDULE B

EXCEPTIONS TO COVERAGE

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES THAT ARISE BY REASON OF THE FOLLOWING:

1. Any inaccuracy in the area of the Land. The Company does not insure the area of the Land or against a shortage in area.
2. Any taxes, charges or assessments levied, assessed, due or assessable subsequent to Date of Policy.

Form 4500-E (2/99)
International Owner's Policy
Endorsement

ENDORSEMENT

File No.: SAMPLE

Policy No.: SAMPLE

The following Endorsement is hereby attached to the Policy:

1. INT 1173 REV – Mexican Policy

ENDORSEMENT

ISSUED BY

First American Title Insurance Company

File No.: MEX _____

Attached to Policy No. Pro Forma

The Policy is hereby amended as follows:

1. The following is added as paragraph 15 of the insuring provisions on the cover page of the Policy:
15. A claim of Ejido land ownership.
2. Subsection (j) of Section 1, DEFINITION OF TERMS of the CONDITIONS AND STIPULATIONS is hereby modified to read as follows:
(j) "Public Records": those records in the Public Registry of Property and Commerce ("*Registro Público de Propiedad y Comercio*") that provide actual, constructive or deemed notice of their contents to purchasers of real property for value and without knowledge.
3. The following subsection is added to Section 1, DEFINITION OF TERMS of the CONDITIONS AND STIPULATIONS:
(m) "Ejido": agrarian nucleus as described in Article 27 of the Political Constitution of the United Mexican States.
4. Section 2, EXCLUSIONS FROM COVERAGE is hereby modified to read as follows:
2. Rights of eminent domain, resumption, expropriation or similar rights conferred under the Laws of the country in which the Land is located, unless notice of the exercise thereof has been Recorded in the Public Records at Date of Policy. This Exclusion does not limit the coverage described in insuring provision 15.
5. Section 7, EXCLUSIONS FROM COVERAGE is hereby modified to read as follows:
7. Claims by indigenous, aboriginal, native or similar group(s) or person(s) based solely upon their status as a member of one or more of these groups. This Exclusion does not limit the coverage described in insuring provision 15.
6. Section 3, NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT, of the CONDITIONS AND STIPULATIONS is hereby modified to read as follows:

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The Insured shall notify the Company promptly in writing (a) when the Insured shall acquire Knowledge of any claim adverse to the Title, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this Policy, or (b) but in no event later than four (4) business days from the date when the Insured shall acquire formal notification of any litigation or other proceeding as set forth in Section 4(a) below. Due to the stringent time requirements imposed by the Mexican court system, if formal notice of litigation is served on the Insured, failure to give written notification of this fact to the Company within four (4) business days of the receipt of such notice of litigation shall be deemed to be a failure to give "prompt notice" required by this Section 3.

Time is of the essence in relation to this Section. If prompt notice shall not be given to the Company, all liability of the Company to the Insured shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall not prejudice the rights of the Insured under this Policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

(Continued)

INT 1173 REV

Page 2 of 2

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior Endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior Endorsements, nor does it extend Date of Policy and any prior Endorsements, nor does it increase Amount of Insurance. This Endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

PRO FORMA

Issue Date: _____

FIRST AMERICAN TITLE INSURANCE COMPANY

PRO FORMA

By: _____

Authorized Signatory

INT 1173 REV
Mexican International Owner's Policy

terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to, or otherwise verified under oath, by the Insured Claimant shall be furnished to the Company within 90 days after the Insured Claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect, item, encumbrance or other matter insured against by this policy which constitutes the basis of loss or damage and shall state the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Insured Claimant to provide the required proof of loss or damage, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the Insured Claimant shall, in the sole discretion of the Company, be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such times and places as they be designated by any authorized representative of the Company, all documents, instruments, writings, other policies of insurance, records, books, ledgers, checks, correspondence, e-mails, disks, tapes and/or memoranda or other evidence, whether bearing a date before or after Date of Policy, which may, in the opinion of the Company, pertain to the loss or damage. Furthermore, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all documents, instruments, writings, other policies of insurance, records, books, ledgers, checks, correspondence, e-mails, disks, tapes and/or memoranda in the custody or control of a third party, whether bearing a date before or after Date of Policy, and which may, in the opinion of the Company, pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the opinion of the Company, it is appropriate in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce other requested information or grant permission to access information from third parties as required in this paragraph shall terminate all liability and obligations of the Company under this policy as to that claim, including any liability or obligation to defend, prosecute or continue any litigation or proceeding.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, legal fees and expenses incurred by the Insured Claimant, which were authorized by the Company up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the Insured under this policy other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy, together with any costs, legal fees and expenses incurred by the Insured Claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay or

(c) To pay or otherwise settle with the Insured Claimant the loss or damage insured against under this policy, together with any costs, legal fees and expenses incurred by the Insured Claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (c), the Company's liability and obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation or proceeding.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the lesser of:

- (i) the Amount of Insurance stated in Schedule A, or
 - (ii) the difference between the value of the insured estate or interest, as insured, and the value of the insured estate or interest subject to the defect, lien, charge, privilege or encumbrance insured against by this policy.
- (b) The Company will pay only those costs, legal fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the Land consists of two or more parcels which are not used as a single site, and a loss is substantiated affecting one or more of the parcels but not all, the loss shall be apportioned and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon at the time of the issuance of this policy by the Company and the Insured as to each parcel, and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

- (a) If the Company (i) establishes the Title, (ii) removes the alleged defect, lien, charge, privilege or encumbrance, or (iii) cures the lack of a right of access to or from the Land, all as insured, in a reasonably diligent manner by any method, including litigation or other proceeding and the completion of any appeals related thereto, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation or proceeding, including litigation or proceedings instituted by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals relates thereto, adverse to the Title, or interest.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, legal fees and expenses, shall reduce the amount of insurance pro rata.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge, privilege or lien on the Title, and the amount so paid shall be deemed a payment under this policy to the Insured.

12. PAYMENT OF LOSS.

- (a) No payment shall be made without producing this policy for endorsement as to the payment made unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right Of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest immediately in the Company unaffected by any act of the Insured Claimant.

The Company shall be subrogated and entitled to all rights and remedies which the Insured Claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the Insured Claimant shall transfer to the Company in a form satisfactory to the Company, all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Insured Claimant shall permit the

Company to sue, compromise or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction, litigation or other proceeding involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss. If any act of the Insured should impair the Company's right of subrogation, that act shall not void this policy, but, in that event, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the Insured to indemnities, guarantees, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

- (a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the Insured and the Company. Without limiting the foregoing, all prior or contemporaneous oral agreements, understandings, representations and statements are merged herein and shall be of no further force or effect. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any modification, amendment or alteration of the terms of this policy shall be effective only if made by a written endorsement attached to this policy and signed by any President, Vice President, Secretary, Assistant Secretary, validating officer or other authorized signatory of the Company.
- (c) Each endorsement attached to this policy at any time is made a part of this policy and is subject to all of the terms and provisions hereof. Unless otherwise expressly set forth in the endorsement, it shall not (i) modify any of the terms and provisions of this policy or other endorsements, (ii) extend the Date of Policy or the date of any endorsements, or (iii) increase the amount of insurance.
- (d) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the Title or by any action or proceeding respecting such claim, shall be restricted to this policy.

15. SEVERABILITY.

In the event any provision of this policy is held invalid or unenforceable under applicable Law, this policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department, at 1 First American Way, Santa Ana, California 92707, United States of America, or to the office which issued this policy.

17. CHOICE OF LAW; JURISDICTION; NO JURY TRIAL.

(a) Choice of Law.

The Insured acknowledges that the Company has underwritten the risks covered by this policy, and determined the premium charged therefor, its reliance upon the Law affecting interests in real property of the jurisdiction where the Land is located and the Law applicable to the interpretation, rights, remedies or enforcement of policies of title insurance of the State of California in the United States of America, which state and country is the domicile of the Company.

Therefore, the court shall (i) apply the Law of the jurisdiction where the Land is located to determine the validity of claims against the Title adverse to the Insured, and (ii) the Law of the State of California in the United States of America, in interpreting and enforcing the terms of this policy. In neither case shall the court apply its conflict of laws principles to determine the applicable Law.

(b) Choice of Forum.

Any litigation or other proceeding brought by the Insured against the Company must be filed only in the State of California in the United States of America, which state and country is the domicile of the Company.

(c) No Jury Trial.

In any litigation or proceeding filed against the Company concerning any aspect of coverage under this policy, the Insured Claimant is permitted only to have the case heard by a judge and not by a jury.

Policy of Title Insurance



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Policy Page 4

ASSETS

	Current Statement Date			
	1	2	3	4
	Assets	Nonadmitted Assets	Net Admitted Assets (Col. 1 - 2)	December 31 Prior Year Net Admitted Assets
1. Goods	5,217,599,187	1,529,208	5,216,069,979	5,078,418,342
2. Stocks:				
2.1 Preferred stock	128,114,510	5,173,087	122,941,423	46,037,954
2.2 Common stock	1,946,772,469	36,380,117	1,910,392,351	1,576,258,455
3. Mortgage loans on real estate:				
3.1 First lien	91,302,270	5,193,649	86,108,621	86,766,549
3.2 Other than first lien	2,562,650	2,587,680		
4. Real estate:				
4.1 Properties occupied by the company (less \$ 50,230,771 encumbrances)	163,417,254	7,600,977	155,816,277	158,902,818
4.2 Properties held for the production of income (less \$ 1,420,080)	1,420,080		1,420,080	1,524,999
4.3 Properties held for sale (less \$ 0 encumbrances)	11,626,622	187,821	11,438,801	9,887,569
5. Cash (\$ 1,098,542,889), cash equivalents (\$ 325,782,792), and short-term investments (\$ 810,851,017)	2,054,032,627	2,551,169	2,051,481,458	2,385,422,130
6. Contract loans (including \$ 0 premium relief)				
7. Other invested assets	370,478,074	86,114,669	284,363,405	183,602,583
8. Receivables for securities	8,763,348		8,763,348	3,893,413
9. Aggregate net-its for invested assets	181,885	181,885		
10. Subtotal: cash and invested assets (Lines 1 to 9)	9,574,738,099	146,867,572	9,427,870,527	9,419,902,927
11. Title plans less \$ 500,000 charged off for Title Insurance only	310,062,544	30,942,784	279,119,760	212,865,140
12. Investment income due and accrued	75,940,228	46,828	75,893,400	71,698,999
13. Premiums and considerations:				
13.1 Uncollected premiums and agents' balances in the course of collection	443,328,887	183,632,351	259,696,536	289,894,823
13.2 Deferred premiums, agents' balances and commissions booked but deferred and not yet due (including \$ 0 assumed but unearned premiums)				
13.3 Accrued retrospective premiums				
14. Reinsurance:				
14.1 Amounts recoverable from reinsurers	181,456	68,180	113,276	26,830
14.2 Funds held by or deposited with reinsured companies				
14.3 Other amounts receivable under reinsurance contracts	4,830,940	272,886	4,558,054	4,750,654
15. Amounts receivable relating to unissued plans				
16.1 Current federal and foreign income tax recoverable and related benefits	12,985,256		12,985,256	21,514,030
16.2 Net deferred tax asset	307,097,556	673,323,746	366,226,190	128,710,154
17. Guaranty funds receivable or on deposit	941,144	823,536	117,608	20,394
18. Electronic data processing equipment and software	22,487,581	8,126,831	14,360,750	14,883,135
19. Furniture and equipment, including health care delivery assets (\$ 0)	65,636,210	63,630,647	2,005,563	672,446
20. Net adjustment in assets and liabilities due to foreign exchange rates				
21. Receivables from parent, subsidiaries and affiliates	704,564,274	170,465,520	534,098,754	269,914,627
22. Health care (\$ 0) and other amounts receivable	499,573	307,821	191,752	918,699
23. Aggregate write-ins for other than invested assets	819,575,287	982,294,443	162,719,156	154,660,656
24. Total assets excluding Separate Accounts, Segregated Accounts and Protected Call Accounts (Lines 10 to 23)	12,737,499,051	1,841,785,578	10,895,713,473	10,907,780,399
25. From Separate Accounts, Segregated Accounts and Protected Call Accounts	3,007,458	3,656,260	711,099	866,244
26. Total (Lines 24 and 25)	12,740,506,509	1,845,441,838	10,895,064,671	10,908,646,643

DETAILS OF WRITE-INS			
0901. Long-Term Certificates of Deposit			
0902. Prepaid Surety Bond	181,885	181,885	
0903. Title Plans			
0905. Summary of remaining write-ins for Line 10 from overflow page			
0906. Totals (Lines 0901 through 0903 plus 0905) (Line 23 above)	181,885	181,885	
2301. Goods	428,594,500	234,710,528	93,784,092
2302. Other Assets	246,138,407	215,160,513	900,184
2303. Prepaid Expenses	65,916,569	68,226,000	598,469
2306. Summary of remaining write-ins for Line 23 from overflow page	104,860,331	64,098,892	40,860,830
2309. Totals (Lines 2301 through 2303 plus 2306) (Line 23 above)	845,510,207	582,295,443	135,273,575

Statement as of September 30, 2006 of the American Land Title Association - Industry

LIABILITIES, SURPLUS AND OTHER FUNDS	1	2
	Current Statement Date	December 31 Prior Year
1. Known claims reserve	727,372,446	732,287,475
2. Statutory premium reserve	9,189,753,907	9,092,102,189
3. Aggregate of other reserves required by law	1,205,500	1,205,500
4. Supplemental reserve	16,282,822	15,438,292
5. Commissions, brokerage and other charges due or accrued to attorneys, agents and real estate brokers	1,634,131	2,451,992
6. Other expenses (excluding taxes, license and fees)	567,770,257	627,027,394
7. Taxes, licenses and fees (excluding federal and foreign income taxes)	77,865,731	88,358,319
8.1 Current federal and foreign income taxes (including \$ 0 on realized capital gains (losses))	146,649,925	144,188,884
8.2 Net deferred tax liability	684,636	322,333
9. Borrowed money \$ 1,195,714, and interest thereon \$ 4,970	10,327,063	18,632,871
10. Dividends declared and unpaid	7,461,913	21,000,000
11. Premiums and other considerations received in advance	80,548,437	57,724,508
12. Unearned interest and real estate income received in advance		
13. Funds held by company under reinsurance treaties	1,020,859	877,539
14. Amounts withheld or retained by company for account of others	13,117,047	16,714,065
15. Provision for unauthorized insurance		
16. Net adjustment in assets and liabilities due to foreign exchange rates	5,716,664	4,195,223
17. Drafts outstanding		
18. Payable to parent, subsidiaries and affiliates	360,504,858	412,151,087
19. Payable for securities	22,082,787	1,737,800
20. Aggregate write-ins for other liabilities	1,083,408,725	1,175,187,791
21. Total liabilities (Lines 1 through 20)	7,414,418,913	7,383,213,297
22. Aggregate write-ins for special surplus funds	1,111,788	2,365,917
23. Common capital stock	410,881,812	411,384,194
24. Preferred capital stock	1,004,910	1,120,919
25. Aggregate write-ins for other than special surplus funds	(175,850)	(170,880)
26. Surplus notes	8,348,000	8,348,000
27. Gains paid in and contributed surplus	1,875,929,707	1,866,038,230
28. Unassigned funds (surplus)	1,179,731,738	1,143,591,074
29. Less treasury stock, at cost:		
29.1 85,250 shares common (value included in Line 23) 1,081,370)	5,005,464	6,178,184
29.2 475 shares preferred (value included in Line 24) 2,330)	716,700	716,700
30. Surplus as regards policyholders (Lines 22 to 29 less 29)	3,489,095,708	3,415,263,436
31. Totals	10,976,424,621	10,828,476,643

DETAILS OF WRITE-INS		
0301. Special Surplus Funds	70,000	70,000
0302. Other Reserves	125,500	125,500
0303. Miscellaneous		
0306. Summary of remaining write-ins for Line 3 from overflow page	1,000,000	1,000,000
0309. Totals (Lines 0301 through 0303 plus 0306)(Line 3 above)	1,205,500	1,205,500
2001. Accrued Compensation	34,414,158	47,385,000
2002. Deferred Compensation	17,699,995	15,968,460
2003. Notes/Contracts Payable	10,000,000	40,397,433
2006. Summary of remaining write-ins for Line 20 from overflow page	1,178,384,607	1,047,235,665
2009. Totals (Lines 2001 through 2003 plus 2006)(Line 20 above)	1,189,498,725	1,175,187,791
2201. Plant Revaluation	610,382	610,382
2202. Surplus arising from increase in Book Value of Title Plants	501,384	501,384
2203. Mineral Interest Assigned Value	22	22
2206. Summary of remaining write-ins for Line 22 from overflow page		1,242,429
2209. Totals (Lines 2201 through 2203 plus 2206)(Line 22 above)	1,111,788	2,365,917
2501. Treasury Stock Repurchase Agent	(170,850)	(170,850)
2502.		
2503.		
2506. Summary of remaining write-ins for Line 25 from overflow page		
2509. Totals (Lines 2501 through 2503 plus 2506)(Line 25 above)	(170,850)	(170,850)

OPERATIONS AND INVESTMENT EXHIBIT STATEMENT OF INCOME			
	1 Current Year to Date	2 Prior Year to Date	3 Prior Year Ended December 31
OPERATING INCOME			
1. Title insurance and related income:			
1.1 Title insurance premiums earned	12,165,187,940	12,013,471,535	18,481,043,412
1.2 Escrow and settlement revenue	474,905,019	478,844,738	637,456,011
1.3 Other title fees and service charges	335,447,787	310,018,014	681,315,020
2. Aggregate write-ins for other operating income	28,060,781	41,384,045	55,137,851
3. Total Operating Income (Lines 1 through 2)	13,221,481,527	13,043,578,331	19,854,952,294
DEDUCT:			
4. Losses and loss adjustment expenses incurred	806,925,802	620,709,262	918,371,790
5. Operating expenses incurred	11,854,378,571	11,843,831,137	16,128,741,425
6. Aggregate write-ins for other operating deductions	228,828	501,036	(225,994)
7. Total Operating Deductions	12,032,072,201	12,465,118,035	17,052,337,211
8. Net operating gain or (loss) (Lines 3 minus 7)	1,189,409,326	578,460,296	2,802,615,083
INVESTMENT INCOME			
9. Net investment income earned	373,190,822	305,728,167	408,808,044
10. Net realized capital gains (losses) less capital gains tax of \$	3,479,509	105,740,567	116,036,350
11. Net investment gain (loss) (Lines 9 + 10)	386,123,364	411,468,734	524,844,394
OTHER INCOME			
12. Aggregate write-ins for miscellaneous income or (loss)	2,013,421	950,585	1,141,004
13. Net income, after capital gains tax and before other federal income taxes (Lines 8 + 11 + 12)	1,569,546,110	1,000,206,640	1,400,156,428
14. Federal and foreign income taxes (benefit)	187,383,330	244,100,810	402,212,181
15. Net income (Lines 13 minus 14)	1,382,162,780	756,105,830	997,944,247
CAPITAL AND SURPLUS ACCOUNT			
16. Surplus as regards policyholders, December 31 prior year	3,415,043,436	3,216,367,225	3,278,367,225
17. Net income (from Line 15)	1,382,162,780	756,105,830	997,944,247
18. Net unrealized capital gains or (losses) less capital gains tax of \$	(51,878)	(512,602,044)	(518,738,642)
19. Change in net unrealized foreign exchange capital gain (loss)	1,098,354	(2,787,656)	(954,173)
20. Change in net deferred income taxes	46,367,446	1,496,565	(1,496,565)
21. Change in nonrealized assets	(37,482,606)	(320,408,790)	(320,399,398)
22. Change in provision for unauthorized retrocession			
23. Change in supplemental reserves	(857,430)	(112,042)	5,172,276
24. Change in surplus inco-		(900,000)	(900,000)
25. Cumulative effect of changes in accounting principles	8,677,967	(54,584,929)	(65,216,136)
26. Capital Changes:			
26.1 Paid in	1,282,371	4,138,450	23,811,093
26.2 Transferred from surplus (Stock Dividend)			844,500
26.3 Transferred to surplus			(1,160,419)
27. Surplus Adjustments:			
27.1 Paid in	25,507,189	631,538,692	962,670,082
27.2 Transferred to capital (Stock Dividend)			(9,945,000)
27.3 Transferred from capital			1,190,410
28. Dividends to stockholders	(242,326,062)	(53,100,206)	(502,118,416)
29. Change in treasury stock			(118,216)
30. Aggregate write-ins for gains and losses in surplus	(434,670)	295,565,020	(198,788,055)
31. Change in surplus as regards policyholders for the year (Lines 17 through 30)	46,142,272	285,474,545	185,886,201
32. Surplus as regards policyholders as of statement date (Lines 16 plus 31)	3,461,185,052	3,501,791,800	3,415,253,453
DETAILS OF WRITE-INS			
0101. Other Title Fees and Service Charges	23,758,788	26,468,706	37,534,511
0102. Agency Income	3,497,878		4,152,198
0103. Refund Income	1,463,688	2,611,578	2,843,511
0104. Summary of remaining write-ins from overflow page	9,652,490	8,813,081	6,137,416
0109. Totals (Lines 0101 through 0108) plus 0105 (Line 2 above)	38,060,781	41,894,045	55,137,851
0601. Loss (Gain) on Disposition of Fixed Assets	27,150	(18,474)	115,441
0602. Depreciation of Furniture and Fixtures	21,850	86,794	101,430
0603. Amortization of Leasehold Improvements	17,404	16,440	32,282
0606. Summary of remaining write-ins from overflow page	844,226	423,887	(423,887)
0609. Totals (Lines 0601 through 0605) plus 0604 (Line 6 above)	326,634	367,436	225,366
1201. Corporate Support Fees	3,734,284	1,699,485	2,953,401
1202. Miscellaneous Income	349,060	390,437	462,306
1203. Loss (Gain) on Sale of Mortgage		233,638	223,638
1206. Summary of remaining write-ins from overflow page	(1,155,809)	(1,325,876)	(1,188,411)
1209. Totals (Lines 1201 through 1205) plus 1204 (Line 12 above)	2,927,535	998,552	1,351,924
3001. Equity in Earnings of Subsidiaries and Affiliates	32,542,181	(5,640,916)	30,444,877
3002. Changes in Adjusted Value of Investment in Subsidiaries and Affiliates	(96,308,190)	97,741,197	(73,701,846)
3003. Adjustment	50,627,091	50,745,050	(89,671,539)
3006. Summary of remaining write-ins from overflow page	1,393,248	144,047,850	245,040,171
3009. Totals (Lines 3001 through 3005) plus 3004 (Line 30 above)	(14,046,670)	296,293,020	(16,288,633)

Statement as of September 30, 2006 of the American Land Title Association - Industry

SCHEDULE T - EXHIBIT OF PREMIUMS WRITTEN

Current Year to Date - Allocated by States and Territories

State, etc.	Is Insurer Licensed? (Yes or No)	Direct Premiums Written		Direct Losses Paid (Excluding Salvage)		Direct Losses Unpaid		
		Current Year To Date	Prior Year To Date	Current Year To Date	Prior Year To Date	Current Year To Date	Prior Year To Date	
		1	2	3	4	5	6	
1. Alabama	AL	YES	78,816,470	74,780,648	8,260,823	5,688,641	5,404,184	5,164,731
2. Alaska	AK	YES	28,008,940	28,081,870	814,119	2,179,890	438,819	270,025
3. Arizona	AZ	YES	404,002,765	522,679,864	13,567,202	11,432,717	11,972,818	8,375,438
4. Arkansas	AR	YES	42,173,817	35,785,228	2,559,644	3,379,941	2,453,445	2,577,609
5. California	CA	YES	3,948,810,281	2,468,865,407	88,038,118	80,147,009	131,177,805	98,556,545
6. Colorado	CO	YES	244,142,301	251,650,595	11,322,244	11,718,004	9,318,431	7,649,449
7. Connecticut	CT	YES	128,824,081	134,118,633	15,301,770	8,183,860	10,325,532	12,888,542
8. Delaware	DE	YES	81,265,308	42,818,054	778,506	883,881	428,368	425,171
9. Dist. Columbia	DC	YES	44,682,096	46,531,787	3,745,919	2,469,408	3,768,727	2,947,127
10. Florida	FL	YES	1,894,592,037	1,712,538,654	68,860,479	44,707,044	74,831,331	58,848,065
11. Georgia	GA	YES	220,738,843	184,723,891	23,008,589	26,363,331	20,663,027	21,403,287
12. Hawaii	HI	YES	78,832,765	81,408,089	3,584,107	2,881,139	5,818,536	5,205,485
13. Idaho	ID	YES	108,468,787	88,840,581	1,842,335	1,570,760	2,884,788	2,712,881
14. Illinois	IL	YES	281,286,205	287,334,970	26,340,318	25,764,454	28,845,825	27,461,175
15. Indiana	IN	YES	78,640,294	78,894,284	7,078,808	8,575,154	8,422,627	8,538,084
16. Iowa	IA	YES	6,751,846	6,720,171	671,188	646,371	920,129	558,172
17. Kansas	KY	YES	34,204,013	36,306,994	1,488,518	743,859	1,270,846	1,720,104
18. Kentucky	KY	YES	46,137,861	44,778,130	8,427,186	4,237,881	5,184,508	4,473,608
19. Louisiana	LA	YES	80,868,117	83,990,781	2,547,087	2,474,271	2,763,816	2,844,709
20. Maine	ME	YES	26,278,683	26,185,898	2,337,558	1,278,303	1,588,826	1,477,603
21. Maryland	MD	YES	205,613,376	234,150,834	10,761,804	1,465,988	14,821,727	16,347,335
22. Massachusetts	MA	YES	202,411,385	234,080,030	19,888,708	7,511,680	14,110,000	15,518,446
23. Michigan	MI	YES	187,141,482	200,728,897	40,876,087	22,875,840	31,588,365	30,597,518
24. Minnesota	MN	YES	116,391,498	123,008,048	8,316,321	8,234,694	10,399,097	12,382,715
25. Mississippi	MS	YES	32,528,807	38,174,388	2,664,064	2,439,810	2,631,140	4,404,671
26. Missouri	MO	YES	58,924,732	53,826,246	5,384,485	18,737,599	11,281,213	9,871,581
27. Montana	MT	YES	41,058,138	40,808,818	1,448,508	1,116,125	1,780,086	1,763,288
28. Nebraska	NE	YES	31,465,363	32,428,227	1,568,578	371,589	3,262,273	2,147,821
29. Nevada	NV	YES	219,871,193	242,584,061	8,996,376	7,768,708	14,595,651	14,844,274
30. New Hampshire	NH	YES	31,863,369	30,786,480	1,826,831	1,603,138	1,687,816	2,014,641
31. New Jersey	NJ	YES	408,838,453	407,572,655	19,088,048	37,873,347	36,879,238	25,022,838
32. New Mexico	NM	YES	108,825,868	88,632,615	4,900,831	2,128,818	4,403,171	3,834,787
33. New York	NY	YES	808,408,722	891,888,478	28,804,218	34,688,302	36,889,323	48,404,650
34. N. Carolina	NC	YES	127,708,497	106,788,817	11,632,525	12,248,884	11,787,884	15,021,585
35. N. Dakota	ND	YES	5,499,812	8,838,671	83,439	45,320	98,076	110,782
36. Ohio	OH	YES	314,041,006	310,778,268	11,761,426	11,369,881	17,717,261	15,740,413
37. Oklahoma	OK	YES	42,468,238	42,708,030	1,256,687	1,457,802	2,594,813	2,339,160
38. Oregon	OR	YES	187,342,811	188,466,705	6,613,375	4,122,969	4,922,084	5,427,118
39. Pennsylvania	PA	YES	428,626,197	410,660,527	12,344,784	13,197,722	15,225,419	13,923,697
40. Rhode Island	RI	YES	31,820,412	31,811,780	781,789	1,782,495	2,720,073	2,088,008
41. S. Carolina	SC	YES	105,208,630	84,419,348	5,118,628	8,885,182	7,389,961	5,302,881
42. S. Dakota	SD	YES	13,382,818	11,887,564	110,184	238,786	1,618,468	211,280
43. Tennessee	TN	YES	118,005,693	108,705,043	6,878,432	10,805,580	8,026,567	7,995,531
44. Texas	TX	YES	1,824,084,434	1,087,742,461	31,649,820	32,000,117	28,567,203	36,882,325
45. Utah	UT	YES	202,847,136	287,650,159	4,308,808	5,618,349	7,334,825	8,432,893
46. Vermont	VT	YES	11,487,441	18,721,131	1,175,747	1,001,941	3,234,208	1,405,342
47. Virginia	VA	YES	243,847,088	348,842,044	7,805,438	8,904,074	24,468,850	6,597,265
48. Washington	WA	YES	219,841,094	294,047,929	13,836,826	18,088,885	13,781,101	13,593,041
49. West Virginia	WV	YES	18,987,715	15,388,018	812,338	841,792	1,145,246	1,359,414
50. Wisconsin	WI	YES	102,328,882	112,868,264	5,927,275	4,452,582	9,334,091	5,610,688
51. Wyoming	WY	YES	21,853,413	21,253,044	246,908	305,170	394,830	382,303
52. American Samoa	AS	YES						
53. Guam	GU	YES	3,307,387	1,758,882	93,414	305,464	388,808	380,842
54. Puerto Rico	PR	YES	28,822,354	26,947,562	3,887,482	1,776,391	3,465,414	4,414,250
55. U.S. Virgin Is.	VI	YES	2,314,997	9,187,721	119,891	60,982	318,130	525,302
56. Northern Mariana Islands	MP	YES	175,034	88,674	136,085	136,882	824	170,038
57. Canada	ON	YES	96,214,400	111,672,481	14,182,565	14,368,576	15,387,025	13,967,487
58. Aggregate Other Asian	OT	X X X	52,477,842	42,822,856	1,878,385	375,828	15,112,489	12,530,443
59. Totals	ALL	59	12,282,777,034	12,778,726,114	605,684,253	497,894,739	723,511,177	638,148,381

DETAILS OF WRITE-UPS

5401. Mexico	X X X	6,206,723	3,699,418	576,818	109,415	794,694	385,004
5402. United Kingdom	X X X	29,295,831	29,889,130	250,782	181,797	192,553	138,628
5403. Australia	X X X	3,592,438	3,218,913	505,611	642,100	2,918,918	1,913,427
From overflow page							
5409. TOTALS (Lines 5401 thru 5403 plus 5409) (Line 58 above)	X X X	14,228,848	8,610,585	444,514	19,625	11,645,916	10,741,935
5410. TOTALS (Lines 5401 thru 5403 plus 5409) (Line 58 above)	X X X	52,477,842	42,822,856	1,878,385	375,828	15,112,489	12,530,443

(x) Insert the number of yes responses except for Canada and Other Asian.

PART 1 - LOSS EXPERIENCE

	Current Year to Date				5 Prior Year to Date Direct Loss Percentage
	1 Direct Premiums Written	2 Other Income (Page 4, Line 5.2 + 1.5 + 2)	3 Direct Losses Incurred	4 Direct Loss Percentage (Col. 3 / (1 + 2))	
1. Direct operations	1,974,530,096	804,969,148	155,192,450	4.19	4.98
2. Agency operations:					
2.1 Non-affiliated agency operations	7,636,835,071	41,331,620	300,731,282	5.02	5.03
2.2 Affiliated agency operations	3,555,921,437	2,018,890	87,045,429	3.05	2.90
3. Totals	12,367,277,404	8,238,219,618	597,969,343	4.45	4.49

PART 2 - DIRECT PREMIUMS WRITTEN

	1 Current Quarter	2 Current Year to Date	3 Prior Year Year to Date
1. Direct operations	914,085,809	3,874,030,096	1,845,923,104
2. Agency operations:			
2.1 Non-affiliated agency operations	2,626,705,073	7,836,835,071	7,391,418,892
2.2 Affiliated agency operations	943,759,619	2,955,611,437	3,236,983,515
3. Totals	4,188,549,221	12,367,277,404	12,378,225,514

Statement as of September 30, 2006 of the American Land Title Association - Industry

OVERFLOW PAGE FOR WRITE-INS

Page 2 - Continuation
ASSETS

	Current Statement Date			
	1	2	3	4
	Assets	Nonadmitted Assets	Not Admitted Assets (Col. 1 - 2)	December 31 Prior Year Not Admitted Assets
REMAINING WRITE-INS AGGREGATED AT LINE 19 FOR REVISED ASSETS				
0004 Interest Receivable				
0005				
0006				
0007				
0008				
0009				
0010				
0011				
0012				
0013				
0014				
0015				
0016				
0017				
0018				
0019				
0020				
0021				
0022				
0023				
0024				
0025				
0027 Totals (Lines 0004 through 0025) (Page 2, Line 0004)				
REMAINING WRITE-INS AGGREGATED AT LINE 22 FOR OTHER THAN INVESTED ASSETS				
2304 Other Intangible Intangibles	26,093,590	29,410,943	232,071	194,922
2305 Leasehold Improvements	4,485,353	4,485,353		
2306 Title Plant Improvements	2,711,615	2,506,081	202,554	298,928
2307 Cash Surrender Value	94,440,218		34,446,218	32,096,371
2308 Reassignment Receivable	18,340,699	18,340,699		
2309 Other Receivables	8,281,050	1,918,175	4,424,878	4,024,882
2310 Prepaid Retirement	3,449,929	3,449,929		
2311 Notes on Premium	515,370	71,809	451,540	687,602
2312 State Tax and Premium Tax Reserve				303,656
2313 Other Deposits	154,500	81,689	62,892	83,819
2314 Properties Held for Sale	74,147	74,147		
2315 Ground Rents	88,600	88,600		
2316 Loans on Personal Security	2,751	2,751		
2317 Other Non-Admitted Assets	540,596	540,596		280,276
2318 Agreements	1,817,927	1,817,927		
2319 Policy Forms	14,508	14,508		
2320 Life Insurance	173,937	90,910	87,027	81,377
2321 Software Inventory	9,022		9,022	42,540
2322 Suspense	2,657		2,657	36,000
2323 Automobile	11,157	11,157		
2324 Investments	7,169,818	193,171	977,645	
2325 Other Write-Ins	48,457	47,480	997	7,079
2327 Totals (Lines 2304 through 2325) (Page 2, Line 2304)	104,960,331	64,086,262	40,893,936	39,183,461

OVERFLOW PAGE FOR WRITE-INS

Page 3 - Continuation

LIABILITIES, SURPLUS AND OTHER FUNDS

	1 Current Statement Date	2 December 31 Prior Year
REMAINING WRITE-INS AGGREGATED AT LINE 03 FOR OTHER RESERVES REQUIRED BY LAW		
0304. Reserve for Loans	1,000,000	1,000,000
0305.		
0306.		
0307.		
0308.		
0309.		
0310.		
0311.		
0312.		
0313.		
0314.		
0315.		
0316.		
0317.		
0318.		
0319.		
0320.		
0321.		
0322.		
0323.		
0324.		
0325.		
0326.		
0327. Totals (Lines 0304 through 0325) (Page 3, Line 0385)	1,000,000	1,000,000
REMAINING WRITE-INS AGGREGATED AT LINE 28 FOR OTHER LIABILITIES		
2004. Reinsurance Contract Payable	9,096,170	10,729,870
2005. Customer Trust and Escrow Deposits secured by Pledged Assets	875,222,000	802,602,038
2006. Payable under Agreements	271,857,530	178,920,750
2007. Unallocated Loss Adjustment Expense Reserve	20,000	20,000
2008. Other Payables	6,540,400	5,720,590
2009. Estimated Liability concerning Corporate Reinsurance		
2010. Other Reserves		
2011. Deferred Gains	60,320	60,700
2012. Deferred Fees	445,820	440,400
2013. Outstanding Checks Greater than 1 Year Old	18,470	15,000
2014. Unapplied Cash	2,371,010	3,604,080
2015. Other Liabilities		
2016. Other Reinsurance		
2017. Accrued Payroll		10,020
2018. Miscellaneous	276,860	1,560
2019. Unspecified Loss Reserves		
2020. Accrued Liabilities for Employee Benefits	6,890,020	5,507,390
2021. Contingent Commission Payable	4,246,160	4,246,160
2022. Visa/Master Card Reserves	643,000	438,000
2023. Reinsurance Payable	751,080	493,510
2024.		
2025.		
2026. Totals (Lines 2004 through 2025) (Page 3, Line 0386)	1,178,364,600	1,047,736,630

Statement as of September 30, 2006 of the American Land Title Association - Industry

OVERFLOW PAGE FOR WRITE-INS

Page 3 - Continuation
LIABILITIES, SURPLUS AND OTHER FUNDS

	1 Current Statement Date	2 December 31 Prior Year
REMAINING WRITE-INS AGGREGATED AT LINE 22 FOR SPECIAL SURPLUS FUNDS		
2204. Voluntary Loss Reserve		1,945,839
2205. Unearned Loss Compensation		(702,410)
2207.		
2208.		
2209.		
2210.		
2211.		
2212.		
2213.		
2214.		
2215.		
2216.		
2217.		
2218.		
2219.		
2220.		
2221.		
2222.		
2223.		
2224.		
2225.		
2226.		
2227. Total (Lines 2204 through 2225) (Page 3, Line 2207)		1,243,429
REMAINING WRITE-INS AGGREGATED AT LINE 25 FOR OTHER THAN SPECIAL SURPLUS FUNDS		
2504.		
2505.		
2506.		
2507.		
2508.		
2509.		
2510.		
2511.		
2512.		
2513.		
2514.		
2515.		
2516.		
2517.		
2518.		
2519.		
2520.		
2521.		
2522.		
2523.		
2524.		
2525.		
2526.		
2527. Total (Lines 2504 through 2525) (Page 3, Line 2505)		

Page 4 - Continuation
OPERATIONS AND INVESTMENT EXHIBIT
STATEMENT OF INCOME

	1 Current Year to Date	2 Prior Year to Date	3 Prior Year Ended December 31
REMAINING WRITE-INS AGGREGATED AT LINE 02 FOR OTHER OPERATING INCOME			
0104. Miscellaneous Income	1,453,019	1,800,782	2,286,738
0206. Premiums Retained as Agent for Underwriter	1,000,144	1,090,780	1,802,549
0206. Management Fees	756,306	1,226,065	1,484,713
0207. Title Plant Income	1,128,390	907,642	1,239,959
0208. Recording Service Fees	462,837	655,991	1,014,688
0209. Ceded Reinsurance from Agents	688,814	906,715	1,094,774
0210. Other Fees	341,099	557,200	770,600
0211. Other Income			
0212. Title Examinations	111,290		729,969
0213. Gross Premiums Ceded	154,195	151,094	700,160
0214. Gain on Disposal of Assets	13,040	37,600	34,101
0215. Interest on Premium Revenue			(979,582)
0216. Closing Fees	505,204	763,953	357,125
0217. Foreclosure Income			242,470
0218. Escrow and Settlement Services	128,065	727,240	168,139
0219. Commission Income			114,904
0220. Mortgage Choice Income	1,640,218	1,826,726	99,218
0221. License Fee Income	99,833	69,823	27,844
0222. Correction of Errors affecting Surplus	757		
0223.			
0224.			
0225.			
0287. Totals (Lines 0204 through 0225) (Page 4, Line 0287)	6,912,400	9,813,081	10,197,470
REMAINING WRITE-INS AGGREGATED AT LINE 09 FOR OTHER OPERATING DEDUCTIONS			
0404. Loss (Gain) on Abandonment of Equipment			(474,907)
0405. Commissions Expense		423,840	
0406. Agent's Fee and Reserve for Claims	244,365		
0407.			
0408.			
0409.			
0410.			
0411.			
0412.			
0413.			
0414.			
0415.			
0416.			
0418.			
0419.			
0420.			
0421.			
0422.			
0423.			
0424.			
0425.			
0497. Totals (Lines 0404 through 0425) (Page 4, Line 0497)	244,365	423,840	(474,907)

Statement as of September 30, 2006 of the American Land Title Association - Industry

Page 4 - Continuation
OPERATIONS AND INVESTMENT EXHIBIT
STATEMENT OF INCOME

	1 Current Year to Date	2 Prior Year to Date	3 Prior Year Ending December 31
REMAINING WRITING AGGREGATED AT LINE 12 FOR MISCELLANEOUS INCOME OR LOSS			
1204. Processing Fee		45,000	80,000
1205. Dividend - Title Plant	28,185	29,100	29,100
1206. Subsidiary Income		9,910	7,322
1207. Management Fees			
1208. Earned on Life Insurance on Offices			1,368
1209. Loss (Gain) on Sale of Equipment			
1210. Retirees Supplemental Benefit Expense			
1211. Accounts Receivable Writeoff			
1212. Loss (Gain) on Stock Due to Impairment			(7,000)
1213. Interagency Transfer to Housing Assistance	(1,188,000)	(1,410,000)	(1,840,000)
1214.			
1215.			
1216.			
1217.			
1218.			
1219.			
1220.			
1221.			
1222.			
1223.			
1224.			
1225.			
1226.			
1227. Totals (Lines 1204 through 1225) (Page 4, Line 1208)	(1,159,815)	(1,390,900)	(1,760,412)
REMAINING WRITING AGGREGATED AT LINE 30 FOR GAINS AND LOSSES IN SURPLUS			
3004. Correction of error in Accounting for a Branch Position		27,754,320	27,734,320
3005. Prior Period Tax Adjustment	(1,041,214)	(2,893,751)	54,932,181
3006. Gain on Disposition/Merger of Subsidiaries	893,935	3,183,753	3,018,204
3007. Accrued Pension Adjustment			(1,648,197)
3008. Voluntary Loss Reserve		1,048,712	1,945,839
3009. Adjustment to Prior Year State Taxes		698,443	808,443
3010. Change in Non-Admitted Assets resulting from Merger of Subsidiaries	94,319	(9,750)	201,542
3014. Bonus Contract Fees			
3012. Correction of error in presentation of change in Non-Admitted OTA		114,415,825	102,573,747
3013. Unearned Compensation	757,030	62,678	84,329
3014. Prior Period Change in Non-Admitted Assets			47,710
3015. U.S. GAAP to Statutory Tax Adjustments	(3,367)	18,368	95,389
3016. Merger of Wholly Owned Subsidiaries	8,796,699		6,188
3017. Equity in Net Income (Loss) of Subsidiary		800	575
3018. Statutory Premium Reserve Aggregation			
3019. Current Prior Year Tax Liability			
3020. Unrequested Premiums			
3021. Minus Reserve Adjustment			
3022. Closed Debts to Retained Earnings - Prior Period Stat. Res. Adjustment			(138,330)
3023. Prior Period Subsidiary Equity Adjustment			(17,687)
3024. FIT Payable Adjustment	(63,212)	(17,899)	(4,688,700)
3025. Other Write-Ins	182,000	208,612	
3027. Totals (Lines 3004 through 3025) (Page 4, Line 3008)	1,361,348	144,047,650	245,046,171

OVERFLOW PAGE FOR WRITE-INS

Page 15 - Continuation

SCHEDULE T - EXHIBIT OF PREMIUMS WRITTEN
Current Year to Date - Allocated by States and Territories

	1 Is Insurer Licensed? (Yes or No)	Direct Premiums Written		Direct Losses Paid (Deducting Salvage)		Direct Losses Unpaid	
		2 Current Year To Date	3 Prior Year To Date	4 Current Year To Date	5 Prior Year To Date	6 Current Year To Date	7 Prior Year To Date
		REMAINING WRITE-INS AGGREGATED AT LINE 10 FOR OTHER ALIEN					
5804. Bolivia	X X X	5,328,824	208,951	12,870		12,917	22,238
5805. Korea	X X X	2,320,313	3,820,201	1,127		109,119	
5806. Caribbean	X X X	1,548,481	308,672				
5807. Italy	X X X	42,108					
5808. Costa Rica	X X X	1,179,697	1,082,594	200,825		34,325	
5809. Angola	X X X	820,693	181,075				
5810. Dominican Republic	X X X	8,143	94,928				
5811. Hong Kong	X X X	254,938	83,744				
5812. Burk. Faso	X X X					10,694,000	10,094,000
5813. New Zealand	X X X			21,035	11,700	48,128	34,605
5814. Honduras	X X X						
5815. Trinidad and Tobago	X X X		60,000				
5816. Ukraine	X X X					7,625	
5817. Queensland	X X X		50,243	3,320			
5818. Bermuda	X X X	272,205	7,380				
5819. Poland	X X X	28,981					
5820. Ireland	X X X						
5821. Hungary	X X X						
5822. Czech Republic	X X X						
5823. Slovakia	X X X						
5824. Japan	X X X	25,433					
5825. Other Countries	X X X	585,108	17,790	104,143		158,431	
5807. Totals (Lines 5804 thru 5825) (Page 15, Line 5810)	X X X	14,223,643	8,818,593	464,912	19,825	11,040,616	10,141,814

QUICK STATS

2004 Property/Casualty Assets

ASSETS	2004 Net Admitted Assets	Prior Year Net Admitted Assets	\$ Change	% Change	2004 % of Total Assets	Prior Year % of Total Assets
1. Bonds (Schedule D)	752,921,254.710	678,095,389.209	74,825,855.502	11.0	59.9	55.6
2. Stocks (Schedule D)	219,965,272.855	199,270,027.054	20,695,245.801	10.4	18.6	16.3
3. Mortgage loans on real estate (Schedule B)	3,274,776.462	2,869,419.794	376,356.678	13.0	0.2	0.2
4. Real estate (Schedule A)	10,983,193.174	9,951,748.954	1,111,444.220	1.2	0.8	0.8
5. Cash, cash equivalents and short-term investments	95,332,292.761	93,345,546.460	1,986,746.301	2.1	7.2	7.7
6-8 Other Invested Assets	41,225,124.512	40,589,942.525	644,181.987	2.1	3.1	3.3
10. Subtotals, cash and invested assets (lines 1 to 9)	1,122,211,843.468	1,023,859,179.686	98,352,663.782	9.6	84.8	84.0
11. Investment income due and accrued	9,604,679.459	9,054,510.774	550,168.685	6.1	0.7	0.7
12. Premiums and considerations:						
12.1 Uncollected prem. & agents' balances in the course of collection	33,160,274.862	32,827,727.286	332,547.576	1.0	2.5	2.7
12.2 Deferred premiums, agents' balances and initialments						
looked but deferred and not yet due	63,889,633.743	63,999,190.199	(276,527.437)	-0.4	4.8	5.2
12.3 Accrued retrospective premiums	3,741,886,047	3,887,056,034	(135,159,987)	-3.2	10.3	9.3
13. Reinsurance:						
13.1 Amounts recoverable from reinsurers	21,699,998.753	21,661,880.834	38,117.919	1.1	1.7	1.8
13.2 Funds held by or deposited with reinsured companies	8,697,738,615	8,631,883,151	65,855,464	3.1	67.0	67.7
13.3 Other amounts recoverable under reinsurance contracts	980,006,916	566,077,859	413,929,057	73.3	0.1	0.0
15.2 Net deferred tax asset	17,918,546.912	16,652,257.457	1,266,289.455	5.2	1.3	1.4
15.1, 16-20, 25 Other Assets	41,620,841.197	38,185,591,960	3,435,249,237	9.0	3.1	3.1
26. TOTALS	1,321,526,443,788	1,219,374,128,967	102,152,314,821	8.5	100.0	100.0

Quick Stats

2004 Property/Casualty Liabilities, Surplus and Other Funds

					2004 % of Total Liab, Surp & Other Funds
	LIABILITIES, SURPLUS AND OTHER FUNDS	2004	2003	\$ Change	% Change
1. Losses		426,112,042,818	352,297,239,931	73,814,802,888	21.0
3. Loss adjustment expenses		84,788,587,046	85,282,048,880	16,516,538,556	24.2
5. Other expenses (excluding taxes, licenses and fees)		20,268,682,826	17,758,511,358	2,472,071,169	13.9
6. Taxes, licenses and fees (excluding federal and foreign income taxes)		5,672,192,135	4,946,727,574	725,454,561	14.7
9. Unearned premiums		192,999,639,309	188,091,852,009	24,107,786,963	14.3
12. Ceded reinsurance premiums payable (net of ceding commission)		17,929,338,826	15,210,149,305	1,759,290,523	11.6
13. Funds held by company under reinsurance treaties		32,524,111,236	31,815,365,121	1,608,746,115	3.5
22. Aggregate write-ins for liabilities		43,178,468,543	37,687,280,687	5,261,227,656	14.0
25. Total liabilities (Lines 24 and 25)		862,774,580,523	757,898,009,152	134,676,562,171	17.6
27. Aggregate write-ins for special surplus funds		30,683,000,834	27,321,700,882	3,341,298,742	12.2
31. Surplus notes		11,436,180,482	9,808,869,930	1,627,310,650	17.2
32. Gross paid-in and contributed surplus		131,615,940,225	106,646,654,575	22,767,284,550	20.6
33. Unassigned funds (surplus)		251,446,247,362	260,176,682,307	51,269,585,686	25.6
35. Surplus as regards policyholders (Page 4, Line 38)		430,551,088,432	350,660,159,576	79,590,508,653	22.7
36. TOTALS (Page 2, Line 26, Column 3)		1,323,325,668,750	1,108,088,165,724	214,437,501,035	19.3

Quick Stats

2004 Property/Casualty Liabilities, Surplus and Other Funds

2003
% of Total
Liab, Surp &
Other Funds
31.8
6.2
1.8
0.6
15.2
1.6
2.9
3.4
88.3
2.5
0.9
9.6
16.1
31.7
100.0

Quick Stats

2004 Property/Casualty Underwriting and Investment Exhibit Statement of Income

STATEMENT OF INCOME	2004	2003	\$ Change	% Change
UNDERWRITING INCOME				
1. Premiums earned	439,087,680,797	385,162,567,644	53,925,113,153	14.0
DEDUCTIONS				
2. Losses incurred	264,012,630,810	236,063,670,721	27,948,960,089	11.8
3. Loss expenses incurred	56,491,513,118	49,799,140,082	6,692,373,036	13.4
4. Other underwriting expenses incurred	111,565,452,911	99,230,386,389	12,335,066,521	12.4
5. Total underwriting deductions (Items 2 thru 4)	432,073,603,227	385,093,197,192	46,980,406,035	12.2
6. Net underwriting gain or (loss) (Line 1 minus 5 plus line 7)	6,014,077,570	(1,326,329,548)	7,340,407,118	208.5
INVESTMENT INCOME				
9. Net investment income earned	43,201,189,296	38,248,745,285	4,952,444,011	12.9
10. Net realized capital gains or (losses)	8,565,800,807	6,682,215,553	1,883,585,254	28.2
11. Net investment gain or (loss) (Lines 9 + 10)	52,566,990,103	44,930,960,838	7,636,029,265	17.0
OTHER INCOME				
12. Total other income (Lines 12 thru 14)	(428,526,630)	(185,504,531)	(243,022,099)	-128.2
15. Net income before dividends to policyholders and before federal and foreign income taxes (Lines 6 + 11 + 12)	56,042,295,561	43,420,132,023	12,622,163,538	29.1
17. Dividends to policyholders	2,145,173,803	2,074,829,041	70,344,762	3.4
18. Net income after dividends to policyholders but before federal and foreign income taxes (Line 15 minus 17)	53,897,121,758	41,345,302,982	12,551,818,776	30.4
19. Federal and foreign income taxes incurred	14,671,177,022	10,519,381,652	4,151,795,370	39.4
20. Net income (Line 18 minus 19) (to Line 22)	41,925,944,736	30,825,921,330	11,100,023,406	35.7
CAPITAL AND SURPLUS ACCOUNT				
21. Surplus as regards policyholders, December 31 prior year	381,502,078,882	288,205,073,335	93,297,005,547	32.4
GAINS AND (LOSSES) IN SURPLUS				
22. Net income (from Line 20)	41,925,944,736	28,825,921,330	13,100,023,406	45.5
23. Change in foreign exchange adjustment				
24. Change in net unrealized capital gains or (losses)	14,154,097,254	26,452,654,352	(12,298,557,098)	-46.5
25. Dividends to stockholders	(18,631,727,234)	(3,158,485,850)	(15,473,241,384)	-49.0
26. Change in treasury stock	(640,215,033)	13,587,296	(653,802,329)	-483.8
27. Aggregate write-ins for gains and losses in surplus	(304,347,139)	(278,887,276)	(25,459,863)	-9.1
28. Change in surplus as regards policyholders for the year (Lines 22 thru 27)	49,248,960,751	61,785,088,254	(12,536,127,503)	-20.3
29. Surplus as regards policyholders, Dec 31 current year (Lines 21 + 28)	430,751,039,633	350,000,161,589	80,750,878,044	23.1

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2004 Life Assets

ASSETS (000s)	2004 Net Admitted Assets	Prior Year Net Admitted Assets	\$ Change	% Change	2004 % of Total Assets	Prior Year % of Total Assets
1. Bonds (Schedule D)	2,049,344,987.00	1,688,717,383	180,627,604	8.3	48.0	49.0
2. Stocks (Schedule D)						
2.1 Preferred stocks	32,168,877.00	26,947,601	5,130,376	19.0	0.8	0.8
2.2 Common stocks	126,232,600.00	112,484,585	13,748,015	12.3	3.0	2.9
3. Mortgage loans on real estate (Schedule D)						
3.1 First liens	284,913,680.00	252,650,605	12,263,077	4.9	6.3	6.6
3.2 Other than first liens	1,135,421.00	928,462	206,959	22.3	0.0	0.0
4. Real estate (Schedule A)						
4.1 Properties occupied by the company	5,823,712.00	5,878,819	(55,107)	-0.9	0.1	0.2
4.2 Properties held for the production of income	12,305,669.00	12,407,745	(101,746)	-0.8	0.3	0.3
4.3 Properties held for sale	1,402,155.00	1,589,947	(187,492)	-12.3	0.0	0.0
5. Cash, cash equivalents and short-term investments	74,656,825.00	76,764,604	(2,107,779)	-2.7	1.8	2.0
6. Contract basis	165,559,855.00	103,945,397	61,614,458	1.6	2.5	2.7
7. Other invested assets (Schedule BA)	68,719,365.00	58,382,302	11,337,063	19.4	1.7	1.5
10. Subsidiary cash and invested assets (Lines 1 to 9)	2,758,537,600.00	2,580,644,205	197,893,395	7.7	65.4	66.5
11. Investment income due and accrued	30,062,789.00	28,650,814	1,411,975	4.9	0.7	0.8
12. Premiums and considerations						
12.1 Uncollected premium & agent's balances in the course of collection	10,702,517.00	10,265,856	436,661	3.3	0.3	0.3
12.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due	11,551,690.00	10,623,596	928,094	8.7	0.3	0.3
12.3 Accrued retrospective premiums	133,472.00	138,376	(4,904)	-3.5	0.0	0.0
13. Reinsurance						
13.2 Funds held by or deposited with reinsured companies	10,078,524.00	6,922,474	3,156,050	45.6	0.2	0.2
15.2 Net deferred tax asset	14,017,476.00	14,358,647	(341,171)	-2.3	0.3	0.4
20. Receivables from parent, subsidiaries and affiliates	6,277,340.00	5,516,044	761,296	13.8	0.1	0.1
23. Aggregate write-ins for other than invested assets	28,326,716.00	21,773,230	1,553,486	7.1	0.6	0.6
24. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 10 to 23)	2,977,546,584.00	2,671,840,650	275,705,934	7.7	68.2	66.4
25. From Separate Accounts, Segregated Accounts and Protected Cell Accounts	1,342,196,338.00	1,178,726,427	163,470,912	13.8	31.8	30.6
26. Total (Lines 24 and 25)	4,219,742,922.00	3,850,567,077	369,175,845	9.6	100.0	100.0

2004 Life Liabilities

LIABILITIES, SURPLUS AND OTHER FUNDS (000's)	2004	Prior Year	\$ Change	% Change	2004 % of Total Liabilities	Prior Year % of Total Liabilities
1. Aggregate reserve for life contracts	1,799,513,671	1,859,700,357	105,810,314	6.2	42.0	44.0
2. Aggregate reserve for accident and health contracts	129,863,788	120,210,582	9,653,206	7.9	3.1	3.1
3. Liability for Deposit-type Contracts	306,737,258	284,305,199	22,432,059	7.9	7.3	7.4
17. Amounts withheld or retained by company as agent or trustee	31,697,595	29,049,596	2,647,999	9.1	0.7	0.5
19. Reimbursements and items not allocated	9,847,522	10,247,727	(400,205)	-3.9	0.2	0.3
21. Liability for benefits for employees and agents if not included above	4,260,702	4,074,544	186,158	4.6	0.1	0.1
22. Borrowed money and interest thereon	19,473,517	19,878,717	(405,200)	-2.0	0.5	0.5
25. Aggregate write-ins for liabilities	84,022,799	87,288,813	(3,266,014)	-3.7	2.0	1.7
26. Total Liabilities excluding Separate Accounts business (Lines 1 to 25)	2,562,862,390	2,403,572,618	159,289,772	6.6	61.2	62.4
27. From Separate Accounts Statement	1,338,834,938	1,178,782,486	160,052,452	13.6	31.7	30.6
28. Total Liabilities (Line 26 and 27)	3,901,697,328	3,582,355,104	319,342,224	8.9	92.9	93.0
29. Common capital stock	3,427,436	3,362,828	64,608	1.9	0.1	0.1
30. Preferred capital stock	1,197,650	1,418,900	(221,250)	-15.6	0.0	0.0
37. Surplus (Total Items 21 + 32 + 33 + 34 + 35 - 36)	255,430,738	268,377,732	(12,946,994)	-4.8	6.4	6.4
38. Totals of Items 29, 30 and 37 (Page 4, Line 55)	256,628,225	271,790,630	(15,162,405)	-5.6	6.5	7.5
39. Totals of Items 28 and 38 (Page 2, Line 26, Col 3)	4,218,742,923	3,854,145,734	364,597,189	9.5	100.0	100.0

2004 Life Summary of Operations

SUMMARY OF OPERATIONS (000's)	2004	Prior Year	\$ Change	% Change
1. Premiums and annuity considerations for life and accident and health contracts	531,152,813	488,084,812	32,458,001	6.6
2. Considerations for supplementary contracts with life contingencies	836,381	796,852	100,129	12.6
3. Net investment income	152,130,106	145,728,082	6,404,124	4.4
4. Amortization of interest maintenance reserve (IMR)	2,302,351	1,541,486		
5. Separate accounts net gain from operations excluding unrealized gains or losses	471,188	459,635	11,553	2.5
6. Commissions and expense allowances on reinsurance ceded	15,789,063	15,028,731	742,832	4.9
7. Reserve adjustments on reinsurance ceded	43,297,481	27,818,320	15,478,130	55.6
8. Miscellaneous income:				
8.1 Income from fees associated with investment management, administration and contract guarantees from Separate Account	63,857,190	12,803,494	2,863,704	20.3
8.2 Charges and fees for deposit-type contracts	136,847	226,613	(82,766)	(40.1)
8.3 Aggregate write-ins for miscellaneous income	(3,357,435)	9,186,745	(12,547,180)	(136.5)
9. Total (Lines 1 to 8)	758,196,394	712,287,057	45,879,307	6.4
10. Death benefits	48,358,480	49,504,212		
11. Matured endowments (excluding guaranteed annual pure endowments)	551,089	510,280	40,819	8.0
12. Annuity benefits	57,871,817	53,822,240		
13. Disability benefits and benefits under accident and health contracts	88,876,338	89,676,080	7,903,258	9.8
14. Coupons, guaranteed annual pure endowments and similar benefits	227,844	14,389	213,576	1488.5
15. Surrender benefits and withdrawals for life contracts	194,989,351	173,182,242	21,807,149	12.6
16. Group conversions	23,855	24,104	(249)	(1.0)
17. Interest and adjustments on contract or deposit-type contract funds	11,156,229	11,583,221	(776,992)	(6.5)
18. Payments on supplementary contracts with life contingencies	1,564,559	2,218,620	(323,651)	(14.6)
19. Increase in aggregate reserves for life and accident and health contracts	(189,678,438)	(122,356,504)	(172,880,495)	(16.1)
20. Totals (Lines 9 to 19)	514,730,783	484,344,291	28,366,487	4.3
21. Commissions on premiums, annuity considerations and deposit-type contract funds (direct business only)	38,595,850	36,446,055	2,250,823	6.2
22. Commissions and expense allowances on reinsurance assumed	9,785,140	9,299,462	533,678	5.8
23. General insurance expenses	47,184,584	45,555,504	1,629,080	3.6
24. Insurance taxes, licenses and fees, excluding federal income taxes	6,741,282	6,500,427	240,855	3.7
25. Increase in loading on deferred and uncollected premiums	(192,940)	(166,117)	(26,823)	(16.2)
26. Net transfers to or (from) Separate Accounts net of reinsurance	47,954,080	39,811,565	8,143,034	20.5
27. Aggregate write-ins for deductions	29,536,368	19,870,248	8,656,720	43.5
28. Totals (Lines 20 to 27)	683,413,882	651,820,855	41,792,827	6.4
29. Net gain from operations before dividends to policyholders and federal income taxes (Line 9 minus Line 28)	64,752,871	60,666,182	4,086,479	6.7
30. Dividends to policyholders	17,619,753	16,753,556	(1,733,893)	(9.2)

2004 Life Summary of Operations

31. Net gains from operations after dividends to policyholders and before federal income taxes (Line 29 minus line 30)	47,732,918	41,912,856	5,820,062	13.5
32. Federal and foreign income taxes incurred (excluding tax on capital gains)	10,006,023	7,902,486	2,103,537	26.6
33. Net gain from operations after dividends to policyholders and federal income taxes and before realized capital gains or (losses) (Line 31 minus Line 32)	37,727,895	34,010,370	3,717,525	10.9
34. Net realized capital gains or (losses) (including gains/losses transferred to the RRP) less	1,944,207	(4,657,812)	6,602,019	122.4
35. Net income (Line 33 plus Line 34)	35,783,688	29,352,558	9,419,544	32.1