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SECURED FINANCING OF REAL PROPERTY IN MEXICO:
A PANEL DISCUSSION

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INTRODUCTION

Mr. William M. Kahane: The real estate development community, and many sources of institutional capital, view the United States today as a mature, some would say a moribund, market that offers few new real estate opportunities. Capital sources in the United States are hesitant to invest domestically in real estate. The notable exceptions are the bottom fishers in the opportunity funds, who buy from the Resolution Trust Corporation and both foreign and domestic banks that are increasingly becoming insolvent. United States capital and expertise continues to search for new opportunities, and Mexico is increasingly viewed as a prime area for real estate investment and development. Mexico offers growth, diversity, and stability. There are, however, a number of near-term issues that need to be overcome. The legal community, both in the United States and in Mexico, may provide a bridge to help overcome some of those obstacles. The critical issues include predictability, patience, and access to key players on both sides of the border. These players are “key” in the sense of having expertise, capital, good ideas, and tech-

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nology. Finally, a crucial role of the legal community will be to structure long-term, mutually-beneficial relationships among the parties.

HISTORICAL CONTEXT

From the late 1970s through the early 1990s, about $600 billion was invested in United States real estate from abroad. An equivalent amount of money was invested by domestic capital sources. The United States was undergoing a significant amount of investment and development in all asset categories and across all geographical areas within the 50 states. The United States development community, however, was myopic, if not provincial, by looking only inward and sticking to what it knew. Opportunities in Mexico at that time, particularly in the early 1980s, were questioned based on status of land ownership in Mexico, high inflation rates, the unfavorable exchange rate between the peso and the dollar, and a troubling and unpredictable legal environment.

Looking at the current situation, it has almost turned on its head. In the United States, we are now experiencing very slow economic growth, a vast over supply in most major categories of real estate, and constrained capital for development, renovation, and acquisition. Further real estate declines are expected in many markets and in many property types. At the same time, Mexico is viewed as representing significant investment opportunities. A politically-stable environment has been established. In addition, Mexico now has a pro-growth government, a plentiful, high-quality, youthful labor force, an expanding consumer base and, obviously, an increase in direct and indirect sources of foreign and domestic investment. Consequently, one is led, almost inextricably, to conclude that as United States capital and expertise seek new opportunities elsewhere while United States real estate markets continue to languish, Mexico’s real estate market will emerge as an area of preferred investment. In addition, it is reasonable to expect that the real estate development industries in the United States and Mexico will grow closer together.

TRENDS

In the hotel area, there will be more direct sales of Mexican hotels to international strategic buyers who have a raison d'etre for being in major markets in the Americas. Also, private placements, equity swaps, and strategic alliances will be forged between United States and Mexican hotel companies. Presently, my firm has one very large client who is in discussions with a large, publicly-traded Mexican hotel company that wishes to exchange resources, information, and expertise. In the resort and golf area, there are joint ventures being created with United States operators. For the first time, United States operators are beginning to look south of the United States border for both ownership and management opportunities.

In the residential area, United States developers and investors are engaging in joint ventures and the financing of condominiums, apartments and single-family houses, particularly at the entry-level and first-time
move-up. In the areas of corporate facilities and tenant representation, firms will become increasingly involved with one another to select sites for major corporations both north and south of the United States border. Joint ventures are beginning to develop office and industrial space for United States companies in Mexico. Mergers are being negotiated between United States and Mexican real estate asset management firms, development companies, leasing companies, and property management firms. LaSalle Partners of Chicago is an example of a company that has built a large and profitable business in Mexico City. Finally, joint ventures are financing regional shopping centers in Mexico with United States retail developers. For example, retailers such as Wal-Mart and Price Club are moving into Mexico.

**HYPOTHETICAL CASE STUDY**

The hypothetical case study involves a company based in Northern California, called NAFTA Associates. It desires to finance, lease, construct, and manage a two-anchor, open-air power center in Mexico. It will be approximately 400,000 square feet in size. NAFTA Associates is presently in discussions with Price Club, Wal-Mart, Target, Mervyn's, and K-Mart as potential anchors for about half the square footage of the center (i.e., 200,000 square feet). The remaining 200,000 square feet would consist of fashion, food and entertainment establishments. A sample of the possible tenants would include Barnes & Noble, Conran's, Esprit, FAO Schwartz, Ralph Lauren, Polo,Sharper Image, Timberland, and California Pizza Kitchen. The design of the center is an I-shaped, single-level mall with a center court and an anchor at each end. The design contemplates top-quality finishes, extensive landscaping, and surface parking for 1,600 cars.

NAFTA Associates has negotiated an agreement in principle with Grupo Macho, a large Mexican landowner, to enter a joint venture for the development of a 25-acre site (hereinafter referred to as the "Property") which would satisfy all of the physical requirements of the center, including parking. The site is graded and all utilities are available to the Property. All off-site installations and modifications required for the development have been completed and paid. There are no remaining project-specific assessments. All basic entitlements have been granted to the contemplated development, thus eliminating any issues of assemblage, land use, or zoning risk. The conceptual scheme has been approved by the local authorities. The Property enjoys a superior location with largely quantifiable, economic, demographic, and market characteristics. The Property also enjoys excellent visibility and access along the area's major highway. One hundred thousand vehicles pass the site each day. The extension of a fixed rail public transportation system to the site is presently under construction and will be completed by 1995, which is the anticipated completion date of the center. The public transportation system is fully-funded. Public bus service is also available to the site. The relevant trade area's demographic profile is characterized by affluent, well-educated
residents. Moreover, there is a significant population growth anticipated over the next ten years with the introduction of 10,000 new homes and residential units. The Property is a part of a prominent, high-quality, 6,000,000 square foot business park, which increases the potential consumer base for the shopping center by 15,000 white collar workers each year. Corporate tenants for the park include PEMEX, Aero Mexico, Grupo Cydsa, S.A., Kemper Financial, United Airlines, and Seguras America. Existing public facilities are comprised of a police and fire station, a community college, a public library, city park and picnic grounds, and a community center. In addition, a 400-room Camino Real hotel, geared to the business traveler, is located adjacent to the site and achieves an average occupancy rate of around seventy percent of full capacity. In the primary trade area, there are a number of competitive retail centers which exhibit healthy sales performance and growth, although none of them are power centers. There are also a considerable number of free-standing stores and restaurants of all varieties in the surrounding area; however, none are within the park itself.

Finally, NAFTA Associates has agreed to a value of $10,000,000 (U.S.) for the site itself. Grupo Macho is prepared to contribute the Property to a joint venture once NAFTA has received firm commitments from each of the two anchors and an additional fifty percent of the stores. Estimates of costs to build, excluding land, run up to $150 per foot. Therefore, the total cost of the center is approximately $70,000,000 ($150 per foot x 400,000 sq. feet) + $10,000). Expected capitalization of the development is $20,000,000 in equity, of which $10,000,000 would be contributed by Grupo Macho in land equity. The balance would be in cash from NAFTA. The remaining $50,000,000 would be provided in the form of debt. The partners' intention is to split the profits and losses equally.

THE DISCUSSION

Mr. William M. Kahane: The first issue is: What legal forms should the venture take? Does the answer to this question change if one is representing Grupo Macho rather than NAFTA Associates? What are the broad tax consequences of such proposed forms of organization?

Mr. Duane H. Zobrist: The answer to this question is the same whether it happens to be a general or real estate transaction. In most instances, the proper form would be that of a joint venture with a corporation formed in Mexico. The joint venture and organizational papers containing the necessary terms and provisions would probably be included in a pre-incorporation agreement. The agreement would address corporate governance, the method of profit-sharing, and the contributions of the parties. Fortunately, for those of us on the United States side, we always look for the double taxation impact because we want to be able to repatriate our profits. Most developers do not want their profits to remain in Mexico. Therefore, you want to make certain that the structure is created in such a way that the taxes paid by the Mexican operation will be
entitled to the United States tax credit, thereby avoiding double taxation. Fortunately, under Mexican law, you are taxed only once anyway. Mexico is much more enlightened than the United States; it does not tax dividends as long as the operating entity has paid taxes on the money. The joint venture would be formed with an existing Mexican company and would organize an operating company in Mexico to build and operate the center. I would probably organize a holding company for the United States portion of the venture; a Mexican holding company that could direct my client’s share of the profits from the operating subsidiary wherever the owners desired. It might even be advantageous to establish a number of corporations for operational purposes.

Lic. David Hurtado-Badiola: Keep in mind that a joint venture in Mexico is a very different institution than it is in the United States and in other Anglo-Saxon countries. A joint venture in Mexico is conceived as a preliminary contract rather than a contract itself. The joint venture, therefore, may take the form of a particular contract or institution such as a corporation or as an *asociacion en participacion*, which is not a formal corporation, but merely a profit-sharing, silent partnership. You have to adapt, or “Mexicanize,” the contract in order to make it effective and enforceable in Mexico. The bulk of the provisions will be considered a preliminary step to incorporation of the company or association you want to incorporate. I agree, it is advisable to incorporate a holding company with ownership of all the shares of the different subsidiaries that you may incorporate. The joint venture agreement should provide for future incorporation of the companies to be formed and, in fact, you can include the joint venture agreement as an exhibit in the by-laws of the prospective corporation.

Mr. Kahane: When my Japanese customers and clients started encountering problems with their United States joint venture partners in the late 1980s, they described a joint venture as “same bed, different dream.” What land title issues are relevant to the assessment of the Property, and what protection can be forged to protect NAFTA associates? Is title insurance available?

Lic. Hurtado-Badiola: There is no such thing as title insurance in Mexico. The most important device available is the public records. The public records system, like the judicial system, is a very old system. I recall, as a law clerk, having to track the title to property in about 20 books when most of them were being used by other law clerks or were lost. Today, there are computerized systems that permit access almost immediately. However, that does not mean that the registration process itself has been improved. Nevertheless, that is the main title insurance available in Mexico. Thus, the caveat here is that if you want to purchase land in Mexico, make sure that you have tracked the public records

1. An association formed for commercial purposes on a temporary basis without incorporation or formal partnership.
appropriately. Once the transaction is complete, file the necessary titles in the public records.

Mr. John Rogers: I understand that there are some United States title insurance companies that are looking at Mexico and attempting to enter the market. If they were to enter, how difficult would it be for them to establish something like the title insurance system in the United States?

Lic. Hurtado-Badiola: The title insurance companies will be on their own in Mexico. The way they intend to operate in Mexico is to create a very well-developed mechanism of tracking the public records. When they are 100% sure that the record is complete, they will proceed to issue the appropriate title insurance after they have tracked the public records.

Mr. Zobrist: First American Title has been writing title policies in Mexico for 15 years in the resort and resort condominium areas. Those areas are a bit easier to track because the developer and Mexican counsel are involved. Really, due to the way the Mexican land title system operates, a title policy is not needed. In the operation of the Mexican land title system it is very difficult to have an intervening lien. Generally, when you enter into an agreement with a Mexican seller, you would request a certificado de libertad de gravamen (certificate of no liens) from the seller if he is going to be your partner. This is a document declaring the property free from encumbrances and is obtained from the municipality where the land is located. The buyer and the seller sign off on the document and, for a period of ninety days, there can be no intervening liens once it is recorded in the municipality. Thus, for ninety days, your document is on file and you can effectively pick up a short-term option on the property. During the ninety day period, the seller cannot remove your recorded interest from the property and the title is, in effect, locked in for that period of time. The result is that the title insurance sold by First American Title is a method to assuage the cultural aspects of Americans. The title insurance would become important only if there were title fraud, such as someone obtaining an intervening lien recorded because of a friendship or because of an improper payment. Title fraud is not unknown in Mexico or anywhere else.

First Chicago Title is also looking very carefully at Mexico right now. They have been doing so for the last year. I think they are writing some insurance policies in Mexico, and I think their experience has been very good.

Mr. Rogers: One of the wild card title issues in Mexico is the problem of the ejido. Do you want to address the ejido?

Lic. Hurtado-Badiola: An ejido used to be a problem, but it is not so serious anymore, especially because of the Agrarian Law2 that allows all the ejidatarios to perform any transaction with the ejidos. It used to be that one could buy a piece of land and believe that the title was

good, but then the property would turn out to be a former ejido. As a result, the transaction could be declared null and void by a court because the campesinos were not permitted to sell to private individuals or corporations.

Mr. Rogers: What protection does the certificado de libertad de gravamen provide in that situation?

Lic. Hurtado-Badiola: The certificado de libertad de gravamen is a certificate that assures you that there is no lien or encumbrance on that property at that particular moment. It is a certificate that is issued by the public registry. It does not prevent the creation of a subsequent lien on the property which necessitates another certificate.

Mr. Rogers: Is there a way of looking into or otherwise protecting yourself on the ejido issue?

Lic. Hurtado-Badiola: There is a public registry of agrarian land, which has been updated. The Mexican government is working very hard to properly maintain those records.

Mr. Mike Mandig, Tucson, Arizona: There is one other title company which I understand is selling title insurance in Mexico, and it is Stewart Title & Trust out of either San Antonio or El Paso. This company decided to hire a Mexican attorney to do an abstract of title as was done in the United States at one time. The only question I have is: can the abstracter get malpractice insurance? I think that it is probably unavailable. Malpractice insurance is only available for foreign purchasers of industrial or commercial properties in Mexico. It is not offered to Mexican land buyers for reasons that I cannot explain.

Mr. Rogers: As a developer, how much comfort are you able to get for your land transaction?

Mr. Kahane: I am very confident at this point. We have drafted joint venture documents at a reasonable cost, and I have received great comfort with regard to the marketability of title. With regard to issues that touch on the environment, entitlements, zoning, and permitted land use, how do I go about ascertaining that all of the requisite approvals have been obtained for my project to proceed?

Lic. Hurtado-Badiola: The best approach is to hire a well-qualified attorney because it takes a lot of time to track these issues. Let me provide you with some background. The Federal District of Mexico has had well-developed zoning legislation since 1976. Currently, every state and municipality also has a land-use plan. According to that legislation, you may request a certificate that shows exactly what the plan of the zone does or does not permit on the particular piece of land. Requesting the certificate is the main step to take.

As to the environment, you need to check the regulations, not only for cases like this hypothetical case, but also for offices and other types of developments. There have been many cases in Mexico where shopping

centers, office buildings, and the like have been closed because they were built without abiding by the limitations on the use of the land. A certificate is required, and a good attorney could easily check the plans and get a certificate which showed what is permitted in a particular area. Most construction such as hospitals, shopping centers, and restaurants require a special license regarding the use of soil which is usually very difficult to obtain. Local authorities require the developer to do many things under the construction regulations and the zoning plans. Thus, it may require a large amount of money to obtain that license.

Mr. Kahane: Assuming that I have obtained my entitlements and permits, I am going to begin negotiating my construction contracts with my general contractor and subcontractors. Are there any issues in dealing with my contractor and subcontractor of which I should be aware, or are there any issues that differ from those in the United States?

Lic. Hurtado-Badiola: Yes. A brief recommendation is to make the contractor responsible for everything. Normally, as in the United States, you will not find a contractor or a construction company that can do the entire job alone. They normally subcontract part of the job. My advice is to make the contractor responsible for the entire job. He, or his company, in turn, will ensure that he acquires the appropriate bondings or insurance and that the subcontractors comply with the requirements for their specific jobs.

Mr. Zobrist: There are no mechanic's lien laws in Mexico, and, therefore, subcontractors do not have the right to create a lien on the project as a result of their work. A lender or a developer does not have to worry about an intervening lien being filed by someone who might have performed work on the property. The contractor is responsible for subcontractors who are paid in whatever form. Similarly, the general contractor does not have a mechanic's lien.

Mr. Kahane: Assuming I have my venture together; I have raised $10,000,000 in equity, entered leases with at least both the anchors and fifty percent of the shop owners, and I am prepared to go ahead and compile my mortgage package, what considerations are going to be important to my mortgage lender? Assuming further that we have satisfied the mortgage lender with respect to marketable title, how does he go about ensuring the security of his collateral? Most importantly, as he looks at his downside scenario, what remedies are available to him in the event of a default? For example, are there additional legal risks that would cause him to demand a higher interest rate on this type of project in Mexico than in the United States?

Mr. Zobrist: We all have to recognize that Mexico is far behind the United States in being able to furnish the type of capital required for our building industry. Mexico is extremely under-leveraged. If Mexico could leverage every piece of property in the country up to seventy-five percent of its value, it would not need anything more to accomplish all of its social plans and its industrialization. Essentially, all the land in Mexico is already owned. Mortgage money is very difficult to find. If
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you can find it, it is expensive and short-term. The real estate industry is going to help us, which is one of the things that is exciting about the developments in Mexico.

The developers in the United States are hungry so they are going to Mexico. In effect, we have a nascent industry in Mexico. There is really no regulation of real estate brokers, no multiple listings, and no loan origination packages. Real estate brokers do not need to be licensed. You can do just about anything you want in Mexico in the real estate field. In order for Mexico to attract the necessary type of capital, however, United States developers will have to overcome local problems, and I think they will. All the big brokerage firms are in Mexico: Cushman & Wakefield, C.B. Commercial, LaSalle Partners, and Grubb & Ellis. Century 21 has already sold 80 franchises throughout Mexico, and they are dealing with these issues because the real estate in Mexico is so under-leveraged. There is one small fund that was assembled by Grupo Sidek for mortgages on resort properties. The fund started at $150,000,000 and I think they have raised additional funds to help sell resort condominiums to Americans, Canadians, and Europeans. As these highly-skilled operators surface in Mexico, it is important to educate government officials and the owners of all this property to reform land laws in such a way that Mexico will become extremely attractive to mortgage lenders.

Mr. Rogers: In order to create or to establish a mortgage, what is involved, and how much would it cost for a project this size?

Lic. Hurtado-Badiola: Mortgages in Mexico are no different from those in the United States. A mortgage is a contract that establishes a right to be provided with security based on the value of the property. The mortgage can even be acquired by a creditor if there is no bidder in the judicial proceeding. The only area that may present a problem is the system for foreclosure. It is necessary to go to court to foreclose a mortgage on real property. Most likely, it will take months to realize the proceeds of a sale. The foreclosure itself is not difficult. A claim is filed, and the court is immediately obligated to issue an order to foreclose the property and attach the goods. The process of selling the property is rather slow because the other party, obviously, has a right to produce evidence, motions, or objections. Then, after a judgment is rendered ordering the sale, the other party has many recourses, such as appeals, and eventually the amparo suit, which may cause additional problems.

Mr. Rogers: Are registration costs one percent of the debt secured?

Lic. Hurtado-Badiola: No. As Licenciado Berdeja-Prieto noted, it varies from state to state because every state and municipality has its own public record registry. The Federal District of Mexico imposes a maximum on the fees that are charged. It is in the neighborhood of $300 (U.S.) to register a mortgage. In other states, it could be six-tenths of a percent of the value.

Mr. Rogers: In our hypothetical case, the shopping center is in the Federal District of Mexico.

Mr. Kahane: Assume, however difficult it might be, that I have obtained $50,000,000 in mortgage financing by pledging all the collateral I have
in the United States and making a personal guarantee. Should I be aware of any important lessons we may have learned in dealing with the Mexican government and/or its local agencies with respect to prior development transactions before I proceed?

Mr. Zobrist: Make sure that Macho Partners is the right partner.

Mr. Kahane: How do I do that?

Mr. Zobrist: You talk to others that have been down the road a few times. You can accomplish this through networking. Credit services such as TRW and Dunn & Bradstreet are only now getting started. Thus, you must know the right people who, in turn, know the right people.

Mr. Kahane: Can you hear my mortgage lender quivering?

Mr. Zobrist: We did not inform your mortgage lender.

Lic. Hurtado-Badiola: The land developers in Mexico are very aggressive, and they have formed a very closed group. They all know each other. If you visit the shopping center South of Mexico City, you will find that the other shopping center to the North is related. The major retailers, such as Liverpool, Palacio de Hierro, Sears, Sanborn's, and Commercial Mexicana are the anchor tenants and control all the developments on the main piece of land. If you are in a joint venture with one of them, you will probably be subject to their conditions.

Mr. Kahane: When it comes to dealing with our shop tenants on the leases, are there any protections that we should seek to impose on the overall economics of the transaction? How do we preserve tax efficiencies that are unique to the Mexican system of which we would be unaware coming from North of the border?

Lic. Hurtado-Badiola: You need a good attorney to draft a solid lease agreement. The Civil Codes of all the Mexican states provide extensive regulations of lease agreements. That is not the problem. The problem is the economics of leases, namely, the increases in rent, the maintenance fees, and the allocation of fees between all the leaseholders. What are you going to do with the trespasso? Trespasso is a very unique institution in Mexico. It is the fee, the key money, that the owner charges to take advantage of an already-developed center, and trespassos have become extremely expensive in Mexico. Recently, I represented a client that paid about $1,000,000 to get into one of the main shopping centers in Mexico City. This fee was aside from rent, maintenance fees, and money that has to be paid to the landlord. Be very careful with the economic provisions of any lease agreements that you develop with your tenants.

Mr. Zobrist: The 80 jillion page lease has not hit Mexico yet, but it will. Our firm is helping one of the large real estate groups develop some form documents. Everyone will be a lot more comfortable with the use of these forms, including the Mexican attorneys who start using them.

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4. For example, the Civil Code for the Federal District of Mexico regulates lease agreements in Articles 2398 to 2496.
Mr. Kahane: Finally, anchor tenants are actually the lifeblood of this center. Are there any particular elements that bear special consideration?

Lic. Hurtado-Badiola: Yes. Shopping centers are flourishing in an unbelievable fashion. When I asked who will survive in this market, I was told by the CEO of the Palacio de Hierro, one of our department store chains, that the survivors will be the ones with good anchor tenants. Thus, the anchor tenant may be the key to the entire deal. You will be better off if you can obtain security that the anchor tenant will not move, sell, or assign the lease.

Mr. Rogers: If you do happen to obtain this mortgage loan, or mortgage financing, it is conceivable that the mortgage lender might ask for something more than just a mortgage. He might ask for an assignment of a lease. Does that create any special problems in Mexico?

Lic. Hurtado-Badiola: None of which I am aware.

Mr. Rogers: Suppose that the assignment involves giving notice to the tenant and informing the tenant that if we ever have to foreclose on this mortgage, we are going to assume the role of the landlord.

Lic. Hurtado-Badiola: Leasehold rights would not be affected because the law provides that regardless of what the landlord does with his property, the lease may not be impaired or affected in any way. Even if the landlord sells or assigns his interests, the lessee is still protected by all the rights provided by the lease agreement.

Mr. Rogers: As a practical matter, do you see any resistance to this approach on the part of those anchor tenants who may be major department stores?

Lic. Hurtado-Badiola: At this stage, there probably will be some resistance to commit to some clauses because these tenants cannot predict the future market in Mexico. Other than that, I do not see any problems.

QUESTIONS AND COMMENTS

QUESTION, Mr. John Stephenson, Dallas, Texas: First, what is the benefit, if any, of using a guaranteed trust instead of a mortgage to secure a loan? Second, can anchor tenants be cut off if a lender forecloses the mortgage, or do the tenants have to enter some sort of an atonement agreement with the lender to ensure that they are not sent off the leased premises if another tenant is available at a higher rent?

ANSWER, Lic. Hurtado-Badiola: The mortgage is just one device to secure such a transaction, but there are many other devices available to accomplish the same result. Certainly, a trust is a very broad security mechanism available in Mexico to secure any type of transaction. A trust contract can provide any provisions desired to secure these type of transactions. As to the second question, the foreclosure of the landlords interest will not affect the rights of the lessees in any way. The rights of the lessees cannot be cut off.

ANSWER, Mr. Rogers: One advantage of using the trust mechanism is that if the mortgage lender wants to transfer its interest at some later date, the trust may allow the lender to avoid re-registering the mortgage and, therefore, avoid registration and other transactional costs.
ANSWER, Lic. Hurtado-Badiola: I do not believe the trust mechanism avoids taxes. Any assignment of the mortgage has to be recorded in the public registry.

ANSWER, Mr. Rogers: I am suggesting that the mortgage not be in favor of the lender, as such, but be in favor of a trustee for the benefit of such lender or lenders as may exist from time to time.

ANSWER, Lic. Hurtado-Badiola: In any event, the transfer of the beneficial interest has to be recorded.

QUESTION, Mr. Mike Hudson, El Paso, Texas: Could you comment briefly on anything under Mexican law which would be afforded priority status over a first mortgage, such as taxes and, perhaps, unpaid labor claims?

ANSWER, Lic. Hurtado-Badiola: You have provided the answer. Preferential rights that would have priority over the mortgage, or any other security, are basically tax and labor debts.

QUESTION, Mr. Mike Mandig, Tucson, Arizona: Regarding the priority of unpaid wage claims, is there any requirement under Mexican law that the owner of the property in question be given some type of prior notification of these actual or potential unpaid wage claims? Regardless of whether notice is given, do the wage claims apply against the property as a lien in the sense that the holders of those claims can take the property to satisfy the unpaid wages? Finally, can you get payment bonds to protect yourself against the eventuality of unpaid wage claims?

ANSWER, Lic. Hurtado-Badiola: As a general principle, you cannot do anything in Mexico without providing notice to the other party. In other words, if you want to foreclose on any property, you must notify the owner. This has to be done through a court proceeding, and the main principle in any proceeding is that the defendant must receive notice as required by the civil procedure rules. The mortgage lender and the pledged creditors have preference as to payment, except that they have to wait for tax and labor creditors to be paid.

ANSWER, Mr. Mandig: In the United States, an owner or developer may fear that a subcontractor, a concrete subcontractor, for example, may not pay his employees who will file liens against the real estate. In Arizona, the mortgage holder on that piece of property would have a problem because Arizona statutes provide that a claim for wages, even though it is owed to a subcontractor with whom the owner has no contractual relationship, will take priority over the mortgage on the property. Lenders protect themselves by purchasing, or requiring the contractor and the subcontractors to furnish, payment bonds in which a surety company stands behind the subcontractor to pay his laborers if the contractor does not do so to keep the property free from liens.

ANSWER, Mr. Zobrist: In Mexico, there are no mechanic's lien laws, therefore, that is not something you have to worry about.

QUESTION, Mr. Mandig: My question really is, do the wage claims that might be asserted by unpaid employees of a general contractor or a subcontractor encumber the property in any way, or are the wage claims only those of the employees of the owner of the property itself?
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ANSWER, Lic. Hurtado-Badiola: Your question is a very interesting one, which would entail about an hour of discussion and debate on who is the employer, and who is responsible for labor costs. Mexican labor law is very comprehensive with respect to this issue. If you are a builder, you will be held responsible for all the debts to your own employees. If you have a subcontractor, however, you may or may not be responsible, depending on certain conditions. If your subcontractor fails or goes bankrupt, then you may be held responsible for his debts unless the subcontractor is independent and does not have any relationship with you as the main contractor. However, it is much more complicated.

QUESTION, Mr. Frederick Hill, Los Angeles, California: Licenciado Hurtado-Badiola, you mentioned earlier that it is very important to have the proper lease documents with your anchor tenants and with the other retail tenants. Can you tell us about the status of tenants that default in Mexico, and what difficulties a lessor may have in removing such a tenant from possession? In the United States, we have a summary procedure called "unlawful detainer" in which we can usually get tenants out rather quickly, particularly commercial tenants. Is it difficult to remove a commercial tenant in Mexico, either because of default, or because he does not vacate when the term of the lease has expired?

ANSWER, Lic. Hurtado-Badiola: Generally, parties to a commercial lease agreement are free to agree to whatever they want. Renting a house for residential purposes, on the other hand, may be subject to some restrictions regarding, for example, increases in rent. However, in both residential and commercial leases, enforcement is subject to the cumbersome court system in Mexico. The lessor must notify or serve process on the lessee defendant, obtain the necessary evidence, and finally, obtain a judgment. This may endure for two or three years, and then end up in an amparo suit. However, the Civil Code in the Federal District of Mexico was amended in October of 1993. The process for terminating a lease was drastically shortened and the civil courts, in general, were ordered to expedite these cases. The Mexican government is signalling events to improve their processes because this may affect doing business internationally. I expect more expeditious justice in this area, and I expect that the new rules will be applied later in the other Mexican states.

ANSWER, Mr. Rogers: The issue of whether you can invoke a trust to facilitate the process of selling a mortgage loan to a third party is going to become critical when we start talking about asset securitization.
