

Mexican Real Estate in CHAPTER 7 BANKRUPTCY CASES

Hispanics make up a significant part of the population in the United States. By 2002, 13% of the population was of Hispanic origin. Of those, almost 67% were of Mexican origin.¹ A study performed by the Center for Latin American, Caribbean and Latino Studies at City University of New York indicated that the largest concentrations of Mexican population in the United States as of 2000 were in California, Arizona, New Mexico, Texas and Illinois.² As of the 2000 census, there were over 20 million people in the United States of Mexican origin.

Over the last eight years, the Mexican population in the United States has grown significantly, not only in border states but throughout the country. Spanish speaking television and radio stations as well as newspapers are available in large and small markets throughout the country. Many people live their life in

the United States exclusively using the Spanish language.

Since becoming a trustee in 1990, I have observed a significant increase in the number of foreign-born debtors. And of these, Mexican-born debtors make up the largest percentage. This is not surprising owing to the geographical proximity of Mexico to the United States.

My principal office is located in Waukegan, Illinois. This is the county seat of Lake County, immediately south of the Wisconsin state line and immediately north of Cook County, whose principal city is Chicago. The population of Waukegan is about 90,000. Of that population, 44.8% was considered Hispanic in the 2000 census. The substantial majority of this population is of Mexican origin. I use Spanish to speak with my clients every day. I am not fluent but have developed a working knowledge of language important to my clients.



By
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As a result of these trends and experiences, I have learned several things which can be helpful to bankruptcy trustees.

The Spanish Language is a Helpful Tool

In ascertaining the financial position of a Hispanic debtor, it is useful to speak, at least part of the time, in the Spanish language. If the trustee can speak only a few important words and phrases in Spanish, the trustee will engender a great deal more respect and evoke a great deal more authority upon the Spanish-speaking debtor. For example, the sentence “¿Tiene usted algo bienes raices en alguno pays del mundo?” has a much different impact upon a debtor than the sentence “Do you have any real estate any place in the world?” If you follow up with the question “¿Tiene usted algo bienes raices en su pays nativo?” or “Do you have any real estate in your native land?” you are likely to get an honest answer. If you are not sure you have been getting a complete answer, you can follow up with something like “¿Tiene usted hijos o una mujer en México?” (Do you have children or a wife in Mexico?). If so, you can ask “¿Donde viven?” (Where do they live?) “¿En una casa?” (In a house?) “¿Quien es el dueño de la casa?” (Who is the owner of the house?). Such a line of questioning is highly likely to evoke honest answers.

Unfortunately, many debtors do not learn from their attorneys that they are required to schedule real estate any place in the world on Schedule A and personal property any place in the world on Schedule B. This can lead to embarrassment to the debtor and challenges to the Trustee.

Recent Experiences

This year, I have encountered two cases in Chicago where debtors did not know that they were required to schedule Mexican real estate in their bankruptcy schedules. In both cases, the type of questioning suggested above evoked honest responses from the debtors at the 341 meetings. In one such case, the questioning was particularly relevant where a search of real estate records revealed a sale of real estate by the debtor which was not revealed in Question 10 of the Statement of Financial Affairs, but which was noted in the online records of the Cook County Recorder of Deeds.

One case, rather quickly, resulted in proof that the property had been sold, post-petition, and an excellent result. The debtor, who is in his early 60's, failed to disclose sale of his Chicago-area home to his sons within 2 years of the chapter 7 filing. A review of the HUD-1 revealed that the debtor received substantial proceeds of sale. I obtained turnover of 100% of the proceeds of sale.

The second case is ongoing and a little more complicated. The debtor testified at the 341 meeting that he had purchased land in Mexico for \$20,000 prior to the petition. This land was not scheduled on Schedule A. The debtor failed to provide any doc-

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uments regarding this land as requested. The Bankruptcy Court granted my motion to compel the debtor to turn over this land to me as trustee. Debtor failed to do so whereupon I filed a rule to show cause. This led to the Debtor's filing a notice of conversion to chapter 13.

Within 5 days of this notice of conversion, the Court held two evidentiary hearings. It turned out that the Debtor initially purchased the land in Santiago Papasquiario, Durango, Mexico, for \$20,000. He then built a house on it for another \$50,000. And he bought furniture and a car in the United States for another \$10,000 which he shipped to Mexico. His wife and children were living there. He had worked hard in the United States for close to 30 years. He was a United States citizen but retained his Mexican citizenship, language and culture. He wanted to retire there. His only issue was that he had tens of thousands in debts which he wanted to take care of before he left. No wonder he resisted the Trustee's efforts to recover the land.

Debtor proposed a 3 year plan but testified at the evidentiary hearing on my objection to his motion to convert to chapter 13 that he only planned to work for about 18 months before retiring to Mexico. The Court denied the motion to convert, giving me the opportunity to administer the real property—that was in Mexico. Now what?

Land in Mexico

The official name of Mexico is “Estados Unidos de México”. Mexico has federal and state governments, just like the United States of America. In Mexico, real estate is governed generally by state Civil Codes. Some aspects of real estate, however, are national in nature. Unlike the United States where land titles are maintained at the county level, in Mexico, land titles are maintained at the state level.

The Public Register for Property is maintained in each state of Mexico. In certain instances, there may be a Public Register for Property maintained by a municipality (“municipio”). Each Public Register for Property maintains records of real estate transactions as memorialized by formal documents known as “escritorios” or “writings”. The *escritorio* is a very important record as it sets out the details of the transaction whereby the owner acquired the property in question. The *escritorio* is prepared by a “Notario Publico”, which in Mexico, as in other civil



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code jurisdictions, is a much more important position than it might appear to those familiar with notaries in the United States.

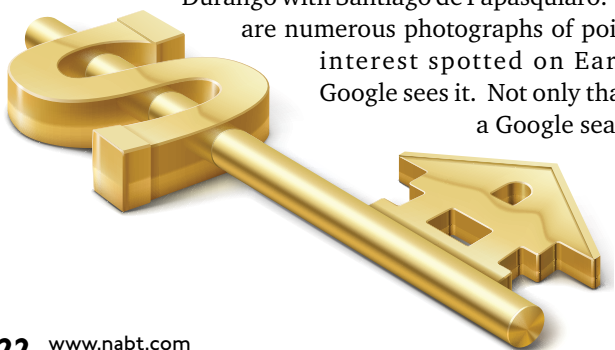
Notarios in Mexico are responsible for the proper preparation of the *escritorio*. In case the *escritorio* turns out to be invalid in any way, he will be personally liable. The *notario* also is responsible for compliance with tax and fiscal matters surrounding real estate transactions such as taxes on rent, on acquisition of buildings, value added tax and tax on transferring dominion. A *notario* must be an attorney and holds a patent from one of the State governments which allows him or her to act in that capacity. Documents issued before a *notario* are official public documents and there may be no objection to their validity. There is

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no title insurance in Mexico because the *notario* system serves that purpose.³ There is no such thing in Mexico as a notice of bankruptcy under Section 549 of our Bankruptcy Code. So I took the position that the real estate had to be transferred to me. I contacted the same *notario* who handled the transaction whereby the debtor acquired the property in the first place. *Notarios* are not the same as attorneys, in that they are deemed not to represent one party or another in a transaction. And so I inquired about obtaining a transfer of the land from the debtor to me, in my capacity as trustee.

This must have been the right move, as the Debtor now is finding a lot more money available to him than he used to have. Soon, I am sure, the debtor will find enough money to pay claims in full together with trustee fees and attorneys fees. If not, I will certainly find my way to Durango and to the property.

Which brings me to another point. You might think that Santiago de Papasquiario, Mexico is at the end of the earth. You may never have heard of it before. I didn't. However, Google Earth has. When I entered that town into Google Earth, I found out several interesting things. It was in the State of Durango. You could get there through either Mazatlan or Durango. There is a Mexican national highway, Highway 5, which connects Durango with Santiago de Papasquiario. There are numerous photographs of points of interest spotted on Earth as Google sees it. Not only that, but a Google search of



Santiago Papasquiario quickly returned this website: <http://www.chagocity.com/index.html> which in turn informed me of local real estate agents, places to stay and virtually everything I might need to deal with this debtor and his real estate. Another click led me to the official site of the *municipio*: www.santiagopapasquiario.gob.mx/.

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Foreigner's Ownership of Mexican Property

American citizens have limited rights to own property in Mexico. Property near the shores or close to the borders may not be owned by foreigners.⁴ Less desirable property inland may be owned by foreigners. Foreigners who have vacation properties in Mexico have to own them through a trust known as a *fideicomiso*. A Mexican bank or trust company will own the real estate in trust and the foreigner will be the beneficiary. It is not too difficult to deal with *fideicomiso* property. If you ask the debtor if he directly or indirectly owns property in Mexico, you should be able to evoke an honest response.

The debtor's checkbook will reflect payment of fees to the Mexican *fideicomiso* trustee or other periodic transfers to Mexico. So if you have reason to suspect property in Mexico, the forensic means to discover the property should be readily available.

Conclusion

Mexican real estate, as foreign real estate generally, may be important assets in a bankruptcy case. Debtors may fail to schedule this asset thinking that it either is not within the jurisdiction of the bankruptcy court or beyond your reach. Both premises are incorrect. You can demonstrate your intention to administer these assets and often find and administer property many places in the world. ♣

Footnotes:

- ¹ Ramirez, Roberto R., and G.Patricia de la Cruz, 2002, *The Hispanic Population in the United States: March 2002*, Current Population Reports, P20-545, U.S. Census Bureau, Washington DC.
- ² <http://web.gc.cuny.edu/lastudies/Mexican%20Population%20by%20State,%20largest%20concentrations.pdf> Center for Latin American, Caribbean, and Latino Studies Graduate Center, City University of New York .
- ³ Additional information concerning *Notarios Publicos* in Mexico is available at: <http://notarios.com.mx/>.
- ⁴ Article 27, Section 1 of the Mexican Constitution prohibits foreigners from owning land within 100 kilometers of a border or within 50 kilometers from the coast. Owing to recent changes in law, foreigners can acquire non-residential property within the restricted area and may use the *fideicomiso* to acquire residential or vacation property.