



## **WHAT DOES PRECONSTRUCTION MEAN?**

Preconstruction is the phase of a development that is post-design and prior to or during the actual construction phase. New developments in Mexico are often presold during the “preconstruction” phase and during the construction of the building. One of the reasons is due to the expense and process for the developers to secure traditional construction financing. The process of preconstruction sales is widely accepted throughout Mexico and is a common means by which buyers can benefit from preconstruction discount pricing prior to the completion of the development when pricing would otherwise be at retail market values.

## **WHAT ARE THE RISKS IN PRECONSTRUCTION?**

The primary risk in preconstruction would be the financial stability of the developer. If the developer does not have the full amount of capital to construct the development and is reliant upon sales and regular buyer payments, vulnerabilities exist for the completion of the project. Many items could contribute to this situation such as claims or actions from third parties (neighbors, buyers, or others), actions or inactions of governing authorities in relation to disputes over permits, required studies/analyses, etc., changes in financial markets (i.e., stock market devaluations), or even “acts of God”, such as a worldwide pandemic. Any of these could halt a development creating delays, costs and potential modifications of the development. Working with a seasoned or financially sufficient developer are some of the best ways to reduce the risk factors in preconstruction.

## **WHAT ARE THE ADVANTAGES OF PRECONSTRUCTION?**

One of the primary advantages to preconstruction is the discount pricing offered during construction. Developers entice purchasers with a variety of discount plans during construction in order to secure sales and further financial stability of the project. Larger discounts are often afforded for higher down payments and at an early stage of the project, up to as much as 100% paid in advance for the best discounts. Only those buyers who are more experienced and less risk adverse should entertain the highest discounts available for substantial payments to developers. Standard plans usually have a 30% down payment with monthly or quarterly payments during the course of construction giving the buyers more comfort that they can see progress as their payments are made. Other advantages of preconstruction include being the first to own a particular property, being able to select upgraded or specialty options when available, or being able to tailor your new purchase in some other way. In addition, certain warranties apply for preconstruction under Consumer Protection Laws in Mexico that do not apply for existing property sales.



## **HOW DO DEVELOPERS FINANCE THEIR PROJECTS?**

Developers in Mexico have a variety of methods available to them for financing projects, plus one key element that is typically not available in the U.S. or Canada. Traditional methods would include financial institution construction financing, personal credit line against other assets, seller financing of land, and of course, the developer's own resources. However, the method most used by developers is through preconstruction sales. While the developer may be using other funds as described above, the preconstruction sales method allows for a developer to use less of those funds as the buyers effectively finance the construction through their purchase money payments.

## **HOW IS THIS DIFFERENT THAN IN THE U.S. OR CANADA?**

All developments in the U.S. and Canada must go through rigorous review by not only local authorities, but also by the Department of Real Estate. While Mexico has AMPI (which is the nationwide professional real estate association), it operates differently than the DRE in the States and in Canada and does not have any regulatory review process required for new developments, as that is a municipal authority process. That said, the local chapter of AMPI does have a strict list of requirements for each development that is submitted for publication in the MLS system and any documents would be available for review by you, your agent and/or your attorney for any development you have an interest.

## **WHAT ARE MY PROTECTIONS?**

Your primary protection in preconstruction is the purchase agreement itself. Since the property that you are purchasing has not yet been constructed, the contract is what you will rely upon for any potential disputes. Preconstruction contracts will contain a variety of elements including price, payment terms, delivery date, default terms and conditions, penalties, and any extensions afforded for specific reasons. An additional protection is that most buyers will elect a payment plan that will be a certain percentage as a down payment, and the balance in either monthly or quarterly payments and a final payment at delivery. This affords the buyer the opportunity to check construction progress during their scheduled payments. You can also have an attorney review the contract and can typically work with a professional real estate agent, both of which to help answer your questions and guide you through the process.

## **CAN I REVIEW PERTINENT DOCUMENTS SUCH AS PLANS, PERMITS, CONTRACTS PRIOR TO SIGNING AN OFFER?**

Of course. The documentation is extensive and will be in Spanish. So if you are not fluent in Spanish, you may need your real estate agent and/or your attorney to review them with you or on your behalf to highlight any potential concerns or address any questions you may have in relation to the development. If the development has been approved for submission to the MLS, you can have some additional comfort in that these documents have already been provided to the MLS to allow the development to be promoted. This is not, however, a substitute for your own review of the documentation if required.





## **CAN MATERIALS, FINISHES AND DESIGNS, ETC. CHANGE DURING CONSTRUCTION?**

Changes are inevitable in all construction, whether building your own personal residence or a developer building a multi-unit development. Developers reserve the right to make changes and modifications during the course of construction as a result of practical and functional considerations as well as design improvements. In addition, developers may be relying upon international suppliers for imported products or the local provider may also be relying on outside parties to comply with their agreements for materials to the developer. If any of those supply chains or distribution methods are interrupted, changes of materials, finishes or products may be required. Developers typically are aiming for a higher standard of finish, functionality, design and ultimate enjoyment of a property for their clients, even if these changes are somewhat different than what was described to the client initially.

## **CAN I HAVE AN ATTORNEY REVIEW THE CONTRACT AND MAKE CHANGES?**

Absolutely, in fact it is recommended that you have an attorney review the purchase contract with you. Keep in mind that developers are usually the authors of their own purchase agreements. If you or your counsel propose changes that the developer is not willing to make, you then have the decision to proceed knowing the terms and conditions of the contract, or not proceed with the purchase.

## **UP UNTIL WHEN COULD I GET A REFUND OF MY PAYMENTS/DOWN PAYMENT?**

It will depend on your contract terms and conditions. Typically, once the initial deposit/down payment has been made, penalties will apply if you default on any subsequent payments, request the cancellation of the contract, or request the return of any payments made. Depending on your contract, you may receive part, all or none of your payments returned, and/or they could be subject to time delays in the event the developer requires that the unit is first sold to another party to recoup the capital in order to return funds. It is important you review your contract carefully in this regard.

## **WHAT ARE THE STANDARD PENALTIES FOR THE DEVELOPER IF THE UNIT IS NOT DELIVERED ON TIME?**

Virtually every developer contract is different as there are no standardized forms for such contracts, only those elements dictated by law. In most developer contracts, there will be a delivery date established and a grace period that the developer is allowed to be delayed without penalty. Penalties are typically established in the contract for periods of time that exceed any grace period and cancellation terms may also be established in the contract as well.





## **WHAT IF THE PROJECT IS DELAYED?**

Developments can be delayed for a variety of reasons: financial, legal, governmental authorities, market conditions, acts of God, etc. Your purchase contract would address what occurs in the event of a delay, and any penalties that may apply. You should review it carefully before signing.

## **WHAT IF THE PROJECT DOES NOT GET COMPLETED?**

In preconstruction, your contract will be the basis for your legal defense. If the development you have purchased in is outside the contract limits and there is either no communication from the developer or their agents, and you are concerned that it may not be able to be completed, you should contact an attorney to discuss your options. Thankfully, even under the preconstruction system as it exists, these occurrences are rare.

## **WHAT IF THERE ARE THINGS THAT NEED TO BE FIXED WHEN THE UNIT IS COMPLETED?**

When the unit is complete, you will be advised that the unit is ready for delivery. Once you have scheduled your delivery date with the developer and/or their agent, you are given the opportunity to review the condition of the property. If you notice anything that is either not working properly, is damaged or in any way in need of repair or replacement, this is the time to make these matters known to the developer. If there are outstanding items that need correction, a “punch list” is prepared for the developer to correct. Depending on the severity of the item, developers can usually correct these items fairly quickly. Buyers can choose to not accept delivery until such time as the items are corrected, or accept the delivery subject to the understanding that within a specified period of time the developer will correct the outstanding items. Note that in the case of appliances and potentially other items provided by third parties, the warranty may be with the third party and not with the developer, and arrangements may need to be made with them.

## **ARE THERE ANY WARRANTIES OF ANY KIND?**

Absolutely. This is one of the benefits of new construction, is that the law requires developers to provide warranties of 5 years for structure defects, 3 years for waterproofing and a year for other items (not including warranties provided by third parties as in the case of appliances, for example). Keep in mind that prior to your occupancy, your unit and the common areas have not been put through the paces of normal daily living. As a result of everybody’s usual routines of life, things can happen that need to be addressed. Extra patience may be required to work out the idiosyncrasies in your new building.

## **WHEN I TAKE DELIVERY, IS THAT A CLOSING?**

Technically no. When you take delivery, you are taking possession of the property. This signifies that you will have the use of the property and will also have the obligations of an owner, such as the requirement to pay your homeowner’s dues, any assessments that may be levied, utilities, etc. If you are choosing to rent your property, and if the building bylaws allow it, you can even rent your new property once you have taken delivery. The closing will be with a Notary Public and usually takes place anywhere from 90- 180 days post-delivery due to the fact that all legal documentation for the transfer of the property

may not yet be complete (such as the recordation of the condominium regime from the Public Registry's office). However, you would typically not be obligated for the property taxes and bank trust fees that will be customary for foreign purchasers until such time as you formally close on the property. Note that a lack of accepting delivery and/or lack of attending the closing may be considered a default in your contract.

## **CAN I MOVE FURNITURE AND BELONGINGS INTO THE UNIT OR MAKE ANY CHANGES PRIOR TO DELIVERY?**

Unfortunately, most developers will not allow either of these to occur prior to delivery for risk of liability as well as potential damage to the unit which then would be the responsibility of the developer.

## **WILL UTILITIES BE ON WHEN I TAKE DELIVERY?**

This will depend on the developer and what arrangements have been made. In most cases, water and gas are already on as those are typically provided by the building under your HOA dues. But you should verify with your agent or the developer team. Electricity and telephone/internet may or may not be on depending on if the developer has been able to secure the necessary information from you and has offered to establish those services in your name. If not, then you or your property manager will need to have those services activated.

## **COULD I SELL MY UNIT BEFORE IT HAS BEEN DELIVERED TO ME?**

Some developers will allow this practice, but usually when the building has already been sold out as they do not want speculators competing with them during the marketing process. In addition, there may be penalties and/or taxes that could be applied, so it is important you review these provisions in your contract. In virtually all cases, the developer will state that their approval is required for you to be able to sell your unit prior to delivery.

## **WHO ESTABLISHES THE CONDO RULES AND BYLAWS?**

The developer is in charge of the creation and recordation of the condo rules and bylaws established under law. That said, these bylaws are allowed to be modified at a later date with a specific percentage of the ownership of the homeowners that is stipulated within the condominium regime. If that percentage or greater is achieved in a legally-established homeowner meeting, the bylaws can be modified to the desires of the homeowners.

## **WHO IS IN CHARGE OF THE HOA?**

Developers have the obligation to operate the association for a minimum of a year. Some developers establish longer periods of time in condo regime documents in order to be assured of a high level of operation of a building, especially in the case of numerous amenities.





## **WHAT ADDITIONAL QUESTIONS SHOULD I ASK?**

In addition to those listed here, any and all questions that make you feel comfortable with purchasing in preconstruction. It can be a complicated topic, and it is not the same as purchasing an existing property, so you need to feel completely comfortable in your decision to purchase in a preconstruction project.

## **SHOULD I BUY IN PRECONSTRUCTION OR NOT?**

Preconstruction offers a variety of benefits, but is not without risk. Weighing the pros and cons of the process will determine your comfort level with a preconstruction purchase.

## **ARE DIGITAL SIGNATURES OR DIGITAL/SCANNED VERSIONS OF THE CONTRACT SUFFICIENT?**

Methods of digital signatures, such as DocuSign, are not only readily available, but acceptable as a matter of law in many countries. Even though the regulation in force in Mexico establishes that the will or consent of the parties can be made by digital means, it is very difficult to prove or sustain in trial that they were not tampered with. Therefore, it is common to have scanned or digitally signed documents as consent for the transaction, and then followed up with original signatures for legal security. Consequently, it is better to obtain the original signatures from the parties, after the documents were digitally signed.



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