How to Due Diligence Your Overseas Property

A Pangea Special Report

By: Margaret Summerfield

Dear Reader,

There’s something about buying a property overseas. The purchase process is so different to the one back home. You don’t speak the language. It’s all so exciting and full of possibilities. It’s easy to get caught up in the buying process, and it’s very easy to get carried away.

I don’t know whether it’s the sun, the rum, or a heady combination of both, but many people take risks when buying a property overseas that they would never take when buying back home. You need to remember not to leave your common sense at the airport.

Sure, you’ve met a guy in a bar who tells you that he can show you this great piece of land, that’s a sound investment. He knows the seller who’s owned it for generations, and just for you, he’ll negotiate a special price. He has a friend who is the best attorney in town, who can do your due diligence for you, for a special price. Your newfound friend tells you that the land needs a permit before you can build your home - but you won’t have to wait months for that, because he has a cousin in the planning department who can help, for a price. That’s the way things work in a foreign country, right?

You wouldn’t buy a property back home this way. You’d hire an attorney, work with a broker you’d worked with before, or get recommendations from friends and family. You’d do your own due diligence, and you’d comply with all the local laws and systems that regulate property ownership.

So why do things differently overseas? You should do the same due diligence, and exercise the same caution, that you would when buying back home.

I spent my first 15 months with Pangea scrutinizing the paperwork for developments in Central and South America. Since 2006, I’ve pored over countless sale contracts and familiarized myself with planning and permitting approvals - to the extent that I’ve been able to advise would-be developers on the permitting process in several locations.

To help you do your due diligence, I’ve compiled the following checklist you should follow with all your overseas property purchases. I’ve broken it down into an easy-to-follow guide.

But before we get started, there is one major difference when buying overseas that you should know about. It’s the legal system. In most of Canada and the U.S., the legal system is common law. But in most of the rest of the world (and especially in Latin America) the legal system is civil law. And the two are very different.

Common law is warm and fuzzy, with lots of grey areas. In a common law country, if you agreed to purchase a pre-construction condo and don’t get what you expected on delivery (no ocean view, a cheaper kitchen, less floor space), you’d probably withhold a portion of the purchase price and go to court. In court, you’d plead your case, argue for forgiveness (“I didn’t close on my condo because the developer didn’t deliver the kitchen he promised”) and reach a compromise.

Not so in a civil law country. Civil law is very black and white. You’re either right or you’re wrong. If you don’t close on your condo, you’re automatically in default, and the developer can keep the condo and any monies you have paid to date. It doesn’t matter *why* you didn't close. If you're unhappy, you still need to close on the condo, and then take the developer to court - which is likely to be a long, difficult process.

For that reason, in a civil law country you need to make sure that your purchase/sale contract is watertight and covers all the possible worst-case scenarios *before* you sign on the dotted line. It's very difficult to rectify problems afterwards.

And you should understand too that legal terms don't automatically carry through from common to civil law. A classic example is buying as joint tenants with rights of survivorship in a common-law country. What you are trying to cover is the scenario where one partner dies, and you want the remaining partner to inherit the property without the need to go to court.

If you say joint tenants to your civil law attorney, he may think you mean tenants in common (as there is no definition of joint tenants in civil law). Tenants in common is very similar, but it has one big difference. A surviving partner will need to go to court to inherit. They do not inherit automatically.

So, to get exactly what you want, explain clearly what you are trying to achieve to your civil law attorney. Don't just quote legal terms from back home at him. Tell him specifically: We are buying as partners, and want to ensure that if one of us dies, the surviving partner inherits the property automatically without the need to go to court, how do we do that?

And now, the first step to take in the buying overseas process.

Step #1: Hire a good, local, in-country attorney Your U.S. or Canadian attorney may work wonders for you, but he is not likely to be familiar with the intricacies of buying a property in your chosen country. You need a local, in-country attorney – and you need him on board before you sign any contract or pay any money to the seller/developer.

Your local attorney should work for you, and only for you. That may sound like a given, but in many countries, an attorney can legally represent both sides in a transaction. It's not seen as a conflict of interest. So make sure that you're the only person your attorney is representing in the transaction. Ask if he has ever had a relationship with the seller, if he is their family attorney, if he is the attorney who did the original paperwork and permits for the property.

Your attorney should be bilingual. It's going to be tricky enough getting to grips with a different buying process. If you can't understand what your attorney is advising you to do, or he isn't clear on your instructions, the whole process could quickly become a nightmare.

Don't take a seller's word for it: have your attorney check everything that they tell you regarding the property.

Also, have your contract translated and read it carefully yourself. Ask your attorney to explain anything you don't understand. Your attorney may not explain a clause that is normal procedure in his country, but it may be very different to how you'd do things back home.

Try to use an attorney who specializes in real estate, has an interest in real estate or regularly handles real estate transactions. They will pick up on things and know details that an attorney who only handles the odd real estate transaction may miss – the communities that flood every time it rains or the developers that deliver shoddy homes.

If you are unsure how to find a good local attorney, do what you would do back home. Ask friends, family or colleagues if they have bought property in that country, and if so, which attorney they used. Failing that, First American Title Insurance has a list of approved attorneys they work with in foreign countries. You can ask for their list of approved attorneys in Costa Rica, for example.

Step #2: Buy Title Insurance If you've purchased in the U.S. – especially if you're buying with bank finance – title insurance is almost an automated part of the buying process. With an overseas purchase, the seller or your attorney won't remind you to purchase title insurance. They'll probably try to put you off, telling you it's not available, it's too expensive, and their property registry system is so good, you don't need it. Stick to your guns. Add buying title insurance to your "must-do" checklist.

Title insurance is available in many countries and it's affordable. It gives you peace of mind.

Title insurance covers defects in title, property taxes, boundary disputes, hidden defects (fraud, forgery, and unknown heirs) - basically anything that is not known to you at the time you are buying the property.

You may ask why you need it, if you have a title checked by an attorney and/or a notary. Well, I recall speaking to one attorney, who said that he had the local notary check all the documents related to a property. Then he went to the property himself and spoke with the neighbors to see if anyone thought they had rights to the property, or if there was a secret love-child who could come to light and claim their portion - things that a notary search would not uncover. Attorneys and notaries are human, too, and can make mistakes.

Not all title insurance policies are equal. Check your cover carefully. Make sure you understand what is covered and what isn't.

Check exclusions in your title insurance cover, which can vary from country to country. In Nicaragua, the Sandinista government confiscated land in the 1980s, and not all of the original landowners have been compensated. Your worst-case scenario in Nicaragua is an uncompensated owner turning up and laying claim to your property or to compensation. But I've seen exclusions in some title insurance policies that specifically stated they wouldn't cover that. Know what the worst-case scenarios for your property are, and then check that your title insurance doesn't exclude that in the small print.

With title insurance, you are covered for events that have happened up to the point when you purchased the property. Anything that you are aware of at the time of purchase is not covered. For instance, if you buy a 10-acre parcel knowing that a family has been living on the land for the last seven years, you can't expect the title insurance company to cover you if the family try to claim title.

Future events, and that includes political risk, are also not covered.

Title insurance is a one-off payment, and lasts as long as you (or your heirs) own the property. In the case of a claim, it should cover defense costs and/or actual loss. If someone challenges your title, based on a past event - forgery of documents, fraud, someone selling a property who was not entitled to do so - then the title company should defend that title. They either cover your defense costs or they pay you your actual loss, up to the amount of the policy. If they defend, they hire a local attorney, and monitor the litigation. Court cases can be lengthy and complicated overseas. It's easier when someone else handles that for you.

You can get a commitment to title insurance on pre-construction property. It does have to be renewed every 6 months, though.

Developers often have master title insurance policies already in place on their land, and that is a good sign. You still need to get individual title insurance though. A developer's title insurance covers them as an owner, not you. Once they sell you a home site, a lot, or a condo, it's no longer covered by their master title insurance policy.

If a developer doesn't have a master title policy, ask why. Sometimes they simply don't bother. They may be dealing with local buyers, who don't ask for title insurance. Maybe they just plain don't know about it. Sometimes there are more sinister reasons…so it is worthwhile checking.

In some countries, there is a gap between closing and getting the property title registered in your name. In that situation, you should buy gap title insurance.

Today, some of the better-known title insurance companies are no longer offering cover in Latin America, Mexico or the Caribbean. Others are only offering limited cover or raising their minimum charge per policy. This is not because they see these as high-risk locations; they're simply not profitable enough for these companies. If you have any questions about title insurance, contact Tuey Murdock, tueymurdock@gmail.com. Tuey, an attorney who worked with First American Title Insurance for a couple of decades, now runs her own company to help buyers find the best title insurance policy on the market.

Step #3: Check the Sale Contract There are many things an attorney will check in a sale contract (too many to go through in this report) but here are some of the basics.

You may get a sale contract or purchase agreement in English from the seller but it's the contract in the official language of the country that you are buying in that is legally binding, whether that is Spanish or Portuguese or French. If you have a dispute with the seller, or if you need to go to court, then the version in the official language of the country will be the one that you use. So get the Spanish or Portuguese or French version of the contract and have your attorney translate it for you. Ask your attorney to explain any clauses or terms that you are not sure of.

Check that the property details, description and price are correct. Check that the seller's name matches the name on the title deed (if it doesn't, it's a red flag!).

Your attorney can check that your sale contract/purchase agreement gives you title, free and clear, on closing. Surprisingly, sometimes the contracts don't. I have seen a few that give you possession of a condo on a specific date, and the keys, but not the actual registered title. That is not what you want. You want the title to transfer to you as soon as you make the final payment on the property.

I've also seen a few contracts that covered title transfer but did not include a mechanism for the seller paying off their mortgage (or in the case of a developer, the portion of his mortgage) related to your property. For that reason, if a seller has a mortgage, check how he proposes to pay it off, and how that affects your title. And make sure that there are no outstanding taxes or liens on the property. Mortgages, taxes and liens transfer with the property title in many countries overseas; they do not stay with the seller.

Unfair penalty clauses are an issue with contracts, too. If a seller has clauses stipulating exactly what will happen if you are in default, and applies financial penalties, you should have the same penalties if the seller is in default. Typically, once you sign a contract, and then need to back out for any reason, you will lose not only the property but also any monies you have paid to the seller. I have even seen a contract where the seller not only kept the buyer's money but imposed a fine on top. That's all well and good - but you should have clauses that protect you equally if the seller/developer backs out. If you stand to lose $50,000 for backing out, so should the seller.

The contract should explain how much you are paying for the property and what currency that's in. It should detail deposits and stage payments, and explain inflation adjustments and balloon payments if they're included.

Check any price adjustments for pre-construction properties. In some countries, developers have an over-ride clause stating that if construction costs increase during the build period, they can charge an additional fee, based on a percentage of the property's purchase price. That percentage can be as high as 10%. So, if you agreed a purchase price of $100,000 for your condo, you could end up paying $110,000.

It's a way for a developer to give you a great price but also to make sure they don't lose their shirt if their costs go up during the construction period.

The additional fee is payable on closing in some countries such as Panama. Developers are supposed to prove that construction costs have actually risen using official government figures and statistics.

In Brazil, the adjustment is monthly, if you are making monthly payments to the developer during the construction period. The adjustment in Brazil relates to the pending balance, not on monies already paid. If you have developer financing on the balance of the purchase price after completion, there is a monthly adjustment for that, too. These adjustments are linked to government-produced indices (INCC during the construction, and IPGM afterwards).

Your attorney can verify if the sale contract has a mechanism for fault fixing. If you buy a property (especially if it's new) is there a period when the seller is still responsible for a leaking roof, or faulty wiring? Make sure you know your rights under the terms of the contract.

Finally, what happens if you buy a pre-construction property and you want to sell it before it is built? In that scenario, you're not selling a property. You're selling a contract to buy a property. It's known as assignment or transfer of rights.

You'll see it addressed in many sale contracts. At a minimum, you'll have to get permission to assign your contract to anyone else. Some developers will only allow it if you are transferring to another family member. Your payment schedule for the property will have to be up to date before any transfer can go ahead. And most developers, even if they're happy for you to transfer your contract, will charge a fee, typically 1%-3% of the sale price that you get.

The person you transfer the contract to will have to agree to all the terms and conditions in the contract you signed with the developer. There's no negotiation, no possibility of making changes. That could be a major drawback for potential buyers.

Buyers would usually prefer to deal direct with the developer and get their own contract with their own terms and conditions. Offering a steep discount on the developer's current price for the same type of unit can help sweeten the deal if you need to assign your contract.

Step #4: Check the Title Deed Your attorney will check the title chain in the public registry. In some countries the registry is online, while in others it is a case of leafing through physical documents. When the registry is online (in Panama and Costa Rica for example) an attorney can sit in their office and check the title of any property anywhere in the country. It doesn't matter where the attorney is based. But when it's a case of going through physical documents, it is best to hire an attorney who is based in the same city/area as the property you are buying.

From that title check, your attorney should be able to tell you the current registered owner and value, the boundaries, previous sales and transfers, whether there are any liens or mortgages or taxes outstanding on the property, and if there are any annotations such as rights of way, etc. Make sure that your seller is the registered property owner.

Make sure you understand what you're buying. We only recommend you buy freehold, titled property; you probably call it fee simple. But there are lots of other ways of holding property overseas.

One is Rights of Possession, *derecho posesorio*, also called ROP. You can live in a Rights of Possession property, record your claim to it and you can sell it. There is a difference, however. Registered title means you own the land. Possession means you have the right to occupy the property, until someone with a better claim to it turns up. If that happens, you could lose the land and the money you paid for it. I've heard from folks who paid $150,000 for a ROP property, "owned" it for a couple of weeks and then someone rolled up with a better title claim. They lost the property and the money they had paid for it.

You cannot get mortgage financing on a ROP property, either.

Ask your attorney if the title chain includes a confiscation or if the property was formerly part of a *co-operativa* or *ejido* land (shared or communal land). If so, your attorney will have to do extra checks to make sure that the title is clear and all transfers were done correctly.

Beachfront and border properties should be checked carefully. Most overseas countries have a section of the beach up to the high-water mark where you cannot legally own a property; it's publicly owned. You may see concession land in this section of the beach. A concession is a form of lease granted by the local government. It's not a secure lease as we see in most of Europe or North America where you get lots of buyer protections - rights to renew the lease, limits on how much you pay per year or to renew, and an appeals board if things go wrong.

Concessions overseas are sometimes granted by one government only to be revoked by the next. You often can't buy or own a concession lease as a foreigner. And usually you can't own or build a residential property in a concession zone – it's restricted to tourism and business ventures (a B&B or beach bar, for example). Yet I've met folks who paid $500,000 for "residential" condos in a concession zone.

Foreign buyers are usually not allowed to own property that borders a neighboring country, either. The distances for these zones are not standardized, but vary from country to country. You'll see ads for property in these border areas, often telling you that you can own it as a foreigner via a corporation – nobody will know who owns the corporation. It's still illegal. Steer clear. There's plenty of property you can legally own.

In some countries, particularly in Asia, foreigners cannot legally own property outright. There are ways round this, but not all are legal. Ask your attorney to investigate thoroughly.

Some countries restrict what foreigners can buy. They may not allow you to buy large land parcels or buy a home as a rental investment. You might have to buy a property of a minimum value or have to build within a short timeframe if you buy a vacant land. Or you may need a letter from the government to show that the property is cleared for sale. Again, check this out with your attorney.

A Note for Buyers in Mexico: If you're buying a property in Mexico, you need to be aware of the fideicomiso trust.

In Mexico, a Mexican buyer can get the freehold, or fee simple, title on property he buys.

But foreigners, according to Mexico's Constitution of 1917, cannot own land within 50 kilometers (31 miles) of the coast or 100 kilometers (62 miles) of an international border.

However, in 1973, the Mexican government established the fideicomiso, or bank trust, as a legal way for foreigners to acquire land for residential purposes in these restricted zones.

Please note, this only applies to *residential* property in the restricted zone. For *commercial* property, you need to set up a Mexican corporation.

The fideicomiso is a safe way to hold property in the restricted zones. It basically grants the title to a bank. You, as the buyer, can choose which bank you want to use from a list of banks approved by the Mexican government to act as trustees if you're setting up a new fideicomiso. Although the bank is the trustee of the property, it can only act on the instructions of the beneficiary of the fideicomiso. The beneficiary is the foreign owner.

As the beneficiary, you retain full control of the property. You can live in it, sell it, make improvements to it, mortgage it, pass it to your heirs or rent it out. You can build on it if it's a piece of land. You get to treat the property as if you owned it fee simple.

You can name more than one beneficiary. A couple can therefore operate as co-owners, jointly making decisions on what to do with the property. You can name an heir, too, so if anything happens to a beneficiary, the named heir takes over as a new beneficiary. That's an added upside. It avoids the need for probate. It avoids the need to pay local inheritance taxes, too.

The bank cannot treat the trust-held property as an asset of the bank.

The beneficiary is responsible for paying property taxes and any costs incurred for maintenance, etc.

Fideicomisos normally run for 50 years. Then you can renew it for an additional 50 years.

To set up a fideicomiso trust from scratch in the state of Quintana Roo (which includes the towns of Cancun, Playa del Carmen, Akumal and Tulum) runs around $2,000. Annual maintenance fees are based on the value of the property. For a property with a value of $200,000 you would pay around $550 a year. The maintenance fee varies widely from bank to bank, so check how much you will pay in annual fees before deciding which bank to use.

You can take out title insurance on property held in a fideicomiso. We recommend that you do so. The best resource for title insurance is Tuey Murdock, tueymurdock@gmail.com.

Currently, you do not need to report property held overseas in your own name to the IRS on your tax return. But you do need to report property held in corporations or trusts. There's some uncertainty as to how the IRS views fideicomisos, as they are not the type of trust this filing requirement was originally aimed at. A ruling in June 2013 decided that a fideicomiso was not a trust for US income tax purposes, but only if the bank's activities were limited to holding title. You need to discuss with your tax attorney your options—to simply declare the property in your tax filing or to apply for a private-letter ruling from the IRS to determine if it's exempt or you need to declare it.

There are some restrictions with fideicomisos. A fideicomiso can generally only hold one property. Plus, if the property is unimproved land of more than 2000 square meters (half an acre), the Ministry of Foreign Affairs require the beneficiaries to sign a letter promising to invest a minimum amount of money to construct a house within 24 months.

Buyers are sometimes wary of using a fideicomiso. But it's a safe and secure way to hold a property. Foreign buyers have used this system to own coastal property in Mexico for more than 40 years. Many people I know personally have bought this way.

The fideicomiso offers some benefits with regards to capital gains tax. If you name an heir, it skips the need for the property to go through probate. And it also gives foreigners the option to own beachfront land in Mexico, which is not possible in many countries overseas.

The Condo Regime: When you're buying pre-construction overseas, and the property is in a condo block or private community, you may find there's a delay with getting title in your name because the developer is still setting up the condo regime. Here's what that means…

When you're buying a condo or home in a private community with shared areas and amenities you need a legal structure called a condo regime.

The condo regime describes the whole property and each individual unit in it. It defines common areas and shared amenities. And it lays out the community rules.

The community rules cover everything from what color you can paint the outside of your home, what size of dog you can keep, to the type of business you can run from your home. The rules state that each owner pays a monthly condo or association fees to cover the cost of maintenance and repair of common areas and amenities, how that amount is determined and what it is used for.

With pre-construction property, the condo regime can cause delays with getting your title deed.

Before the developer can transfer the title on a pre-construction condo or home in a private community to a buyer, he needs to set up the condo regime and register it. And developers normally only start the legal process of setting up the condo regime when construction reaches a certain stage. That's because once the condo regime is approved, the developer can't modify the project or the layout of individual condos or homes. If he does so, he needs to start the whole process from scratch. That takes time and costs a significant sum of money.

Moreover, in some locations, municipalities won't allow a developer to apply for approval of a condo regime until the project is at least 80% complete.

That's the case in Mexico's Riviera Maya. And setting up the regime here is a multi-step process. First, the paperwork – and there's an awful lot of it – needs to go to the local municipality for sign off. Then it goes to state level for authorization by SEDUMA, the body responsible for urban planning and the environment. Then it's back to the local municipality before it proceeds to the final stage with the notary public.

Even in a very small condo project with only a handful of units, it can take 6-8 months to get the condo regime finalized and approved. With larger projects, it can take much longer.

My normal advice is that at closing and delivery of a pre-construction condo the property title should transfer to the buyer. So how can you protect yourself while you wait for the approval of the condo regime?

Rule number one is hold some money back. Never pay in full on a pre-construction property. Add a clause to your contract with the developer that says you're holding back a percentage of the purchase price until title is in your name. The contract should set a maximum timeframe for the title transfer, giving you the right to back out and get a full refund or extend the contract if the title transfer doesn't take place.

The second thing is to draw up a pre-assignment of ownership contract. Your attorney can do this on delivery of your condo. This contract recognizes the rights of the buyer as the owner of the property while they wait for the condo regime and final title transfer.

The document should detail the unit purchased and the monies paid to the developer. You can get this document notarized.

Step #5: Check the Permits and Approvals Folks often think that it's the Wild West outside North America and Europe when it comes to permits. That's simply not the case. If you need a permit to do something back home, you'll need either the same permit (or something very similar) to do it overseas. The standard permits are environmental, water, construction, and municipal. In my timeframe doing this job, the number of permits required have multiplied in most locations we cover, they've gotten more difficult to obtain, and more expensive to get. And, because of that, folks will sometimes skip one or more steps in the permitting process.

Have your in-country attorney check to make sure that your seller/developer has all the permits and approvals he needs to comply with current regulations.

Many countries require projects to have developmental and environmental pre-approval before they can legally market or sell a property. That process can take up to two years, and until pre-approval is granted the developer cannot legally start selling - or construction.

Checking permits doesn't just apply to pre-construction property. In some countries, you can see finished houses for sale that have either never applied for planning approval or perhaps had initial approval but subsequently added an extra bedroom or garage. This is particularly true in rural areas. Sometimes you only need to pay a fine or tax to get retrospective approval. But you could risk losing the property or having to remove the upgrades and additions.

And, in some cases, a missing permit can mean you can't get title on the property.

If you really want to purchase a property but one or more permits are missing, get the seller to get all the permits and approvals needed before you close on the property. Make it the seller's headache – don't try to do this yourself.

In that scenario, if the seller or developer wants to see some money before they get the permits, put the money in an approved escrow account. You can stipulate that the money is only released on a certain date if the sale closes, you get title transferred to you and the permits are all in place – if that doesn't happen, you can take the money back out of escrow without penalty.

Step # 6: Get a Survey/Check Access You should get a proper survey done to legally establish your boundaries. This is particularly important with older properties, where boundary markers noted in the deed may no longer exist. I've seen deeds that were more than a century old that referenced boulders and trees; the boulders and trees are likely no longer there.

It's also important to do a survey when buying large land parcels. You'll pay a price per acre or per hectare. And you want to know that you're getting each and every acre or hectare you're paying for.

On the topic of land, if you plan on farming, growing crops or cultivating vines, do a soil analysis to see if the soil is suitable to do that. Seek expert advice if you plan on farming as a business to make sure your plans are viable in the area you're buying in. Ask about climate, frost, water availability, infrastructure, access to markets, etc.

How do you get to your property? If it is via a right-of-way through someone else's property, that needs to be stated in the deed. Similarly, has anyone else got rights of way through your property? Both of these scenarios can be checked by your attorney.

Side Notes: Check if the property you're buying has squatters or anyone else using it. If so, ask the owner to remove them legally before you close the sale. Always ask for the property to come with vacant possession.

If you're buying a property with existing tenants or employees (a caretaker, say) and you want to keep them on, you need to start afresh with them. The seller should terminate his contract with them and pay them off in full any monies he owes (rent deposits, salary, sick pay, etc.). Then get your attorney to draw up a new contract between you and the tenants or employees.

Step #7: Check Infrastructure Essentials These are the services that you can't live without, and you should ask the seller as many questions as you need to ask to feel comfortable before proceeding with the sale.

Water:

- Is there a source of water on the property?
- What's the purity? - Is it potable/drinkable?
- What's the water pressure?
- If there isn't a mains/municipal water supply, can you drill a well? In some locations getting a permit to drill a well can take years rather than months. Also, check how deep you will have to drill, and how much that will cost
- If there isn't water on the property, make finding it a condition of sale. No water=no sale. You can add details on the volume and purity of the water you'll need to close
- When drilling your own well, find out who controls the well. In some scenarios you may have to hand over control of the well to a local co-operative group who will take charge of it…which is not necessarily a good idea (as they may be able to prioritize supplying water from the well to other people, leaving you high and dry)
- How is waste treatment being handled, and does it comply with local regulations?
- Will there be a municipal waste water system, a system put in place by a developer in a condo block or private community, or will you need to put in a septic tank?
- If a septic tank, check local regulations to see how much you will have to spend (some environmentally-sensitive areas require a very high-tech, and very expensive, tank)
- Make sure you can put in a septic tank. In beach areas, on lakeshores, or on riverbanks, that may not be possible
- Hot water doesn't come as standard in many Latin American homes. It's fine if you only need to install a hot water heater (that's relatively cheap and easy), but

make sure there is hot water plumbing/piping in place. It's often missing in older homes and it's an expensive, time-consuming and messy job to install it

Electricity:

- Is there a working supply in place? - If not, what timeframe and cost are you looking at? In rural Latin America, it can take a long time to get hooked up even if you are relatively close to the nearest supply and happy to pay the fee
- Is it overground or underground?
- Don't assume with electric (or telephone or water) services that a meter on the wall or wiring means you have a supply. Check with local supply companies to make sure the property is actually connected
- How reliable is the service - will you need a back-up generator?

Roads:

- Are roads and pavements already in place?
- If not, when will they be finished and what standard will they be? Developers often leave doing paved roads until last, as road surfaces can be damaged by heavy construction equipment.

Remember, you can ask for roads and utilities to meet a timeframe and certain standards in your contract when buying pre-construction. In many locations, you can't get a lot titled until it has a certain level of infrastructure in place.

And, with pre-construction, you're relying on a developer's promises. He's promising big swimming pools, a fancy clubhouse, gourmet kitchens, high-speed internet. But none of this is in place when you're buying.

<u>That's why we recommend that you never pay in full for a pre-construction property upfront</u>. Ignore the cash discounts on offer by the developer: Hold money back. Close only when the infrastructure's installed and you can get the property title transferred to you.

If **high-speed internet** is an absolute necessity for your job or your business, check that it is available in your area (check with a local service provider). Ask what the speed is in MB (megabytes). "High speed" or broadband internet in some countries overseas is as slow as dial-up in some parts of Europe and the US.

Check **cellphone** cover too. There's great coverage in Panama from multiple carriers, for example, but the building I live in is a cellphone black hole – there is next to no signal once you step inside the building and it's often impossible to make or receive calls. Yet step out into the street and you're back to full network cover.

<u>Step #8: Check the Developer's Background</u> If dealing with a pre-construction development, ask if your developer has developed before. If so, ask where, and what, and how the development turned out. Can he provide you with written testimonials from previous buyers?

If you can go and look at some of his finished communities, do so. It will give you a good idea of the quality of his construction, finishes, etc.

Ask how your developer plans to finance the project. If he has loans or mortgages, how is he proposing to pay them off? If he is committed to repaying those *before* he starts construction that is not the ideal situation for you.

Does he need money from sales to finance the project? How likely is he to achieve that sales level in the current market? Bank financing often kicks in when a developer has sold 20%-80% of the project. That percentage is decided by the bank, based on a number of factors, including the developer's track record, and the market he is operating in. Banks have become more cautious since the last economic downturn, and tightened lending restrictions. If the developer needs to sell 80% of his condos before he gets the construction loan from the bank….it's a slow market…and you're his first buyer, you could be waiting a very long time for your condo.

Most developers do not build themselves. They hire a construction company. What is their background and record? Can you see some of their finished projects to see if you are happy with quality of their work?

Check if the developer has **insurance** that covers him in the event that his contractor goes bankrupt or can't complete the work or fails to complete it satisfactorily. Insurance still means a delay waiting for the funds to re-start construction, but it's better than the alternative of an unfinished project. Ask if there is also fire or flood cover. What happens if your condo is 50% built…and you've paid 50% of the purchase price…and it burns to the ground?

You should also check if you're hiring a contractor directly yourself to build your home that they carry adequate insurance.

Even if you're buying a finished, move-in ready home, make sure the seller has insurance in place until the title transfers to you, and your policy kicks in. And remember to get your policy set up before closing!

Step #9: Check the Master Plan With pre-construction developments make sure that amenities promised in the master plan are in writing in your contract, if possible, with timelines and standards - the swimming pool, the clubhouse and landscaping. Imagine how you would feel if you only got some or none of those promised amenities - a small pool rather than the Olympic-size one, or no pool at all. Amenities are usually the last items installed in developments, and they suffer if a developer is running short of cash.

If the developer has reserved areas or green space, see if they will be preserved, or used for future development.

Similarly, if there's empty land next to your property find out what plans are in place for it. Check the local municipal developmental plan (if there is one) and see if roads, or factories, are planned nearby. Ask what local zoning regulations allow. Similarly, check out the local area - is there a municipal garbage dump, or a truck park, close to your new home?

Step #10: Check the CCRs/HOAs These apply in condo towers and private communities. You should always check the CCR's (Covenants, Conditions and Restrictions) to make sure there is nothing you can't live with. Keeping certain pets may go against CCR rules. Working from home usually carries restrictions, related to the type of work you do.

See what standard of maintenance you are obliged to carry out on the exterior of your property and what remodeling is allowed.

Perhaps subleasing your property, for vacation rentals, interests you. Check that the CCRs allow that.

Make sure too that the rules are tight enough that what your neighbors do won't adversely affect you. If you don't want a purple three-story house right next to your fence...chickens in the neighbor's yard waking you in the early hours...the owner of the house next door allowing his home to fall into such a state of disrepair it adversely affects the value of your home…check those CCRs. I've seen all of those in developments without strict CCRs.

On the upside, CCRs are often the only form of zoning protection you'll have. Local rules and zoning do exist in most of the world but they are often not very strictly enforced.

CCRs can help preserve the value of your home. If you don't want the house next door turning into a nightclub…or a neighbor building a shack in the vacant lot across the street…you'll feel more comfortable in a community with CCRs.

You also need to check the HOA (Home Owner's Association). Who will manage and run it? If it is the developer, when is the handover date to owners? What are the projected monthly dues? Can the HOA enforce collection? One development I saw had roads and pavements in terrible condition, with potholes and badly worn surfaces. Maintenance was impossible as owners did not pay their monthly dues and the CCRs had no mechanism for enforcing payment.

Who will manage the HOA finances? What checks and balances are there for ensuring that funds are managed correctly? Around 20-25% of your monthly dues should go into a reserve fund, for covering major problems (replacing an elevator in a condo tower, or roads in a private community, say). But often in older communities owners will try to cut their monthly costs to the bone, ditching the reserve fund to achieve that. Then, when the elevator needs replacing or the roads need re-surfacing, owners either cannot or will not pay out of pocket for these big-ticket expenses.

Make sure that the CCRs and HOAs are tied into the property deed and enforceable against future owners if the current owner sells. And don't assume that because CCRs are in your deed that they are enforceable. They must also be set up under a proper statutory regime that varies country by country.

Step #11: Investigate Ownership, Tax issues and Wills Discuss with your attorney and tax advisor the best way to hold your property overseas. You need to decide before you buy what you will use the property for. Is it a vacation home, a main residence or a rental vehicle?

Whether you hold the property in the name of an individual or a corporation, for example, is dictated by your personal circumstances and what your plans are for the property. You might want it to hold it in a corporation to pay lower taxes on rental income - or in your personal name to qualify for a residency visa.

In larger countries like Brazil, Argentina and Mexico, taxes can vary from state to state. You should ask your attorney to outline all the taxes that apply in the state you're buying in.

Ask what happens if you die. If you are a couple, how would the death of one partner affect the property ownership? You may need to have two wills, one in the country you are buying in and one back home. If you do, make sure both your attorneys are aware that you have two wills.

Step #12: Use Approved Escrow Services You are almost at the end of the checklist, and probably ready to start making payments to the seller. The most important rules here is: don't ever pay the seller directly.

We advise that you use approved escrow services at that stage. Developers and real estate agents and attorneys will have bank accounts, but they are often no more than a bank account in the developer's or agent's or attorney's name, where your monies are mingled with those of other clients and possibly even the developer's or agent's or attorney's personal money.

Even if the developer, agent or attorney is totally honest, if anything happens to them you could be waiting a long time to access your money if their finances and monies held in their bank accounts have to go through a probate procedure (which is usually long and complicated overseas).

Escrow services give you full control over when your money is paid and who it is paid to. You can add all kinds of terms and conditions – only releasing the money when title is in your name, all permits are in place, etc. It's the most secure way of paying for your overseas property.

In some countries such as Panama you can use something similar which is an irrevocable letter of payment. This is where you pay the money to a local bank and the bank issues a letter to the seller, stating that the bank has the money and will pay the seller once certain conditions are met such as transfer of the property title.

Finally, remember that buying a property overseas is exciting, and potentially one of the most profitable investments you can make. You just need to do your homework, and make sure it's the best possible deal for you.

Margaret Summerfield

P.S. Due diligence isn't fun or exciting. Many buyers see it as a bit of a bore – and an expense they'd like to skip.

We don't. Before we tell you about a pre-construction project, Pangea carries out a due diligence check on it.

You still need to do your own due diligence though. Here's what we do, and what you need to do yourself.

Pangea checks the master title of the project. That's the title of the piece of land before it's divided into lots or a condo building constructed on it. We don't check each individual lot or condo title. We can't check condo titles, because they are usually only created once the condo building is almost complete and the condo regime in place.

What you need to check: You need to have an attorney check the title of the lot, condo or home that you're buying. Make sure it's valid, properly registered and free of any liens or mortgages.

Pangea checks the sale contract. We check the standard sale contract. We want to ensure it's not missing any normal clauses. We also don't want it skewed in favor of the developer, with unfair penalty clauses. And, again, the contract should promise to give buyers title to their unit free and clear from liens and mortgages.

What you need to check: Developers often update a sale contract. The contract we check may not be the one you're asked to sign some weeks or months down the line. Your attorney needs to go through your contract with you.

There are lots of clauses in a sale contract that you need to comply with. Many of these depend on your personal circumstances, such as making stage payments on time. You'll likely want to alter some of the finishes, change the payment plan, or perhaps ask that the developer faces the same penalties that apply to you for breach of contract.

Talk through your contract with your in-country attorney. Understand exactly how much you will pay for the property, what penalties you may pay if you don't comply with the contract and what happens if you don't get what you're promised. Add as much detail as possible on items such as flooring, windows, cabinetry, etc. Agree any changes before you sign the contract or make a down payment.

Pangea checks the permits and approvals. Many folks think that overseas is the Wild West, where the norms and laws that apply back home don't exist. But when it comes to zoning, permits and approvals, whatever you need back home, you'll likely need overseas too.

Pangea checks that the required permits and approvals are in place on a project. These typically include environmental permits, subdivision or master plan approval, and a raft of others – water licenses, sales licenses, municipal permits, you name it.

And we go one step further on behalf of our readers. If a developer is waiting on one last permit or license, and we think the deal is so strong we can't wait until it is in place before we tell you about it, we push the developer. We get the developer to agree that you can make a no-money hold on a unit, or put your money in escrow, until the permit or license is in place. John Doe, the buyer on the street, doesn't get that same protection.

What you need to check: Some permits and approvals (occupancy permits, for example) are not available when Pangea carries out due diligence. And permits and approvals already granted are occasionally revoked. Your attorney will verify that the property you're buying has all the permits and approvals required.

You will also need to do a thorough check on any resale or a property you buy through a real estate agent we put you in touch with, if that property is not part of one of the specific projects we write about.

Finally: Pangea does not check condo regimes, homeowners' associations, and the rules and regulations for condo blocks or private communities. This is something you need to do for yourself.

The condo regime is not in place normally until the project is heading for completion. And the rules and regulations are very varied. The rules may limit what type of work you're allowed do from home or if you can sub-let. They may ban pick-up trucks or dogs that weigh more than 30 pounds. As a buyer, you need to figure out if you can comply with the rules and if you're comfortable paying the projected monthly fees.

We've got two top tips. First, hire a good, in-country attorney to do your due diligence. And second, never pay in full for a pre-construction property. Hold some money back until final closing, at least 10%, so you can use it as leverage if everything doesn't go to plan.