

Negotiating Rights of Way in LATIN AMERICAN COUNTRIES

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Throughout history, there have been colonized countries and conquered ones, especially in Latin America. Latin American countries, known as “the new world,” during the age of exploration, were affected by these conquests and colonization. Conquest is the act of military subjugation of an enemy by force of arms; colonization is the act of domination of a country’s territory by another. The process of colonization can be for political, military, cultural, economic, or other reasons and can be carried out with violence or peacefully. These effects can be seen and felt even today. The impact has left their imprints the countries’ formation and culture.

The History of Conquest

The process of conquest was the first meeting between inhabitants of old Europe and those of Indigenous America. This event, so significant for all mankind, but specially for indigenous people, would be repeated again and again around all the territories inhabited by the multiple American cultures.

Expropriation

The act of expropriating an asset is coercive, that is to say, the decision to acquire the asset is of the State, and for this, the State must give full compensation for the loss of property that the expropriated party experiences. The compensation must be of sufficient monetary value so that the affected party can replace the expropriated asset with a similar asset, according to the real value, which in principle, is the market value.

The culture and behavior of countries that were conquered are different from those that were colonized. Except for Argentina, Chile, Costa Rica and Brazil, most Latin American countries were conquered. Each country has a different behavior and mentality due to its history (conquered or colonized), so when it comes to negotiating right of ways or expropriations, there are different factors to consider.



Argentina

In the case of expropriation of land for different types of projects, the value of the property will be paid, in addition to the damages that are a direct consequence of the expropriation. When the property is declared of public utility, the expropriator may acquire it directly from the owner within the maximum values estimated for that purpose by the National Appraisal Court for real estate or by the competent technical offices to be designated in each case. For real estate, the maximum estimated value shall be automatically increased by 10% for all items. Collateral damages such as consequential damages and loss of profits are not covered.

No action by third parties may prevent the expropriation or its effects, and it shall be understood that the expropriation has been terminated when the transfer of ownership to the expropriating party has been affected by means of a final decision of the judge, the taking of possession and payment of compensation.

Chile

Expropriation in Chile is not enforceable — it is always paid to the owner according to the amount defined by the appraisal committee or according to the amount determined by the judge, if the owner opposes and decides to file a judicial claim. With the expropriation, the owner loses the domain of the property (i.e., loses the property), and it is transferred to the Chilean Treasury. The Commission is made up of three independent professionals who are part of the national list of appraisers and who are appointed by the president. This designation is for life, and its designation is by region and by profession, according to what each appraiser has defined when registering. The responsibility of expert appraiser is for life.

Mexico

The expropriation of a property occurs when the owner of the property does not agree to sell the property and refuses to grant permission for the right of way. This occurs upon refusal by the owner of the land to enter into a purchase and sale agreement, or surface occupancy agreement with Mexican petroleum company and electric company; once these instances are exhausted, and an exchange of his property for an equivalent value in another site is proposed and rejected, the government then proceeds with the expropriation process. It is necessary that a notary public attest to the facts for which a record is drawn up stating that the owner does not give his consent for the purposes.

This process may take several years, however, the occupation of the property is immediate upon authorization of the Secretaría de Energía, or SENER (Department of Energy) (Secretaría de la Reforma Agraria) for which the public utility must be well founded. The construction of a pipeline is considered of public utility as stated in the Expropriation Law and the Regulatory Law of Article 27 of the Constitution in the Oil Industry.

Costa Rica

Property is inviolable; no one may be deprived of their property except in the legally proven public interest, subject to compensation in accordance with the law. In the case of war or internal commotion, prior compensation is not indispensable. However, the corresponding payment shall be made no later than two years after the end of the state of emergency.

For reasons of public necessity, the Legislative Assembly may, by a two-thirds vote of the totality of its members, impose limitations on property in the social interest.





Only the State and public entities may agree to compulsory expropriation when the property subject to expropriation is necessary for the fulfillment of public purposes.

Object of Expropriation

Any property whose acquisition by the public power means an act of indispensable necessity or benefit to the community may be subject to expropriation. Once the public cause is justified, no property can be excluded as an object of expropriation.

Determination of Fair Price

The administrative appraisal shall indicate all the data necessary to value the property to be expropriated and shall describe, in a broad and detailed manner, the method used. Regarding real estate, the report shall contain a clear and detailed mention of the following:

The estimated price of adjoining properties and other properties in the area or sales made in the area, especially if it is a road or other project similar to that of the part of the property under appraisal, in order to compare the surrounding prices with that of the property to be expropriated, as well as to obtain a homogeneous and usual value in accordance with the area.

Brazil

Compulsory right of way: the owner of the property who does not have access to the public road, fountain or harbor may, upon payment of a compensation, completely oblige your neighbor to give you the passage — the direction of which will be judicially arranged, if necessary.

For the neighbor whose property is more natural and easily lends itself to the passage, if there is a partial sale of the building, so that one of the parties loses access to the public road, springs or ports, the owner of the other must tolerate the passage.

The provisions of the preceding paragraph apply even when, prior to the sale, there was a passage through a neighboring property, the owner of which has not obliged, subsequently, to give another.

Venezuela

A property can be expropriated when it is or is declared of public utility. A talk must be held with the owner of the property, and an "amicable agreement" must be reached on the fair value of the property and its payment, in case no interested party attends or does not accept. If there is no interested party or if there is no acceptance, the amicable settlement will be considered exhausted, and the expropriating entity may go to court to request the expropriation of the affected property. Otherwise, a trial is held where three appraisers are appointed — one by the expropriating party, another by the owner and a third by mutual agreement between the two parties.

Closing Thoughts

If you are going to do a right of way job in Latin America, it is recommended to partner up with a person who knows about the laws and the process in that country. 🌐



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