



March 2009

Dear Investor,

*Greenwashing Risks* was researched and written prior to the global financial crisis triggered by the subprime mortgage crisis and massive bank failures that emerged in September 2008. The recent economic downturn has left U.S. consumers uncertain in their financial futures and with considerably less financial flexibility in their investment options. U.S. homeowners may now be less likely to invest in foreign real estate due to the dropping prices of real estate in the United States, a general mistrust of foreign legal systems, and the fact that previously, real estate purchases were in part funded by investments in the recently collapsed market. However, real estate options in Latin America will continue to be a tempting option to some U.S. investors looking to retire in the near future, as these purchases often appear to offer buyers relatively affordable property in appealing tropical settings, with a generally lower cost of living.

You may have heard about a recent lawsuit regarding Donald Trump's alleged marketing misrepresentation of a resort development just south of Tijuana, Baja California, Mexico. American investors were offered a lower-cost Baja California coastal alternative to Southern California living, and unfortunately, some may have lost everything in this deal gone wrong. Assured by Trump's face on the billboard advertising the Trump Ocean Resort Baja, scores of investors gave up their life savings for the slice of paradise the resort promised. Ivanka Trump, speaking on her father's behalf, told the Associated Press in 2007 that Donald Trump was "involved in every capacity" of the development. And at least one Trump Ocean Resort Baja brochure stated, "Mr. Trump is personally involved in everything his name represents."<sup>1</sup> However, now that the project has collapsed, the Trumps are attempting to distance themselves from the failed venture, claiming, "We are not the developer of Trump Baja — we are the brand...we never took on the obligations of the developer and we were not responsible for the financing."<sup>2</sup>

Attorney Bart Ring, representing 69 buyers who purchased a total of 71 units in Trump Ocean Resort Baja, with deposits totaling \$18 to \$20 million, has filed a lawsuit in Los Angeles County Superior Court challenging Trump's assertion that he had nothing to do with the development. With unspecified damages against Trump and family, Ring is alleging fraud, negligence, and

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<sup>1</sup> Elliot Spagat, "Buyers sue Trump over failed Mexico condo project," *Washington Post*. Mar. 14, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/13/AR2009031303422.html>.

<sup>2</sup> Don Dahler, "Investors lose millions on Trump-backed project," Mar. 9, 2009, <http://wcbstv.com/topstories/investors.trump.project.2.954651.html>.

breach of fiduciary duty, claiming Trump led buyers to believe that he had an active role and stake in the development.<sup>3</sup>

Trump is claiming that he merely leased his name to the developers in Mexico and that he's never even been to the construction site. Yet with a pitch from Ivanka Trump and hard campaigning by the rest of the family, the resort sold 188 units for \$122 million the first day.<sup>4</sup> Trump Ocean Resort Baja required approximately 30 percent down from investors, with units going at prices from \$300,000 to \$3 million. It also required the signing of a contract that contained a clause allegedly giving Trump the right to spend the deposit before negotiating a construction loan.<sup>5</sup> All told, investors are out \$32.2 million and have been informed that they will not be getting their dream homes or their deposits back. Abandoning Tijuana, Trump is now turning to Panama, as the Trump Ocean Club is beginning construction in Punta Pacifica, Panama City.<sup>6</sup>

This sad case illustrates just one of the many perils of investing in real estate abroad. Other challenges include unfavorable foreign legal systems, untold environmental damages, shoddy construction, and unscrupulous developers who can escape accountability in U.S. courts. Not surprisingly, there has been an increased consumer demand for responsible retirement investment options abroad over the last several decades. One of the largest groups of such investors is the baby-boomer generation, with an investment potential estimated at \$15.5 trillion over the next 20 years and a keen awareness of compelling environmental issues. This interest has prompted some developers to employ green marketing strategies to entice consumers concerned with the environmental impacts of their investments.

The greening of investors has resulted in the increased marketing of developments throughout Latin America as environmentally friendly. Unfortunately, many of these developments are having profound effects on some ecologically and culturally significant areas. Developers marketing their projects as green may be making unsupported claims of their developments' greenness or taking advantage of the inherent vagueness of the term "green." This graying of the concept of "green" is going unchecked, leading to misrepresentation of the true nature of the developments and to potential disappointment for investors. Despite the popularity of green investing and marketing, no U.S. federal or state agency has tackled this emerging area of real estate law.

Part of the problem is that while domestic green building guides exist, there are no globally recognized international standards for green housing developments. Additionally, developers are currently not required to disclose the environmental impacts of their development to potential investors. This paper investigates the domestic causes of action potentially available to investors of foreign real estate who have been misled by developers' misrepresentations. It identifies the existing laws and policies prohibiting fraud and regulating the marketing and sale of green products and services.

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<sup>3</sup> Hui-yong Yu, "Trump sued by condo buyers over abandoned Baja luxury resort," *Bloomberg Press*, Mar. 14, 2009, <http://www.bloomberg.com/apps/news?pid=20601103&sid=amZyVmUO5gJU&refer=us>; "Donald Trump sued over failed Baja project," Mar. 13, 2009, <http://www.10news.com/news/18928928/detail.html#>.

<sup>4</sup> Elliot Spagat, "Trump Mexico venture folds, leaving buyers strapped," *Newsday.com*, Mar. 6, 2009, <http://www.newsday.com/business/ny-bztrump0307.0.5950974.story>.

<sup>5</sup> *Id.*

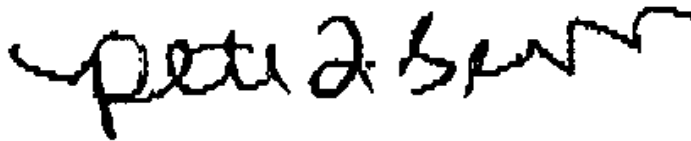
<sup>6</sup> [http://www.trumpoceanclub.com/TOC\\_2008/home1.html](http://www.trumpoceanclub.com/TOC_2008/home1.html).

In conducting this research, the Center for Biological Diversity discovered that there is a lack of relevant domestic law and regulation directly governing the green marketing of real estate abroad. Additionally, we recognized that there has not been an empirical study of the true loss of value in real estate that has been marketed as green but then constructed without adequate regard to environmental considerations.

Therefore, we recommend that, domestically, existing applicable state and federal laws be enforced and more stringent, relevant law be implemented to combat these nontransparent practices abroad. Additionally, there should be international standards for green developments to educate investors on the impacts their investments make so that they can make more fully informed decisions, and to identify the true financial losses associated with investing in supposedly “green” real estate. Constant watchdogging is required until such international and domestic standards are established and consistently enforced. Hopefully, once investors are armed with the knowledge that some of these developments can have undisclosed negative impacts on the natural environment, they will not invest in them and developers will be forced to either develop elsewhere or develop in a truly sustainable and green fashion.

We hope that you find this report on the greenwashing risks associated with investing in real estate in Latin America a useful tool in informing your decision to invest in real estate abroad.<sup>7</sup>

Sincerely,

A handwritten signature in black ink that reads "Peter Galvin". The signature is written in a cursive, slightly slanted style.

Peter Galvin  
Conservation Director

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<sup>7</sup> This report provides information about the law and is designed to help readers understand their legal needs. However, legal information differs from legal advice, as legal advice refers to the application of law to an individual’s specific circumstances. Therefore, this report should not be construed as providing specific legal advice for a particular person’s case or situation.