

BUYING REAL ESTATE IN MEXICO

Once you've decided to invest in Mexican real estate, you need competent and comprehensive advice to help you structure your investment in the most efficient manner. Buying real estate overseas requires more diligence, inquiry and planning to maximize U.S. and Mexican tax and estate planning benefits. You may have heard multiple stories about the complexities and potential horrors of owning property in Mexico, but no one has given you a detailed and comprehensive outline of how to do it right. We hope this outline provides you with enough information to guide you in the right direction to structure your land ownership in the way that suits you best.

Hot Button issues to consider in buying Mexican Real Estate:

- Can I hold title directly or must I form a trust?
 - *Oceanfront property must be held in a Mexican land trust.*
- How much are bank trustee fees?
 - *Bank trustee fees may vary, but they typically range between \$500 and \$1000 annually.*
- How do I incorporate my Mexican property into my Estate plan?
 - *There is no cookie-cutter formula for your estate plan, as each case is different. However, prudent planning is critical to protect your asset for the benefit of your heirs.*
- How much are closing costs and who pays for them?
 - *The buyer typically pays for all closing costs (other than Seller's income tax); closing costs range from 4-7% depending on the size of the transaction.*
- What is the role of a Mexican Notary in a real estate closing?
 - *A Mexican Notary is a lawyer, but not your lawyer. They are also public officials who prepare the deed and help pay taxes and record the deed. They function almost as an escrow agent also.*
- What are tax consequences when I sell?
 - *Mexican income taxes are payable on the gain of the sale. International tax treaties allow for you to have a credit on your US taxes.*
- Can I rent my vacation property?
 - *Yes, but you will incur Mexican income taxes based on the rental income that your property generates.*
- Can I get Title Insurance?
 - *Yes – Title insurance is available in Mexico.*

As a first step, get informed and ask questions. You are about to close on a purchase of a valuable asset in a foreign country, and you should be doing as much, if not more, diligence than you would if you were buying property at home. We run across an astonishing number of people who close on deals only to discover that they don't have clear title to the property or that there are significant building limitations or environmental concerns with the land. In many cases, people have "purchased" a home but put the title in the name of a broker or a friend, only to find years later that they don't own anything.

Also, consider including your Mexican property into your estate planning documents. Thoughtful estate planning will save your heir's considerable trouble and grief that could result from having to probate an estate in a foreign country.

CAN I OWN LAND IN MEXICO? A foreign (non-Mexican) person cannot own title to oceanfront land in Mexico that is used for residential purposes. The Mexican foreign investment law designates a "restricted zone" which extends 30 miles inland from the coast and non-Mexicans can own property only through a trust known as a *fideicomiso*.

WHAT IS A FIDEICOMISO AND HOW DOES IT WORK? There are many types of fideicomisos, but for these purposes, a fideicomiso is a contract between a Mexican bank and you or your designee, known as a beneficiary. The Mexican bank, acting as fiduciary, holds title to your property under the trust contract which provides that you will enjoy all use and rights associated with property ownership. Not only do you enjoy all the rights of a property owner, including the right to collect income from rentals of your property, but you also have the typical responsibilities of a property owner, including payment of property tax, insurance, utilities and homeowners' association dues, if any.

HOW LONG DOES THE TRUST LAST AND HOW MUCH DOES IT COST? Mexican law provides that a fideicomiso last for 50 years, and can be renewed at the end of the term. Although bank fees may vary, a typical charge is a one-time set up fee of \$500 and an annual maintenance fee of \$500.

ARE THERE ANY SPECIAL REQUIREMENTS REQUIRED OF A FOREIGN INVESTOR?

SRE Permit

Article 27 of the Mexican Constitution permits foreigners to acquire land in Mexico, provided they agree to consider themselves as Mexican nationals concerning the acquired property and do not invoke the protection of their country of origin or domicile for matters regarding the property. Prior to forming a fideicomiso, all foreign buyers must obtain a permit from the Ministry of Foreign Affairs (*Secretaria de Relaciones Exteriores, "SRE"*) wherein you must agree that for matters connected to the property, you will be considered a Mexican citizen, will not invoke diplomatic protection of your home country, and will submit to the jurisdiction of Mexican courts. The permit application is typically handled by the bank fiduciary or the notary overseeing closing and costs approximately MX\$14,835 pesos.

Anti-Money Laundering Law

Mexican real estate transactions are subject to Mexico's Anti-Money Laundering Law (officially, the *Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*). For Mexican banks to comply with the law, they must verify their clients' identity as well as the source of the funds used in the transaction. As a result, when a foreign individual is establishing a fideicomiso for the purchase of Mexican property, the individual should expect to provide the Mexican bank fiduciary with the following documentation:

- Know Your Customer (KYC) form for an individual. Requirements vary slightly by a financial institution, but in general include the individual's name, address, email, telephone number, date and place of birth, nationality, marital status, occupation.
- Proof of address, such as a utility bill or bank statement. Must be no more than three months old.
- Identification of the foreign individual, such as a passport or other government-issued photo identification which includes the individual's signature.

If the beneficiary of the trust is a legal entity, the bank fiduciary will also require the following:

- Know Your Customer (KYC) form for a legal entity. Requirements vary slightly by a financial institution but in general include entity name, address, email, telephone number, formation date, description of the corporate purpose, ownership structure, and name of a legal representative.
- Certificate of Formation/Articles of Incorporation apostilled and translated into Spanish by a certified translator.
- Power of Attorney or other document granting authority to the legal representative who will be signing closing documents on behalf of the buyer entity; such document should be apostilled and translated into Spanish by a certified translator.
- Name and Identification of the legal representative of the entity.
- Proof of address of the company, such as a utility bill or bank statement. Must be no more than three months old.

HOW DOES A CLOSING TAKE PLACE IN MEXICO? Although some developers and brokers have tried to structure an offer to purchase, escrow and closing similar to U.S. conventions, the process in Mexico is still different. Assuming you have signed a binding contract and have complied with the requirements of a foreign owner required by Mexican banks and are ready to proceed to closing, an escrow is optional in Mexico. There are several reputable escrow companies that are operating in Mexico to service real estate transactions for the benefit of foreign buyers. However, hiring an escrow agent is not customary for most transactions, and the function of the escrow agent is often carried out by the Mexican notary public or "*Notario Público*."

WHAT IS A NOTARIO? A Notario is an attorney licensed to practice law in Mexico and who also has been granted authority by the State government to prepare deeds to convey real property. Even though a Notario is a licensed attorney, he or she is NOT your attorney in the transaction. Instead, their role is more of a public official overseeing that the legal requirements to transfer the property are fulfilled. A Notario can also act similar to an escrow agent and can receive funds for the purchase and pay off property taxes, utilities and other charges required as part of the transaction.

WHAT FEES, CHARGES AND COSTS WILL I INCUR AS PART OF THE PURCHASE? In Mexico, it is customary for all charges, other than income tax, to be paid by the buyer. These charges include appraisal charges, public registry filing fees, Notario fees (which are determined according to State law and may be about 2% of the transaction) and State acquisition tax (which is set by State law and maybe as high as 2.2% of the value of the transaction). We typically advise buyers to expect fees to be between 4% and 7% of the purchase price.

HOW SHOULD I HOLD TITLE? The beneficiary of a fideicomiso can be a foreign person or a foreign company. The manner in which you hold title is personal and depends on your own financial and legal situation. We advise clients to hold title taking into account their existing estate planning needs and structures. We typically see clients take one of two positions. Some clients elect to hold title as individuals and others will take title through an LLC or other entity formed in the U.S.

IF I TAKE TITLE AS AN INDIVIDUAL, WHAT ARE MY CONCERNS? During your life, you will not have too many concerns about being a beneficiary of a fideicomiso. However, if you don't plan properly, your heirs could run into problems. Even though Mexico does not have an estate or inheritance tax, if you bequeath the fideicomiso interest in your property to a foreign person, your heir will be subject to a 25% tax charged on gratuitous transfers to foreign persons. However, if you set up your fideicomiso from the start by naming a substitute beneficiary, that substitute beneficiary can inherit the beneficial interest in the property without being subject to the 25% tax to which foreign persons may be subject. If you hold as an individual, it may also be beneficial to have the Notario prepare a Mexican will to confirm your intentions.

IF I TAKE TITLE THROUGH AN LLC, WHAT ISSUES DOES THIS RAISE? Buying Mexican real estate through an LLC creates more requirements as noted above. In addition to the bank requirements, the Notario will also request copies of the corporate records of the LLC translated into Spanish. However, if you purchase through an LLC, your LLC can be incorporated into your U.S. estate planning documents without having to involve a Mexican will or be engaged in Mexican probate proceedings in the future.