

OWNING IN MEXICO



Frequently Asked Questions

» What is a FIDEICOMISO? (Mexican Bank Trust)

Pronounced “fee-day-co-miso.” This is a legal structure which allows non-Mexicans to purchase real estate property located in the “Restricted Zone”. This zone encompasses the areas along the coasts and borders of Mexico. Essentially, it is a recorded contractual arrangement where a property is held in “Trust” by a bank for a specific purchaser, or beneficiary. In all material respects it is similar to the type of Trusts commonly used in the United States and Canada to hold property for estate planning purposes.

In order to establish a Trust a permit is required from the Secretary of Foreign Relations. Such a permit is usually issued for a term of fifty years and can be renewed for an additional term of fifty years. Contrary to the commonly held misconception, a Mexican Bank Trust (FIDEICOMISO) is not a lease. It is a form of ownership in which real property is transferred into a Trust for the sole purpose of the Beneficiary. It is not necessarily better or worse than fee simple ownership . . . just different.

» What defines Mexico’s “Restricted Zone?”

Defined under the Mexican Constitution, the “Restricted Zone” is the land 100 kilometers from any Mexican border and 50 kilometers from any coastline. In these areas, non-Mexicans may not purchase or hold direct domain over any land, unless done so through a Bank Trust. Therefore, a FIDEICOMISO is required for any non-Mexican acquiring residential property in these zones.

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» What parties are involved in the FIDEICOMISO?

A THE TRUSTOR (SELLER)

This is the individual or entity that creates the Trust (In most cases this is the original Mexican landowner or Seller). The Trust is irrevocable, so once the Trust is incorporated, the Trustor will have no power to change any part of the Trust or participate in it.

B THE TRUSTEE

This is a Mexican bank authorized to act in such a capacity under the Mexican General Law of Credit Institutions. Such banking institutions are strictly regulated and controlled by the Ministry of Finance and Public Credit, The Bank of Mexico and the National Banking Commission. A Trustee may not be a beneficiary of the FIDEICOMISO. The Trustee receives instructions from the Beneficiary and is empowered with the rights and necessary powers to achieve the objectives set forth in the Trust Agreement and, at the same time, acts on behalf of the foreign Beneficiary in any and all transactions involving the property held in FIDEICOMISO.

C PRIMARY BENEFICIARY (PURCHASER)

This is usually the purchaser. As the Beneficiary of the Trust you enjoy all attributes of ownership including: use and enjoyment of the property; the ability to improve the property; the ability to obtain financing using the property as collateral; as well as selling or renting the property and retaining all resulting net profits. In essence, the Beneficiary has the same absolute rights to use, benefit from and enjoy the property as if it were in fee simple ownership.

D SUBSTITUTE BENEFICIARIES

Substitute Beneficiaries are those who receive the beneficiary rights upon death of the Primary Beneficiary. Transferred upon death of the Primary Beneficiary, the Trust property will revert to the benefits of his designated Substitute Beneficiaries. PLEASE NOTE: It is much easier for your heirs if you list them in the Trust Document than it will be for them to acquire the rights through other legal channels, since your Trust Document can also act as a Will regarding your Mexican property.

» What are the applicable Taxes?

A PROPERTY TAX (IMPUESTO PREDIAL)

Property taxes in Mexico are very low compared to the United States and Canada. Your Seller will pay the property tax up to the closing date. Thereafter, this will be our responsibility on a yearly basis. It is customary in Mexico for the owner of the property to pay his property tax one year in advance.

B Property Acquisition Tax and Registration Fee

The buyer pays the Acquisition Tax (or Transfer Tax) and Registration Fee. It is currently 2.9% of the declared value of the transaction or the appraisal value, whichever is the highest.

» What is a Certificate of No-Liens (No-Encumbrance)?

This is a document issued by the Public Registry Office that certifies the current status of the property.

» What is the Foreign Relations Permit?

This permit is obtained from the Secretary of Foreign Relations in order to establish a Trust. The application for this permit must indicate the proposed usage of the property. If the property is a vacant lot the request should include a general development plan, as well as the amount of money being invested and the time frame for the project. The permit is obtained by the Trustee on your behalf.

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» What are the Bank Administration Fees?

If the Title is held in a Bank Trust there will be annual administration fees. The bank also charges fees to change Primary Beneficiaries or establish a new Trust. Most banks are now quoting fixed fees of less than \$500 per annum.

» What is an Escritura Publica (Public Deed)?

This document attests to the transfer of property. It is formalized upon being recorded at the Property Tax Office and the Public Property Registry Office. Only a Mexican Notario Publico can issue this document.

» What documents will I need?

- » If you are acquiring property as an individual you will need the following:
- » Complete names of the Beneficiaries
- » Complete names of the Substitute Beneficiaries
- » Foreign address and telephone numbers for all Beneficiaries
- » Official picture identification of all Beneficiaries (Passport preferred)

If you are acquiring property through your corporation:

- » Exact corporate name and denomination
- » Certified copy of the corporate bylaws and articles of incorporation translated into Spanish.
- » In the case of Canadian corporations, said documents must be legalized at your nearest Mexican consulate or embassy. If the corporation was formed in the United States, the documents must bear an apostille.

» Who is the Notario Publico (Notary Public)

The Mexican Notario Publico is a specialized attorney who has practiced his profession for at least five years and has been appointed by the Governor of the State in which he is practicing. Notarios are strictly regulated and they represent the public interest as opposed to particular parties. The Notario performs a very important role in that he is responsible for performing all the correlative recordings and the title search in respect to all real estate transactions. His duty is to draft the public deed and to confirm the validity of signatures.

Prior to closing, the Notario's additional duties include:

- » To examine the documents of the selling party to ensure their accuracy and legitimacy
- » To verify title
- » To search the public records to determine the status of the seller's title to the property and the existence of liens
- » The calculation and payments of buyer's and seller's taxes.

What is a Title Search?

A Title Search, or Title Investigation, involves an examination of the recorded documents on a particular property. The title search will reveal any existing liens, history of the property, easements and any other details pertinent to the property. Title insurance costs vary according to the company that provides the service, however they typically run around .065% of the purchase price.

What is a Condominium?

A Condominium is a legal structure, placed and registered on a property, which has the legal effect of subdividing into individual private units. These units share common use areas and common property. Private units may be enjoyed only by the exclusive owners thereof, whereas common areas and common property may be used and enjoyed by all owners.

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Will there be a Condominium Association on the property I am purchasing?

Yes, all condominiums are subject to one or more condominium regimes which will contain all the provisions (bylaws) that regulate the rights and obligations of the Owners, Occupants and Visitors who have access to the installations of the Condominium. The observance of the Bylaws is mandatory for all the Owners, Occupants and Visitors of the units.

How is the Condominium Association administrated?

In order to administrate the Condominium, and in accordance with Mexican law, an "Association Civil" (AC) must be formed. The "AC" is similar to a Homeowners Association in the United States or Canada. The "AC" typically hires a professional management company to run the day to day operations of the Condominium. In accordance with the Bylaws, an annual Owners Meeting is held to review the administration of the Condominium and to set operating and budget parameters for the coming year.

Will I pay a Maintenance Fee?

Yes. The Owners share in the expenses of the Condominium in accordance to their "Percentage Factor". Maintenance fees cover such expenses as operation, administration, maintenance and management of the Common Areas. Each Owner is responsible for payment of their Maintenance Fee in advance on a monthly, quarterly or annual basis. An itemized list of Maintenance Fee expenditures is usually provided by the "AC" at the annual meeting.

Key Words

For your convenience I have listed several key words you may encounter in Spanish

Apoderado	Agent through a power of attorney	Fiduciario	Trustee (Mexican National Bank)
Avaluo	Property Appraisal report	Garantia	Guarantee
Beneficiario	Trust Beneficiary (usually the Buyer)	Gravamen	Lien
Bienes Raices	Real Estate	Honorarios	Fees paid for a service
Cesion	An assignment of rights and obligations	Impuesto	Tax
Corredor	Broker	Inscripcion	Act of recorded entry in the Public Record
Derechos	Rights	IVA	Value Added Tax
Ejecucion	Foreclosure	Perito	A licensed or specially certified expert in a given field
Escritura	Public Deed	Poliza	A policy (such as an insurance policy)
Estudio Topografico	Land or plot survey	Predial	Property Tax
FIDEICOMISO	Trust Agreement	Prima	Premium paid for insurance coverage
Fideicomisario	Trust Beneficiary	Registro Publico	Public registry for land records
Fideicomitente	Trustor (usually the Seller)	Zona Restringida	The "Restricted Zone"

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