

BUYING PROPERTY IN MEXICO`S RESTRICTED ZONE

By David W. Connell

When buying real estate in Mexico's costal areas or borders, foreigners cannot acquire "fee simple" title to land but rather have to set up Mexican trust or Mexican corporation to hold the title to the land so that they can control such properties. This article will briefly review the 2 most common forms foreigners have for buying land in Mexico "restricted zone".

The "restricted zone", according to Article 27 of the Mexican Constitution, is all land located within 100 kilometers of any border of Mexico and 50 kilometers of any ocean. Article 27 of the Constitution states that no foreigner will be allowed to acquire **direct** title to land within the restricted zone. However, Mexico's Foreign Investment Law allows foreigners to acquire **indirect** title to land in the restricted zone by one of two methods: through a Mexican corporation or through a Mexican bank trust (fideicomiso).

I. - Acquiring property in the restricted zone using a corporation:

As of 1995 foreigners can fully own, operate and administer Mexican corporations. There are still some restrictions on certain activities such as mining, airports, and telecommunications where foreigners are limited in the percentage of ownership of Mexican corporations; however, the general rule is that foreigners can participate in up to 100% in the ownership of Mexican entities, including Mexican corporations that buy and sell real estate.

Mexican corporations require a minimum of two members, of which both can be foreigners. There is no legal requirement of having a Mexican partner/member in a Mexican corporation set up to purchase real estate.

There are several different types of Mexican commercial entities, however the two most common are the *S.A. de C.V.* (corporation of shares) and the *S. de R.L. de C.V* (*partnership*). Both the "*S.A. de C.V.*" and the "*S. de R.L. de C.V*" are limited liability entities, and both of these types of entity are treated the same for Mexican tax purposes. However, some foreign government (such as the US) treat them differently for tax purposes, and therefore getting advice on which entity is best for you is important.

Forming and maintaining Mexican corporate entities is much more expensive than in other countries. All Mexican entities require monthly tax filings which have to be done on-line and in the forms provided on-line, which means that you will need to hire and pay for an accountant to do monthly and annual tax filings, as well as other types of required filings such as Foreign Investment filings and in a lot of cases Anti-Money Laundering filings. All of these filings add up in fees and

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therefore a Mexican entity can be quite expensive to set up and maintain. Make sure you know what it will cost you to maintain a Mexican corporate entity before you set one up!

If you do decide to set up a Mexican corporate entity, this entity will be able to acquire the deeded ownership to land within Mexico's Restricted Zone.

II. - Acquiring property in the restricted zone using a Mexican bank trust (fideicomiso):

A In Mexico a *fideicomiso* (trust) is a three-party contract by means of which the seller (settler/*fideicomitente*) irrevocably transfers to a bank (trustee/*fiduciario*) real property so that a third party (beneficiary/*fideicomisario*) can use and enjoy such real property. The transfer of the real property from the seller to the bank is a definite and irrevocable transfer of title.

Under Mexican law only Mexican banking institution can act as a trustee. When a property is purchased and held in a bank trust, the bank holds title, and the beneficiary has the right to use and enjoy the property as he sees fit (as long as the manner in which he or she does so is lawful). The bank cannot encumber or sell the property without the express written consent of the beneficiary.

When purchasing property in Mexico's Restricted Zone using a trust, the "deed" to the property will be the trust (*fideicomiso*) that is signed before a Mexican notary and by means of which the property is transfer to the trust. A normal purchase transaction includes: 1) Making a written offer on the real estate. 2) Having a signed acceptance of the offer. 3) Signing of an escrow agreement and open of escrow with the corresponding deposit. 4) 10 – 15 day due diligence inspection period for residential (commercial is usually longer). 5) Close of Due Diligence, 6) Final and full funding of escrow 3-5 days prior to close. 7) Signing of closing documents (trust title transfer) before a notary public and signing of Disbursement Instruction for Escrow.

Some common terms of a Mexican bank trust are:

- a) The trust term is usually 50 years and can be renewed.
- b) You will be asked to designate primary (usually the buyer) beneficiaries and secondary or substitute beneficiaries. Since property held in trust is not part of your "estate" (you Testament or Will will NOT determine who gets this property), the bank trustee will ask you to provide the names, addresses and identifications of your secondary or substitute beneficiaries. This is a good thing as it avoids the need of probating in Mexico the property rights, as they will be transferred to your secondary or substitute beneficiaries. Make sure your instructions regarding who will be your secondary of substitute beneficiaries are clear. If for some reason you do not designate a secondary beneficiary, you will have to probate your Will in Mexico, which could take a long time.

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- c) If the property held in trust is unimproved land and larger than 2,000 square meters, the Ministry of Foreign Affairs will require that the beneficiaries sign a letter promising to invest in the land a certain amount of money over a 24-month period. The amount of money that will need to be invested will be determined by the location of the property and its size.
- d) If for any reason you want to change the Bank trustee that is holding your title, you can do this and chose another Mexican bank. Many international banks are in Mexico and provide trustee services but not all banks do provide this service.
- e) You will have to pay an annul administration fee to the bank. For this type of trust the annual costs starts at about \$ 600 dollars. Most banks seem to be lacking in keeping good records of what you have paid annually. Clients often receive notification from the bank telling them they have not paid their annual fee, when in fact they have. Always keep original receipts of what you have paid to the bank.
- f) The banks are not responsible to defend your property from any legal claims. If you are in a law suit you or your attorney will need a power of attorney from the bank to defend any actions against your property.

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