

BUYING PROPERTY IN MEXICO`S RESTRICTED ZONE

By David W. Connell

The restricted zone, according to Article 27 of the Mexican Constitution, is all land located within 100 kilometers of any national border and within 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 bank trust (*fideicomiso*).

This document will take a look at both options available:

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

As of 1995 foreigners can fully own, operate and administer Mexican corporations. There remain some restrictions on the activities that a Mexican corporation can participate in when foreigners are involved such as mining, airports, and telecommunications; however, the general rule is 100% participation. There are no investment restrictions on foreign-owned Mexican corporations aimed at buying and developing property.

Mexican corporations require a minimum of two associates or shareholders. Both shareholders can be foreigners, and there is no need to have a Mexican partner.

There are several different types of Mexican corporations, however the two most common are the *S.A. de C.V.* and the *S. de R.L. de C.V.* The *S.A. de C.V.* is a limited liability corporation of shares and the *S. de R.L. de C.V.* resembles a limited liability partnership. Choosing which type of corporation to set up is important for tax purposes in both the US and Mexico, and you should speak with an attorney or accountant on both sides of the border to understand the benefits and costs each one entails. Making sure these things are done correctly from the beginning will, without a doubt, save you time and money.

The Mexican legal system is a very "formal" system in that there are "forms or procedures" that must be followed in order for certain types of documents and transactions to be considered valid. This holds true with setting up a Mexican corporation. If the "forms and procedures" are not done properly, the limited liability nature of these corporations can be defeated and the shareholders or partners could be held jointly and unlimitedly liable.

Once your Mexican corporation is formed, it has the legal capacity to acquire property anywhere in Mexico, including the restricted zone. Acquiring property is also a "formal" procedure and you need to make sure all of the proper steps are done to secure title. The following section on trusts (*fideicomisos*) goes over some of these formalities.

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If everything is done correctly you should have no problem acquiring title insurance on this property from any of the major US title insurance companies. That reflects how secure purchasing property in Mexico can be when done properly.

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

A *fideicomiso* (trust) is a three-party contract by means of which the seller (settlor/*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 an authorized Mexican banking institution can be a trustee.**

The bank acquires title to the real property and is obligated to allow the beneficiary to use and enjoy the property as he sees fit (as long as the manner in which he or she does so is lawful). If the beneficiaries wish to rent the property to third parties they can do so by obtaining the necessary authorizations. Beneficiaries also have the right to sell the property when they please and to receive the benefits produced by such sale.

The bank cannot encumber or sell the property without the express written consent of the beneficiary.

Mexican law requires that all real property transactions be done by a Notary Public. The Notary is obligated to register in his books the deed of transfer of title, have it signed by the parties involved and have it recorded in the Public Registry of Property that corresponds to the location of the property. Once the deed of transfer of title is signed in the presence of the Notary and registered with the Public Registry of Property, the real property transaction has fulfilled the requirements of Mexican law.

There is no escrow institution in Mexico. Instead, from the time the parties agree on a price and give a down payment until the deed of transfer of title is signed before the Notary, a preliminary agreement is usually signed to secure the rights of the parties involved. This agreement should only be signed after having confirmed with the Public Registry of Property that the property involved in the transaction is free of encumbrances. Once the preliminary agreement is signed, all the necessary paperwork and authorizations are obtained and sent to an appropriate notary for signing and registration.

The deed of transfer of title that is registered in the Notary's books as well as with the Public Registry of Property **will contain the entire trust agreement** and is the document that will prove that you have rights to a certain piece of real property. Once the deed has been registered with the Public Registry of Property, the first deed of title goes to the bank and the second deed of title is given to the buyer/beneficiary.

If you need to verify to authorities outside Mexico that you have invested in a foreign country, an "apostilled" or "legalized" copy of your deed of trust will be sufficient.

The Foreign Investment Law permits trusts for up to 50 years, and such permits can be renewed.

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Besides the above, some of the general terms of the contract of fideicomiso are as follows:

1. There can be more than one *fideicomisario* (beneficiary). If more than one *fideicomisario* is designated, each will be co-beneficiaries of the property held in trust (unless otherwise established).
2. Substitute beneficiaries or "*fideicomisarios sustitutos*" will need to be designated. Substitute beneficiaries are usually family members and will only have the right to participate in the trust once all of the first beneficiaries have passed away (unless otherwise established).
3. If the *fideicomisario/beneficiary* is not happy with the bank that is acting as *fiduciario/trustee*, the *fideicomisario* has the right to change banks.
4. 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.

If you have any questions about this process, please feel free to contact me or you may discuss it with your real estate agent.

Sincerely,

David W. Connell

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