

Property Ownership by Foreigners in México

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Foreigners can own property fee-simple in the interior of México, including valuable sites in such tourist meccas as Guadalajara and Cuernavaca and the Capitol of México City. The property referred to as the “Prohibited Zone” runs along México’s coasts and borders is a restricted area, which was established under the Mexican Constitution and extends 100 kilometers (about 62 miles) inland along the coasts. This means that virtually all of Baja California is included in the “Prohibited Zone”. The Rosarito Beach / Ensenada / Cabo San Lucas type areas require a Mexican Bank Trust Deed for a Foreigner to enjoy legal ownership of a home in “The Baja” or on the coasts of mainland México such as Cancún, Acapulco, Puerto Vallarta, Mazatlán, etc.

Four Ways to Hold Property in México

Mexican Bank Trust Deed ~ Fideicomiso (Pronounced Fee-day- co-mee-so)

Mexican Land Lease

Commercial Property

Mexican Corporation ~ Recommended for Commercial Businesses such as Hotels, Restaurants, mini storage, B & B, etc.



The Mexican Bank Trust Deed

The Mexican Bank Trust was created in the early 70’s to promote tourist and retirement investments along popular coastlines by Mexican President Echeverría, which authorized the very first 30-year Bank Trust program. This is the most secure method to hold real estate on México’s coasts.

Your Bank Trust Deed must be established at an authorized Mexican Bank in their Trust Department. In 1989 President Salinas mandated the 30 year Trust be extended for an additional 30 years. Then, December 27, 1993, President Salinas extended the Trusts from 30+30 year arrangement to the new 50+50 year time period and in perpetuity. The property you hold in a Bank Trust Deed is yours to improve, build, sell, leave to your estate, etc. You’ll enjoy all the same rights you have in your U.S. fee-simple real estate via the Bank Trust Deed. Your Family Trust in the USA can also be the deeded owner of the Bank Trust Deed if you so desire, however; there can be additional costs because your Family Trust must be officially translated to Spanish and many times those Family Trusts are quite lengthy at \$20.00US a page for certified translation.

There are several Subdivisions in the area that were set up as a Master Bank Trust by the developers 37 years ago. Two of those subdivisions in Baja were San Antonio Del Mar and Las Gaviotas. They both had the original 30-year Trusts, which expired March 2003. All the owners requested their new 50 + 50 Year Bank Trusts and those new Trusts have long been issued. When you decide to sell your home, often times another foreign person will be purchasing your Bank Trust Rights. You will sign a “Letter of Instruction” to the Bank holding your Trust that will advise the Bank of your new Buyer’s names and beneficiaries. The new Buyers can assume the remaining years of the Bank Trust Deed or they can apply for a new 50 + 50 year Bank Trust Deed. It is the Buyer’s choice. If there are 40 years remaining on a 50 year Trust, most likely you would just make a name change on the existing Bank Trust Deed.

If you sell your Trust Rights to a Mexican National, he has the option to take title with your existing Trust or remove the property from the Trust and take title in “Escrituras” (Mexican National form of Ownership). There will be a fee charged by the Bank to cancel the Trust. Sometimes the Mexican National will opt to pay the annual Trust fee and stay within the Trust, especially if *his most-likely* buyer would be another foreigner.

A Land Lease for More than 10 years is not Legal and never has been!

The Mexican Land Lease

Nearly every day clients ask, “Can I get a 99-year land lease?” A land lease for more than 9 years and 11 months is not legal and never has been. Nor is the 10 + 10 + 10 year arrangement, either. If you enter into a 10 + 10 + 10 agreement with a Mexican landowner and at the end of the Lease term (allowable by law) the landowner decides he does not want to recognize that second ten-year lease you *thought you had*, **he does not have to do so**. You have no recourse, because you entered into that agreement which was designed to circumvent Mexican Law, thereby giving you no legal status to use the Mexican Court System. *If you lease land, the lease should be 9 years and 11 months to stay within the leased-land laws. It is possible and perfectly legal for the Mexican land owner to give you a new 9 year 11 month lease at the end of your first 9 year 11 months and so on.* I only suggest Leased Land arrangement if you are: #1. Limiting your second home to a smaller total purchase amount rather than a Bank Trust purchase; and #2. Only if you can obtain a 9 year 11 month lease. Just be sure the total investment you are willing to pay for the structure on lease land is an amount you can average over a 10-year period and be willing to “walk away” from at the end of your first lease period of 9 years 11 months. **That may not be the case, but know it could be the case in the future.** #3. **DO NOT CONSIDER THIS TYPE-ACQUISITION “AN INVESTMENT”.**

Lease Land Fees

Land lease rents run about \$250.00US to as much as \$800.00US per month. Most leases have a “cost of living adjustment” at the end of your lease for the next lease term. Usually there’s a 3 to 10 % fee when you sell your structure that goes to the landowner and your buyer will probably have a nominal increase in the rent as well. Usually a 10% increase.



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IN MEXICO

Commercial Property (Fee Simple Ownership)

Commercial property like the Ford, Sony, Zenith, Toyota and Sharp facilities are allowed to own their commercial piece of property as fee simple. This exemption was made to encourage the large investment for these type facilities that employ many Mexican Nationals. You, as a foreigner, can also own a piece of land/building and business such as a restaurant, hotel, store, etc., **WITHOUT A BANK TRUST DEED!** You no longer need a Mexican National to own 51% of the Mexican corporation or your commercial property. You can obtain a Work Permit Visa, as a foreigner, to operate the business and provide jobs for the Mexican people. For a Mexican corporation you need 2 shareholders & they can be from any country. A 99% and 1% partner is allowed. This law changed in the early 1990's.

Do you have a Mexican Parent?

Many of the Buyers these last few years are Mexican-American persons that are residing in the USA. If they have one or both parents with their Mexican birth certificate, the children have a window of opportunity to obtain their Mexican Birth Certificate, which would allow them to OWN their property fee simple as a Mexican Citizen. This opportunity is only good for one generation. This is a real benefit that eliminates the Annual Bank Trust fees, which cost about \$330 US to \$550.00US per year; depending upon the Bank you select and the permit from the Foreign Relations office in México would not be required, which is about \$1400.00 US.

Property Taxes, Trust Fees and Homeowner's Insurance Annually:

The annual property taxes are so low that when we tell buyers that a home or condo with a value of \$450,000US is \$400.00US a year, they think we're nuts! It's true. There is a one-time property tax that is paid at closing that is an acquisition tax that are part of your closing fees. Your annual fees on a \$450,000US home would look something like this: **Annual Bank Trust Deed fee @ \$550.00US, Property Tax @ \$400.00US, Homeowner's insurance @ \$350.00US, and HOA maintenance fees at an average \$250.00US a month for an annual expense of \$4,300US FOR THE YEAR!**

HOA fees are the variable in this calculation.

How does a Mexican Property Purchase Closing Work?

The laws in México provide very well for Foreign Buyers. The system is clear and there are a lot of checks and balances that are in place to protect your real estate investment. When an offer is made and accepted by all the parties, then we set about to obtain the survey, current appraisal, Letter of Instruction from the Seller to the Bank that holds the Bank Trust Deed to change the Bank Trust Deed to the new Buyer's names, which includes naming their beneficiaries. We open the file with a Notary. A Certificate of no Liens is required at closing, a letter from the bank stating the Bank trust fees are current, the property tax receipt for the current year and a letter from the Home Owner's Association that all those fees are current and there are no pending assessments with the Association or the Federal Zone, if the Federal Zone applies. The Notary verifies the "Chain of title" and will not sign the document until all the required documents are in order and are within the required dates of no longer than 6 months old for the appraisal and survey and Certificate of no Liens. With these same documents, Title Insurance is available with First American Title Insurance Company or Stewart Title.

Who is a Notary in México?

A Notary in México is NOT the same as a Notary in other countries. The Mexican Notaries are held in high esteem and are the only non-government official who has the right to use the Official Seal of México. All Notaries must be an Attorney. They are the lawyers' lawyer. Frequent Continuing Education courses are required for all Notaries by the Mexican Government to maintain their continuing educational requirements. There are only a few Notaries per capita and they must "sign off" on every marriage, will, real estate transaction, etc. When you close a transaction with a Notary, the fees are paid to his office and after Buyers and Sellers sign the Bank Trust Deed and the Seller is paid, then the recording of your documents are completed by the Notary both in the local municipality and in México City. The Notary pays the acquisition tax on the Buyer's behalf and when your Bank Trust Deed is finished by the Notary, all the documentation that was required for your closing is bound in a legal-size book for your safe keeping including the tax return showing your taxes were paid as required by law. **THIS IMPRESSIVE DOCUMENT IS YOUR BANK TRUST DEED also known as your "Fideicomiso". The same type document for Mexican Nationals applies, which is their Escritura.**

What happens to my Bank Trust Property if I die?

Your beneficiaries are named in the Bank Trust document when the Bank Trust is placed in your name. When you apply for your Bank Trust Deed, you name each beneficiary and list the percentage of ownership of each heir within the document. Should something happen to you, your heirs will need to take an official copy of the Country of Origin Death Certificate and have it translated into Spanish. You will then send those two documents to the Secretary of State from your State and request an Apostille which is an internationally-recognized document that the attached death certificate is authentic and will be recognized by the bank to place the Bank Trust Deed in your heir's name(s). This Apostille fee is \$26.00US in California & in Arizona it is \$3.00US. This can be accomplished via the Internet and pre-paid Fed-Ex returns. You can also have a Mexican Will for other assets such as the contents of your home, cars, etc.

Should I Hold My Property in a Mexican Corporation to save Trust Fees?

You should consult an attorney about this option, but for **personal residential investments**, it is usually recommend your title be held in a Bank Trust Deed. IT IS POSSIBLE for a foreigner to own a Mexican Corporation. With that comes monthly and annual filings with the Mexican I.R.S. and you lose your "capital gains exemption benefit" that you receive with the Bank Trust Deed for residential property when you meet the Capital Gains Requirements. These requirements are that you have the Bank Trust Deed in your name, proper ID and the electric bill in your name with normal usage. Depending upon the price point of your property, you can receive a zero-capital-gains exemption when you sell. It is imperative that your make your "Capital Gains Clock" start ticking as soon as possible to receive these allowed benefits. The fees for a Bank Trust and the benefits thereof far outweigh the ownership in a Mexican Corporation, EXCEPT in instances where you may be opening a Bed and Breakfast or other ongoing business ventures within that corporation. **Corporations are expensive to create in México and so you must seek professional legal advice to really understand your individual goals for making a choice of "Mexican Corporation Ownership" versus "Bank Trust Deed Ownership".** If you are planning to use a Mexican Corporation to own ONE HOME with the goal of not paying Bank Trust fees, then I see "negative benefits". **You must calculate your cost of Mexican corporation verses Bank Trust fees and decide if giving up your "Mexican Capital Gains Tax Exemption" is really worth it.** SEEK LEGAL COUNCIL WITH A MEXICAN REAL

ESTATE ATTORNEY!

As they say, **pay now or pay later in ANY COUNTRY! SEEK LEGAL ADVICE ON YOUR CAPITAL GAINS TAXES BEFORE YOU TAKE TITLE TO YOUR PROPERTY WITH YOUR MEXICAN LAWYER OR NOTARY, IN ADVANCE OF YOUR CLOSING, TO KNOW YOUR BEST POSITION WHEN YOU SELL YOUR PROPERTY.**

By: Diane Gibbs

Brought to you by your Realty and Relocation Specialist Velia Amparo Rivas at www.veliarivas.com of Realty Executives in Rosarito Beach, Baja, México.