

Frequently Asked Questions

Can a USA or Canadian citizen own real estate in Mexico?

Yes.

Although Article 27 of the Mexican Constitution restricts direct ownership of land by non-Mexicans within the “restricted zone” –100 kilometers (about 62 miles) from the border and 50 kilometers (about 31 miles) from the coastline – amendments to the Constitution have established a system whereby non-Mexicans may own land or property within Mexico. These were designed to both protect the purchaser’s ownership rights as well as to promote the sale of real estate to foreign investors.

Since 1973 foreigners (non-Mexicans) have been able to purchase coastal and border properties through an established and perpetually renewable Mexican property trust called a *Fideicomiso*. This is a bank trust, much like an estate trust in the U.S., which gives the purchaser all of the rights of ownership.

Foreigners may acquire non-residential property in the restricted zone using a Mexican corporation without the need of establishing a bank Trust. This is a great benefit for foreign business owners. Compliance with Mexican law requires that the property be used for nonresidential purposes only. There is also additional government reporting and tax payments required for this purchase structure, so it should be evaluated with proper legal and tax council.

What is the Trust, and how does it work?

The bank acts as the “Trustee” for the trust and the purchaser is the “Beneficiary” of the trust. The trust is not an asset of the bank; the bank merely acts as the trustee of the trust, and the trust holds the legal title to the property. All rights and privileges of ownership, including exclusive use and enjoyment, are held by the trust Beneficiary--the foreigner. The beneficiary enjoys all rights of ownership enabling him to occupy, rent, gift, or transfer title to the property to any legally qualified person he may designate. The actual document is a Trust Deed and is public document registered in the local land registry. This is not to be confused with a land lease or anything at all related to a lease—a common misconception. These Trust Deeds have an initial term of 50 years, and are legally renewable in perpetuity at any time or at the end of the 50-year period for a filing fee (less than \$1,000 US) for additional 50-year periods. The property may be sold at any time, with the seller being responsible for paying his capital gains taxes on the appreciated value. This process is designed to protect the rights of foreigners, and ensure that property transfers are made in a legal manner.

How are these Trusts created?

To establish a property Trust, (*fideicomiso*), banks will charge a predetermined fee, plus a percentage of the property's value, to cover the costs of preliminary studies and the drafting of the Trust agreement. The bank also charges an annual fee for maintaining the

Trust. The Trusts are carried as off balance sheet assets by the banks who act as trustees. Most of the larger Mexican banks have established trust departments, with English-speaking personnel, as well as publications, available to answer questions about Trusts and their services.

What are my rights as a buyer?

As Beneficiary, you have the right to sell your property without restriction. You may also transfer your rights to a third party or pass it on to named heirs.

How long does it take to close the purchase transaction?

Currently, the time to close a real estate transaction with financing will take approximately 60 to 90 days. Cash transactions typically require 30 to 60 days to close.

How much will closing costs be?

Closing Costs are paid by the buyer and are higher in Mexico due to the added steps involved in the process.

Closing costs typically range from 6-8% of the purchase price depending on the location of the property and size of the transaction. The Mexican Government assesses a 2% transfer tax on all real estate transactions, based on the sales price of the property. Other closing costs, such as title search, bank trustee fees, *Notario Publico* (public notary), tax and lien certificates, foreign ministry permit, and the registration and filing of all legal documents as required by the local government are approximately an additional 4%-6%.

The seller is responsible for certain fees such as the Capital Gains Tax, any unpaid utilities and property taxes. All these fees need to be paid at or before the time of closing.

Is the interest paid on a property loan tax-deductible?

It is important that you consult with an accountant with experience in taxation on foreign real estate investments. However, per IRS regulation Section 163 (C), as well as Publication 936, interest paid on primary and secondary residences up to an aggregate one million dollars in loan amount is tax deductible. Further, all non-recurring closing costs are also tax deductible. The IRS regulation does not specify that the home must be located in the United States. But, again, please consult your tax advisor for applicability to your specific tax situation.

What taxes can I expect to pay in Mexico?

For the buyer, the subject of real estate taxes generally comes as good news. As a general rule, property taxes are very low in Mexico. The property tax, known as *Impuesto Predial*, varies according to the jurisdiction in Mexico in which your property is located. Taxes are paid annually, with the assessed value determined at the time of sale and based on the purchase price of the property. Property taxes have historically been low in Mexico because they have never been considered a source of governmental revenue, however, this is subject to change.

Capital Gains taxes (*Impuesto Sobre la Renta*) are due at the time of selling the property and are the responsibility of the seller. The Tax is a percentage of the difference between the purchase price and the selling price. The *Notario* is the only person authorized to make the calculation and collect the taxes for payment to the authorities. The *Notario* is personally liable if he does

not collect the correct amount. It is illegal to underreport the purchase price in order to attempt to lower your yearly property tax. Additionally the capital gains tax will be higher upon the ultimate sale of the property.

Is title insurance available in Mexico?

Yes. In fact, title Insurance is required on all properties we finance and is available through Stewart Title Guaranty de México as well as First American.

We recommend that you obtain an Owner's Policy. The title company will require a deposit to begin the title search. You will be credited with that amount on the closing Funding Sheet.

Is insurance available on the property itself?

Insurance – including property, theft, flood, liability, hurricane, damage, and earthquake – are all readily available in Mexico and policies can be written to pay claims in U.S. dollars.