

Fideicomiso

A. FIDEICOMISOS

1. Definition:

A fideicomiso or bank trust is defined for real estate purposes as a transaction entered into between a Mexican bank and a foreign individual or firm investing in areas otherwise restricted to foreign investment, with the bank serving as trustee or legal owner with respect to certain real property interest and the investor serving as the legal beneficiary of the trust. The bank holds title to the property in trust for the beneficiary who retains the exclusive right to use and control of the property. As trustee, the bank acts on behalf of the beneficiary in transactions involving the property held in trust. However, the beneficiary controls and makes investment decisions regarding the property, including the decision to transfer, assign or otherwise dispose of his or her interest in the property. The trust is essentially a contractual arrangement which, in most respects, is identical to the type of trust commonly used in the United States. Trusts are established for initial 50-years periods and can be renewed indefinitely.

2. The trust mechanism:

The trust arrangement in Mexico involves an institution only Mexican banking institutions authorized and regulated under Mexican Banking laws can serve as trustee with respect to a certain property interest. The trustee holds title to the property for the beneficiary of the trust, who retains economic benefits arising out of the property. Land held under a trust can be passed on to future generations much like other forms of real property. As the transferee of property held under trust, the person receiving the bequest may apply to the Secretary of Foreign Affairs for a new permit granting that person an additional 50 years term during which to use and enjoy the property.

3. How many take part of a fideicomiso?

- The purchaser, who is called "fideicomisario".
- The seller, who is named "fideicomitente".
- A Mexican Bank, known as "fiduciaria". A Public Notary*, who registers the transaction.
* The Public Notary or Notario Publico is a government appointed lawyer who processes and certifies all real estate transactions, including the drawing and review of all real estate closing documents, thus insuring their proper transfer.
- The Secretariat of Foreign Affairs, which releases the authorization for foreigners to own a piece of land in Mexico.

B. HOW FOREIGNERS CAN OWN REAL ESTATE IN MEXICO

Alternatives

It is common misconception that foreigners cannot own Real Estate in Mexico, but reality is that they can. However, there is a restrictive zone, as described below, and we have to consider the following alternatives:

Outside the Restricted Zone, a foreigner or foreign corporation can acquire any type of real estate as any Mexican National, holding the property as a direct owner complying with Mexican law.

Within the Restricted Zone, a foreign or foreign corporation may obtain all the rights of ownership but it must be in a bank trust, known as Fideicomiso.

Another alternative is to purchase non-residential property through a Mexican corporation which can be, under certain conditions, 100% foreign-owned, with a provision in its by-laws that the foreign accept to be subjected to Mexican laws and agree not to invoke the laws of their own country.

Also, the real estate acquired is to be registered with the Foreign Affairs Ministry and is used for non-residential activities. In other words, under said conditions, foreigners can acquire, directly, properties destined for tourist, commercial and industrial use.

The restricted zone

The Mexican Constitution regulates the ownership of the land established that "... in a zone of 100 kilometers along the border or 50 kilometers along the coast, a foreigner cannot acquire the direct ownership of the land". These areas are known as the "Restricted or Prohibited Zones". Nevertheless, the latest Mexican Foreign Investment Law, which became law on December 28, 1993, makes the allowances mentioned above.

C. FIDEICOMISO OR BANK TRUST

Any foreigner or Mexican National can constitute a Fideicomiso (the equivalent to an American beneficial trust) through a Mexican bank in order to purchase real estate anywhere in Mexico, including the Restricted Zone. To do so, the buyer requests a Mexican bank of his/her choice to act as a trustee on his/her behalf.

The bank, as a matter of normal course, obtains the permit from the Ministry of Foreign Affairs to acquire the chosen property in trust. The Fideicomiso can be established for a maximum term of 50 years and can be automatically renewed for another 50-year period. During these periods you have the right to transfer the title to any other party, including a member of your family.

The bank becomes the legal owner of the property for the exclusive use of the buyer/beneficiary who has all the benefits of a direct owner, including the possibility of leasing or transferring his/her rights to the property to a third party or to a preappointed heir. During this period, the foreigner is considered as a Mexican.

The trustee is responsible to the buyer/beneficiary to ensure precise fulfillment to the trust, according to Mexican Law, assuming full technical, legal and administrative supervision in order to protect the interests of the buyer/beneficiary.

Fideicomisos are not held by the trustee as an asset of the bank.

For practical purposes, even in unrestricted zones many foreigners, and Mexican Nationals for that matter, prefer to hold their property under a Fideicomiso.