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Buying Real Estate in Coastal or Border Areas

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Laws regulating ownership of real estate in Mexico are different from those in other parts of the world largely due to Article 27 of the Mexican Constitution of 1917, which prohibits foreigners from owning residential real estate within 30 miles (50 km.) of any coastline or 60 miles (100 km.) of either border. These areas are known as the "restricted" zones.

To allow foreigners to purchase vacation or retirement homes in these zones, and bring in much needed dollars, the Mexican bank trust, or *fideicomiso*, was established in 1973. The trust places legal title in the name of a Mexican bank under a permit from the Secretary of Foreign Relations, so the bank may administrate the property on behalf of the buyer/beneficiary, who enjoys the same rights of ownership as does a Mexican national.

A permit to establish a trust can be obtained for a period of 50 years and then renewed. In other words, a trust established in 2003 will expire in 2053. In the sale of a property with an existing trust, the seller may assign the rights so that the buyer can enjoy the term established in the original trust.

The cost for the permit and record in the foreign investment registry is currently about 1,450 dollars and bank trust administration fees generally range from 200 dollars to 750 dollars annually. There are other expenses involved in the acquisition of a property, and it is wise to request a written estimate prior to beginning the transfer process.

The Mexican corporation as a vehicle for acquisition of "restricted" property: Under the 1993 Foreign Investment Law, a corporation established in Mexico is considered Mexican under the law, even if all shareholders are foreign. Thus a Mexican corporation with 100% foreign ownership can acquire property in the restricted zone. This applies *only* to non-residential property: a hotel, restaurant or other type of business. It is a violation of the foreign investment law to place a retirement or vacation home in the name of a Mexican corporation, and generally it is more costly due to taxes on corporate assets.

Title investigations and the Public Registry: Title, whether through direct ownership or a trust, must be registered in order to give notice to third parties as to the interest of the property. A certificate obtained from the local Public Registry will in addition provide information as to encumbrances on title. Title insurance is now available through both Mexican and U.S. companies and should be considered an absolute must.

There is no licensing law for real estate or escrow agents in Mexico and regulation of attorneys is virtually nonexistent. A foreigner considering the purchase of property in Mexico should consider the following guidelines:

- **Carefully select your real estate broker.** Confirm that the agent you are considering is an active member of the Mexican Association of Real Estate Professionals (AMPI). AMPI members operate under a code of ethics, and are affiliated with the U.S. National Association of Realtors (NAR) and the Canadian Association of Realtors (CREA). Check with others who have dealt with the broker.

- **Be wary of ejidal property.** More than 50% of all land in Mexico is ejidal (e-HEE-dal), or communal land, meaning it is government property at the service of a community, much like Indian lands in the United States and Canada. Certain provisions in the law now allow *ejidos* to be converted into private property, but until the conversion

process is complete, it may be risky.

- **Confirm the value to be registered in your deed is the full amount you paid.** In many communities it is customary to use an appraised value, rather than full value, as the basis for cost. Since appraisal values can often be 40% to 60% of true commercial value, the buyer will save money at the onset in both acquisition taxes (2% of declared value) and property taxes. Nonetheless, using a value less than full purchase price is illegal and can be costly when selling since the capital gains tax paid on the sale will be based on the value declared in the deed at the time of original purchase. Thus a seller may end up paying a hefty capital gains tax on a fictitious book value. Better to declare it correctly at the beginning than be stuck with unwelcome taxes when it is later sold.

- **Insist that title, whether through direct ownership or a trust, be recorded in the local Public Registry.** Some attorneys in Mexico still insist this is not necessary. This is an error! Should a lien attach, correctly or incorrectly, to the trusted property, no beneficiary may transfer his rights to the property unless they have been registered in his name prior to the attachment of a lien.

- **Select a neutral third party to handle the transfer of your title.** Escrow companies operate under Articles 193 to 208 of the Mexican Commercial Code, and perform services as neutral third parties and/or consultants in the transfer of titles. Since there is no licensing for these companies either, it is prudent to insist on references and an examination of track records in much the same way you would in selecting the realtor representing you.

- **Spend the money necessary to research and obtain a valid transfer of title.** Closing costs can range from 3% to 20% of property value. A less expensive property will cost more, percentage-wise, to transfer with the percentage decreasing as the price increases. To protect your investment, it is of utmost importance to budget money for a correct transfer.

- **Insist upon a binding arbitration clause.** Lawsuits can be costly and time consuming. It is far less expensive for the parties to agree ahead of time to resolve any possible dispute through binding arbitration.



Linda Neil is founder and CEO of the settlement company®, consultants and land use professionals specializing in legal and tax matters affecting real properties in Mexico. The company provides escrow services and supervises the transfer of titles on Mexican properties located anywhere in the country. Ms. Neil, a California-licensed real estate broker with 30 years of experience in Mexican real estate, is a member of AMPI, NAR and FIABCI. For further information on these subjects, e-mail: info@settlement-co.com.