Ownership in Mexico
Separating Fact From Fiction in Mexican Real Estate

Purchasing property in Mexico is safer than ever before. With U.S. Title Insurance and U.S. Third Party Escrow, let Snell Real Estate guide you through your entire real estate transaction, ensuring that the process is done legally, safely and securely.

The following is an overview regarding the ownership regulations currently in place for individuals. Please note that the information is intended for individuals, not corporations. Over time these regulations may change, therefore it is important to make sure that the process outlined here is still in effect by contacting a certified accountant or Mexican Notario.

Within the last twenty years real estate in Mexico has become a lucrative and viable investment strategy, bringing with it a new breed of sophisticated investor. U.S. Title Insurance, U.S. Third Party escrow and comprehensive title searches are the standard—promises and handshakes are not. Today, there are established regulations for non-Mexicans owning land in Mexico that make the process of purchasing safer and easier than ever before. These rules are in place to both protect the Purchaser’s ownership rights and to promote the sales of real estate to foreign investors. The key to purchasing in Mexico is an established and perpetually renewable Mexican property trust called a Fideicomiso (fee-day-coe-me-so).

WHAT IS A FIDEICOMISO (MEXICAN PROPERTY TRUST)?

With the advent of the North American Free Trade Agreement (NAFTA), the Mexican government recognized that it was crucial to make foreign investment in Mexico safer and easier for non-Mexicans. Because the Mexican Constitution prohibits non-Mexicans from purchasing or owning real estate within 60 miles of the U.S. international border, or within 30 miles of the Mexican coast, an innovative and secure method of holding title was created. This method allows non-Mexicans ownership through a Mexican property trust called a Fideicomiso. This is a trust agreement, much like an estate trust in the U.S., which gives the Purchaser all of the rights of ownership.

In order to gain the rights of ownership, the Department of Foreign Affairs in Mexico City issues a permit to the Mexican bank of the Purchaser’s choice, allowing the bank to act as Purchaser of the property. Essentially, 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 banks simply act as the Trustee to hold the trust.

Much like living wills or estate trusts in the U.S., the Mexican bank, or Trustee, takes instruction only from the Beneficiary of the trust (the Purchaser). The Beneficiary has the right to use, occupy, lease and possess the property, including the right to build on it or otherwise improve it. The Beneficiary may also sell the property by instructing the Trustee to transfer the rights to another qualified Purchaser, or bequeath the property to an Inheritor. The initial term of the trust is 50 years, however the trust can be renewed for additional periods of 50 years indefinitely, providing for long-term control of the asset.

The Purchaser holds the same rights as a property owner in the U.S. or Canada, including the right to enjoy, sell, rent, improve the property, etc. This is not to be confused with a land lease. The property purchased is placed in a trust with the Purchaser named as the Beneficiary of the trust — the Purchaser is not a lessee. If the property purchased is already held in a trust, the Purchaser has the option of assuming that trust, or having the property vested in a new trust.

HOW LONG DOES IT TAKE TO ESTABLISH A TRUST?

At Snell Real Estate, we partner with Federal and State notaries for all of our closings in order to secure your trust. A Notario Publico in Mexico is much different than a Notary Public in the U.S. In Mexico, Notarios are specialized attorneys who act on behalf of the state and federal government in relation to any transaction; they are comparable to a U.S. Clerk of Courts.
On average, Snell Real Estate can obtain your trust within 60-90 days. In some cases title has been transferred in as little as two to three weeks. We oversee the entire process and make certain you understand each and every step involved. For your benefit, we can even provide you with a sample trust in English for your review.

Many real estate purchases in Mexico have only a simple buy/sell agreement between the Purchaser and the Seller as evidence of ownership. This is not a safe method of ownership and is not recommended by Snell Real Estate or our U.S. Third Party Escrow provider, Stewart Title Guaranty, Houston, Texas.

**RULE NUMBER 1: ALWAYS GET YOUR TRUST.**

**WHEN DO I PAY FOR MY PROPERTY?**

The Purchaser should only release funds when the Purchaser holds clear title. By utilizing our U.S. Third Party Escrow service with Stewart Title Guaranty, Houston, Texas, your money is held in an individually numbered escrow account until your trust is complete and the property rights have been transferred to you, the Purchaser.

**FIRST AND FOREMOST**

Snell Real Estate does not recommend that a Purchaser release funds to a Seller until the trust has been received. Purchasing property without receiving a trust is simply buying without receiving the title in your name; this is risky and not recommended.

**Fact:** Until the Purchaser has received the trust, and rights to the property have been transferred to the Purchaser, the legal Owner of record in Mexico is still the previous Owner.

**Fact:** Purchasers cannot bypass Mexican taxes or fees by not getting a trust, even if the property is sold to someone else before the Purchaser’s trust is in place.

**TITLE INSURANCE IS A NECESSITY**

Whether you purchase real estate in the U.S. or Mexico, Snell Real Estate recommends Title Insurance for every property your purchase. We insure our cars, homes and our health — it is just as important to insure one of your largest investments: your property. Snell Real Estate will not represent or sell any property in Mexico that cannot be covered by a Title Insurance policy with Stewart Title. As a service to the Purchaser, Snell is the only brokerage in Baja that purchases up to $250,000 in title insurance for all properties purchased through Snell Real Estate.

**Fact:** Title Insurance is available for properties in Mexico purchased by U.S. and Mexican citizens.

**Fact:** Just because you have a trust does not ensure you have free and clear title. Title insurance is a necessity.

**Fact:** In a Snell Real Estate property search, the property’s title is searched all the way back to the Mexican Revolution. Most trust-securing title searches only go back to one or two owners of record.

**ENSURING OWNERSHIP**

In the trust document the Purchaser must name the Beneficiary or foreign Owner of the property. The purchaser can be an individual, multiple partners, a foreign corporation, an estate trust, a living will, or another entity. The Trustee of the trust (the Mexican bank) will take direction from whomever you name as the Beneficiary.

**Fact:** You can name a U.S. corporation as the Beneficiary of the trust. This is perfectly legal.

**Fact:** If you sell the shares in the U.S. corporation, you have created a real estate transaction in Mexico and all Mexican capital gains taxes apply.*

**Fact:** You can own a property in a Mexican corporation and take title fee simple only if the property is for development or investment purposes.
Fact: You cannot own property through Mexican corporation to bypass the trust process.

Fact: It is against the law for a foreigner to own property in a Mexican corporation for residential purposes.

* This refers directly to Article 190 of the Mexican Revenue Code and is also declared in the International Tax Treaty between the U.S. and Mexico. If this is done, and you do not pay the Mexican taxes, you will have created a tax burden over the property for the new owner.

**Investing in Mexico Real Estate**

Mexico offers the foreign investor an attractive investment opportunity in an economy that is undergoing dramatic improvement and growth. Coupled with the Fideicomiso guidelines outlined in our Guide to Buying Mexican Real Estate, buying real estate in Mexico is now a great investment. Following the country’s inability in 1982 to service its escalating foreign debt, Mexico introduced structural changes in its economy designed to move the country toward an open economy with more direct foreign investment. Among the most significant changes were (1) Mexico’s accession to the General Agreement on Tariffs and Trade, (2) a government willing to work with the International Monetary Fund and other sources to restructure the country’s foreign debt, (3) the liberalization of policies concerning foreign ownership of Mexican companies, and (4) the encouragement of tourism development.

In an effort to promote foreign investment, including investment in real estate, Mexico enacted new regulations designed to relax the restriction on foreign investment, which formerly limited foreign ownership of Mexican companies to 49 percent. Under the new regulations, foreign investor’s can now own up to 100 percent of a large number of enterprises, including hotel companies, development companies, etc. without prior authorization from the Foreign Investment Commission. Thus, foreign investors in these enterprises have been put on equal footing with local investors and are no longer required to engage a Mexican investment partner.

The Mexican Federal Corporate Income Tax ranges from 25 to 38 percent. Provisions in the income tax code have also been established to offset the detrimental effects of inflation on monetary assets and liabilities, inventories and depreciable assets.

Mexico will continue to offer foreign investors close proximity to the world’s largest market, a solid communications infrastructure, ample supplies of energy, low labor costs, and skilled and trainable labor resources. The liberalization of the foreign investment rules is a clear indication of the very favorable attitude the government has taken towards foreign investment. The combination of a rapidly improving economy and stable profitable base foretell an excellent ongoing investment environment.

The Mexican government has stated that it aims to double the number of foreign tourist arrivals into Mexico, representing foreign exchange revenue of $5 billion plus annually. A key to achieving the government’s goal of ten million visitors a year is to develop new tourist destinations with modern facilities and infrastructure. The Los Cabos region is a priority area for this targeted growth.

For Additional Information Contact:

Marija Tatiana Terzic
The Real Estate MVPs
Keller Williams Realty
310-433-2462
Email: Marija@therealestatemvps.com