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Buying Real Estate in Mexico Through a Bank Trust (Fideicomiso)

THIS INFORMATION IS PROVIDED FOR YOUR CONVENIENCE ONLY AND IS EDUCATIONAL IN NATURE. WE DO NOT OFFER AND THIS INFORMATION IS NOT INTENDED TO BE LEGAL ADVICE AND, FOR YOUR PROTECTION, WE STRONGLY RECOMMEND YOU SELECT AN ATTORNEY AND/OR OTHER INDEPENDENT AGENTS TO REPRESENT YOU IN ANY AND ALL TRANSACTIONS.

Article 27 of the Mexican Constitution, establishes an outright prohibition against foreigners acquiring direct ownership of real estate within 100 kilometers of the national borders or 50 kilometers of the coastline (this zone is now known as the "Restricted Zone").

In 1993, Mexico enacted the Foreign Investment Law liberalizing land ownership for foreigners in Mexico. For real estate within the Restricted Zone for residential purposes, foreigners may only acquire the rights to use and enjoy the land through a Mexican bank trust known as a "Fideicomiso". A Fideicomiso is formed by contract between the purchaser (Beneficiary) and bank (Trustee) to provide the Beneficiary with use and enjoyment of the real estate purchased for a term of 50 years. The trust may have multiple beneficiaries and can be renewed for additional 50-year terms. The Beneficiary may lease, sell or transfer the real estate at any time.

The bank "Trustee" holds title to the real estate on behalf of the "Beneficiary" and obtains the required permits from the Mexican government. The Trustee administers the Fideicomiso and is responsible for carrying out the terms of the agreement. In Mexico, only authorized Mexican financial institutions can act as Trustees. The Trustee cannot encumber or transfer the real estate without the instruction and approval of the Beneficiary. For foreigners accustomed to having direct title to real estate this arrangement may seem complicated, but Fideicomisos are common, relatively easy to use and the only legal process available for owning residential land in Mexico.

In Mexico, notary publics are attorneys who have special commissions from the government to authenticate and register public deeds and other important documents. Notaries are the only Mexican entities authorized to process your right to purchase. While most are professional and detailed in their preparation of public deeds, it is helpful to have someone who can compare the English version of the purchase contract with the Spanish version of the public deed to make sure the deed accurately reflects the agreed terms. Experienced legal counsel can help minimize some of the difficulties with purchasing real estate in Mexico.

In case you have not selected an attorney, we are pleased to refer you to the Office of Mr. Jose Luis Gaytan, a Mexican attorney and state licensed Spanish-English translator who practices in the state capital city of La Paz in Baja California Sur. Should you choose Mr. Gaytan's services, please be assured that your information will be kept confidential. The attorney of your choosing can walk you through the process, explain the fideicomiso and notary fees and act as your Power of Attorney to sign papers in the event you cannot be here at the appropriate times in the process.

When your neutral third party closes your purchase, the money is placed in your personal escrow account in La Paz, Mexico. You will sign an Escrow Agreement, which allows your money to be placed in an interest-bearing account, with the interest going to whomever the Buyer and Seller have agreed to in the escrow instruction. These funds are not released to the Seller until you have your title and all other conditions stipulated have been satisfied. Once the deed for the real estate is formalized and filed in the Registry by the notary, the purchase is complete.

Other than the fact that the buyer is purchasing through a Fideicomiso, the purchase transaction is essentially the same as any other real estate transaction in The United States. To secure your purchase, the following steps for verification will be taken by your attorney representing you:

- the terms of the sale are evidenced by a written purchase contract the seller holds valid, unencumbered title to the real estate an appraisal of the property the property tax payments are current a certificate of no liens the Fideicomiso agreement correctly describes the terms negotiated with the Trustee and the Beneficiary A 'Letter of Instruction' is written to the Trustee stating that the Seller will sign over his/her property rights to the Beneficiary the Foreign Relations Department issues a permit for the Fideicomiso; if desired, the buyer obtains title insurance the escritura/deed is registered in the Public Registry of Property the funds can now be released to the Seller and You are officially the owner of the property.