

FIDEICOMISO

What is a trust and who needs a trust ownership?

Since 1973, a constitutional amendment known as the Foreign Investment Law has allowed non-Mexicans to acquire coastal and border property through a "trust", called fideicomiso, established with a Mexican bank. This trust assures the foreign buyer of all rights and privileges of ownership, and is needed to own properties which fall into the "restricted zone". Any property located within 50 km (32 miles) of any coastline or 100 km (64 miles) of either border is defined as the "restricted zone" by Article 27 of the 1917 Mexican Constitution. As of 1994, the Foreign Investment Law dictates that the trust be established for a term of 50 years, renewable at any time during its existence by simple application.

Why trust ownership?

The trust arrangement was established by the Mexican government as a way of protecting foreigners who own property in Mexico. By means of the trust there is an automatic authoritative review of the transaction to ensure it is legal and unencumbered. Prior to the trust agreement being signed by the purchaser, the bank must confirm the seller's information; i.e. proper ownership, insurance and any liens or indebtedness against the property. All of which provides protection to the foreign owner.

How does the trust work?

The bank, known as the "trustee" holds the Deed for the purchaser, known as the "beneficiary". This property is not part of the bank's assets and cannot be subject to a lien or attached to bank obligations. While the bank is the technical owner of the property, they have a statutory obligation to follow the beneficiary's instructions concerning the property.

What rights does the beneficiary have to the property?

The beneficiary has all ownership rights to the property and may sell, lease, mortgage, pass to heirs or do any other legal act with the property. The beneficiary may transfer or assign his beneficial interest to any person and keep the profits from the sale of the property subject to applicable tax laws and expenses for the sale. Property held under a trust can be passed on to heirs and there is no inheritance tax. This is accomplished by naming them as substitute beneficiaries in the event of your death.

How long does the trust last?

Trusts are granted and now extended in 50 year periods. The original periods were 30 years and if you purchase property currently held in a trust, a new 50 year period can be established or the existing trust can be assigned. Trusts are renewable at any time by simple application.

How much are Trustee Fees?

The costs to establish a fideicomiso trust vary from bank to bank. The typical range is approximately \$1,000-\$1,500 U.S. for trust set-up and about \$300-\$500 U.S. each year for management of the trust. These fees are paid directly to the bank that has your trust.

How are these trusts established?

The fideicomiso trusts are established by a Notary Public following the receipt of a permit by the Ministry of Foreign Affairs. There are a large number of foreign-owned properties in Mexico, especially Puerto Vallarta and standard forms are utilized by the local Notary Public.