

Acquiring Real Estate Property in Mexico as a Foreigner.

by Veronica Cantu.

Mexico has been an attractive location for international investors acquiring real estate assets. Although the Mexican real estate market is not a bargain at this moment, prices are denominated in U.S. Dollars while maintenance costs are in Mexican Pesos, giving most of the time an attractive advantage to foreign investors.

The real estate industry in Mexico is regulated at the federal level; however, purchasing a property also involves complying with Mexican laws at the state and municipal levels. Typically, a real estate transaction involves several participants like a notary public, a tax collector, an appraiser and the Public Registry.

Restrictions

The Mexican Constitution and related laws, establish the limitations and certain of the formalities required for foreigners interested in purchasing real estate in Mexico.

For foreigners wishing to acquire real estate assets in the country's territory, it is important to note that, geographically, it is divided in two zones: the "Restricted Zone" and the "Permitted Zone".

The Constitution defines the "Restricted Zone" as an area comprising up to 100 kilometers inward anywhere along Mexico's international borders, as well as an area up to 50 kilometers anywhere along Mexico's coastline. Foreigners are not allowed to own property directly in the "Restricted Zone". On the other hand, the "Permitted Zone" is all the remaining land area located outside the "Restricted Zone".

However, foreigners have been able to indirectly acquire property in the Restricted Zone by using special investment vehicles, like trusts or companies, designed for such purpose and within the limit of certain conditions, like obtaining a permit from the Mexican Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*).

Acquisition through a Property Trust:

For housing purposes, foreigners may establish a trust (*fideicomiso*) after obtaining a permit from the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*).

A trust under Mexican law is an agreement through which the seller transfers the ownership title of the property to a Mexican financial institution that will act as the trustee (*fiduciario*). Then the foreigner, acting as the beneficiary (*fideicomisario*) of the trust, will be able to use the property as an indirect owner. In essence, through the trust agreement the foreigner holds the beneficiary title on the property, while the trustee holds the legal title of the asset.

Even though the trustee holds the legal title of the property, per the trust agreement, it cannot restrict the way in which the beneficiary uses the property, and it cannot either dispose, encumber or sell the

property without the written consent of the beneficiary. Also, the beneficiary is entitled to sell the beneficial interest in the property to another foreigner, by means of an assignment agreement of the trust rights. If the beneficiary wishes to transfer the beneficial interest to a Mexican person, the trust can then be terminated.

Acquisition through a Company:

For commercial or industrial purposes only, foreigners may constitute themselves as a Mexican company or corporation, which will need to include a foreigners' admission clause to allow them to be shareholders of a Mexican corporation either as individuals or as a foreign corporation.

Through such Mexican corporation, the foreigner can acquire real estate property, after obtaining a permit from the Ministry of Foreign Affairs (*Secretaria de Relaciones Exteriores*). Incorporating and maintaining a Mexican corporation, like in many other countries, does involve a reasonable amount of legal expenses going forward, which often make sense due to the business nature of the entire setup.

Other Formalities:

As an additional formality for completing a real estate transaction is the execution of a purchase-and-sale agreement between the parties, the legal buyer and the legal seller of the property. Such agreement will have to be signed before a notary public in Mexico, which will then issue and sign the corresponding public deed that originates the ownership rights. Then, the public deed will have to be recorded at the corresponding Public Property Registry (*Registro Público de la Propiedad*) at the nearest city location from the property. This two-step process is what guarantees the validity of the property rights against all local and/or international third parties.

It is important to note that every time a foreigner wants to acquire real estate property in Mexico's "Restricted Zone", the Ministry of Foreign Affairs (*Secretaria de Relaciones Exteriores*) can take up to thirty days after filing the request to issue the acquisition permit that will allow the foreigner to complete the transaction.

Finally, other applicable taxes and fees will have to be paid by both the seller and the buyer during the transaction, such as Income Tax, Real State Property Tax, Value Added Tax, registration fees, appraiser fees, notary fees, advisory fees and those that may be imposed by related local jurisdictions.

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March 20, 2018.



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