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FOREIGN OWNERSHIP IN MEXICO

# Understanding the **Fideicomiso**

The Mexican bank trust, explained end to end: what it is, what it is not, what it costs, how it renews, and how it passes to your heirs.

LOS CABOS · BAJA CALIFORNIA SUR · MÉXICO

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## START HERE

# The one thing **everyone** asks about

“Can a foreigner really own property in Mexico?” is the first question we get, every week, from almost every buyer. The answer is yes, and it has been yes since 1973.

What confuses people is the mechanism. Inside a defined coastal and border zone, foreign buyers hold residential property through a **fideicomiso**, a Mexican bank trust. The bank appears on the deed as trustee. You appear as beneficiary, and you hold every right of ownership there is.

Because it is unfamiliar, it gets described badly. We have heard it called a lease, a 99-year right, a government loophole and a form of partial ownership. It is none of those. This guide explains what it actually is, in the order the questions actually come up.

**1973**

IN CONTINUOUS USE SINCE

**50 yr**

INITIAL TERM

**No limit**

RENEWALS PERMITTED

**If you read nothing else**

The trust gives you the right to live in, rent, remodel, sell, mortgage and bequeath the property. The bank cannot occupy it, rent it, encumber it or sell it. It holds the deed and acts on your instruction, and it charges an annual fee to do so.

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## A note on who should answer these questions

Your agent can explain how the trust works. Only your notario can tell you what applies to your specific property, and only a Mexican tax professional can advise on your tax position. Anyone who blurs those lines is doing you a disservice.



The fideicomiso is not a workaround. It is the legal instrument that Mexican law provides for exactly this purpose, and it has been tested for over fifty years.

WHAT THIS GUIDE IS ABOUT

# 01

## The **Restricted Zone**

A line drawn in the constitution in 1917, and the trust that resolved it in 1973.

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01 Where the zone applies

02 Why it exists

03 What happens outside it

## SECTION 01

# Where the **restricted zone** applies

Mexico's constitution restricts direct foreign ownership of land within **50 kilometers of the coastline** or **100 kilometers of a national border**. Effectively all of Los Cabos and Baja California Sur sits inside it.

## WHERE YOU ARE BUYING

## HOW YOU HOLD TITLE

Los Cabos, La Paz, Todos Santos, the East Cape, Loreto

Through a fideicomiso. All are inside the restricted zone.

Anywhere within 50 km of any Mexican coast

Through a fideicomiso.

Within 100 km of the US or Guatemalan border

Through a fideicomiso.

Interior cities such as Guadalajara, Querétaro, San Miguel de Allende

Foreigners may hold title directly, in their own name.

## Why the zone exists

The restriction dates to Article 27 of the 1917 constitution and reflects the security thinking of its era: coastlines and borders were considered strategically sensitive and were closed to direct foreign ownership.

By the 1970s that restriction sat awkwardly against a growing tourism economy that needed foreign investment. Rather than amend the constitution, Mexico created the fideicomiso in 1973: a trust structure that satisfies the constitutional requirement, because a Mexican institution holds title, while giving the foreign beneficiary the full substance of ownership.

### What this means practically

The trust is not a concession or a special permission that could be withdrawn. It is the standard, intended mechanism, used by hundreds of thousands of owners, and it is how essentially every foreign-owned home in Los Cabos is held.

# 02

## How the **Trust Works**

Three parties, one deed, and a clear division of what each one can and cannot do.

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01 The three parties

02 What you control

03 What the bank cannot do

## SECTION 02

# The three **parties**

| PARTY                                  | ROLE                                                                                                |
|----------------------------------------|-----------------------------------------------------------------------------------------------------|
| Fideicomitente<br>The seller           | Transfers the property into the trust at closing. Their role ends there.                            |
| Fiduciario<br>The trustee bank         | A Mexican bank authorized to act as trustee. Holds title and acts only on your written instruction. |
| Fideicomisario<br>You, the beneficiary | Holds all rights of use, enjoyment and disposition. Names substitute beneficiaries who inherit.     |

## What you control

- ☐ **Occupancy.** Live there as long and as often as you want, with no permission required.
- ☐ **Rental.** Rent it short or long term, subject to the community's rules rather than the bank's.
- ☐ **Alteration.** Remodel, rebuild or expand, subject to the same municipal permits as any owner.
- ☐ **Sale.** Sell to anyone, at any price, at any time. The bank executes; it does not approve.
- ☐ **Encumbrance.** Use the property as collateral where a lender will accept it.
- ☐ **Inheritance.** Pass it directly to your named substitute beneficiaries.

### What the bank cannot do

It cannot live in the property, rent it, sell it, mortgage it, or transfer it to anyone without your written instruction. It has no economic interest in the property beyond its fee. If the bank were to fail, the trust and the property are not part of its assets: the trust is transferred to another authorized institution.

# 03

## Setting **One Up**

What happens between your accepted offer and the day the deed is recorded in your trust.

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01 The steps

02 Realistic timing

03 What you need to provide

## SECTION 03

# How a trust **is established**

01

**The notario opens the file**

A notario público in Mexico is a specialized attorney appointed by the state, far closer to a clerk of courts than to a US notary public. They are responsible for verifying title and for the legality of the transfer.

02

**Permit application to the Ministry of Foreign Affairs**

The notario applies for the permit that authorizes the trust for this specific property and beneficiary. This is normally the longest single wait in the process.

03

**The trustee bank is engaged**

You choose, or your notario proposes, an authorized Mexican bank. Fees and service levels differ between banks, so it is a fair question to ask.

04

**The trust deed is drafted**

Naming you as beneficiary and your substitute beneficiaries as heirs. Read it in full. A misspelled name or a wrong measurement is far cheaper to fix before recording.

05

**Signing**

At the notary's office, or by power of attorney granted before a Mexican consulate in your own country if you cannot travel.

06

**Recording**

The deed is recorded in the Public Registry of Property. At that point the transfer is complete and escrow releases the funds.

**What you will be asked to provide**

Your passport, and depending on the bank, proof of address, a completed know-your-customer file and the details of the people you are naming as substitute beneficiaries. Have their full legal names and dates of birth ready; this is where signings get delayed.

# 04

## Renewal, Sale **and** **Inheritance**

The three questions that arrive later, and the ten minutes at signing that decide the third one.

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- 01 Renewing the term
- 02 Selling the property
- 03 Passing it to heirs

## SECTION 04

# What happens **later**

## Renewal

The trust runs 50 years and renews indefinitely for further 50-year terms. The right to renew is part of the instrument, not a discretionary grant, and renewal is a procedural filing handled by the trustee bank. You will pay a fee. You will not be re-evaluated.

## Selling

When you sell, the buyer either takes an **assignment** of your existing trust or establishes a new one. Both are routine. Your notario will advise which is cleaner for the specific transaction, and the choice can affect closing costs on both sides, so it is worth raising early rather than at signing.

## Inheritance

This is the part worth your attention, because it is decided at signing and it is where the trust genuinely outperforms direct ownership.

### Name substitute beneficiaries when the trust is created

If you name them, the property passes directly to those people on your death, outside probate in Mexico. If you do not, your heirs face a foreign probate process that is slow, expensive and conducted in a language they may not speak. Adding beneficiaries later is possible but costs more and requires the bank's process. Do it at signing, and revisit it if your circumstances change.

- ☐ Have full legal names and dates of birth for each substitute beneficiary ready at signing.
- ☐ You can name more than one, and you can specify their shares.
- ☐ Review the naming after a marriage, a divorce, a birth or a death in the family.
- ☐ Tell your heirs the trust exists and where the documents are kept.

# 05

## Corporations **and** Myths

What is legal, what is not, and the structures you should decline even when offered confidently.

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01 Foreign corporations

02 Mexican corporations

03 What you will hear that is wrong

## SECTION 05

# Corporations: **legal, and often misused**

A **foreign corporation** can be named as beneficiary of the trust. That is legal and occasionally sensible for estate or partnership reasons. Be aware that selling the shares of that company creates a real estate transaction in Mexico, and Mexican capital gains tax applies regardless of where the shares changed hands.

A **Mexican corporation** can hold property in fee simple, without a trust, but only for development or investment purposes. It cannot lawfully be used by a foreigner to hold a residential home and bypass the fideicomiso. Doing so contravenes Article 190 of the Mexican Revenue Code and the tax treaty between Mexico and the United States. If the corresponding taxes go unpaid, the liability attaches to the property and follows it to the next owner.

## If someone proposes a structure that avoids the trust

Ask them to put the recommendation in writing, over their professional license, including the tax treatment on eventual sale. The response to that request will tell you everything you need to know about the advice.

## Three things you will hear that are wrong

### WHAT PEOPLE SAY

"You never really own it, the bank does."

"It expires after 50 years and you lose it."

"You can avoid it with a Mexican company."

### WHAT IS ACTUALLY TRUE

The bank holds title as trustee and acts only on your instruction. You hold every right of ownership, including sale and inheritance.

It renews indefinitely. The right to renew is part of the instrument.

Not for residential use. That structure is unlawful for a home and creates a tax liability that follows the property.

## SECTION 06

## Questions we get **every week**

### **Q. Can a foreigner own property in Mexico?**

Yes. Anywhere in the country. Within 50 kilometers of the coast or 100 kilometers of a border, ownership is held through a fideicomiso, a renewable Mexican bank trust that carries all rights of ownership. Outside that zone, foreigners hold title directly.

### **Q. How long does a fideicomiso last?**

Fifty years, renewable indefinitely for further 50-year terms. Renewal is a procedural filing handled by the trustee bank, not a fresh approval.

### **Q. What does a fideicomiso cost?**

Two separate things. There is a one-time permit and bank setup fee paid at closing, and then an **annual trust fee of roughly US\$500 to US\$600 per year** paid to the trustee bank for as long as you own the property. The annual fee is not part of your closing costs, which are a one-time charge of **6 to 8 percent of the purchase price**.

### **Q. Do I need residency to have a trust?**

No. You do not need residency, a Mexican bank account or a Mexican tax ID to establish a fideicomiso and buy property.

### **Q. Can I rent out a property held in trust?**

Yes. Rental is one of the rights the trust carries. Whether you may rent short-term depends on the community's rules, not the trust. Rental income earned in Mexico is taxable in Mexico and generally reportable in your home country.

### **Q. What happens if the trustee bank fails?**

The property is not part of the bank's assets. The trust is transferred to another authorized institution and your ownership is unaffected.

### **Q. How long does it take to get the trust?**

Plan on about **90 days** from accepted offer to the trust being issued.

### **Q. Can I buy without being in Mexico?**

Yes. A power of attorney granted before a Mexican consulate in your home country, or before a notario here, lets the closing proceed without you. Your funds remain in escrow until title transfers.



# Questions about **your specific situation?**

Every property is different, and the answers that matter to you depend on where you are buying, how you plan to use it and who you want to inherit it. Send us the question. If it needs a notario or an accountant, we will tell you that too.

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