



BUYING WITH



**RE MEXICO**  
REAL ESTATE

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# ABOUT REMEXICO

REmexico Real Estate has established the strongest, most effective listing marketing program in Baja real estate for sellers of residential and commercial real estate. Nobody else offers the local, national, and international exposure and reach needed to sell your home. Our marketing program will be designed specifically for your home and customized to highlight its features and benefits. If you wish to sell your home, list with REmexico Real Estate for the most professional presentation, worldwide reach and real results.

**REmexico Real Estate** brings new standards to Real Estate sales in Mexico. Combining years of experience in Real Estate development, marketing, and residential sales, REmexico is your one-stop-shop for buying and selling real estate in Mexico.

## **THE STANDARD IN SERVICE**

REmexico Real Estate proudly believes that Real Estate is a SERVICE oriented business and we make it our number one priority. Our clients' goals and needs are at the forefront of what we do daily and we always remember that it is our job to strongly represent our clients' best interests at all times.

## **THE TOP QUALITY**

In today's marketplace, selling a home takes more than open houses and a sign in the front yard. At REmexico, we are innovators in marketing real estate and will create customized advertising and materials for your listings.

Each of our listings benefit from the strongest presence in the local community paired with a visibility on the Internet that is second to none. The same process is applied for each of our listings, no matter what the list price or value of the property. List with REmexico and you'll have an edge up against the competition.

## **HONESTY & INTEGRITY**

At REmexico, we truly take a great deal of pride in how we do our business. Our agents are ethical, hard working, and honest people who are trained and skilled professionals, dedicated to working in your best interests at all times.



## BUYING GUIDE

### HOW TO BUY/OWN/SELL PROPERTY IN MEXICO

Owning real estate in Mexico is an incredible opportunity. However, there are some important statutes in place that foreign citizens must be aware of before they can own their own home here.

Today, foreign citizens “own” property in Mexico’s restricted regions through a **trust** which functions much like trusts in other countries. These regions are for any property within 60 miles from the border or within 30 miles of any coastline-which includes Los Cabos. It is highly recommended that each foreign citizen consult with a professional real estate agent or an attorney that has experience in foreign ownership of Mexican property within the restricted zones.

REmexico offers the most qualified agents to help you understand and enjoy Mexican property ownership.

### THE FIDEICOMISO 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-Mexican citizens. Because the Mexican Constitution prohibits foreigners 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 foreign 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 obtain 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.

### **Establishing a Trust**

At REmexico, 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, Notaries 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, REmexico 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.

### **Buying**

The Purchaser should only release funds when the Purchaser receives clear title. By utilizing a U.S. or Mexican third party escrow service like First American Title Company, Stewart Title Guaranty, or one of several escrow service providers in Mexico, 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.

### **Title Insurance**

When you purchase real estate in Mexico, REmexico recommends you consider Title Insurance for your property purchase. We insure our cars, homes and our health — it is just as important to insure one of





your largest investments: your property. Title Insurance is available for properties in Mexico purchased by U.S. and Mexican citizens through Stewart Title.

### **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.

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

- 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.\*
- You can own a property in a Mexican corporation and take title fee simple only if the property is for development or investment purposes.
- You cannot own property through a Mexican corporation to bypass the trust process.
- It is against the law for a foreigner to own property in a Mexican corporation for residential purposes. This refers 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.

*\*REmexico suggests that all their clients consult with a tax professional before purchasing or selling Real Estate in Mexico.*

# THE HISTORY OF MEXICAN LAND OWNERSHIP

To fully understand how land ownership in Mexico works, it is vital to learn the history of property ownership in Mexico. If you picture a country that has been dominated by foreign owners since the early 1500s, you will begin to see why Mexico is so protective of its most valuable resource...land.

In 1517, when Hernandez de Cordoba sailed from Spain to the Yucatan Peninsula, foreigners laid claim to Mexican lands. Spain decided that since they had landed here, it was now theirs. It was not until 1822 that Mexico declared its independence from Spain, much like the U.S. declared independence from England, but even with this new independence, the lands of Mexico were still owned by wealthy foreigners, the Mexican upper class and the Church. Porfirio Diaz, a former President of Mexico for over 30 years, nearly sold all of Mexico to foreigners during his term.

The end result was the Mexican Revolution, which cost over one million lives and was the basis for the Federal Constitution of 1917. The new constitution imposed new laws and restrictions on foreign ownership.

In the 1930s, President Lázaro Cárdenas disassembled the large property holding and distributed it in the form of cooperative farms or "Ejidos." The people were given exclusive rights of usage for these properties and were allowed to farm and cultivate them while receiving the profit from their efforts. After nearly 4,000 years, over 50 million acres of land was back in the hands of the Mexican people, however, it was still owned by the Federal Government. Even though the people were allowed to farm the properties and profit from their work, it was not until 1992 that they were allowed to sell their properties. The 1992 Agrarian Law recognizes property rights within the Ejido and allows for the owner of record to sell or lease the property to a non-Ejido member. The property can be removed from the National Agrarian Registry (removed from Federal Control) and placed in the public land registry allowing it to be sold or leased. Today, thousands of acres are being removed on a daily basis from the Ejidos, added to the public lands and being sold or leased. There are well over 50 million acres of land that will go through this process to be either leased or sold over the coming years, making investing in Mexican real estate an attractive venture for foreign investors.





## CLOSING COSTS

Closing Costs are charges involved in the transfer of the rights in property purchased in Mexico. The total cost can vary depending upon the circumstances. It is generally prudent for the Purchaser to plan on approximately 4% to 6% of the purchase price to cover these costs. The following is a brief explanation of the closing costs in a standard transaction:

### **Appraisal**

This establishes value for purposes of property tax assessment for the Purchaser and the Seller and is required by the Notary Public for preparation of the deed for transfer. A government appointee, often an architect, who is called a Perito Valuador or an Official Appraiser, makes the appraisal.

### **Foreign Relations Permit**

If the property being purchased is in a Trust with a Mexican bank, and the Seller has a beneficial interest in the property that has been registered under the trust, the Purchaser will pay only the costs for Assignment of those beneficial rights, bank transfer fees and registration in the Foreign Investment Registry. A permit will be required only if so stipulated in the Seller's trust.

If the property is not under a Trust, it will be necessary to acquire a permit from the Secretary of Foreign Relations to establish a trust. The application for the permit must indicate the proposed usage of the property. If the property is a vacant lot, the request should include a general development plan; the amount of money being invested and the time frame in which the investment will be made.

### **Bank Administration Fees**

If title to the property is in a bank trust there will be annual fees for the administration of the trust. These fees will generally range from \$500 USD to \$700 USD a year and are subject to reappraisal of the property each year or two. The bank also charges fees for the transfer of beneficial rights and/or the establishment of a new trust. Many banks are now quoting fees fixed for three to five years of \$300 to \$650 USD per annum. Banks generally do not send annual statements. It is often necessary to request the bill for fees from the trustee bank each year and to pay on time to avoid penalties.



## **Title Search**

A title search will be generated by the Notary Public to insure that there are no liens against the property. They will procure a Certificate of no Liens prior to closing.

## **Transfer Tax**

The acquisition tax, or transfer tax, is generally paid by the Purchaser. It is currently 2% of the declared value of the transaction.

## **Settlement Costs**

These fees are for services provided and include: supervision and coordination of permits, tax payments and the myriad of other details necessary to obtain full legal title. These fees are based upon the purchase price in the transaction.

## **Notary Fees**

The Mexican Notary Public is an attorney who has practiced his profession for at least five years and has been appointed by the governor of the state in which he is practicing. His duty is to draft the deed and to confirm the validity of signatures. The persons signing before him must prove they are who they say they are. The notary is also responsible for the calculation of Purchaser and Seller taxes. His fees are based upon a rate schedule and are tied to the amount declared in the property transfer.

## **Value Added Tax – I.V.A.**

The “Impuesto Sobre Valor Agregado” is a value added tax, currently at 16% of the value of goods and services offered by real estate brokers, banks, and notaries with headquarters in Mexico. I.V.A. must be paid on fees charged by the Notary, the appraiser and any other professionals whose services are being used in the transaction.

## **Capital Gains Tax**

A foreigner who sells property in Mexico is liable under special rules, much like the United States, for the payment of I.S.R. tax (Impuesto Sobre la Renta) which is the Mexican equivalent of the Capital Gains tax. Liability is either 20% of the declared value of the transaction or 28% of the net gain, less the improvements made, commissions paid and other allowable expenses. The formula is complicated and the tax

should be figured both ways and confirmed by the Notary Public who will be preparing the final deed and tax declarations.

Understanding Mexican tax law is an integral part of the purchasing process. What you do today dictates your tax liabilities tomorrow. The following is an overview of the capital gains tax regulations currently in place for individuals. 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 a Mexican Notario.

Capital gains tax law in Mexico states that tax is owed on the profit you receive when you sell your home or property. You have two options when it comes to capital gains and you can use whichever is the better of the two options for you:

1. Pay 28 percent\* of the net profit. (There are a variety of deductions included in this option.)
2. Pay 25 percent\* of the gross sales amount with no deductions. Although a 28 percent capital gains tax may seem high, Mexico does have several procedures that will assist you in maximizing your cost basis, thereby reducing your net profit and lowering your capital gains. The key is understanding these laws before you buy, not when you decide to sell.

*\*Percentages reflect the 2009 Tax Code.*

## **The Seller’s Capital Gains Liability**

The first step in calculating your capital gains is to subtract the value you have recorded in your trust, or Fideicomiso, from the sales price of your property. In the past, some real estate companies have recorded values lower than the actual purchase price in an effort to “save” taxes for their client; they thought they could save money on the two percent acquisition tax. This is a major error. Never record a lower value than what you actually paid for the property. Doing so simply establishes a lower cost basis for the property, which increases your capital gains tax liability.

An oversimplified example is: You wisely purchase a home site (lot) for \$1 million, but unwisely record a value of \$500,000. In the eyes of Mexican tax law, your cost basis is now \$500,000. If you sell the lot for \$1.2 million, you see a profit of \$200,000. However, according to your recorded cost basis, Mexico sees a profit of \$700,000 and your capital gains tax would be \$140,000 of your profit. REMexico Real Estate’s approach to ownership in Mexico, specifically the trust process, has been established to protect

you and provide you with the legal means to safeguard your investment. Recording your authentic purchase price with proper documentation is the only way to maximize your potential profits. The bottom line is to always secure your property trust for the true value of your purchase as quickly as possible.

In summary, a property is not yours until you have title in your name. Also, if you don't record the accurate value of your purchase, you're most likely taking on someone else's capital gains liability.

- Recording a property's true value benefits you and establishes your cost basis in the eyes of Mexico.
- The amount you pay for a property has no impact on your yearly property taxes.
- Capital gains taxes you pay in Mexico can be applied to your U.S. taxes.

### **Inflationary Credit**

As soon as you pay your two percent acquisition tax to receive your trust, you are eligible to receive an inflationary credit from the Mexican government for each year you own the property. This credit is added to your cost basis when you decide to sell your property. The credit is based on consumer index adjustments (inflation) and can be quite significant. In the past when inflation was higher, we have seen credits in excess of 15 percent per year applied to a cost basis when you acquired your property some years ago. On a million-dollar property, this can be as much as \$150,000 USD per year added to your cost basis, significantly reducing your capital gains tax should you decide to sell in the coming years.

*Note: You are not eligible to receive the inflationary credit unless you have paid your two percent acquisition tax.*

### **The Primary Residence Capital Gains Exclusion**

Mexico, as well as the United States, provides its residents a capital gains tax incentive for their primary home. The tax incentive in Mexico states that if you sell your "primary residence," you pay no capital gains. This law is in place for "residents" (Mexican nationals or foreigners) of Mexico only, and there are several items required to establish residency status. In order to claim your home as your primary residence in Mexico, you must be able to prove that it really was your primary residence. At closing, you will be required to provide the Notary with a residence visa or working permit (FM3 or FM2), as well as a bank account, water, phone and electric bills, paid tax receipts and your Trust — all in your name, all with the

address of the home, and all in place for at least 6 months or more than five years gives you more benefit. A tax ID number is necessary. Please keep in mind that this is just a guideline of the requirements. It is necessary to communicate with the Notary prior to listing your property for sale or closing your transaction in order to know if you are eligible for the exemption. Note: You cannot have two primary residences at the same time. Therefore, if you claim the home in Mexico as your primary residence, you give up your primary residency status in the U.S. Keep in mind that the capital gains tax exemption is intended for residents of Mexico, not for persons owning second homes or vacation homes.

*\*Based on the 2009 Tax Code*

Allow REmexico Real Estate to put our knowledge and experience to work for you. We are an independent brokerage firm, assuring you that our only interest is representing you in a safe, solid and secure Real Estate transaction.

## THE FM3: MEXICAN PAPERS FOR FOREIGNERS

If you plan on living in Mexico for more than 6 months at a time you will need an FM3. With an FM3 you can legally keep a car in Mexico. If you are in Mexico, you can apply for an FM3 at the Immigration Office. You can also apply for one in any Mexican Consulate in the USA. You will need to renew your FM3 every year. Many people hire someone to help with this process. These can be specialists, accountants, attorneys, or property managers that offer this service.

Here is what you need to apply the first time. (Make all copies on one side of the paper only):

- 3 copies of your bank statement for the last 3 months. This is to prove that you can afford to live in Mexico. They are somewhat flexible, but they will expect an income of about \$1000 US per month for a single person, but less if you own a home.
- Proof of residency - Bring 3 copies of your electric and telephone bills. If you rent and do not have these, you can go to the Presidencia or Municipio (City Hall) building in your town and they will issue you a proof of residency for around 50 pesos.
- Three copies of your passport - they want copies of every page including the front and back cover.
- You need 4 passport size photos. There are usually photographers near the Immigration Offices that know exactly what you need.
- There are 3 forms you will need to fill out for your first FM3. You can get these either online or at the Immigration Office. The first is sort of a letter - they told me what to say at the office. The second is a long form that you will have to fill out every year.
- Once everything is approved they will fill out the Forma Fiscals and you will take the forms to the bank and pay. The bank will stamp the form and you bring it back to Immigration Office.





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