

Trust: “Fideicomiso” and how does it work?

The Constitution of Mexico states that no foreigner is permitted to own property within 100 kilometers (62 miles) of the national border or 50 kilometers (31 miles) of the coast; all of the Baja Peninsula, with the exception of a tiny portion of the interior, falls within the restricted zone. The fideicomiso, a bank trust, is the federal government's accommodation allowing foreigners to own property within these restricted zones. It is the only legal and secure method for foreigners to own residential property within these areas.

The fideicomiso is a trust set up with one of the federally-chartered banks in Mexico. The bank becomes the owner of record for the property and the foreign buyer is the sole and controlling beneficiary. Under the terms of the trust, the foreign beneficiary enjoys all rights of ownership including pledging the property as collateral, renting it out, bequeathing it to heirs, or tearing down an existing structure to construct a new residential or touristic dwelling. The parties involved in the trust arrangement are: ` Fideicomitente: the seller ` Fiduciario: the trustee, i.e. the bank ` Fideicomisario: the beneficiary, i.e. the buyer

The life of the trust agreement is fifty years and can be renewed for an additional fifty years. An application for renewal of the trust must be made to the Secretary of Foreign Relations within a period of 180 days (minimum) to 365 days (maximum) before the expiration date. This procedure assumes that there have been no changes in the beneficiaries or terms and conditions of the trust. If the trust is terminated, ownership of the property is transferred to the party named by trust beneficiary, subject to legal capacity of that party to own the property; if the trust expires and the fiduciary has not received instructions regarding a transfer, the property may be sold and the proceeds, less expenses, of the sale go to the trust beneficiary.

Banks charge an initial set-up fee of approximately \$500 – \$750 and an annual maintenance fee of about .05 –1 percent of the value which is subject to reappraisal every year or two. With the increasing numbers of bank trusts established by foreign real estate owners, annual trust fees have decreased substantially in recent years; it makes sense to shop around for the best rates and services.

Although setting up the bank trust may seem like adding extra red tape and cost to the transaction, it actually does have some advantages. The trust can be modified in a fairly simple procedure to allow for new beneficiaries. The interests in the trust can be passed to heirs without going through a probate proceeding in Mexico. If so instructed by the beneficiary, the trustee may rent or lease the property for up to ten years with the beneficiary receiving the rental income.

In order to avoid potential legal problems for themselves and their clients, banks customarily review prior title documents before accepting the property in trust. This is not a guarantee of a clear title, but it is one more professional examination of the property's status.

If the property is sold to another foreign buyer, the process is one of transferring interests in the trust. The interest in the property can be transferred by means of a Contrato de Cesión de Derechos Fideicomisarios. If the property is already in a trust, the buyer may either request an assignment of the rights or a new trust for a fifty-year term. In either case, a permit from the Secretary of Foreign Relations is required and the new deed must be registered in the National Foreign Investment Registry. The costs for transferring the rights of a trust are about \$1,500 for a new

permit, in addition to about \$500 for registration in the National Foreign Investment Registry (RNIE). An assignment of rights has no permit charge but does require RNIE registration which costs about \$500.

Therefore, when deciding whether to accept an assignment of rights or apply for a new trust, the factors to weigh are the remaining term of the existing trust and the annual bank fees. If the trust has an unexpired term of less than thirty-five or forty years and/or annual fees of more than \$500, it would probably be advantageous to obtain a new fifty-year trust with a bank offering more attractive fees.