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LUXURY REAL ESTATE

RIVIERA MAYA

# OWNERSHIP IN MEXICO

## EVERYTHING YOU NEED TO KNOW ABOUT A BANK TRUST

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# WHAT IS A BANK TRUST?

Before defining what is a bank trust, known as Fideicomiso in Spanish, let me explain why you need it. You might be aware of a strip of land called Restricted Zone, an area of 50 km (30 miles) from any coastline or 100 km (60 miles) from any international border – i.e. with the United States, Belize or Guatemala; the entire Baja California Peninsula is part of the restricted zone.

According to the Mexican law, only Mexican citizens are allowed to own and purchase property in the restricted zone, but there is also a legal way for foreigner to own a property in these areas. When a foreigner wants to purchase property within the restricted zone, he has the choice to acquire the property using either a Mexican bank trust, or establishing a Mexican corporation, which then acquires the asset.

## Mexico's Restricted Zone

The 1917 Constitution of Mexico outlines clearly that non-Mexican citizens are not allowed to own real estate along Mexico's coastline or near any international border (within the distances mentioned above).

As the Mexican government came to realize that foreign investment in these areas was advantageous and attractive, special arrangements were made that allowed investment without changing the constitution.

The Mexico Foreign Investment Law mandates the process for owning property in this restricted zone. This was first introduced in 1971, adjusted in 1993, and once again updated in 1998.

If we take a closer look at these regulations we can find these interesting points.

- If it is for residential purposes, foreigners can own property within the restricted zone using a Mexican bank trust for real estate (fideicomiso in Spanish).
- For business purposes, foreigners can own property within the restricted zone using a Mexican corporation.



**Foreigners can set up, invest in and own 100% of a Mexican Corporation.**



The Mexican corporation requires a minimum of 2 shareholders; usually both can be foreigners, but one must have Mexican residency. Only a few industries do not allow 100% foreign ownership, such as the oil industry and communication.

The fideicomiso is an agreement set up between the foreign buyer and a Mexican bank. The bank acts on behalf of the buyer. The bank will hold the title of the property, but has a fiduciary obligation to follow the instructions and wishes of the foreign buyer, who can enjoy, use, rent out, improve, expand, build on and even sell the property keeping 100% of the income and profits.

## Other facts about the bank trust

### There are three parties involved:

#### **Fideicomitente**

The seller of the property.

#### **Fiduciario**

The bank acting as the trustee and holder of the title.

#### **Fideicomisario**

The beneficiary or buyer of the property.

The term is for 50 years, and it is renewable indefinitely for 50-year periods.

Secondary beneficiaries can be established within the trust to establish automatic inheritance of the property in case of death of the first beneficiary.

The buyer can choose which bank he wishes to establish his bank trust with. There are various multi-national banks in Mexico including Scotiabank, HSBC and BBVA Bancomer, as well as Mexican national banks such as Banorte.



**Outside the restricted zone a foreigner doesn't need a bank trust; property can be held with a simple and straight title.**



# BANK TRUST AND OWNERSHIP

## The Bank Trust

Paying for a property is not enough to become an owner in Mexico. In order to have a valid ownership it is necessary to have the title recorded, which puts the rest of the world on notice that the property is yours. If you are a foreign person purchasing a property within the restricted zone, the property will transfer not to your name but to the name of a Mexican bank as trustee for your interests.

As it was mentioned before in this guide, the Mexican constitution prohibits direct ownership of real estate by foreigners in the restricted zone; this is the reason for the bank trust, the fideicomiso, which has been established under the guidelines of the Mexican government so that foreigners will be protected in their property acquisitions.



**When purchasing real estate in Mexico never leave the title of your property “in limbo”. Make sure to follow every step necessary to complete the legal transfer of ownership.**

## Recording the Title for Full Ownership

Whether you are purchasing in a zone requiring a bank trust or in an area where title can be taken directly into your name, it is necessary that this transfer of ownership take place and your interest be registered as soon as possible after the successful conclusion of the negotiations to purchase your dream property. Be sure to find the help of a trustworthy lawyer and notary public to complete the steps.

Until this transfer takes place you are vulnerable. For example, if the seller dies the heirs may be unwilling to recognize your rights in the property, leading to a lengthy and expensive probate proceeding. Meanwhile, your interest may not be recognized by the authorities should you wish to obtain a building permit, by the bank should you wish to borrow money and use the property as collateral or as part of your assets by the courts should a third party also claim an interest in the property, or, very importantly, should you later decide to sell your property. The foreigner purchasing real estate in Mexico is buying personal, not real property if the acquisition is in the restricted zone. Be sure to do it properly, and also try to complete all the necessary steps in a reasonable time.



## How does personal vs. real affect the foreigner who acquires property under a Mexican bank trust?

The foreigner purchasing real estate in Mexico's restricted zone is buying personal property, but the difference is negligible.

For example, instead of using the words transfer of title one should more properly say transfer of trust rights, or assignment of trust rights.

In practical terms the beneficiary has full control of the property and he may direct the trustee bank to:

- Lease the property
- Mortgage the property
- Sell the property

The foreign owner enjoys full rights of usage and may do anything to the property, as long as it's permitted under Mexican law, and he enjoys the same rights of dominion as any Mexican citizen who has direct title to the property.

He may construct a building, tear it down or modify it in compliance only with the local zoning and planning ordinances or, if applicable, the home owners' condominium regime.

A permit to acquire the rights for the property must be obtained from the Secretary of Foreign Relations and the terms of the permit form a part of the deed.

The term for a trust is fifty years, and multiple renewals are permitted under that law. This means that by requesting extensions every fifty years, a property may be controlled by a family or business entity for generations.



# THE DIFFERENCE BETWEEN USING A BANK TRUST AND A MEXICAN CORPORATION

Talk to your broker about bank trusts and Foreign Owned Mexican Corporations (FOMC) to determine which the best vehicle for you to hold title is. Both have advantages and disadvantages.

## The Bank Trust

The bank trust or fideicomiso is a trust agreement that you establish with a bank to hold title of the property with you; you and the bank are both named in the title documents. The bank has a fiduciary responsibility to represent your interest in the property. The Fideicomiso gives you the rights and the vehicle to hold the property in perpetuity. It is a 50-year trust agreement that is renewable every 50 years by you or your heirs, and it has the advantage of giving you eligibility for Capital gains tax exemption. Other interesting facts include:

- You may transfer your rights in the fideicomiso to another foreign buyer (i.e. sell the property)
- You may rent, sell, remodel or make improvements upon on the property you have in a fideicomiso
- Your heirs may inherit the rights to the fideicomiso, effectively by-passing probate, should you depart without a proper will
- The fideicomiso is easy to maintain by paying the annual fee to the bank

## Keep in mind about the fideicomiso:

The main disadvantage of the fideicomiso is that it is restricted to a property of no more than 2000 square meters, (slightly more than 20,000 square feet) but there are exceptions.

You can request a permit for acquiring a fideicomiso that allows for a property larger than 2000 square meters, but this is a complicated process requiring an investment plan, time line, inspections, architectural renderings, business plan, and plenty of governmental red tape. All this extra work is only recommended for an investor that plans to make a significant investment in the property.

Also you need to be careful, since if the title papers, property dimensions and corresponding documentation are not in perfect agreement, the bank will not issue the fideicomiso, and a rectification of the property measurements will be required.

Finally, another disadvantage of the fideicomiso is that it is limited to one specific property. Sometimes you can put two adjoining properties into the same fideicomiso, but generally speaking, the fideicomiso is only designed for an individual property.

**FAQ** **Would we be able to use the same Mexico bank trust for multiple purchases or does each property have to have its own trust?**

This is one of the most common questions from non-Mexican buyers. The following are answers given by different experts in Mexican real estate.

“Each property will need to have its own separate bank trust. Trusts are property-oriented, not people-oriented, thus a specific property is the object of each trust contract, and the reason for the trust being established.

For example, when a property held in trust is sold, the trust stays in place, only the beneficiaries in the contract change — the original beneficiaries of the Mexico bank trust (sellers) cede their beneficiary rights to the buyers, who become the new beneficiaries of that same trust.”

Rita Sheese - Cozumel Capital  
Cozumel Real Estate

“A Mexico bank trust is required for each property since the trust (fideicomiso) is actually a deed to the rights in a specific property. A permit from the Secretary of Foreign Relations is required for each property and the text of the permit is included in the fideicomiso deed. The only exception to the one deed per property rule is where two lots are contiguous. Then both can be put into one deed but usually will still require two foreign relations permits.”

Linda Neil - Linda Neil Properties  
La Paz Real Estate

“One Mexico bank trust must be used for each property. Each trust contains the particular information of the transaction, such as purchase price, trustee and substitute trustee, permit from the Secretary of Foreign Relations and appraisal, amongst other items.”

Ivan Castillo – Lawyer and escrow services  
Stewart Title



## Foreign Owned Mexican Corporation

The Foreign Owned Mexican Corporation (FOMC) is a vehicle that allows foreigners to open a business and work in Mexico. The corporation is a Mexican entity, and as such, has the right to hold title to real estate. An attorney or notary public can help to set up your corporation, but it is important to know what your goals are in respect to the property, business and type of real estate investment.

To set up a corporation you need:

A minimum of two individuals (stockholders), of any nationality, that are at least 18 years of age

One of the stockholders will be required to be the managing partner, and will be required to acquire and maintain a Mexico FM-3 visa that must be renewed every year

The corporation is required to make monthly reports to Hacienda (the Mexican Department of Treasury) reporting income and expenditures. The reporting needs to be done by a certified accountant.

## Some advantages of the Mexican corporation

It allows for the purchase of properties larger than 2000 square meters

There is no limit to the number of properties it may own

It allows for one or more of the stockholders to legally live and work in Mexico year round.

### Keep in mind:

If you decide to set up a Mexican Corporation, consider that, besides a managing partner with a resident visa, a Mexican corporation requires more hands on attention than the Fideicomiso. Consider carefully which option works best for you.

Also, the corporation pays taxes and cannot avoid capital gain taxes when it sells property.





# BANK TRUST TIPS TO REMEMBER

When Americans, Canadians or Europeans wish to invest or purchase oceanfront property in Mexico, they basically have two options to hold the asset, either by setting up a Mexican corporation or a Mexico bank trust. If you plan to set up a bank trust please review these tips:

## Study, review, and learn a little

Before making any decisions, make sure to study, review, and learn a little more about the bank you choose as the holder of the bank trust.

- Go to the website of Asociacion de Bancos de Mexico ( <https://www.abm.org.mx/> ) and make sure the name of the bank you want to work with is listed there.
- Check if they have offices or a branch in the town where you plan to purchase your property.
- You will need to be in contact with your bank for payment of annual fees, questions, interviews, and/or notifications. Having the bank in the same city is convenient for any of these required visits.

## Research and read

If you purchase property within a condominium regimen, review and ensure that the deed establishes that you, the beneficiary, will have the power to vote at the condominium meetings. This point is quite important but it may slip pass the lawyers when they prepare your Mexico purchase sales contracts. When you are buying a property through a bank trust, and such property is part of a condominium association, the voting rights need to be established and identified. By Mexican law the domain of the property remains with the financial institution, and you the foreigner have the beneficiary rights. The bank therefore is the legal representative of the property.

In such case, since the bank holds the voting rights, meetings for the condominium association should be attended and voted on by the bank. In order to resolve this legal conflict, the deed or the purchase sales contract should include a simple clause establishing that such voting rights are to remain with the beneficiary.



**For those who have already purchased in Mexico and have a deed that does not state this clause, visit your bank and ask them to prepare legal documentation to forward these rights to you.**

**Such documentation will need to be signed and notarized before a Mexico notary public.**

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## **Study your options and get the best deal**

Before choosing a bank to hold your trust, study if they have any package deal that might include insurance and other services.

There are some banks such as the Spanish bank BBVA Bancomer, that can help you with an entire package: loan, bank trust, closing services and regular assistance in setting up your Mexican checking or savings account. In package deals, discounts might be given.

And of course, dealing with one institution to administer various services might be convenient for your needs.

## **Review and compare**

Don't forget to review and compare set up fees and annual service fees that the bank will charge for holding your trust. If you don't need a full package, then ask your lawyer if he can get a better rate with a particular bank.

Sometimes for the volume of clients the lawyer sends to the bank he can obtain special discounts for which you as an individual would not qualify. These small discounts add up.

There are many details related to the theme of bank trusts and their contracts, so please feel free to contact us at HH Luxury Real Estate if you have any further questions.



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