

# Buyer ADVISORY



SONORA • MEXICO

## A Guide for Foreigners Purchasing Property in Sonora, Mexico

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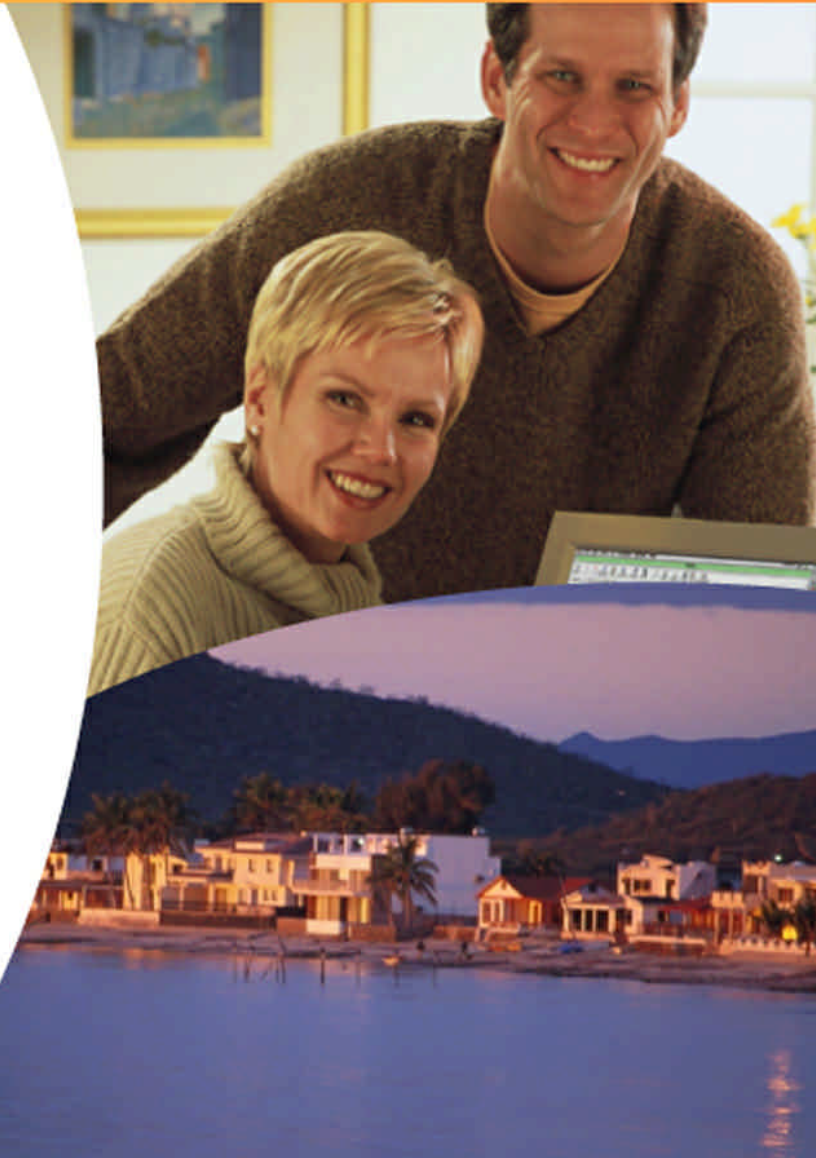
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## Property Ownership in Mexico

- **Non-Restricted Zone:** Foreigners may directly own real property located in the interior of Mexico.
- **Restricted Zone:** Foreigners may not directly own real property located in the Restricted Zone. Instead, foreigners may obtain renewable fifty-year beneficial rights to residential property in the restricted zone through a Mexican bank trust (*fideicomiso*). The Restricted Zone comprises all property within 50 kilometers (31 miles) from the coast and 100 kilometers (62 miles) from the international land borders.
- **Commercial:** If the property will be used strictly for commercial purposes, foreigners may incorporate a Mexican business entity, which can obtain fee simple title to the commercial property.

## Formalities for Purchasing Property in Mexico

- **Bank Trust:** Under a bank trust, a Mexican bank holds the legal title to the property for the benefit of the buyer. The buyer, as beneficiary, has the equivalent of all of the rights of ownership including the ability to use, rent, modify, improve, encumber and sell the property. An additional advantage of a bank trust is the ability to name substitute beneficiaries. Under present law, bank trusts are created for fifty-year terms, renewable indefinitely. Buyers may

also assume existing trusts using certain precautions.

- **Contract:** There are no set forms used for purchase offers in Mexico. A purchase offer, once accepted by the seller becomes a contract.
- **Notaries:** A buyer must formalize the purchase before a Mexican Notary Public. Under Mexican law, only Notaries are authorized to prepare and record a property deed. Notaries are attorneys appointed by the state government to specialize in various matters (including real estate transactions). Notaries are also responsible for collecting taxes at closing.
- **Property Registry:** The Public Registry of Property is the central recording entity for all public documentation concerning property. In order to ensure its ownership rights against the seller and third parties, a buyer must record all property transfers at the Public Registry of Property for the jurisdiction in which the property is located. (Timeshare acquisitions are the lone exception to this recording requirement.) Notaries typically handle registration.
- **Valuation for Taxation Purposes:** Buyers must obtain a Mexican appraisal to assist in determining the taxes for closing. The taxes will be based on the greater of the appraisal value or the purchase price. Buyers must not under-report the purchase price to the notary.

## Safeguards for Purchasing Property in Mexico

- **Checklist:** Buyers should follow all indications and request all information provided in the Buyer's Checklist.
- **Real Estate Professionals:** Buyers should employ a real estate professional, registered with the state under the Sonoran Law for the Registry of Real Estate Professionals, to assist in the purchase of any real property.
- **Disclosure Statement:** Buyers should request that the seller provide a property disclosure statement. This document provides information concerning the current physical, legal and economic condition of the property.
- **State Development Approval:** Buyers should request a copy of any applicable Mexican state and municipal development authorizations in order to ensure compliance with local laws and ensure proper and timely completion of the development construction.
- **Arizona Public Report:** Buyers should always obtain a copy of the Arizona Public Report for Mexican developments offered for sale in Arizona. Mexican developers must apply for and obtain an Arizona Public Report before offering for sale or lease in Arizona property located in Mexico consisting of six or more, improved or vacant lots, parcels or fractional interests, including timeshare, condominium and campground properties. The Public Report is considered both a "license for a developer to offer" Mexican property for sale in Arizona and a public information statement providing valuable information to the buyer.
- **Escrow:** Escrow is the means by which the buyer deposits earnest money with an escrow agent and for later delivery to the seller once the title transfer process is complete. Buyers should require that any deposits or earnest money be placed in a neutral escrow account and should not pay any portion of the purchase price until the ownership or trust is transferred in the buyer's name and title insurance is purchased. Although growing in importance, escrow is not commonly used in Mexico at this time. Consequently, verify the identity of anyone claiming to be an escrow agent with a title insurance agency.
- **Due Diligence:** Buyers should inspect the condition and suitability of the property with an independent investigation and due diligence before committing to a purchase. Buyers should also verify all relevant information that could affect the price or the decision to purchase, or both.
- **Title Insurance:** Buyers should obtain a title insurance policy that will indemnify the buyer against damage or loss arising from a defect or lien upon the title to the property.
- **Attorneys:** Buyers should employ a Mexican or U.S. attorney that specializes in Mexican real estate transactions to handle the legal aspects of the purchase.
- **Market Valuation:** Buyers may contract a U.S. or Mexican appraiser to determine the market value of the property in question.

## Types of Property in Mexico

- **Subdivisions:** Purchasing property in a subdivision is possible by acquiring a fee simple interest or the beneficiary interest in a trust, depending on the location of the property. This permit is registered at the Public Registry of Property for the jurisdiction in which the property is located. If the subdivided lots are being offered for sale in Arizona, the Developer must apply for and obtain an Arizona Public Report.
- **New Construction:** Building a residence is possible by acquiring a construction permit from the local city government (municipio). A builder must obtain title to the parcel of land, obtain a construction permit and hire a building contractor.
- **Resale Property:** Purchasing resale property is possible by acquiring fee simple interest or the beneficiary interest in a trust, depending on the location of the property.
- **Condominium:** Purchasing a condominium is possible by acquiring an interest in a properly recorded condominium regime. A condominium regime is a Mexican legal notary public document that is not legally obtainable until construction is complete. As a word of caution, buyers are commonly asked to make nonrefundable deposits to fund construction. This practice entails significant risk considering that buyers must make a payment without the existence of the condominium regime designed to protect the buyer.

- **Timeshare:** Purchasing a timeshare is possible by acquiring timeshare rights in property. Timeshare rights (as opposed to real property rights) are contractually acquired interests to use property according to the terms of the relevant timeshare purchase contract. The Mexican Federal Consumer Protection Law provides that buyers have the irrevocable right to cancel all timeshare purchase contracts (including resale timeshare contracts), within five days of signing the contract in question. Arizona law provides for a seven day recession period for purchasers of timeshare property being offered for sale in Arizona. Cancellation entitles the buyer to full reimbursement of any amounts delivered to the seller. Timeshare rights vary but are generally not ownership interests.

## Closing Costs in Mexico

- **Negotiability of Costs:** Closing costs in Mexico are generally more expensive than in the U.S. Sonoran law states that closing costs are the joint responsibility of the buyer and seller, unless otherwise agreed. Consequently, buyers should be aware that payment of closing costs is negotiable.
- **Buyer's Costs:** Buyers customarily pay the following fees: 1) two percent transfer tax based on the higher of the sale-price or appraised value; 2) appraisal fee; 3) trust bank fees; 4) notary fees; 5) trust permit fees; 6) title insurance premiums; and 7) deed recording fee. Fees for real estate professionals and attorneys should also be taken into account when calculating costs.

- **Seller's Costs:** Sellers customarily pay the following fees: 1) certification of the absence of liability; 2) certification of the absence of liens; and 3) capital gains tax on the sale. Fees for real estate professionals and attorneys should also be taken into account when calculating costs.
- **Timing of Payments:** Buyers should request an estimate of closing costs before signing any offer to purchase. Most transaction costs must be paid in advance of closing. Pre-closing costs include trust bank fees, trust permit fees, some notary fees, document fees (including certifications of the absence of tax liability and other liens), and appraisal fees. In order to reduce the possibility of paying costs for uninsurable property, buyers should obtain an acceptable title insurance commitment on the property before paying any transaction costs.

## **Financing Options in Mexico**

- **Bank Financing:** Real estate financing in Mexico is difficult to obtain and very expensive when available. As a result, most transactions are handled on a cash-only basis. Qualifying buyers may find U.S. mortgage companies willing to finance 70% of the purchase price for a second home in Mexico. There are also a growing number of Mexican banks willing to finance under certain circumstances. Irrespective of any financing agreement, buyers should require that title to the property (or a beneficiary interest in a trust) be transferred into buyer's name at the time of closing.
- **Seller Financing:** Sellers may be willing to finance all or part of the purchase price. The buyers, however, should require that title to the property (or beneficiary interest in a trust) be transferred into the buyer's name at the time of closing. If not, buyers should be aware that all payments made prior to acquiring title transfer run several risks, including the following: risk of liens on the property by the seller subsequent to the purchase; risk of losing to seller's creditors in case of insolvency or bankruptcy of the seller; risk of potential title defects; risk of multiple sales over the same property; risk of future litigation; risk of not obtaining a good and provable record of payments made and allocation and cost of taxes upon transfer, among others. Buyers should also be aware that title insurance is not available if title is not transferred.
- **Types of Finance Transfer:** Please consult your real estate attorney to review the options on providing security to the buyer and seller in a financed purchase. The most common options are issuance of a mortgage, guaranty title trust or a title retention sale. These three means all require the participation of a Mexican notary public and registry of the resulting document at the corresponding Public Registry of Property.

## Real Estate Professionals in Mexico

- **Registry:** Buyers should conduct business exclusively with real estate professionals that are registered with the state under the Sonoran Law for the Registry of Real Estate Professionals and that have complied with required training.
- **Duties:** Buyers should expect that any real estate professional hired to assist with the acquisition of property in Mexico will insure that the following takes place:
  - 1) that all payments, including earnest money, be placed into a neutral escrow account;
  - 2) that the purchase be handled in a manner to facilitate the acquisition of title insurance;
  - 3) that the purchase funds not be released until the transfer of title or trust has been recorded in the buyer's name;
  - 4) that the purchase offer be prepared according to the buyer's specific instructions;
  - 5) that the buyer be provided a full estimate of any fees and costs associated with the transaction;
  - 6) that the real estate professional assist the buyer with all negotiations;
  - 7) that the real estate professional provide frequent progress reports throughout all stages of the purchase transaction; and
  - 8) that any purchase be contingent on a final due diligence review, including professional and personal inspection of the property prior to closing;
  - 9) that the real estate professional recommend, when necessary, consultation with persons that can assist in the transaction (civil engineers, architects, attorneys, bankers).
- **Compensation:** If a property is listed for sale with a real estate professional, that real estate professional is typically compensated by the seller. Often, that real estate professional will share his/her commission with an outside real estate professional representing the buyer. If the property is not listed, is listed with a real estate professional who will not cooperate or is offered in a new development, compensation may not be available to the buyer's real estate professional. Buyers who wish to secure a commitment from a real estate professional and see everything that is available on the market should consider entering into a contract with the real estate professional that promises compensation to the real estate professional in a minimum amount and provides for a credit against that obligation for any compensation paid by the seller or listing real estate professional. Any contract should state the real estate professional's legal obligation to the buyer.

- Insurance: Buyers should be aware that Mexican real estate professionals do not generally carry liability or errors and omissions insurance. Consequently, buyers should exercise caution.
- Multiple Listing Service: In those areas where there is an established Multiple Listing Service (MLS), buyers should work with a real estate professional who is a member of that organization. MLS in Mexico does not operate in exactly the same fashion as in the U.S., but it promotes ethical and fair dealing and encourages cooperation among real estate professionals.

For more information consult <http://www.azmc.org>