

## Owning Property in Mexico

Buying property in Mexico, whether land, condo, or a house, can offer good value for money in comparison to prices in the US and Europe. Mexico's land costs can be lower, building and maintenance is more economical, and cost of ownership (taxes, utilities) very low. Though there are 'horror stories' associated with buying property here (as in every country in the world), the overwhelming majority of all real estate deals go through legally and smoothly.

The reasons to buy property in Mexico come down to a personal choice, and depend on your individual circumstances. Perhaps you will be living in Mexico for some years and you see long term rental as 'wasted' money, or perhaps you're looking for an overseas property investment that will surrender a rental income, while providing you with a place to stay on holiday when you visit.

If you're considering the purchase of property in Mexico, you will need to undertake extensive research, choose your location and property very carefully, and ensure that you hire the right professionals and that the letter of the law is followed. Thousands and thousands of foreigners have successfully purchased land and property in Mexico. With the right approach and plenty of homework, there is no reason why you should not become one of them if you want to.

### Have questions? Need help?

Call Dan today at 602.332.3499 when you need help with your Mexico property purchase, give me call. I can help find the right property for you and assist you with the process.

### Financing your Mexican Property Investment

Historically, most real estate transactions in Mexico are cash only. US Mortgage companies and Mexican Banks are now beginning to offer mortgage products for the purchase of real-estate in Mexico, although 20-30% deposits are required and interest rates are not as attractive as those in the US, Canada, and Europe (typically 7.99% and up).

Financing inside Mexico is still difficult and relatively expensive, so if you plan to buy real-estate in Mexico you will be well advised to have your own funding available from a US or Canadian lender.

Some people who are planning to retire to Mexico will sell their house in their home country and use the proceeds to finance property in Mexico; those who want to keep a 'base back home' may release equity from their existing home, rent it out, and use the dual proceeds to fund their retirement home in Mexico.

It's important to think carefully beforehand about how you are going to finance your property in Mexico.

**I can help you obtain financing for Mexican properties; just call me at 602.332.3499 to discuss.**

## Mexican Law: Property Ownership

Mexican Law provides for private ownership of land by foreigners, and its law is very specific about the way in which land rights should be transferred from seller to buyer, and also what type of lands are not eligible for public ownership. A *Notario* (Notary Public) will guide you through the details, but generally:

- Property may be purchased and owned outright for residential use by foreign nationals outside of the 100km restricted land border zone, or outside of the 50km coastal zone.
- Inside of the restricted border/coastal zones, foreign nationals may own land through a *fidecomiso* (a bank trust) which provides for ownership of the land and property in all but name.

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The Mexican Constitution previously banned foreign nationals from owning property that was within the restricted border zones. This old law was intended to protect Mexican soil from foreign invasion.

Because the Constitution cannot be altered in this respect, the Government introduced a system of land trusts, so that foreign nationals could invest in property inside of the 'restricted' zones. In this current manner, foreigners wanting to buy a dream home with a stunning beach view now can, except that it will be by means of a trust, set up through one of the main banks in Mexico.

The trust holds the deeds to the property, and you and/or other named persons you specify are sole beneficiaries to the trust (and therefore the property). You have full rights to do whatever you like with your property: it can be developed (in accordance with local planning regulations), rented, leased, sold, or given away. In other words, you own the property in all but name.

The trust enables you to name a beneficiary upon your death, and you do not need to have a Mexican Will in order for your wishes in regard to the trust to be executed (an efficient step in the process).

You do not have to be resident in Mexico to own property there, so there is no need to qualify for resident status under immigration laws in order to have a property investment in Mexico.

Mexican Law on property ownership is comprehensive and provides protection for the seller and the buyer in all property transactions, provided that the law is followed, and you ensure that all necessary documentation is present and that the procedures are adhered to. Your Notario (see below) is an important person in this process.

**Title Insurance in Mexico:** When you buy real estate in Mexico, consider buying Title Insurance. Title Insurance insures you against liens or other associated defects. This is especially important if the property you are buying has been privatized. Rates for Title Insurance are around US\$5-US\$5.50 per US\$1,000 of the property's value; payable once at the point of purchase. **Call me at 602.332.3499 with your questions about Title Insurance or for a referral to the two US Title companies currently operating in Mexico.**

## The Role of the *Notario* in Mexico

The *Notario* (Notary Public) is the most important person you will deal with when you make a property investment in Mexico. Do not confuse the role of the Notary Public in the US with its counterpart in Mexico – they are quite different. For example, in the US almost anyone can become a Notary Public. Not so in Mexico, where the role is appointed directly by the State Governor (the highest seat in State Public Office). The Notario has the power to witness and certify important business documents which require absolute authenticity. The appointment also holds responsibility for the management and secure storage of original records. Notarios must be Mexicans of at least 35 year in age with a degree in Law, have three years work experience at a Notary Public office and they must pass a stringent exam. Those who pass, in time, are appointed as Notary Public by the State Governor.

Under Mexican Law, the deed to the property must be prepared by the Notario. As a buyer, it is your right to choose the Notario, and it should be your first port of call – or second after your lawyer.

The Notario ensures that all documentation and permits are in order so that the transaction can proceed.

Everything official to do with your transaction should be done via the Notario. Do not take anyone's word about documentation (like property deeds) being valid - take copies to the Notario for official verification. A good lawyer will be able to advise you on such matters.

## Do Your Due Diligence

The Notary Public and/or your lawyer will do a series of checks on the property and ensure that the property has a 'clean' history, and that there are no liens on the land (e.g. an old unpaid mortgage). Under Mexican Law, liens are passed on with title of the land - BEWARE!

Your Notary Public should also check that all land taxes have been paid during the last five years (if applicable) and that utilities (electric, gas, water and phone) have also been paid during the last two years. By Law, you are not liable for debts after these time periods.

Other items to be checked include: Checking all buildings are on tax registers and have the required building permits, utilities were legally installed and payments are up-to-date, the property is not jointly owned, or if it is, that both (or all) owners agree to the sale, and that the seller/s has/have the right to sell.

The Notary Public is legally responsible to ensure that all documents are in order and that all legal procedures have been adhered to. He will do a thorough check and will not destroy his reputation by hiding any problems, or potential problems from you.

## The Purchase Procedure

If you have hired a lawyer (which is recommended but not compulsory) then he/she will likely act as an intermediary between you and the Notary Public / Seller.

The exact process will vary, but you (or your lawyer) will follow a process similar to this:

- Find a property you like and verbally agree to a price.
- Execute an agreement to sell/buy, the "Convenio de Compra/Venta", with detailed costs, inclusions and exclusions, as well as deadlines. A deposit of 5-10% is typically paid by the buyer and cancellation penalties are set (usually equal to the deposit).
- If the property is inside the 50/100km coastal/border zone, set up a bank trust (*"fideicomiso"*).
- Seek permission from the Foreign Secretary's office (a formality) to buy land. You will be asked to sign the "Calvo Clause", which states that you will not seek foreign jurisdiction in dealings with your property transaction.
- If you are buying from a developer (e.g. a new housing estate) advise the Notary Public who will ensure the developer's permits are in order.
- Get a copy of the Land / Property Deeds from the seller. The Notary Public will check these out.
- Ask the Notary Public to check that the land is not Ejido land, as discussed earlier.
- An official appraisal of the Land (Avaluo) needs to be carried out; your Notary arranges this.
- Provide your Notary Public (or lawyer) for official documents including, but not limited to, a Photo ID (passport), Birth Certificates, Marriage Certificates (if appropriate), and your visa (could be a Tourist Permit) to show your stay in Mexico is legal.
- The seller presents to the Notary Public documents including (but not limited to): original property deed, up-to-date tax receipts for the property, public utilities bills (shown as paid), plus up-to-date details of land-service fees (shown as paid).
- Capital Gains Tax is paid by the seller, unless you have agreed to pay CGT as part of the buying agreement. The Notary Public will state how much this is.
- Payment is made (see note below) at the time the deed is signed over to you (performed at the Notary Public's office).
- The Notary Public's and Solicitors (if applicable) fees are paid at this time as well, as well as other taxes associated with land purchase (see Taxes, below).

**Payment:** Whether you are paying with cash or via financing, you (or your lawyer representing you) will need to have the agreed funds available for payment at the Notary Public's office on the date the deeds are transferred to you.

**Money Transfer Declaration:** \Cash or monetary instruments (of any kind) with a value of or exceeding USD\$10,000 MUST be declared when you enter Mexico (and enter/exit the USA - even if you are in transit to Mexico from elsewhere via the US). There are no limits on how much you can transfer in or out of either country - but sums over the US\$10K limit must be declared on a special form to US Customs.

## Costs and Taxes: Buying

When you buy property in your home country, you are usually faced with the associated costs like agent fees and taxes. Mexico is no different, although the net value of these costs as a percentage of the property values may be lower overall, but this is not guaranteed as professional fees have risen recently too.

- **Acquisition Tax:** This Tax is paid on the sale value of the property and is equivalent to about 2% depending on the State in which you buy. This tax is paid whether the property is sold, transferred, donated, placed into trust, split off or merged.
- **Vat (Sales Tax):** No Value Added Tax (Sales Tax) is payable on residential property. Commercial Property transactions are liable to VAT at the current rate in addition to the Acquisitions Tax.
- **Appraisal Tax:** The Tax Authority may choose to perform a commercial appraisal of the property after you purchase it. If the appraisal value is greater than 10% of the price you paid for it, you will be asked to pay 20% tax on the difference between the two amounts. This sum is due within 15 days of the date of the appraisal report.
- **Registry Fee:** In order to have the Public Records updated, a 1.3% fee (based on the value of the transaction) is paid by the buyer.
- **Public Notary Fees:** You will be required to pay fees for services provided by the Notario. These are about 1.5% of the transaction value, plus the cost of the official appraisal (as described in Valuation section, for tax purposes)
- **Bank Trust:** If you purchase property within the 50/100km restricted zones, you will need a bank to set up and manage a trust for you. Shop around, as prices vary from Bank to Bank. Set-up fees can cost up to US\$750, with annual service charges between US\$300-US\$500. The annual service fee will cover legal obligations (e.g. the filing of necessary documents annually) by the bank on your behalf.
- **Lawyer / Attorney Fees:** If you hire a lawyer / attorney, you will also need to pay him/her with fees for services they undertake on your behalf. These should be negotiated in advance.
- **Land / Building Surveys:** If you need to undertake any land or building surveys, these will have to be paid for separately. Cost will depend on type, extent and complexity of surveys undertaken.
- **Foreign Office Permit:** Your permit from the Mexican foreign office will cost around US\$1,500.
- **Service Fees:** If you are buying a house in a gated community, or an apartment, be sure to check on the annual service fees, and have these put in writing. Service fees can range from US\$100 a year to US\$1000 a year, depending on location, number of houses or apartments in the enclosure and amenities offered.

- **Title Insurance:** When you buy property in Mexico, you would do well to consider purchasing Title Insurance. Rates are based on the sale value of the property and are charged at around US\$5-US\$5.50 per US\$1,000 of the value. More Information about Title Insurance.

### Costs and Taxes: Selling

When you sell a property in Mexico, you will be subject to the fees of any professional services you contract, plus the following taxes and fees:

- **Income Tax on Property Gains:** If the home has not been your main residence for at least the last two years, will be required to pay income tax on the property. You may either pay 20% on the gross amount of the transaction, or elect to pay 40% tax on the net profit obtained from the property. This law prevents short-term speculation on the property market. Commercial property is taxed at above rates, regardless.
- **Agent Fees:** If you employ an agent, expect charges of around 3-6% of the value of the sale as a fee, but you may want to negotiate on this beforehand. You will also need to pay VAT (Sales Tax) on agent fees.
- **Timeframe**  
Timeframes can vary dramatically from a few weeks, to several months! If agreeing to 'deadlines' in your initial sales agreement, leave yourself plenty of time to meet deadlines that you agree to. On average, you can expect the process to take up to 3 months from the time the initial sale agreement is drawn up and the deposit is paid.

### DISCLAIMER

*This report is for informational purposes only.*

Mexican real estate laws, market conditions, and local customs frequently change. Please consult an attorney specializing in Mexican law before buying or selling Mexican Real Estate. Be sure to perform ALL of your due diligence. Only deal with reputable real estate agents, developers, and attorneys. Call me today at 602.332.3499 and I can help you connect with these specialists.