

# dlgluce<sub>llp</sub>

## The Ins and Outs of Purchasing Land in Mexico\*

The beaches of Mexico are world-renowned. Each year tourists flock there to relax, drink in the sun, and experience the culture of our southern neighbors. So what happens when a person decides that they want to own a piece of this paradise? There is one small stumbling block between you and that perfect beach side vacation property in Mexico: Article 27 of the Mexican constitution prohibits foreign citizens and corporations from purchasing land within 31 miles of the ocean and 61 miles of the border. In theory, these nearly century old restrictions keep foreigners from owning land in nearly 40% of the country.

There are, however, a couple of creative ways that the Mexican government has deemed acceptable in order to allow the acquisition of land in the restricted zones by foreigners. The first is to create what is called a Fideicomiso, or bank trust. According to the University of Illinois Business Law Journal, this process involves a Mexican bank buying the property and holding the title, while the purchaser pays the bank the purchase price and becomes the beneficiary of the trust. [1] This is, however, limited to a term of 50 years, which may be renewed only once within the initial term for a total of 100 years in all. In addition to the time limit on such a trust, there are several other restrictions, including the requirement that the buyers consider themselves Mexican citizens in matters pertaining to the property, and the restriction on foreigners from invoking the protection of their governments in relation to the property. [1] These restrictions are known as the "Calvo Clause", and violations could lead to forfeiture of beneficiary status in the trust.

The cost of establishing a Fideicomiso varies depending on the value and location of the land. They typically fall between 5% and 10% of the purchase price. The trustee (the Mexican bank) will also charge annual fees, as well as additional fees upon renewal of the trust. Other than the involvement of the Mexican Secretary of Foreign Relations (SRE) and the Trustee, many steps involved in the purchase of the property closely mirror steps that would be taken in any real property investment. These include assuring that the seller holds unencumbered title to the land, negotiation of the sale price, and obtaining title insurance. Though this process may seem overwhelming at first glance, with the help of an experienced attorney and real estate agent it can be a safe and novel way to invest in real estate.

Another, perhaps less involved, way to enjoy your own beachfront property in Mexico would through establishing a timeshare. Even if a Mexican corporation is completely owned by foreign interests, it is possible for them to own land within the restricted zone as long as it is not for residential use. Timeshares in Mexico are not considered residential use, and therefore could present a way for those who perhaps cannot afford the initial investment necessary to create a fideicomiso to acquire their perfect vacation home. [1] These transactions are also subject to the Calvo Clause, and are under the authority of the SRE, so it would still be advisable to seek experienced legal counsel before entering into them.

[1] Alicia Filter, *Purchasing Beachfront Property in Mexico: How Americans Circumvent Mexico's Constitutional Prohibition*, University of Illinois Business LJ, 2006

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