

Owning Real Estate in Mexico Information:

BUYING MEXICAN REAL ESTATE

Mexico has thousands of miles of pristine coastline, wonderful colonial cities which boast architectural wonders stretching back many hundreds of years, and diverse expatriate communities of Americans and Canadians scattered throughout the country. *The Mexican government is encouraging the expansion of tourism and investment in Mexico. Anyone can acquire real estate in Mexico if some simple rules are understood.*

Mexicans by birth or naturalization can buy real estate anywhere in Mexico. Foreigners may purchase real estate directly in their own names throughout the interior of Mexico. *In addition, foreigners may buy property near the border and the coastline in the area referred to as the restricted zone (about 31 miles inland from the ocean and about 62 miles from the borders) as the beneficiary of a bank trust.*

The bank holds technical legal title to the real estate and the foreigner is the beneficiary of the trust. The bank acts on behalf of the beneficiary like any trustee must act. The beneficiary may use the ownership interest in the trust as collateral for a loan. *That interest may also be transferred by will or through a typical sale process like other real estate interests.* Although the foreigner does not technically own a direct interest in the real estate, the foreigner's rights to use and deal with the property are very similar to outright ownership. A bank trust may be issued for **50 years** and it is renewable for another 50-year term. During the trust term and at its end, the interest may be sold by the beneficiary at the price determined by the beneficiary if the beneficiary chooses to sell. **Of course, always obtain proper professional advice before signing any contract to purchase.**

Thousands of people from countries around the world own real estate in many parts of Mexico. *It has been estimated that 300,000 to 500,000 Americans and Canadians spend over six months each year in Mexico. Many own real estate.* As U.S. baby boomers grow older, more and more will be setting their sights on a secure retirement which includes spending part of the year in Mexico. Many will buy a condo, house or villa in one of the many choice beachfront or other interesting locations around the country.

Always work with your own professional advisor to acquire that perfect piece of Mexican property you have always wanted!

How Foreigners Can Buy Real Estate in Mexico

by John Fleming

Debunking Some Myths

Americans are sometimes afraid to buy property in Mexico. Often their fears are based on stories they've heard at third hand, or confusions between past history and present practice. Here are some of the myths I hear most often, followed by an explanation of the facts of each situation.

1. Americans can't own real estate in Mexico.

2. An American must have a Mexican partner (who has at least 51% ownership) in order to own real estate in Mexico.
3. A bank trust is a lease agreement.
4. The Mexican government can take away foreigners' property at any time.

1. Americans can't own real estate in Mexico. Not true. In most of Mexico, Americans, or any other foreigners, can own land outright with what's called fee simple title, the same kind we have in the United States.

Only in the restricted zone--50 km.(31.05 miles) from the ocean and 100 km. (62.1 miles) from the borders--is it true that foreigners can't hold fee simple title). Puerto Peñasco is in that area, so these limitations apply.

Perhaps one reason for this restriction is that the Mexicans were somewhat concerned about having lost so much territory to the U.S. in the 19th century--about 1/3 of their country: Texas in 1845, and in 1848 through the treaty of Guadalupe Hidalgo the territory that became California, Nevada, Utah, most of Arizona, and parts of New Mexico, Colorado, and Wyoming. The treaty was signed shortly after American forces had captured Mexico City. The U.S. paid \$15,000,000 for all this land. And in 1854 through the Gadsden Purchase the U.S. acquired the rest of what is now Arizona and New Mexico. It's not surprising that Mexico was a little nervous about allowing foreigners, especially Americans, to acquire any more land.

But old wounds heal, and now the U.S. and Mexico are working hand in hand. NAFTA has promoted good business relationships, but even before NAFTA, Mexico wanted to make it possible for foreigners to invest in their country, so in 1971 they developed the bank trust (fideicomiso) as a way for Americans to buy residential property in the restricted area. I'll explain the bank trust more fully a little later.

2. Americans can't own real estate unless they have a Mexican partner. Not true. It used to be that for a partnership or corporation, foreigners had to have Mexican partners who owned at least 51% interest. This is no longer the case. Under the new Foreign Investment Law of 1993, a Mexican corporation--like ours--can be owned 100% by foreigners, and the corporation can buy and own any property with fee simple title, as long as its use is non-residential.

3. A bank trust is a lease agreement. Not true. Under a bank trust the beneficiary (buyer) has all the rights of ownership: the right to use, borrow money on, make improvements on, and transfer. A lease grants only the right to use. If the tenant makes improvements, such as building a house, on the property, that house belongs to the landlord. Nor can the tenant sell the property or borrow money on it.

In Puerto Peñasco there have been in the past many long-term lease agreements for land. Before 1971 the Bank Trust was not available, and leasing was the only option for Americans. Apparently some of them were confused about the difference between a long-term lease and ownership; thus they built homes and made improvements on the land they were leasing. After the Bank Trust was initiated, some leases expired and the landlords

declined to renew, which was their legal right. The tenants then lost the houses they had built. This frightened other Americans, who thought that their compatriots had had their ownership rights taken away, when in fact they had never possessed such rights. In many cases, however, the tenants of the former leases were able to regularize their situations by purchasing the property under a bank trust

4. The Mexican government can take away foreigners' property at any time. Not true. The bank trust is established by the government and gives foreigners the same rights as Mexican citizens. The only difference is that they never receive the actual fee simple title. It is held in trust for them by a bank. When first established, the term of a Bank Trust was for 30 years only. In 1989 it was made renewable for another 30, and in 1993 the term was extended to 50 years, renewable for another 50.

It may help in understanding the Bank Trust to compare it with the Deed of Trust, a type of financing instrument used in the U.S. People who buy homes for cash receive their titles right away. But the majority don't buy for cash. Under a deed of trust the buyer of a house has only "equitable title," or an equity interest, with the right to use but only a restricted right to sell, until the loan is paid off, after which the owner receives the actual fee simple title. Until then it is held by a trustee, usually a bank or title company.

In Mexico the Bank Trust is also held by a trustee, but the buyer never receives the actual title. Realistically many homeowners in the U.S. never receive title to their properties either, because they sell or refinance their homes long before the 30-year term of their loan is complete.

The Process of Buying Real Estate

The process of buying real estate in Mexico is similar to that in the U.S. The following chart will help to make that clear.

U.S.	Mexico
Purchase Contract Details of offer, including financing options Accompanied by earnest money	Promise of Bank Trust Details of offer Accompanied by down payment
Contract & earnest money held by Escrow a neutral 3rd party	Down payment made to seller
Escrow instructions	Documents handled by Notario a specially trained & licensed attorney appointed by the governor a neutral party represents the state
Deed of Trust (for financing)	Bank Trust (for all foreigners)

or Fee Simple Title

or Fee Simple Title (for Mexicans)

A notario is a lawyer with a position similar to that of judges in the U.S. It is not the same as a notary public, although the names sound alike. In the U.S. anyone can post a bond, pay a fee, and become a notary public. But a Notario in Mexico has several years of apprenticeship after his legal training and must pass a very difficult examination. I hear it's as bad as the bar and the CPA exams rolled into one. Notarios are appointed by the governors of each state, and there are very few of them (only 2 in Puerto Peñasco). Their functions are a combination of real estate lawyer, tax assessor and IRS auditor. It is they who close real estate transactions, like escrow officers in the U.S., but with expanded powers. Since the Notario is a neutral party, buyers should hire their own lawyers if they need representation. Procedures are changing. Two U.S. companies I know of are now offering title insurance in Mexico: Stewart Title and Lawyers Title. This will provide added security for foreigners. It's also attractive to American loan companies who are lending to Americans for buying Mexican properties. Although costly at the moment, title insurance and financing rates will probably soon be lowered by competition. I've heard that possibly in the not too distant future the Bank Trust will disappear, and fee simple title will be available for foreigners also. The pattern of its history supports this assumption. Currently the states of Arizona and Sonora are working together to develop reciprocal licensing requirements for real estate agents--classroom training, experience, and background checks. As the two countries become more similar in their real estate practices and procedures, buying real estate in Mexico will become even easier for American citizens.

Crossing the Title Assurance Border

by [Mitch Creekmore](#)

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Latin America Division

Since man first began claiming and acquiring ownership of land there has never been a time when he has not needed some form of title assurance. The very nature of land induces a need for title assurance because its characteristics differ from other forms of property. Land titles are symbolic because the title is what a purchaser gets when he purchases real estate rather than actual delivery of the property. For this reason, it is highly important that a purchaser have the best assurance possible that his title is good, unencumbered and free of flaws, or that he have an indemnity against loss due to a title defect.

Historically, a purchaser's lack of knowledge of the complexities of land titles have caused him to discount the importance of land title assurance. Knowing little or nothing about titles, real estate buyers have consistently relied on the advice of others. They have been led to believe that it is not necessary to look back into a title beyond a couple of previous ownership's, that the public records contain information with respect to every possible title hazard and that an attorney's opinion gives positive assurance of a safe title.

Conditioned as the public has become through traditions and practices, it is inconceivable that a title could be completely lost irrespective of the customary assurances available. Prior to the inception of title insurance, it became obvious in the late 1800's that the US needed a more secure form of title assurance - a

form based upon indemnity dollars instead of word of mouth reliability. And now today, over 100 years later, foreign purchasers of real estate in Mexico face the same dilemma.

The land registration and title certification process in Mexico is a good one, a system similar by definition to that of a "Torrens" concept. However, any title defect that can occur in the US can also occur in Mexico with other potential hazards looming on the horizon uncommon in US property conveyances. "Ejido" claims or expansions, labor liens, fideicomiso (Mexican bank trust entitlements), property regularization and permitted use issues can pose significantly detrimental problems to unknowing purchasers of Mexican real estate. Moreover, little if no legal recourse is afforded the purchasing public against the public notary who closes all real estate transactions in Mexico or against Mexico's public registry of property concerning title or lien defects, omissions, gaps in ownership or recording errors. A title insurance policy issued on Mexican property provides a comfort and security benefit to foreign purchasers and is the only safeguard against title pitfalls resulting in eventual Mexican lawsuits and monetary losses. When all of the gloss of the notarial certification process is scraped away, no one individual or entity provides a monetary indemnification or guarantee insuring good title in Mexico.

With the eventual creation of a secondary mortgage market and secured lending programs backed by Mexican property as collateral, title insurance will become a mandatory requirement in every transaction. Investors in mortgages, who have no knowledge of conditions in Mexico, will increasingly need the assurance by a financially sound institution that the titles to the real property acting as collateral for various mortgage instruments are marketable. That is, the titles to the real estate backing the mortgage securities are in fact valid. In the absence of absolute certainty, title insurance will be the essential element that will facilitate any foreign lenders entrance into Mexico's residential or commercial mortgage market.

People have always been slow to alter practices or abandon customary ways of doing things. Mores of the public have been difficult to change. Title insurance, however, is the latest step in the evolutionary development of title assurance, whether in the US or Mexico. It displaces reliance upon the infallibility of individuals and substitutes corporate indemnity providing the most secure form of title assurance yet devised. After more than 100 years of developing an integral role in real estate transactions in the United States, title insurance has begun the same arduous process of overcoming public perception on its importance and subsequent benefit when purchasing properties or scrutinizing mortgages with real estate in Mexico.

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YES, you can own property in Mexico. The first question people usually ask about when buying Mexican Real Estate is whether or not they can actually do it and are they at risk of having their property taken away by the government. The truth is, many non-Mexicans have purchased property in Mexico and the government cannot take your land if you have the proper legal title.

Additionally, since the change in the foreign investment law of December 1993 foreigners can now own land in the formerly restricted zones - within 30 miles of the beach and 50 miles of the border. For non-Mexican citizens, the laws of Mexico established an ordinance where the title is placed in a trust called a "Fideicomiso" (fee-day-co-mee-so) which acts as and is registered as the legal owner. This ordinance is virtually identical to



trusts established in the US to avoid probate.

YOU are the owner! You as the homeowner, have complete control over the trust and can sell, will, rent or transfer the property at any time. The Fedeicomiso "trust" is established for an initial 50-year term and perpetually renews every 50 years. The cost of establishing the Fedeicomiso "trust" is approximately \$500 U.S. dollars and the fee to maintain it is approximately \$500 U.S. dollars per year.

The Fedeicomiso has a trustee, such as Citibank-Banomex, which acts as a fiduciary on behalf of the homeowner who is the beneficiary of the trust. This is the same as a trust in the United States. Additionally, the SEC has ruled that a Fideicomiso is equivalent to a "fee simple" title in the U.S. This is how billions of dollars worth of property in Mexico is owned by foreigners.

The trust system of ownership is sanctioned by the Mexican government, provided for under the Mexican constitution, and secured by the Central Bank of Mexico; thereby offering powerful protection.

Title insurance is essential to ensure that you have a free and clear title when you purchase property. Like in the United States and Canada, Title Insurance can be purchased for properties in Mexico. Property titles can be searched back to the first days of the Mexican Republic. It is extremely important when purchasing property in Mexico that you obtain a title insurance policy. This insures a clean and clear title. Just like in the United States, unless a Title policy is in place, you will never be able to obtain low interest American financing.

Stewart Title Company is one of the most experienced providers of title insurance in the U.S. and one of the largest title guaranty companies in the world. They have a division that specializes in Mexican real estate transactions. With more than 100 years of service to the real estate industry, Stewart Title has established over 3,500 offices worldwide, including a local office in Tijuana, Mexico. For further information regarding title insurance analysis and policy-issuance, please visit Stewart Title's website at www.stewarttitle.com.

Baja Vistas currently has title insurance from Stewart Title Company. This guaranties that The Residences owns a clean and clear title, free from liens and lawsuits, to the property on which your condominium is being built upon. Specific information for our title insurance policy can be obtained from Autumn Frank, Vice President of Stewart Title, at afrank@stewart.com.

The Baja Vistas uses Stewart Title Company to secure your purchase. Title insurance assures the marketability of your title and gives you no-fault recourse in the event of disputes. The carrier, not the homeowner, shoulders the potential risks and indemnifies against losses or damages arising from title defects.

Upon purchasing your unit MX Vistas will pay 100% of your Title Insurance policy fee.

News headlines blared in November 2000 when Americans were evicted from their homes in the Mexican municipality "Punta Banda" near Ensenada, Baja California. Though disturbing, we must understand that this situation is an aberration. Mexico has made significant changes to its foreign investment laws to promote, enhance, and protect foreign investment in the real estate sector.

The evictions demonstrate that in any country, title discrepancies exist, lawsuits get filed, and in some rare cases, buyers lose their property. To be educated and prudent buyers, we must understand the issues.

The American residents at Punta Banda are, on one hand, victims of possible fraud and misrepresentation concerning the developer's ability to enter into lease agreements for lots within the Baja Beach and Tennis Club. On the other hand, residents ignored the warnings and disclosure that the ownership of the land was in dispute and there was pending litigation to resolve the title matter.

The plaintiffs had given public notice that the developer did not own the property and that no one should build on it. The U.S. lessees trusted in the assurances given by the developer and the Ministry of Agrarian Reform. However, ownership of the land was overturned and the evictions occurred.

In that light, why should Americans not fear buying real estate in Mexico? Title assurances and ownership protections that exist today were not readily available when Americans built in Punta Banda 14 years ago. And remember that the property can probably be insured with a title insurance policy enforceable under U.S. jurisdiction guaranteeing ownership rights.