

“TRUST” PURCHASING RESIDENCES IN MEXICO

**By Mitch Creekmore, Stewart Title Guaranty Company
Mexico Division**



After 5 years of work in Mexico insuring real estate properties to foreign purchasers, there are always varying questions asked relevant to residential acquisitions. “If I buy a house in Mexico, don’t I get a 99 year lease from the government?” Or, “I understand that I can buy a residence in Mexico if the title is vested in a Mexican corporation.” And invariably, “I didn’t think Americans could own Mexican beach front properties.” All of these suppositions are incorrect. In order to clear any confusion a purchaser might have regarding the acquisition of Mexican residential property, it would be appropriate to define what Mexico’s Constitution and the Foreign Investment Law of Mexico mandates regarding foreign (non-Mexican) buyers of real estate.

Most purchasers contemplating buying a house in Mexico are aware that Mexico has a “restricted zone” (50 kilometers along all of Mexico’s coastline, 100 kilometers along all of Mexico’s natural borders) per Article 27 of the Mexican Constitution. What many purchasers are not aware of is the Foreign Investment Law of Mexico (“FIL”) originally established in 1971, amended to the “New FIL” in December, 1993, and ultimately amended again in October, 1998. This FIL is known as the “Reglamento de la Ley Inversion Extranjera y del Registro Nacional de Inversiones Extranjeras.” Relative to properties within this prohibited area, the amended Foreign Investment Law’s intent is to clearly and narrowly define what is residential property, what properties must be in a “fideicomiso” (Mexican bank trust), and what properties are considered non-residential and therefore can be purchased by foreigners in a Mexican corporation.

For the purpose of the terms set forth in Article 5, Title Two of the Law, real estate used for “residential purposes” shall mean any real estate destined “exclusively for residential use of the owner or third parties.” The following activities, without limitation, shall be deemed real estate held for non-residential purposes: (I) those destined for time-share use; (II) those destined for any industrial, commercial or tourism activity that may simultaneously contain a residential component; (III) real estate acquired by credit institutions, financial intermediaries, and auxiliary credit organizations to recover debts owed to them and in the ordinary course of business; (IV) real estate used by entities in the course of their business consistent with sale, development, construction, sub-division and other activities included in the development of real estate projects, until these are sold to third parties; and (V) generally, real estate destined for use in commercial, industrial, agricultural, cattle, fishing, forestry, or service-related activities.

When in doubt whether real estate is deemed destined for residential purposes, the Ministry of Foreign relations shall resolve the matter in ten business days from the date the party consults the Ministry on the subject. If at the end of ten business days, the Ministry fails to respond, the use in question shall be deemed for non-residential purposes. Further, Article 6 of Title Two specifies that when in doubt on whether real property is located within or outside the restricted zone, the Ministry of Foreign Relations, on consultation with the National Institute of Statistics, Geography and Data Processing, shall decide as appropriate. And lastly, Article 7 of Title Two provides the notification procedure which interested parties

must give to the Ministry of Foreign Relations. That is, (I) the location and description of the real estate; (II) a clear and accurate description of the uses to which the real estate in question is destined; and (III) an ordinary copy, in annex, of the public instrument, known as an “escritura”, that records the formalization of the acquisition.

When one condenses and “boils down” all of the language and definitions of law, coupled with the resulting legal effect that must be understood, what does a foreign purchaser really glean from this information? Simply, that Mexico’s Constitution and Foreign Investment Law are very specific regarding foreign acquisition of real estate, and particularly in the restricted zone. Most importantly, we as foreign buyers of Mexican properties must realize that title to real estate in the prohibited zone can **only** be vested one of two ways for our benefit: either in a 50 year renewable Mexican bank trust (*fideicomiso*); or, in a Mexican corporation that can solely and exclusively be owned by one or more foreign stockholders with no Mexican ownership participation. Make no mistake buying public. There is no gray area concerning Mexico’s constitutional or foreign investment law. The title to houses on the beach, villas, condominiums, townhouses or single family lots within Mexico’s restricted zone can only be conveyed into a *fideicomiso* with foreigners having renewable beneficiary interest. The assertion by some purchasers that title to residential real estate can be vested in a Mexican corporation for foreign ownership purposes simply is not correct. However, all other real estate, non-residential in nature, can be conveyed to foreigners in fee simple provided the title is in a Mexican corporation whereby foreigners can have exclusive ownership. And one final, salient point. Whether title is vested in a *fideicomiso* or a Mexican corporation, in either case, all of these properties can be insured by a U.S. contract of indemnity more commonly known as a title policy. There are a few U.S. title companies that can provide Owner’s and Lender policies for guaranteeing ownership rights in these Mexican entities.

Mitch Creekmore is the Director of Business Development for the Mexico Division of Stewart Title Guaranty Company in Houston and may be contacted at (800) 729-1900, ext. 8753 or (713) 625-8753.