



CARLOS SOLÓRZANO
SOLORZANO CORPORATION

Purchasing Real Estate in México

BY CARLOS SOLÓRZANO

Buying real estate in Mexico is secure and the process could be seamless if done properly. No different than you would do at home, always retain the services of an expert who can review and negotiate on your behalf

Dealing with the myths

We have all heard the horror stories about people buying real estate in Mexico. People losing significant amounts of money, or encountering challenges throughout the process. Some are purely myth, some are real. However, buying real estate in Mexico is as secure as it can be when involving the right professionals and following the right steps to obtaining the title of your property.

As a general rule, a foreign individual or company may directly own land in Mexico. However, due to a constitutional restriction, foreigners (individuals or companies) are prevented from acquiring direct ownership over land located within a strip 50 kilometers of the coastline and within 100 kilometers of international borders (“The Restricted Zone”).

Although direct ownership in the Restricted Zone is not available to foreigners, they can still acquire other rights over real estate if complying with the following:

1. A Mexican company with foreign investment up to 100% may directly acquire property within the Restricted Zone, as long as it is to perform industrial, commercial or tourism activities (non-residential);
2. Foreign individuals or companies may acquire the right of use and benefit from real estate for residential purposes through a trust executed with a Mexican financial institution as the Trustee. Trust permits are granted for 50 years and are renewable;
3. Foreign individuals or companies may lease real estate without limitation;

For Mexican territory outside the Restricted Zone, foreign individuals or companies may acquire fee simple ownership.

The Process:

Mexico's procedures, whether acquiring real estate or incorporating a company, tend to be more formal and it is complying with such formalities that in the end provides the security expected on any investment or business venture.

Step One: The Preliminary agreement

Typically, there are two agreements when purchasing real estate in Mexico. First is the "preliminary agreement" (promise to purchase) with the developer or seller. The second is the "final agreement" (transferring of title) before a Notary Public which represents the formalization of the first agreement. You will most often encounter a "preliminary agreement" when buying on preconstruction, which will outline all your payment obligations, the construction schedule, and finishing details for the developer.

The success or failure of your investment will strongly depend on your approach when dealing with the "preliminary agreement".

THE SUCCESS OR FAILURE OF YOUR INVESTMENT WILL STRONGLY DEPEND ON YOUR APPROACH WHEN DEALING WITH THE "PRELIMINARY AGREEMENT".

It is more common than not to see buyers signing these agreements while on vacation in Mexico without consulting a lawyer regarding the scope and consequence of such an agreement, and in many cases without properly assessing the economic impact. Certainly something you would never do when buying real estate in your home country. Therefore, the question: “Why do it in Mexico?”

Step Two: Formalizing a Trust

Foreigners acquiring real estate in the Restricted Zone for residential purposes must do so through a Trust. To incorporate such a Trust, a permit from the Ministry of Foreign Affairs must be obtained. The permit is granted for 50 years and it is renewable. The trust should always be administrated by a Mexican Financial Institution (typically a bank); the “Trustee”.

The vehicle of the Trust as a mechanism to acquire real estate in Mexico has been around for over 30 years. I am unaware of any case of a foreigner losing their interest due to deficiencies on this Trust structure.

Using a Mexican bank as the Trustee leads us to ask whether Mexican banks are reliable or if we should be using familiar names (Scotia Bank and HSBC) as Trustees? The answer is simple: all banks operating in Mexico, regardless of their name, are Mexican banks for legal purposes. Therefore, one is as reliable as the next and as sound as Mexico’s financial system.

When selecting the Trustee, it is not the name you should be focusing on but the Fiduciary services that such a bank provides in the area in which you are purchasing. Different banks have different regional interests and their services may be outstanding in some areas and questionable at best in others.

Step Three: The Final Agreement

The final agreement (transferring of title) is the most important step in purchasing real estate in Mexico and it is due when all the obligations and dates on the first agreement are met, or can also replace the first agreement when buying finished assets.

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ALL BANKS OPERATING IN MEXICO, REGARDLESS OF THEIR NAME, ARE MEXICAN BANKS FOR LEGAL PURPOSES.

IT IS WRONGLY PERCEIVED THAT THE NOTARY MAY BE REPRESENTING THE INTERESTS OF THE BUYER.

There is always confusion among foreigners regarding what the role of the Notary Public is during the purchasing process. It is wrongly perceived that the Notary may be representing the interest of the buyer. The Notary Public is involved in ensuring that any transaction formalized by you is granted and complies with all applicable regulations, taxes paid, and registrations obtained.

The final agreement is always granted before a Notary Public (lawyer with special patent granted by the state or federal government). When the real estate is located in the Restricted Zone, it is with the Notary Public that the incorporation of the trust takes place. The final agreement, once formalized by the Notary, is registered at the Public Registry of Property. It is not until this last step is done that your acquisition of real estate in Mexico is complete.

Three recommendations for a smoother process

1. First, never sign an agreement to purchase real estate while vacationing in Mexico. Regardless of the attractiveness of the deal and the reduced price the sales agent may present to you, always obtain a copy of the contract, as much information as possible about the project, bring it back home to be reviewed by an expert and use a professional to negotiate on your behalf.
2. Second, before purchasing real estate in Mexico, retain your own lawyer to assist you during the final agreement, commonly refer as the closing process.
3. Third, select your Trustee based on their services, fees and presence in the geographic area in which you are purchasing, instead of by the name of the Trustee.

NEVER SIGN AN AGREEMENT TO PURCHASE REAL ESTATE WHILE VACATIONING IN MEXICO. REGARDLESS OF THE ATTRACTIVENESS OF THE DEAL.

Conclusion

Buying real estate in Mexico is secure and the process could be seamless if done properly. No different than you would do at home, always retain the services of an expert who can review and negotiate on your behalf the terms of your first agreement (preliminary agreement) and to assure that the process is thoroughly completed and your title is duly registered at the corresponding Public Registry of Property.



Carlos Solórzano

Tel. (403) 718-9808 Email: carlos@solorzanocorporation.com

Carlos is a licensed lawyer from Mexico, having worked primarily on corporate and commercial issues, particularly structuring foreign investments to comply with Mexican laws. He has extensive experience regarding the formation of corporations and limited liability companies (its equivalents in Mexico), negotiation and implementation of joint ventures and strategic alliances and real estate transactions involving commercial, residential and mixed-use developments.

Prior to partnering for the launching of SOLORZANO CORPORATION, Carlos served for 3 years as a consultant with the Canadian Law Firm Fraser Milner Casgrain LLP, assisting several clients on successfully establishing their businesses in Mexico. From 2002 until to 2005 Carlos worked for the Mexican Consulate in Calgary promoting investment from Alberta to Mexico by providing potential investors with guidelines for conducting business in Mexico. Before moving to Canada in 2002, Carlos practiced law with top tier law firms in Mexico representing Mexican and non-Mexican clients.



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