

Marcor Realty



Fideicomiso or Bank Trust

Have you toyed with the idea of purchasing a home in Mexico? If so, you're not alone. Over 70,000 United States citizens now live between the border and Ensenada. Not all are here full time. Many have second homes they occupy on weekends and during the summer months. Others have moved to Mexico permanently to retire. Young people, trying to escape the high prices of homes in California that doom them to remain renters, are now purchasing in Mexico with the intent to commute to jobs in San Diego with the ease of the Senti Pass. The Rosarito area has become a Mecca to those wishing to start anew.

The purchaser's first job is to locate an agent and agency that is credible and reliable. Websites, local newspapers, the phone book, personal recommendations and interviewing potential agents are sources that are available to use. The following questions should be considered: Is the agent someone I like and trust personally? How much experience does he have? Does he belong to real estate organizations that promote a code of ethics? Does the company have a computer capabilities? Does the company have a good reputation?

Once you have found the agent and agency you feel knows the area and has the drive to find what YOU are looking for, don't hesitate to let him do his job. Consider signing a buyer-broker agreement that will motivate him to work hard for your interest. It stands to reason that if you aren't committed to him by bouncing from agent to agent, he then can't be committed to you. On the other hand, commitment bonds with commitment.

If a buyer wants to buy and a seller wants to sell, it's the real estate agent's job to put the two together for a win-win business deal. It is no different than anywhere in the world.

The differences comes in the laws that govern the land and in the procedures of the transactions.

For instance, according to Mexican law, a foreign individual can't hold fee simple or direct title in residential areas of most the Baja peninsula since there's a restricted zone 100 kilometers deep from any Mexican border and 50 kilometers from any coastline. The peninsula is so long and thin, it generally applies to all of Baja. As a result, the bank trust or "Fideicomiso" (pronounced "Fee-deh-com-ee-so") has been established under





the guidelines of the Mexican government to allow foreigners to acquire ownership rights to real estate property within these restricted zones.

What exactly is a Fideicomiso? It is a bank trust. The Mexican bank becomes the Trustee or legal titleholder when the Settlor or seller irrevocably transfers a house, condominium, or property to the benefit of the foreigner, or trust Beneficiary, the buyer. The beneficiary can utilize and enjoy the property as he wishes, having the rights of ownership but not the "direct dominion" which is held by the bank. A beneficiary can direct the bank to lease, mortgage or sell the property. He can pass the property to his heirs who become the Beneficiary Substitutes as they move into the position upon the death of the primary beneficiary.

In reference to a bank trust transfer, the correct words to use are not "transfer of title", but are "transfer of trust rights" or "assignment of trust rights." The normal term of a

bank trust is fifty years, but multiple renewals are permitted under the law. In this way, a family can control Mexican property for generations.

It should be made clear that the bank trust is never considered an asset of the bank. The bank or trustee must fulfill its duty to the beneficiary by assuming full technical, legal and administrative supervision of the trust in order to protect the interest of the beneficiary or buyer. It can't make decisions concerning the property without written directions of the beneficiary. A bank trust provides to the beneficiary absolute control over a property. A worst case question to be answered is, "What happens if the bank fails?" The answer is simple. The bank trust is transferred to a different authorized bank.

A buyer needs to be aware that some properties don't qualify for a bank trust. In fact when a purchaser selects a property, the first question he should ask is, "What type of title does this property offer?" It may or

may not have an existing bank trust in place. If it has one, the purchaser may choose to transfer an existing bank trust or to create a new one, provided that the property qualifies for a bank trust. If he chooses the transfer, he will acquire the remaining years on it. For instance, if there are 15 years remaining, the trust transfers with that fifteen-year time frame intact. If a new one is created, it must be formed in the trust department of an authorized bank. A new 50-year trust will be established. When setting up a new trust, it is wise to investigate the costs as they vary from bank to bank. Also, some banks are more time efficient than others. This is when an experienced real estate agent's knowledge is useful. Such knowledge can save time and money.

Because a permit to acquire the Fideicomiso, which becomes part of the deed, must be obtained from the Secretary of Foreign Relations in Mexico City, a transactions closing may take longer than the usual expectation of thirty days. Be





patient. It could take between 6-8 weeks. The government runs on its own time frame.

On December 28, 1993, a new law was established in Mexico allowing for limited foreign ownership in the restricted areas. A 100% foreign owned Mexican company may directly own fee simple title to property providing it is for commercial or industrial, not residential use. No bank trust is required. This law was enacted as part of foreign investment law to attract foreign companies to invest in Mexico and does not pertain to individual residential transactions.

In any country the best way to purchase property is by getting fee simple title. Mexican citizens qualify for fee simple, yet many choose to receive a transfer of a bank trust when given the choice because they know it can be a valuable sales tool when reselling the property. If the most likely future purchaser is a foreigner, having a bank trust already in place could be an attraction to the

potential buyer. Therefore, a Mexican citizen may choose the bank trust option over the Escritura, or fee simple title.

When selecting property to buy, a purchaser needs to be aware of the differences between a Master Bank Trust and an individual bank trust. A Master trust is a bank trust that has been obtained by a developer for an entire subdivision. When identifying the property you want, make certain the property offers an individual bank trust. If it doesn't, you may still purchase the property. It just won't be as secure as an individual bank trust since it will be officially registered as a bank trust in the developer's name, not yours.

An individual bank trust offers the purchaser security with its regulation by the government. The paperwork is thick and official. The bank has to pass through extreme security in order to obtain official authorization from the government. It can't make mistakes. The property has to be legally owned by the

seller through an Escritura Publica or bank trust and can't have any liens against it. Both the buyer and seller have to have photo identification and proper paperwork. The transaction needs to be witnessed and registered locally as well as in Mexico City. As a result, obtaining an individual bank trust is the most secure way in which an individual foreigner may personally own the rights to residential property in Baja Calif, Mexico.

