



# STEPS TO BUY IN MEXICO

# INTRODUCTION



Although many aspects of buying properties in Mexico are like the processes we already know from the U.S. or Canada, there are some very important details that you, as a foreigner buying here, should know in order to complete your property transaction safely.

This guide was especially designed by a team of leading experts for American and Canadian buyers who are new to the Mexican real estate purchasing process, or for buyers who, having been somewhat involved in Mexico's real estate culture, have realized that they really need to check out the details, and get it right for the next time. The guide was developed on a Frequently Asked Question concept, taking the questions that buyers new to Mexico's market most often ask, and complementing these with questions that buyers should ask, but usually do not.

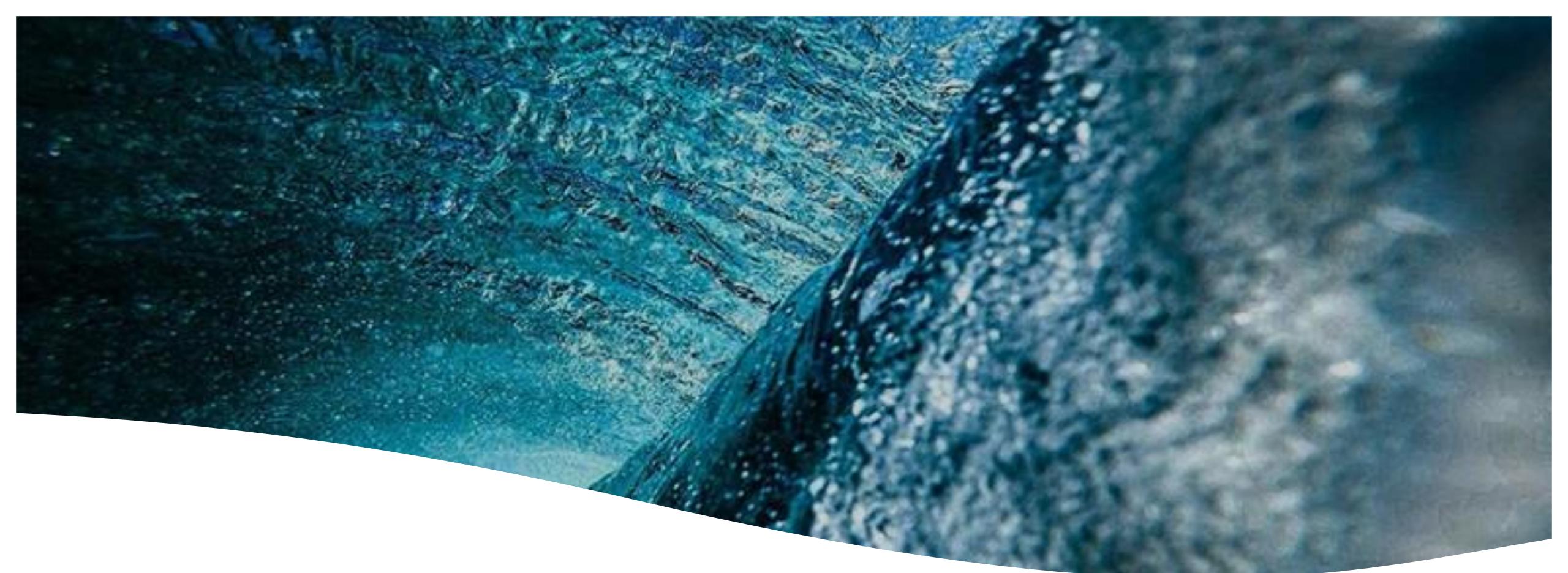
# WHAT ARE THE STEPS IN THE REAL ESTATE PURCHASING PROCESS IN MEXICO?

- The specific process will depend on factors like location, price, type of property, etc, but we can summarize the steps like this:
- 1. Find an agent, start looking for properties online
- 2. Plan a visit to tour the properties.
- 3. If you find one that you love, make an offer!
- 4. If the offer is accepted, talk to your lawyer to draft a purchase agreement.
- 5. Make a deposit.
- 6. Get permits, appraisals and all documents needed for the closing.
- 7. Sign the Title Deed at the Notary Public.



The process for foreigners buying properties in Mexico is like the United States and Canada, yet some extra steps are required. The most notable of these extra steps are the requirements of registering and obtaining permission from Mexico's Secretary of Foreign Relations, and if you are buying in the "Restricted Zone", which is the area within 100 kilometers of any national border and within 50 kilometers of any coastline, establishing a bank trust or Mexican corporation.





# PURCHASING PROCESS

# WHAT IS THE DIFFERENCE IN PURCHASING PRE-CONSTRUCTION VS. RESALE?

- Purchasing pre-construction means that the property to be acquired is in the process of being built – therefore there is no finished product.
- On the other hand, a resale is the purchase of a property that already exists and has been owned by another person. This property could be a house, condo, lot or commercial space.



If you choose to buy pre-construction, the first and most important thing to do is to research the developer's background. What do you know about the developer? Have your Buyer's Representative help you respond these questions.

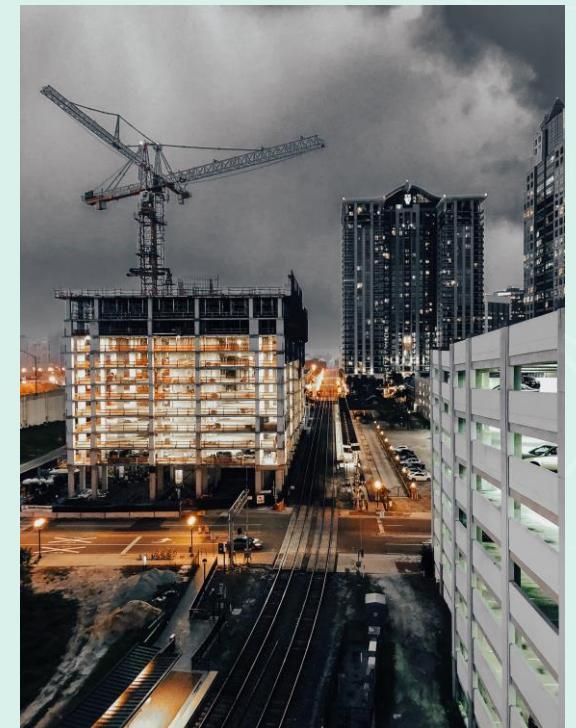
- Have they completed other projects in the area?
- Do they have experience building on the beach?
- If they have had issues in previous buildings, what are they doing to improve yours?

Purchasing in a new development can be a dream come true if you use prudence and sound judgment. Work with an experienced and reliable real estate agent to help you review documents, contracts and act as your advocate.

Typically, developments have a form purchase agreement. Ask to see the boilerplate agreement and look for the following items to be included:

- Plans and specifications of your particular unit and the common areas
- Date of physical and legal delivery and penalty clause in case of non-compliance
- Rules and regulations for the condominium
- If buying a custom home, payments can be set based on milestones; otherwise, a payment schedule should be outlined

## WHAT CAN I DO TO PROTECT MY INVESTMENT IF I PURCHASE PRE- CONSTRUCTION ?



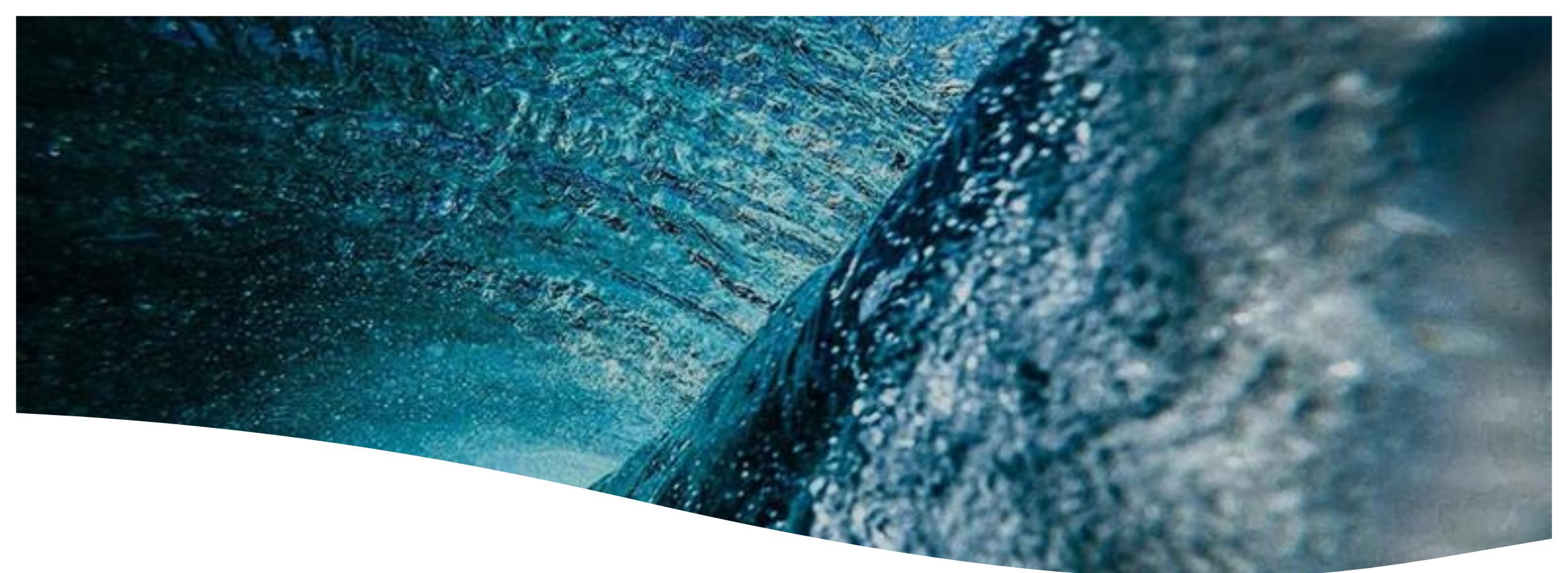
## HOW DO ESCROW ACCOUNTS FIT INTO THESE PROCESSES?

Escrow accounts serve as a safety factor for the buyer, since they are used to hold funds and have them in custody during the purchasing process.

An escrow account is used when a property is complete and ready for titling. Realtors recommend it when someone has made an offer on a property and needs to pay a deposit, since the money is kept safely in the account while the closing papers are drawn up.

Usually these funds are a 10% of the purchase price for the earnest money deposit and the subsequent 90% funds for the balance of the purchase. Putting funds in escrow shows a firm commitment on the part of the buyer, but it's also a safety factor for them, since they should issue specific instructions as to when and under what conditions the funds are to be released to the seller.

In the case of a resale property, once an offer has been agreed to by all parties, an earnest money deposit is placed in escrow. The Escrow Company will hold the funds until the closing, and they will disburse these funds according to a letter of disbursement signed by both the buyer and the seller. In the case of preconstruction properties, many developers receive the deposit and following payments directly and most do not use escrow services. In this case it is important to ask your broker about the reputation of the developer in question, and, better yet, contract an attorney to represent you for the purchase transaction before giving any deposit monies.



# BANK TRUST AND RESTRICTED ZONES

# WHAT IS A BANK TRUST AND HOW IS IT RELATED TO THE RESTRICTED ZONE?

The trust system was established by the Mexican government to protect foreigners wishing to purchase real estate in the restricted zones, where they are prohibited to hold title in their names.

As we commented before, the restricted zone is 50 km (31 miles) from the coast and 100 km (62 miles) from any border. If a foreigner is purchasing outside of this area, then the trust is not necessary.

Do not be confused: a Bank Trust is not a “lease”. Much like living wills or estate trusts in the U.S., the Mexican bank, or Trustee, takes instruction only from the Beneficiary of the trust (the purchaser). The Beneficiary has the right to use, occupy, lease and possess the property, including the right to build on it or otherwise improve it.

The Beneficiary may also sell the property by instructing the Trustee to transfer the rights to another qualified Purchaser, or bequeath the property to an Inheritor. The initial term of the trust is 50 years, however the trust can be renewed for additional periods of 50 years indefinitely, providing for long term control of the asset.

The process of renewal is relatively simple and inexpensive. Furthermore, in the event of death, the heirs do not need to go through probate as the property is in trust and they are already designated as the substitute beneficiaries. There is a process that is necessary with accompanying fees, but it is fairly simple. The property is held in a trust through a Mexican bank, wherein the bank is the trustee, you are the beneficiary and you designate substitute beneficiaries upon your passing.



## WHEN SHOULD I USE A BANK TRUST AND WHEN SHOULD I USE A MEXICAN CORPORATION?

In most cases it is best to use a bank trust. but if the buyer is going to use the property strictly for business, owns multiple properties, or if he is planning to run a business here, then it may be best to set up a corporation.



# WHICH ARE THE ADVANTAGES AND DISADVANTAGES OF EACH OF CORPORATION?



## Advantages

- The corporation is a Mexican entity and has the right to hold title to real estate.
- It allows for the purchase of properties larger than 2000 square meters.
- There is no limit to the number of properties it may own.
- It allows for one or more of the stockholders to live and work in Mexico legally year round.

## Disadvantages

- The corporation requires more hands on attention than the bank trust.
- It does not have the ability to avoid capital gains taxes when it sells property.
- It requires a minimum of 2 stockholders. If foreigner, the managing partner must have a Temporary or Permanent Resident visa. He can also be a Mexican citizen. The requirement in either case is that the managing partner has FIEL (electronic tax ID).
- It involves monthly reporting of financial activity through a certified accountant.

# WHICH ARE THE ADVANTAGES AND DISADVANTAGES OF EACH OF BANK TRUST?

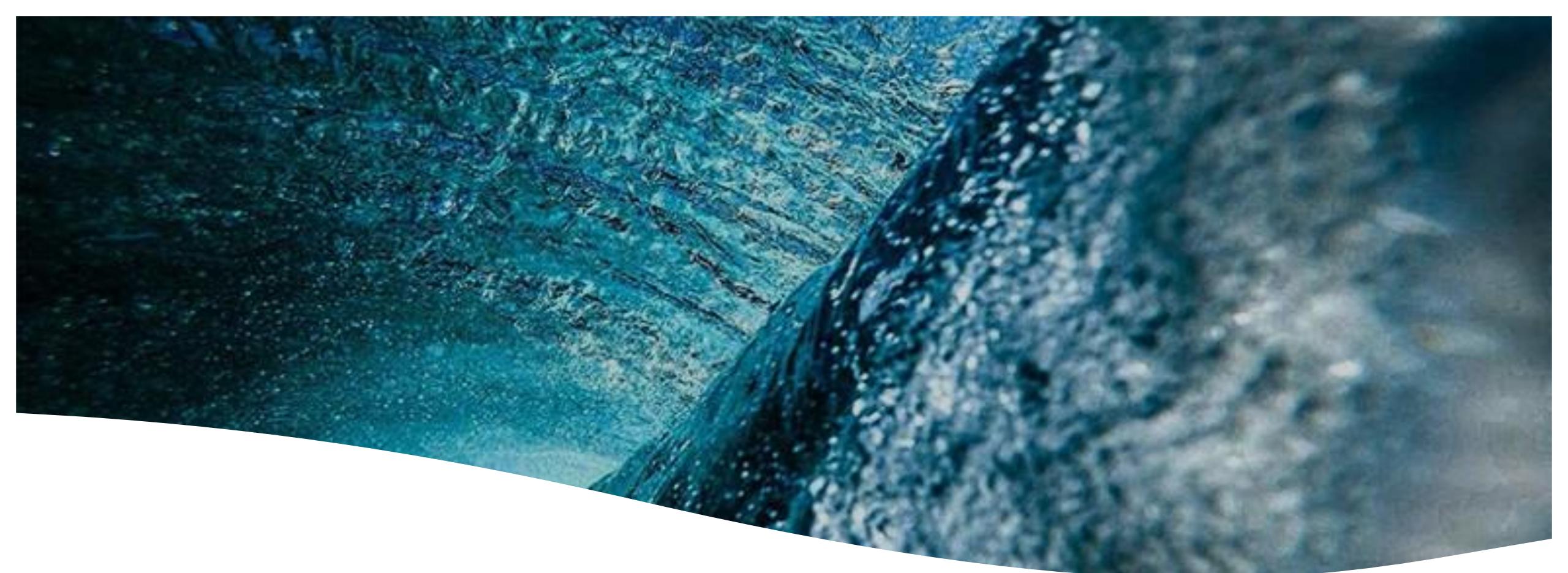
## Advantages

- The bank trust gives you the rights and the vehicle to hold title to the property in perpetuity.
- It is a 50-year trust agreement that is renewable every 50-years by you or your heirs.
- You can transfer your rights in the bank trust to a foreign buyer.
- You may rent, sell, remodel or dismantle the improvements on the property.
- Your heirs can inherit the rights to the bank trust, effectively by-passing probate, should you depart without a proper will.
- There are also tax advantages pertaining to capital gains taxes when you sell.
- The bank trust is easy to maintain by paying the annual fee to the bank.

## Disadvantages

- It is restricted to hold a property of no more than 2000 square meters. There are exceptions, but it is a complicated process.
- It is limited to one specific property. Sometimes you can put two adjoining properties into the same bank trust. But the bank trust only is usable for one piece of property.





OFFER TO PURCHASE

# WHAT SHOULD AN OFFER TO PURCHASE INCLUDE?

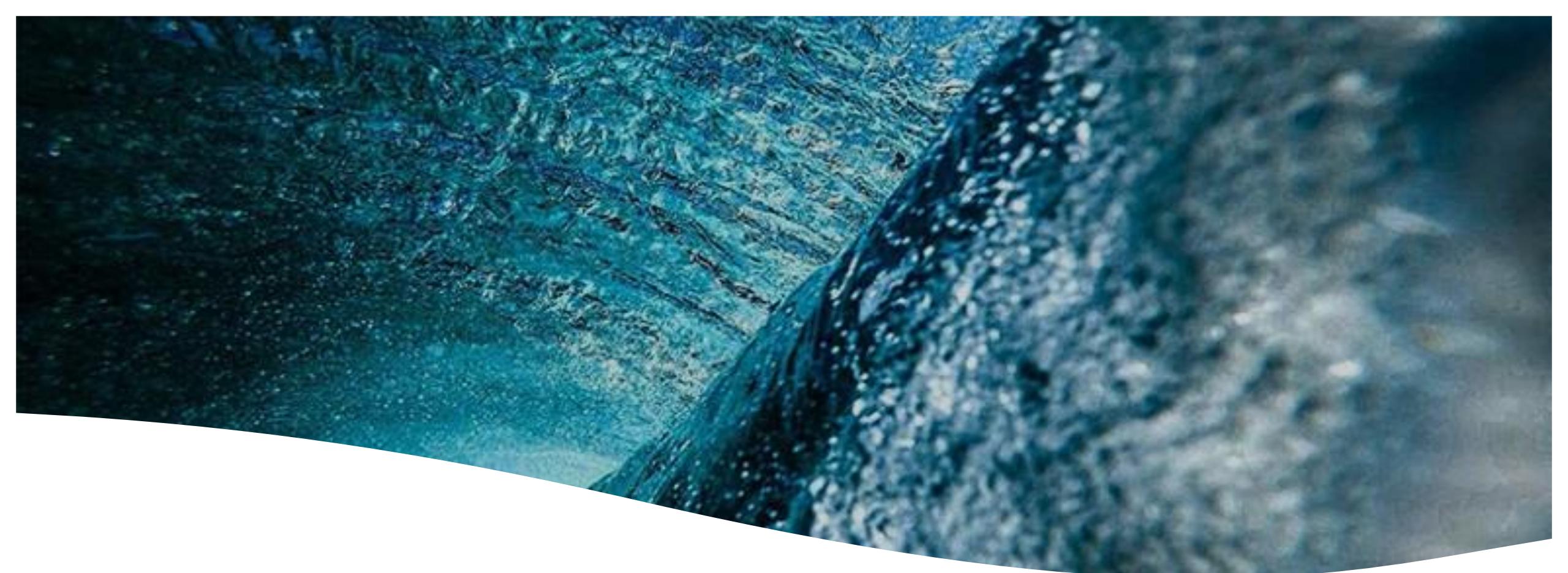
The most important information that an offer must include is the name of the prominent purchaser, the property to be purchased, the purchase price offered and general conditions that the prominent purchaser would like to offer to the seller. But if you're more into details, here's a list of items to include:

- Names and personal info of the parties
- Description of the property
- Price and payment terms
- Provisions for escrow (if applies)
- Terms and conditions of the offer
- Offer to Purchase
- Promissory Contract
- Title Deed
- A timeline noting the dates of signature of the contract, estimated dates for signing  
the deed and for receiving physical and legal delivery.
- Name of person responsible for closing costs (typically buyer), real estate fees and

capital gain tax (typically seller)

- Responsibilities of the parties
- A clause indicating that the title shall be passed free and clear of liens or encumbrances
- Penalty clause in case of non-compliance
- Property condition
- Inclusions
- Term of effect
- Jurisdiction
- Signature of the parties and witnesses





# PROMISSORY CONTRACT

# WHAT IS A PROMISSORY CONTRACT?

- It is the agreement where terms, conditions and obligations of the purchase are agreed upon. It is a more formal document, outlining the terms and conditions of the acquisition and sale, which could have timing or conditional clauses.
- It is used when it is uncertain what you will buy or how much you will pay, and it is especially important when title transfer may take time, such as in pre-construction, where the final steps of transferring legal possession may not occur for several months or years into the future.



# WHAT ARE THE ITEMS TO LOOK OUT FOR IN A PROMISSORY CONTRACT?

The promissory contract should clearly set forth the specifications that will eventually be contained in the purchase sale contract, most importantly price and terms. But there are more items that must be included. Here's a list of information that you should make sure is included in your Promissory Contract.

- Name of purchaser and seller
- Full legal description of the property
- Purchase Price and payment schedule
- Date of delivery of possession and transfer of title
- Penalty clauses in the event of default



# WHAT IS THE TITLE DEED?

It is the final contract, the transfer from seller to buyer. In the case of the purchase sale of real estate, it is formalized in a public document before a notary public, either in the form of a purchase sale contract or a trust deed, as the case may be. The deed is the notarized sales contract or trust. This is also a sales contract prepared by notary, which can be very different from the Title Deed. The deed is usually about property description and price. All other terms in the Title Deed are performed before closing.

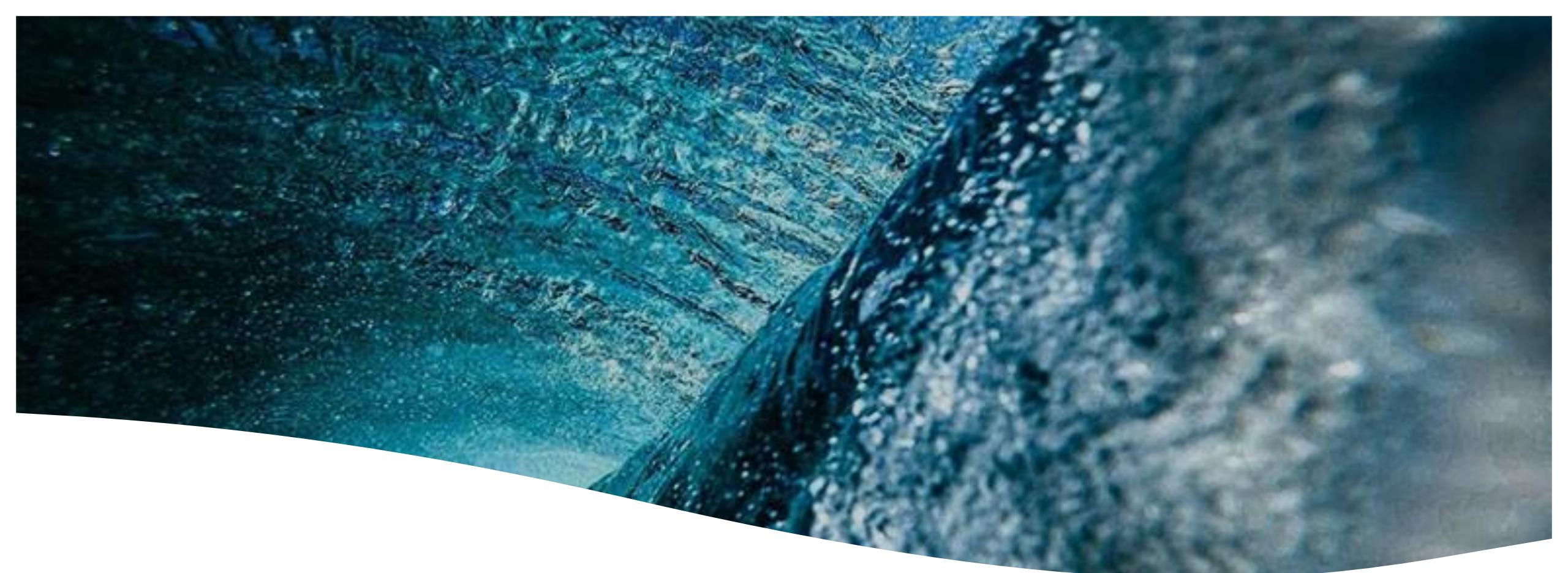


## WHEN DO WE USE THE TITLE DEED

Always. This is like your deed of Title in the US. And it always needs to be signed in front of a Notary Public and recorded at the public registry. The promissory contract only gives the parties the obligation to enter into the future contract, i.e. the obligation to take an action.

The Title Deed is the final action.





# THE KEY PLAYERS IN A MEXICO REAL ESTATE TRANSACTION

# HOW IMPORTANT IS IT TO FIND THE RIGHT AGENT?



It is extremely important. The purchase of a home is likely the single largest financial commitment you will make in your lifetime. When coupled with the fact that you are investing in a second home in a foreign country, it is imperative that you have a knowledgeable, experienced, professional real estate agent representing your interests.

*The right agent will:*

- Listen to your dreams and needs
- Find the best property to suit your requirements
- Negotiate the best price for the property that you want
- Share information about notaries, attorneys, accountants and all professionals you need to close successfully need after you buy your property
- Provide information about architects, builders and other service providers you will need after you buy your property

# WHAT ROLE DOES A NOTARY PUBLIC HAVE IN THE PURCHASING PROCESS?

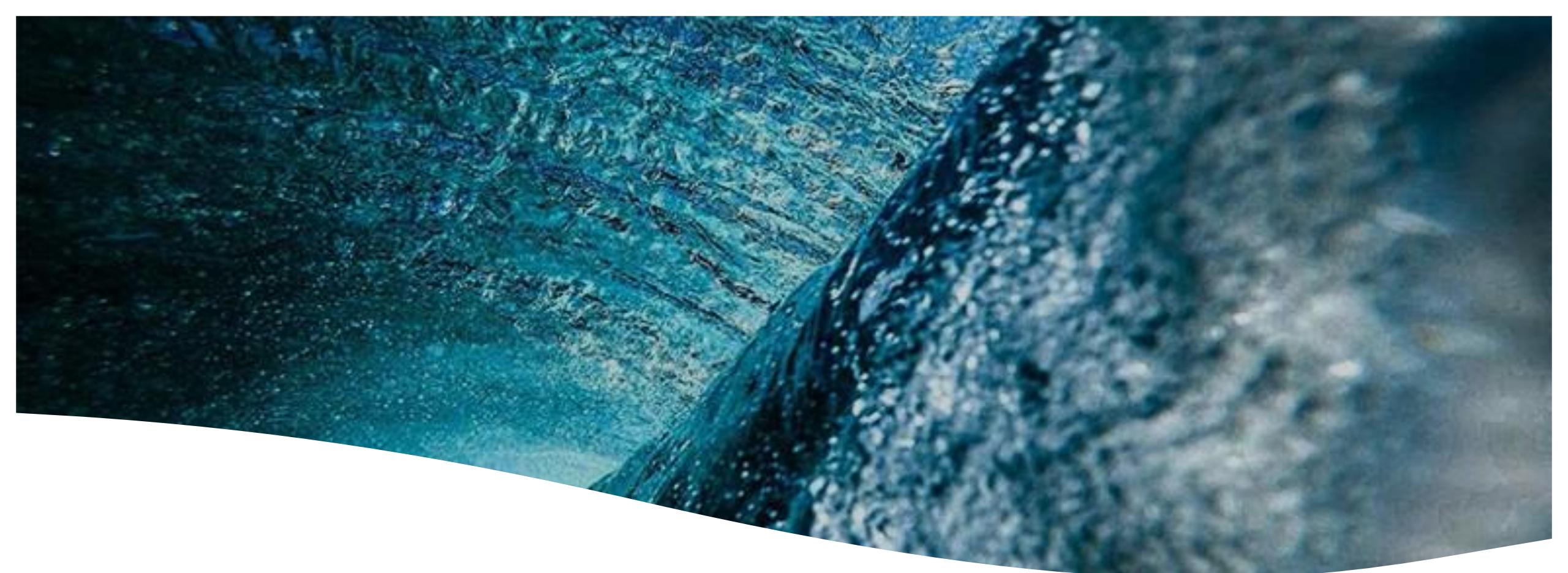
A notary public has a fiduciary responsibility to both parties and sanctions that contract from a tax and legal point of view. He is also legally responsible for the accurateness of the transaction.

The Notary Public will check all paperwork on real estate transactions and confirm the correct people have signed all the necessary paperwork. They collect taxes that need to be paid and register the property in the public register of properties.

As part of the closing process, the notary public will verify the following official documents, which are required by law for any transfer:

- A no-lien certificate from the public property registry, based on a complete title search.
- A statement from the treasury or municipality regarding property assessments, water bills and other pertinent taxes that might be due.
- An appraisal of the property for tax purposes.





# CLOSING COST ESTIMATES

# WHAT ITEMS ARE IN THE CLOSING COSTS?

*Following is a list of items that will be paid by the buyer:*

- Property acquisition tax
- Added Value Tax
- Public registry rights
- Appraisal by authorized valuator
- No liens certificate
- Notary's fees and legal expenses
- Attorney's legal expenses
- Bank Trust fees
- Notice for Mexico's Foreign Affairs Department
- Escrow fee (if applies)

*The seller is responsible for certain fees as well:*

- Capital gains tax
- Tax property certificate
- Any unpaid utilities
- Property taxes
- Sales commissions





## WHAT PERCENTAGE SHOULD I ESTIMATE FOR THESE COSTS?

Usually the total closing costs will be around 3% to 11%, depending on the State where you are purchasing and upon the value declared in the operation: the lower the value, the higher the percentage. Closing costs can also run higher depending upon the vehicle used to hold title and what attorneys you use.



## ARE THERE ANY OTHER COSTS THAT MAY OCCUR?

Yes, there is the possibility of a “reverse capital gain tax” for the buyer if the property appraisal comes in more than 10% below the purchase price. This is extremely rare but can happen.

Other expenses that could arise are consultation fees to clear up any unexpected situation and home inspections.

# SERVICES



REALTOR



LEGAL



DEVELOPERS