

Buying Property in Puerto Vallarta



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Frequently Asked Questions

Can Foreigners Buy Property in Mexico?

- Yes- In this region, foreigners buying property in Mexico need to own it through a bank trust referred to as a Fideicomiso.

The Bank Trust is established through a Mexican bank assuring foreign buyers of all the rights and privileges of ownership. As of 1993, the Foreign Investment Law allows these deeds to be established for a term of 50 years and to be renewable upon termination. This process protects the rights of foreigners and makes sure that the transaction is legal and unencumbered. For more than 35 years, many thousands of American and Canadian citizens have used the Bank Trust ownership system in Puerto Vallarta – Riviera Nayarit area and throughout Mexico’s coastal resort destinations. The Bank Trust Fees are to be paid on an annual basis on the anniversary date of the formal closing.

Why Do Foreigners Need A Bank Trust to Purchase Property in Vallarta?

- The Mexican Constitution of 1917 designated the area within 100 kilometers (62 miles) of Mexico's borders and within 50 kilometers (31 miles) of the coastline as off limits to direct real estate ownership by foreigners. This used to be known as the “Prohibited Zone” but new beneficial legislation in place now refer to it as the “Restricted Zone”.
- A foreigner can purchase the right to hold, occupy, use, improve, develop, rent and sell real estate by purchasing a beneficial interest in a bank trust which holds the legal title to the property.
- The bank acts as trustee while the beneficial interest in the trust is owned by the foreign individual.
- The trustee bank is obligated to deal with the property only for the benefit of the beneficiary.
- The bank takes its instructions from the beneficiary owner only.
- The beneficiary may be a foreign individual or other foreign legal person such as a corporation.
- The trust exists strictly for the benefit of the beneficiary who is for all practical purposes the owner of the underlying property.
- The property may be passed on by will or inheritance, it can be used as collateral for a loan and the property can be freely enjoyed, rented or sold all as determined by the owner beneficiary.

The Foreign Investment Law of 1993 went even further and authorized the out-right ownership of nonresidential real estate in the Restricted Zone by a Mexican corporation which can be 100% foreign owned. This includes real estate purchased for development which will be sold off to foreigners for residential use. The corporation is considered Mexican and therefore the foreign shareholders can own the land directly through this Mexican person.

What Is a Mexican Bank Trust Or Fideicomiso?

- Any foreigner or Mexican National can constitute a Fideicomiso (the equivalent to an American beneficial trust) through a Mexican bank in order to purchase real estate anywhere in Mexico, including the Restricted Zone.
- When buying property in Mexico as a foreigner, the buyer with their agent requests the Mexican bank of their choice to act as a trustee on their behalf.
- The bank, as a matter of normal course, obtains the permit from the Ministry of Foreign Affairs to acquire the chosen property in trust.



- The Trust term is 50 years and can be automatically renewed for another 50 year period.
- During these periods you have the right to transfer the title to any other party, including a member of your family.
- The bank becomes the trust holder of the property for the exclusive use of the buyer/beneficiary who has all the benefits of a direct owner, including the possibility of leasing or transferring his/her rights to the property to a third party or to a pre-appointed heir.
- The bank ensures precise fulfillment of the trust, according to Mexican law, assuming full technical, legal and administrative supervision in order to protect the interests of the buyer.
- "Fideicomisos" (Trusts) are not an asset of the bank.
- More Mexican Nationals are opting to purchase with a Bank trust because it clearly states who they wish to become their beneficiaries in the event of death.
- The Trust works as a will and testament for the property purchased and saves time and money by avoiding a lengthy probate case (which can be 2+ years in Mexico).

What Documents Do I Need in Order to Buy Property in Mexico?

Apart from having the necessary funds, there are standard documents you will need to present to the Notary when buying property in Mexico as a foreigner:

- Valid passport.
- Valid driver's license (normally 2 forms of photo ID are required).
- Proof of address (at home or here in Mexico) in the form of a recent utility bill.
- Birth Certificate
- Marriage License
- Personal information (full legal name, date of birth, place of birth, address, contact information email and phone).
- Beneficiary information (full legal names, copy of passports of official IDs and addresses).

THE PURCHASE PROCESS

In order for you to understand better how the process works, here you have the steps once you have decided to make an offer on a property:

- The agent prepares the offer for you to sign
- The agent presents it to the selling agent
- The owner will either accept it or counter offer

Once there is an agreed price and the offer has been signed by both parties,

- The buyer will have a contingency period of about 10 to 14 days to do an inspection and review condo docs, etc.
- Both the seller and the buyer sign the contract to open an Escrow account
- The buyer will send to the Escrow account (that costs \$750 USD) a deposit of the 10% of the purchase price.
- A closing cost estimate will be provided by the agent from the closing attorney and the closing Notary



- The buyer will send the closing Notary a wire transfer of 4,000 USD of the closing expenses as a deposit.
- The closing Notary and the closing attorney work on the closing paperwork documents.

A few days before the closing:

- The buyer will send the remaining balance of 90% of the purchase price and the balance of the closing costs to the Escrow Services account.

Once the closing takes place and all documents are signed, the closing Notary and the closing attorney will let the escrow company know the transaction was successful and properly closed. Then the escrow company releases the funds to the seller and the agencies involved.

Do I Need A Temporary or Permanent Resident Card in Mexico?

If you do not plan to stay in Mexico for more than 6 months at any time then no, you don't. If you are planning to stay for more than 6 months in Mexico, then the answer is yes.

If you plan on selling your property, then you will have to have Temporary or Permanent Residency and an RFC (Mexican Taxpayer Number).

How Do I Get a Mexican Resident Card?

If you wish to stay for more than 6 months consecutively in Mexico then you will need a Resident Card.

The residency process is initiated by setting up an appointment at the nearest Mexican Consulate to where you live abroad (Home Country).

You need to attend the meeting in person and deliver the requirements they will outline for you. Immigration law being a federal law, the requirements should be the same however please note each Consulate has the ability to request less or more paperwork.

As a general guideline, they will ask for:

- Original passport (and photocopy of the page containing the photo and personal data)
- Visa application form (printed on one page, double sided)
- One photograph measuring 3.9 cm x 3.1. cm, face uncovered, no eyeglasses, frontal view, in color, and with white background.

- Payment of fees in cash (please note fees are updated monthly).

For Permanent Residency: Original and photocopy of investment receipts or bank account statements showing an average of monthly balance equivalent to \$100,000 USD (changes yearly) or original and photocopy of tax-free monthly income from pensions for roughly \$100,000 USD (changes yearly).



For Temporary Residency: Original and photocopy of investment receipts or bank account statements showing an average of monthly balance equivalent to \$3,000 USD (changes yearly) or original and photocopy of tax-free monthly income from pensions for roughly \$3,000 USD (changes yearly).

The process can take up to 10+ days in which they will hold your passport. Once you obtain the visa, you must travel to Mexico within the next 6 months to finalize the residency process.

Once in Mexico, the requirements are:

- Proof of address from Mexico (utility bill). If it is a rental then the utility bill and the rental agreement.
 - Photos "infantile" size, face uncovered, no eyeglasses, frontal view, right view, in color, and with white background.
 - Original passport
 - Original FMM that is stamped in your passport.
- Signing the letters and applications (depending on whether you applied for the temporary or permanent residency).

The process takes approximately 8 weeks. Please note that during those weeks you cannot leave Mexico without a special exit permit that has an additional cost of \$150 USD (today's rate) so please plan your travels accordingly.

The fees and expenses vary depending on which visa you apply for. For the Temporary Residency, it can only be issued for one year - after the one-year initial period you can reapply for 2 or 3 years). For the Permanent Residency, there are no renewals on this visa.

If You Want to Be A Registered Tax Payer in Mexico, You Will Need an RFC Tax Number.

How Do I Get One?

The RFC is a unique TAX ID number issued to all active and non-active tax payers in Mexico.

This can be obtained in person to the local Vallarta SAT office (Mexican IRS office).

You will need your original Passport, Immigration Card and proof of address to obtain the RFC in person at the SAT office.

When Does the Closing Process Take Place?

- All sales are conducted through a Notary Public.
- A Spanish sales contract with a courtesy English translation is written up and presented to you for review then initial each page and sign.
- Once a price is agreed upon by the buyer and Seller, A Closing coordinator will facilitate the sale process and closing for us, at no extra cost to the buyer.
- We set up an Escrow account (approx. \$750 USD) to hold funds until closing.
- A standard 10% deposit in the escrow account is required to formalize the sale.
- Standard timing is 60 days for a closing and can be up to 90 days if the property is acquired through financing.



- The final balance of 90% purchase price and balance of closing costs are transferred to Escrow a few days prior to closing.

Closing costs run (approximately 5-7% of the total purchase price) are paid by the buyer, with the seller paying the applicable capital gains tax and the real estate fees (which are 100% deductible against the capital gains tax). Depending on each individual transaction, the buyer may or may not need to be present at the closing. Sellers are always required to be present at closing, in the event a seller can't be present, he/she/they can grant a POA to someone they trust.

The closing attorney arranges all the documentation with the Notary and the Public Registry office and when we are ready to close the buyers and sellers meet at the Notary for the final signatures.

On closing, the buyer is given a copy of the certified deed, but the original registered version can take up to 6 months to get formally registered in the Public Registry office. Once it is ready, the Notary will let the buyer know to come and collect it.

What Is Public Registry?

- In Mexico, deeds, usually known as public instruments, can be researched at the local Public Registry of Property which is open to the public.
- The deed must be finalized and signed by a Notary Public.
- The deed will typically list the parties involved in the transaction including the Notary, seller, buyer, and the trustee bank.
- The deed identifies the property.

Once the deed is finalized and signed by the Notary, by the seller, by the bank as trustee (if a bank trust is involved) and by the buyer (who will also be the trust beneficiary if a trust is used), the transaction is considered closed.

Why Do Property Sales Go Through A Public Notary?

- In Mexico, a Notary Public is a governmental official who reviews all documents of importance with respect to the sale of real estate.
- The training, function and responsibility of Notary Public in Mexico are completely different from North America.
- In Mexico, a Notary Public is appointed by the governor of a Mexican state for life.
- A Notary must be a Mexico licensed attorney.

Becoming a Notary Public involves attending law school in Mexico, obtaining a law degree, passing an exam and being admitted to the bar in Mexico. To hope for appointment, the prospective Notary Public must then work as an apprentice for several additional years with a Notary Public. A Notary does not act as an escrow service. The Notary Public's job is to see that certain formalities have taken place. Although a Notary is always an attorney, it is not the Notary's job to provide any party with legal advice. Any buyer or seller who wants legal advice should hire a separate lawyer licensed in Mexico.



Can Foreigners Get A Mortgage in Mexico?

- Currently financing is available for citizens of Mexico, the USA, Canada, the UK and Spain.
- There are financial institutions that work locally and have been improving the quality of service, speed of the transaction and lowering the interest rates to attract more buyers.

As A Foreigner Selling My Property Will I Pay Capital Gains Tax on Closing?

- The simple answer is yes, if you made money you need to pay tax.
- Exemptions, possible? if you are a full time resident and taxpayer (RFC Number) in Mexico. You need a valid Temp or Permanent Resident Immigration Card or a Mexican voter card and all bills in your name as proof of residency.

In Mexico, the concept of capital gains tax does not apply in the sense in which it is determined in the United States. Here, the tax on the gain is 35%.

But you also need to convert the sales price into Pesos at the exchange rate of the closing day and convert the purchase price into Pesos at the exchange rate that was in effect on the day of closing.

However, in order to determine the gain, the following costs and expenses are deducted from the amount for which the property is officially sold:

- The original land cost and the depreciated construction cost, based on the number of years the property was held and adjusted for inflation according to the official consumer price indexes.
- Additions, modifications and improvements, but not maintenance, made on the property (construction), adjusted as above.
- Commissions paid to real estate brokers by the seller.
- The closing costs, including all expenses, taxes and fees paid by the seller. The Notary will retain the calculated gain after deductions forwarding it to the Mexican tax authorities. The seller will then deduct this amount against his/her annual tax return, which becomes an adjustable tax credit in the U.S.

In order to ensure you are paying what you should be and not being over charged, we work with qualified legal tax accountants to help us ensure the whole process.

Taxes

Property taxes have been low and remain low in Puerto Vallarta – Riviera Nayarit. Known as 'Predial' – yearly property tax - the mil rate is .08% of the assessed value of the property, determined at the time of sale. This tax is paid yearly in January, February, or March to receive a discount (15%, 10%, 5%). Property taxes have historically been low in Mexico because they have never been considered a major source of governmental revenue. This tax law may change in the future.

Purchasing property in Mexico – Legal Terms

NOTARY PUBLIC: A Notary Public in Mexico is a Government appointed Lawyer given faculties to certify documents, draw up wills, constitute companies, and do land and property transfers. A Notary Public must have been a Practicing Lawyer for at least five years prior to being appointed and also must go through a series of exams. His or Her specialty is Civil Law. Dealing with Real Estate transactions, the Notary makes



sure the entire process is legal and that all the steps are completed prior to closing. He or she is also responsible for the payment of all taxes and must retain them from the client.

FIDEICOMISO: This is a term that you will hear frequently in this part of Mexico. As a foreigner, you must have a Fideicomiso (Trust) to be able to acquire property (handled by the closing attorney / Notary) as it is within 50 kilometers from the ocean. The owners are named beneficiaries inside the Fideicomiso (Trust) agreement. The Fideicomiso has many different names: Trust, Deed, Deed Trust, and Escritura.

FIRST BENEFICIARIES: First Beneficiaries are commonly called the “owners” as they are the beneficiaries of the trust that make the decisions. More than one person can be in the first beneficiary position and it is important that you specify.

SECOND BENEFICIARIES: Second Beneficiaries are normally called the “beneficiaries of the owners”. Easy enough, they are the First Beneficiaries’ beneficiaries. In almost all cases in the event of death of one in first position the survivor is the deceased beneficiary. In the event of death of both in the first position the second beneficiaries move up into first position. They normally move into position as you request; all at the same time; with different percentages; one at a time. It is a good idea when assigning this position to keep it simple. Currently, there are no inheritance taxes. To change the Second Beneficiary in the future is a simple process.

- The trust has duration for 50 years. With an annual fee of about 500 USD.
- The fee is paid on the anniversary date of your purchase.

ESTIMATE OF CLOSING COSTS: The estimate is the list of closing costs. At closing the sale price will be converted to Mexican Pesos.

About the Estimate

APPRAISAL: An appraisal of the property is done for every purchase and is used to establish minimums to pay property taxes.

TRANSFER TAXES: Transfer taxes are paid after closing and are approximately 2.3% of the purchase price.

REGISTRATION: The registration tax is paid to register the property in the Public Registry. It is not based on a percentage.

PERMIT: The permit is issued by the Secretary of Foreign Affairs in order for foreigners to “purchase” property within the restricted zone.

REGISTRATION: Once the trust document is signed, the paperwork gets sent to the city to register the use of the Permit mentioned above.

BANK FEES: This is the first-year fee and the acceptance fee. These get paid at closing upon the banks signature.

FOLIOS AND COPIES: These are internal Notary fees for copies and legal letterhead



TITLE CHECK AND CERTIFICATES: There are three certificates obtained: No debt on Water, No debt on Property Tax, and No Lien on Property.

NOTARY FEES: This is the fee the Notary charges to draw up the document, process all the paperwork, request all certificates, request appraisal, request permit, pay all taxes, collect all of the signatures, and register the deed.

Closing costs are normally 5-7% of the purchase price of properties.

DEPOSIT: A deposit of 4000 USD of the estimate is needed to begin any documentation process with the closing Notary.

CLOSING: Closing takes place usually within 60 days of receiving all the documents needed to process the paperwork.

THE DAY AFTER CLOSING: All documents are sent to the city to get registered. This process normally takes 3-6 months. The notary will keep the Title file for the new owners until they can pick it up, or they can also give a written permission to somebody else.

YOUR RESPONSIBILITIES DOWN THE ROAD: As a property owner, you will need to pay property taxes. These taxes are paid every January. You will also need to pay your yearly trust fees.