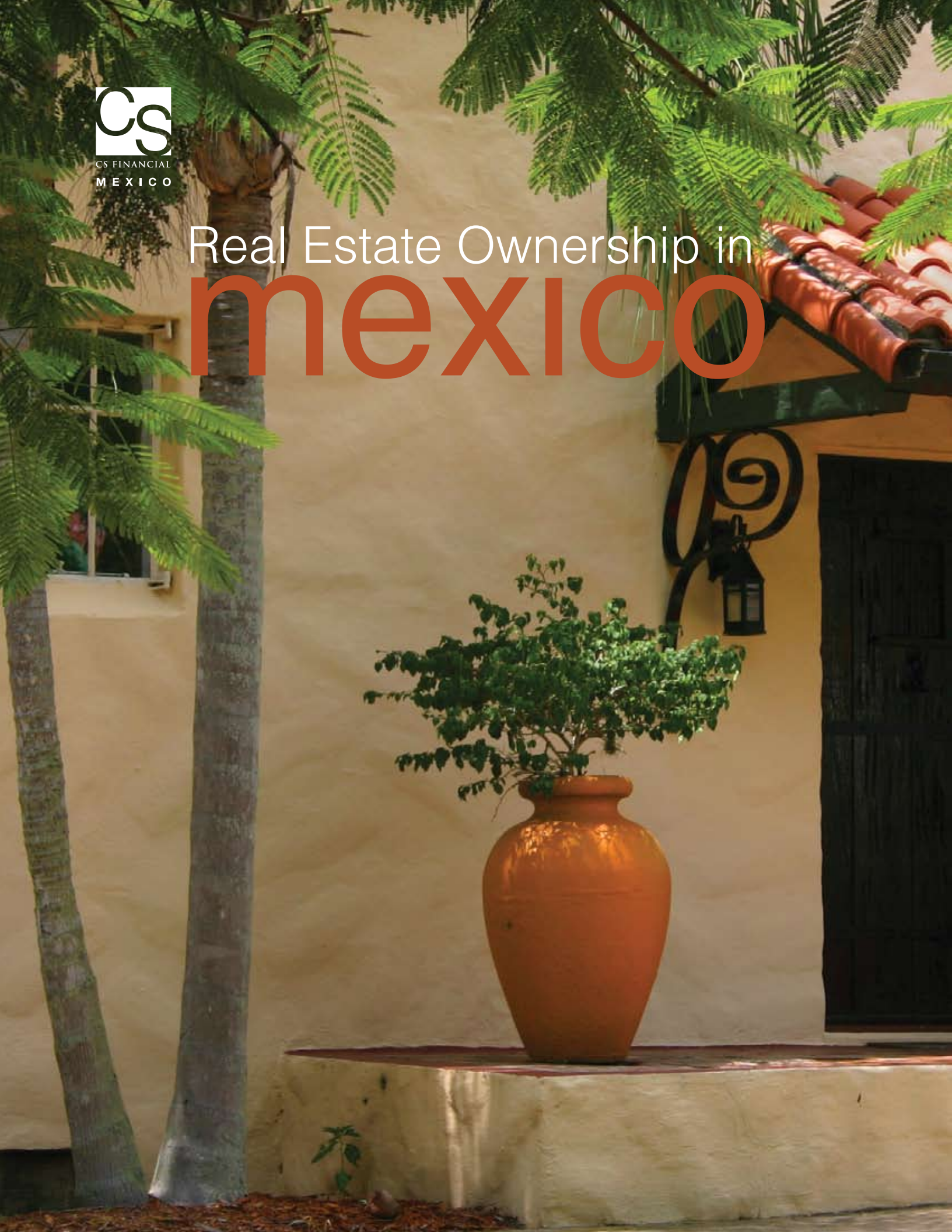




Real Estate Ownership in **mexico**



The purpose of this article is to provide the reader with an overview/guideline for the acquisition of real estate within the "restricted zone" in Mexico by a potential foreign purchaser. The article has been structured with headings pertaining to the most important issues regarding such purchases.

manner of owning real property in mexico within the "restricted zone"



The Mexican Constitution prohibits foreigners from purchasing or owning real estate within that area of land which is 100 kilometers inland from its borders or within 50 kilometers inland from its coasts. This area is defined as the "restricted zone." Aware of the need to foster foreign investment along that area, the Mexican Government developed an instrument of ownership of real property within the "restricted zone" under which title could be held safely and securely by foreigners, and at the same time overcome and satisfy the nuances of the Mexican Constitution. This instrument, called a *Fideicomiso*, allows ownership by foreigners of real property through a Mexican Property Trust. This trust agreement provides its beneficiary with all rights incidental to the ownership of real property.

The mechanism by which this Trust is created is rather simple. The Mexican Foreign Ministry issues a permit to a Mexican bank of the purchaser's choice, allowing the bank to act as purchaser for the property on behalf of the beneficiary. The purchase property is placed in a Trust. The bank is the "Trustee" of the Trust and the actual purchaser is the "Beneficiary" of the "Trust." Only a Mexican bank can act as Trustee of these types of trusts.

The Trust is not an asset of the bank; the bank simply acts as Trustee to hold the Trust. The role of the Trustee is a passive one, only subject to the instructions it receives from the Beneficiary.

Much like Living Wills or Estate Trusts in the U.S., the Mexican bank, as Trustee, takes instructions only from the Beneficiary of the Trust. The Beneficiary has all incidental rights to the ownership of real property, including, but not limited to, the right to use, enjoy, occupy and possess the property, rent the property, the right to build on it or otherwise improve it, etc. The Beneficiary may also sell the property by instructing the Trustee to transfer the rights to another qualified owner; or in the case of death of the Beneficiary, by providing in the trust instrument to bequeath the property to an inheritor. It should be noted that an important provision of this type of Trust is that it allows for a Successor Beneficiary, creating in essence a succession structure in the event of death of the Beneficiary.

The initial term of the Trust is 50 years, and it can be renewed for additional periods of 50 years indefinitely, providing for long-term control of the asset.

closing costs

Any purchase of property will incur closing costs. Mexico is no different. The typical and customary closing costs for the purchase of real property in Mexico include permit fees, Notary Fees, Acquisition Tax, certificate of no liens, appraisal and registration or recording fees. What amount the closing costs will be may vary, especially if the fees are negotiated favorably for matters such as appraisal, notary fees, and other items that are not regulated or set by law. However, it should be assumed that typical closing costs will run 4% to 5% of the purchase price.

The primary fee, and the most important fee at closing, is the Acquisition Tax. This tax is paid by anyone purchasing or acquiring property in Mexico, whether a Mexican citizen or a foreign buyer. The tax is 2% of the purchase price (and may be somewhat higher in certain jurisdictions that may impose some form of local tax) and is paid when the actual closing takes place and the transfer deed is taken for recording.

Sellers seeking to reduce their capital gains tax liability and buyers looking to reduce their acquisition tax burden are among the many parties who have taken to record a lower purchase price. Do not record a lower purchase price to save money on the payment of the Acquisition Tax, or alternatively to assist the seller in reducing their capital gains tax liability. Recording a lower value to save money on the Acquisition Tax will drastically increase the capital gains tax at a later time of resale.

Closing costs are typically upon Closing, which is when the property is acquired and final transfer documents are executed with the Notary Public handling the closing of the transaction.

There may be the need to release some funds prior to closing, typically of which will be the amounts required to obtain permits, certificates and other procedural matters that need to be authorized/obtained from the applicable authorities.

time period to get a trust

A Notary Public is required for purposes of handling the closing of any real estate transaction in Mexico. In Mexico, the Notary, or *Notario Publico*, is much different than in the U.S. He/she is more like a Clerk of the Court. The Notary Public typically will commence the process of obtaining the required permits for the purchase of property by a foreigner and thereafter will proceed in completing the trust document, along with counsel for the purchaser and the bank Trustee. On average, any foreign purchaser should figure 60 days to obtain his/her trust.

payment of purchase price for the property/escrow

Until recently the concept of an escrow company, as understood in the U.S., was nonexistent in Mexico. With the advent of the North America Free Trade Agreement (NAFTA), the major title insurance companies, along with their escrow departments, found reasons and motivation to open up for business in Mexico. Most major title insurance companies nowadays have a presence in Mexico, with escrow departments in the U.S. to provide the parties with the comfort necessary in a real estate transaction. This has now allowed for reputable third-party escrow services (*e.g., Title Company*) to hold money in individually numbered and insured escrow accounts until all matters and items required for closing are completed and the property rights have been transferred to the purchaser.

The foregoing is of extreme importance because in the past, deposits were provided directly to sellers, causing disarray or improprieties in certain situations on the part of sellers taking advantage of trusting buyers.

It is not recommended that a purchaser release funds to a seller until all matters and items required for closing are complete and that the Notary Public handling the closing verifies same. Purchasing property without receiving a trust is simply buying without the purchaser receiving title in his/her name, which is risky and not at all recommended.

Until all matters and items required for closing are complete, and rights to the property have been transferred to the purchaser, the legal owner of record in Mexico is still the previous owner.

title insurance

Wherever you buy real estate you should always obtain title insurance to protect your investment. Mexico is no different.

As discussed earlier, most major U.S. title insurance companies have operations in Mexico, and are offering title insurance for the purchase of real estate in most areas of Mexico.

legal form of ownership of property

There are two basic ways by which a foreigner may own real property within the "restricted zone" of Mexico. Such form of ownership will hinge upon the type of use for which the property will be held.

If the property will be for residential or any other purpose, the property must be owned through a Trust. In the Trust document, the Beneficiary or foreign owner for the property must be named. This can be the purchaser personally, multiple partners, a foreign corporation, an estate trust, a living will, or other entity. The Trustee of the Trust (the Mexican bank) will take direction from whoever is named as Beneficiary.

If the property will be purchased/owned for development or for investment purposes, it can be owned through a Mexican corporation, and said corporation may simply hold title fee. It is against the law for a foreigner to own property in a Mexican corporation for residential purposes.

use of independent counsel

As in any other major transaction the use by purchaser of a reputable and knowledgeable attorney is very important and highly recommended. Any purchaser should seek the advice and assistance of counsel in order to make the purchase experience manageable and more secure.

As noted above, this article is only intended to be an overview/guideline pertaining to the acquisition of real estate within the "restricted zone" in Mexico by a potential foreign purchaser. Any purchaser should contact a specialist in the area (attorney, accountant or consultant) who will be in a better position to answer all issues in greater detail and specificity.



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