

## Mexican Trusts



Most foreigners, including Canadians, first encounter Mexican trusts when they consider the possible purchase of Mexican real estate in what is known as the “Restricted Zone.”

The restricted zone is composed of real property located 100 kilometers next to international borders, and 50 kilometers from Mexican costliness. Increasing numbers of foreigners are purchasing real estate in costal areas of Mexico.

It is important to have a basic knowledge of how Mexican trusts work, and more importantly, how they can work for you. At the beginning of the 20<sup>th</sup> century, no foreigner could directly own real property anywhere in the country. The reason for this restriction lies in history. Today, however, foreigners may freely and directly own real property anywhere in Mexico, except in the mentioned restricted zone.

The most common way to get around the constitutional prohibition on foreign ownership of real property in the restricted zone is to hold the property in a Mexican trust.

### What is a Mexican Trust?

Trusts are legal entities created by an agreement to transfer title in property (such as real estate, securities, cash, art collections, etc.) to a second party. This second party, also called a trustee, will then administer the property in favor of designated beneficiaries. Simply put, a Mexican trust is an agreement entered into pursuant to Mexican legislation.

### Parties to a Mexican Trust

There are at least three characters in the creation of any trust: the creator (fideicomitente), the trustee (fiduciario), and the beneficiary (fideicomisario). A fourth party allowed by Mexican law is the technical committee (comité técnico).

### Purpose of Mexican Trusts

Most trusts in Mexico are created for family and estate planning purposes. Some of the most common uses for trusts are as follows:

- 1) Remove property from the reach of creditors;
- 2) Remove property from the reach of family members, or ex-family members;
- 3) Condition the transfer of property to beneficiaries;

- 4) Secure the privacy of the creator;
- 5) Obtain professional management of trust assets;
- 6) Guarantee a private mortgage;
- 7) Hold property in the restricted zone when the beneficiary is not a Mexican citizen; and
- 8) Manage bequests to charities.

Tax management is usually not an important factor in the creation of Mexican trusts.

The trust agreement will state the purpose of the trust, how and when the property can be distributed, and to whom.

### **Who Can Be Trustee?**

It is important to note that only financial institutions in Mexico can act as trustees. Under no circumstances can the creator of a trust, or any other entity, serve in this capacity. Traditionally, only Mexican banks were authorized to serve as trustees. Recently, however, insurance companies have begun to offer trustee services

Historically, banks provided you with a standard trust agreement, and you had no choice in the design of the agreement. While you cannot get away from transferring title to a trust, as the creator you have the right to design the trust agreement in such a way as best benefits your interests.

Also keep in mind that if you are the creator of a real estate trust in the restricted zone, you are also the initial beneficiary. As beneficial owner, you have certain rights. In fact, as beneficiary you can usually do with the property anything any other owner of real property could do. For example, you can modify the property, sell it, rent it, keep it unoccupied, gift it, divide the ownership rights among your children, provide for a life estate for the surviving spouse, etc. For all intents and purposes it is your property to do as you please.

Finally, as beneficiary of a Mexican real estate trust, you usually have the right to change the trustee. It is better to make sure that this right is spelled out in the trust document in the first instance, but it need not be the case.