

The FOREIGN RELATIONS PERMIT FOR THE *FIDEICOMISO*.....

What do we do when it expires?

Under Mexican law, all properties acquired by foreigners must be held in a Mexican bank trust which is known as a *fideicomiso* (fi day co me so). These bank trusts are established by permission and a permit from the Mexican Secretary of Foreign Relations.

Originally, when the law was established in 1972, the permit was given for thirty years. At that time no one knew what would happen when the permit expired except that the law stated that "property must be transferred to one who is legally entitled to hold title". This left a big uncertainty for those who were investing large sums of money in Mexican properties.

The law was clarified in 1989 with the following in Article 20 of the Foreign Investment law which was published in the Official Diary of the Federation on May 16, 1989.

The text states: *When the term expires for those trusts created under Articles 18 and 19 of the Law, the Secretary of Foreign Relations will expedite, under the terms of the same laws, new permits requested for the same properties located in the restricted zone, providing the following conditions are met:*

1.- *That the new trusts involve the same foreign investors that are named in the trusts that are expiring;*

2.- *That the new trusts contain the same terms and conditions as those in the trusts that are expiring with regarding to purpose, usage and general characteristics.*

3.- *That the permits are requested within a time period of 180 days (minimum) and 365 days (maximum) prior to expiration of the trust.*

4.- *That the dispositions of the Law, of this Regulation and of the General Resolutions are observed.*

This declaration gave clarity to the law. It was established that the permits could be renewed and, in 1995, pursuant to the conditions of the NAFTA treaty, the period for the foreign relations permit to establish a Mexican bank trust, *fideicomiso*, was extended to **fifty** years and could be renewed multiple times. This was tantamount to ownership in perpetuity.

Thus for trusts established between 1972 and 1995, these are expiring between 2012 and 2025, unless the owners have taken it upon themselves to extend the term of the trust to 50 years. This indeed was done by many who were concerned about leaving a property to heirs with a trust that is expiring.

What is the procedure for renewing a trust permit? It is relatively simple; An application must be made to the Secretary of Foreign Relations to obtain a new fifty year permit. Upon receipt of same, the old permit extinguished by the trustee bank and the

new permit formalized by the trustee bank and the notary public. The trustee bank may be the same or a different one from the original permit. The primary beneficiaries however must be the same as per number one in Article 20 of the Foreign Investment law (see #1 above). To change the primary beneficiaries in this renewal action will trigger an acquisition tax which is 2% of the value of the property, and a possible capital gain tax which is 35% of the difference between the former value and the new value. Substitute beneficiaries may be changed however.

Other costs involved are the bank cancellation fees for extinguishing the old permit, a new permit fee, registration in the Foreign Investment Registry, a signature fee and the first annual fee for the new trust, notary, public registry fees, etc. It is wise to consider budgeting three to four percent of property value to renew the permit and receive the new notarized deed.

This may seem expensive to some but it is important to remember that this is once every fifty years and the only other expense to maintain the legal status of the property is the payment of bank annual trustee fees which range from US 350.00 to US 550.00 per year. Compare these expenses with the cost of annual property taxes on a home of comparable value in the US or Canada and it will most likely be considered a bargain!

about the author:

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