

## **THE FIDEICOMISO**

### **WHAT HAPPENS WHEN THE PRIMARY TITLEHOLDER DIES?**

**by Linda Jones Neil**

Article 27 of the Mexican Constitution prohibits ownership of real property by foreigners along the borders and coastlines of the country. This issue was resolved by implementation of the Mexican bank trust, the *fideicomiso*, in which a Mexican banking institution holds fee simple title for the beneficiary of the trust, the foreigner, who has all the rights of a Mexican national in terms of usage, rental, sale, modification, etc. to the property.

Many object to using the trust saying it is cumbersome and expensive. The banks charge an annual fee of 350. to 500. USD simply for holding title. When compared to the property taxes that one normally pays in his or her native country, however, the expense seems modest. Besides this is the ONLY legal way to hold title to a residence in the restricted zone of Mexico.

One of the major benefits of holding title in the Mexican bank trust, the *fideicomiso*, is that the owner of the property in trust has the right to name heirs and substitute beneficiaries within the corpus of the trust. This eliminates the need for a probate proceeding in a Mexican court which can take a year and cost several thousand dollars.

Thus, Joe and Margaret Smith, as owners of the beneficial rights under the trust for their beachfront home, may then name themselves as substitutes and then their children as substitutes when Joe and Margaret pass on. So Joe dies and Margaret obtains full ownership, then when Margaret deceases, Johnny and Joan, their children, can come into full ownership as the owners of the beneficial rights. All of this without a court proceeding provided it is set up correctly within the *fideicomiso* contract.

**Procedure and costs:** When the primary beneficiary(ies) pass on, the substitutes must present death certificate(s) for the deceased, with apostille. This is translated and handed to the trustee bank which will then move forward to obtain a new permit from the Secretary of Foreign Relations in the name of the substitute. An appraisal must be made which will indicate current value of the property at time of death. This establishes the stepped up basis, the new value for tax purposes. The beneficiary will be required to pay a one (1%) percent acquisition tax on the entire new appraised value. No other taxes are involved since Mexico does not have an inheritance tax.

Costs for the transfer involve a new permit, bank trustee fees, appraisal, a notary fee, registrations plus the 1% acquisition tax. Basic fees on a 350,000. property will probably run about two (2%) percent of the newly appraised property value, plus the 1% acquisition tax, for a total of approximately 3%. What is saved here is several thousand dollars in probate and legal fees and a year minimum in probate court.

Copyright, 2013-14, Consultores Phoenix, S.C. Reproduction prohibited without permission.

about the author:

*LINDA JONES NEIL is the founder of The Settlement Company®, which specializes in real estate transfers and escrows, as well as renewals of permits and other legal services for the foreign property owner. Licensed as a California real estate broker, she has pursued her profession in Mexico for over forty years. Her skills in negotiating contracts between parties from three distinct cultures have placed her services in demand as a consultant and for speaking engagements on Mexican law and customs in Mexico, the United States and Canada. She has been widely published on the subject of real property in Mexico. Memberships; FIABCI, AMPI and NAR. Linda is a former member of the National Advisory Council of AMPI and has served as NAR Presidential Liaison to Mexico..*

E-mail [info@settlement-co.com](mailto:info@settlement-co.com), website: <http://www.settlement-co.com>