

Legal 500

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Mexico

Real Estate

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Mexico.

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Mexico: Real Estate

1. Overview

Mexico has a civil law system; therefore, it is similar to other civil law systems such as France, Spain, and other Latin countries. Naturally, the Mexican system has essential and unique differences from other legal systems and the law applicable to "Real Estate" properties in Mexico is no exception. The law applicable to Real Estate in Mexico is abundant and a multidisciplinary legal focus for its study and understanding is essential.

2. What is the main legislation relating to real estate ownership?

The Mexican Constitution provides the general legal framework for the regulation of Real Estate in Mexico. Our Carta Magna recognizes three main types of Real Estate property. The main legislation relating to the ownership of each type of Real Estate in Mexico is the following:

1. Private Property: Each State in Mexico has its own Civil Code, including Mexico City, which establishes the provisions applicable to Real Estate owned by private parties.
2. Public Property: The National Property Law (*Ley General de Bienes Nacionales*) regulates Real Estate assets owned by the Mexican Nation at the Federal level. Additionally, each State has its own public property law, which regulates the Real Estate assets owned by such State and its municipalities.
3. Social Property: The Agrarian Law (*Ley Agraria*) and its secondary regulations, including the rules of the National Agrarian Registry (*Registro Agrario Nacional*). Social property is the direct consequence of the 1910 Mexican revolution that culminated in 1917 and gave rise to the Constitution currently in force in Mexico, which was intended to eliminate land monopolization in the country by major property owners (*Latifundistas*). Social Property (*propiedad social*) is owned by population settlements that form a defined group such as an Ejido or an Agrarian Community (*comunidad agraria*) which have legal status pursuant to Mexican Legislation.

3. Have any significant new laws which

materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the near future?

(i) Amendment to Mexico's City Constitution: On September 2, 2024, an amendment to subsection A), numeral 2 of Article 3 of Mexico's City Constitution was published in the Official Gazette of Mexico City. The primary objective of this amendment was to harmonize local provisions on property ownership with the framework established in Article 27 of the Mexican Constitution. The amendment does not introduce new substantive provisions or alter existing powers concerning property ownership. Its primary effect is to align the constitutional language of Mexico City with the legal framework established in Article 27 of the Mexican Constitution.

(ii) Amendments to the Civil Code of Mexico City Regarding Lease Agreements: On August 29, 2024, a decree came into effect introducing several amendments to Mexico's City Civil Code concerning lease agreements. These modifications aim to establish a cap on monthly rent increases and create a new obligation for landlords to register all lease agreements in a digital registry.

Among the most significant changes is the amendment to Article 2448-D, which stipulates that annual rent increases may not exceed the inflation rate reported by the Bank of Mexico for the previous year, from the originally agreed monthly rent amount.

Additionally, the decree mandates the creation of a digital registry for lease agreements to be managed by the government of Mexico City. With this, landlords are required to register any lease agreement they execute within a maximum of 30 days following the corresponding execution. Regarding lease agreements executed before the decree came into force, landlords must register them in the digital registry within 90 days after the registry is established.

(iii) New Regulations on Temporary Lodging Services in Mexico City: On October 4, 2024, the "Decree Adding a Fourth Paragraph to Article 61 Sexies of the Tourism Law of Mexico City (*Ley de Turismo de la Ciudad de Mexico*); Adding Article 36 BIS to the Housing Law of Mexico City

(*Ley de Vivienda de Ciudad de Mexico*); and Adding a Paragraph to Article 22 of the Law for the Comprehensive Reconstruction of Mexico City (*Ley para la Reconstrucción Integral de la Ciudad de Mexico*)" came into force. The purpose is to impose restrictions on the provision of temporary lodging services in residential-use properties in exchange for compensation. The new regulation requires hosts seeking to offer accommodations for up to 50% of the nights in a year to comply with the Commercial Establishments Law of Mexico City. It further penalizes hosts exceeding this occupancy threshold by temporarily suspending their registration of the property in the corresponding host registry mandated by the government of Mexico City.

Additionally, it prohibits the use of properties included in social housing programs, low-income affordable rental housing, or those that were affected by the September 19, 2017 earthquake, for temporary tourist lodging schemes.

(iv) Proposed Amendment to Article 2448-F of the Mexico's City Civil Code: On October 29, 2024, a proposal was introduced aiming to modify the requirements established in lease agreements. The proposal seeks to eliminate the ability of landlords to demand the following from prospective tenants:

1. A guarantor who owns a movable or immovable asset of equal or greater value than the leased property.
2. Advance payment of one or more months' rent.
3. The signing of blank promissory notes.

The real estate rental market, particularly in Mexico City, has gained significant relevance due to issues affecting this sector, including: (a) a shortage of housing available for rent; and (b) excessive requirements imposed by some landlords. For these reasons, regulating lease requirements is deemed essential to balance and protect the rights and obligations of both landlords and tenants. This amendment aims to promote fairer access to rental housing and establish clear conditions that lower entry barriers for tenants.

4. How is ownership of real estate proved and are ownership records available for public inspection?

The ownership of private Real Estate is proved and evidenced by the corresponding ownership title. Ownership titles need to be formalized in public deeds before a Notary Public. Ownership titles of Real Estate are enforceable against third parties when registered in the Public Registry of Property (*Registro Publico de la*

Propiedad).

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

(i) Regarding private property, foreign corporations and natural foreign persons cannot directly acquire Real Estate located within the "Restricted Zone". According to Article 27 of the Mexican Constitution, the Restricted Zone comprises of 100km from the Mexican land borders and 50 km from the Mexican coastline, however a trust may be put in place in order for foreign parties to be the beneficiaries of Real Estate in the Restricted Zone.

The Foreign Investment Law (*Ley de Inversion Extranjera*) regulates the conditions under which foreigners can acquire property in Mexico. For non-Mexican citizens, the law prohibits direct ownership of land in restricted zones (as explained above). The Mexican Constitution allows foreign corporations and natural foreign persons to acquire property in Mexico freely, provided that they pledge, before the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*), to be legally considered as nationals and to refrain from invoking the protection of their governments in any dispute regarding the land's ownership. While diplomatic protection over land disputes is now extremely rare around the world, in Mexico its avoidance created a now archaic rule that carries historical significance.

(ii) Regarding public property, it may not be sold, it may not be subject to acquisitive prescription (*usucapion*), and it is unseizable, however certain rights may be granted to private parties via federal or state concessions. One example is the Federal Maritime Terrestrial Zone (*Zona Federal Marítimo Terrestre*), a twenty-meter-wide strip of land adjacent to the sea, for which it is possible to obtain a federal concession from the Ministry of Environment (*Secretaría de Medio Ambiente y Recursos Naturales*) only for its use and enjoyment.

Also, in certain cases, public property assets may be disincorporated from the direct public domain of the Nation and then sold to individuals.

(iii) Regarding social property, it may not be sold, it may not be subject to acquisitive prescription (*usucapion*) and it is unseizable. However, since 1992, there is a legal pathway in the Mexican Law to transform social property into private property.

6. What types of proprietary interests in real estate can be created?

In the Mexican jurisdiction several proprietary interests can be created through (i) *in rem* rights such as property, co-property, usufruct, servitude, use and habitation rights, mortgage; and (ii) *in personam* rights such as gratuitous bailment, lease, and deposit.

7. Is ownership of real estate and the buildings on it separate?

The general rule under Mexican law is that everything that is constructed, joined, or incorporated into the surface of Real Estate is part of that property. Therefore, under Mexican law, these items become attached to the property through accession rights (*derecho de accession*). Nonetheless, parties may waive accession rights. In fact there are some States in Mexico that regulate a surface right (*derecho de superficie*), which allows the owner of the soil to be a different person than the owner of the constructions built on the Real Estate.

8. What are common ownership structures for ownership of commercial real estate?

Common ownership structures for commercial real estate in Mexico include (i) corporations, (ii) direct ownership by individuals, (iii) co-ownership, (iv) trusts, (v) foreign entities, (vi) private equity funds, and (vii) the division of property rights through bare ownership and usufruct. Corporations are widely used due to their ability to limit liability and create a separate legal entity, making them suitable for larger-scale or income-generating properties. Direct ownership by individuals, while straightforward, is generally reserved for smaller investments as it does not offer liability protection.

Co-ownership allows multiple parties to share ownership and risk, often through agreements that define the rights and obligations of each co-owner. Trusts, such as FIBRAs, have been a preferred structure for real estate investments, allowing pooled capital and access to tax efficiencies. However, amendments to Article 187 of the Income Tax Law, effective January 1, 2020, restricted the FIBRA tax regime to publicly traded trusts, excluding private trusts from these benefits and signaling a move toward greater transparency.

Foreign entities, such as LLCs and LPs, often treated as fiscally transparent in their home jurisdictions, face different rules in Mexico. Article 4-A of the Income Tax Law, effective January 1, 2020, mandates that these

entities are treated as taxable entities unless treaty provisions apply. If deemed Mexican tax residents, they lose their transparency and are taxed under the general corporate tax regime, requiring careful structuring to mitigate potential double taxation.

Private equity funds and hybrid structures are often used for cross-border transactions or larger-scale investments. Article 205 of the Income Tax Law, effective January 1, 2021, provides a framework for maintaining fiscal transparency for foreign legal arrangements managing private capital in Mexico. Compliance requires registering members with the tax authorities, proving beneficial ownership, and operating in jurisdictions with tax information exchange agreements. Non-compliance leads to the loss of transparency and taxation at the entity level.

The division of property rights into bare ownership and usufruct is a useful mechanism for estate planning. Bare ownership grants the title to the property, while usufruct provides the right to use and benefit from it. Since 2022, the consolidation of property rights, when the usufruct ends, is treated as a taxable event under Mexican law, based on the fair market value of the usufruct at the time of consolidation. Proper valuation and compliance with reporting obligations are essential to avoid penalties.

Recent reforms to Articles 187, 4-A, and 205 of the Income Tax Law, as well as changes to the rules governing consolidation of bare ownership and usufruct, highlight the increasing complexity of Mexico's tax regime for real estate investments. Selecting the appropriate structure requires careful consideration of legal and fiscal implications, as well as strict compliance with the evolving regulatory framework.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

In a typical purchase transaction, the purchaser would perform due diligence on the seller's corporate and personal documents, and on the property's titles and documentation. Regarding the review of the properties, the due diligence should be very thorough in all aspects but especially on (i) title review (including (a) chain of title, (b) title records, and (c) possession of the Real Estate) (unfortunately it is not uncommon to find legal uncertainty in the ownership of Real Estate in Mexico); (ii) environmental restrictions, since environmental limitations imposed by the government have increased in recent years; (iii) licenses and permits including use of land since its regulation is usually complex and there are

ever more innovative projects that push the boundaries of the use of land permits; (iv) property tax; and (v) water, other utilities or condominium debts.

The due diligence process usually takes from one to three months. This time may vary since buyers usually perform independent research on the available public documentation regarding Real Estate.

Also, although not common, an Environmental, Social and Governance due diligence is also recommended, in order to have a sense of the impact of the project to be developed in these areas since it might affect the viability of the project regardless of its compliance with all applicable laws.

10. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

In Mexico sometimes information in the corresponding public registries has been lost or destroyed making it difficult to cover certain aspects of the review process.

However, there are risks that, due to their nature or inherent limitations in the process, may fall outside the scope of a due diligence review. Some of the main risks that are not typically detected in a due diligence process, include: (i) social conflicts related to the property; (ii) possession of the corresponding property (usually with large properties); and/or (iii) structural damage or construction defects that are not detectable through standard visual or technical inspection.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

It greatly depends on each transaction; however, a standard process for transfer of Real Estate in Mexico would start with the execution of a letter of intent and/or a promissory purchase agreement, at which time the due diligence process may begin. At this moment buyer usually gives a refundable security deposit to seller. Once the due diligence is finalized and is satisfactory, the parties negotiate and enter into the definitive agreement, which needs to be formalized in a public deed before a Notary Public and filed for its registration with the Public Registry of Property. Possession is usually delivered upon the execution of the public deed or earlier if the price is paid in its entirety. In terms of liability, the standard would be for it to pass to buyer, as of the execution of the definitive agreement, by which the transfer of the property is carried out (whether it is a

private agreement of a public deed).

Every state regulates this, however, in practice, buyer is customarily responsible for the cost of notarization fees and also chooses the notary public. Additionally, buyer is responsible for the payment of a local transfer or property tax and the value added tax (only applicable to construction for commercial or industrial purposes). Seller is responsible for the payment of the income tax.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Yes, it's very common. Through a share purchase agreement ("SPA"), under Mexican law, there is no change with respect to the owner of the property; it is still under the legal entity's ownership. Through an SPA the buyer is not only acquiring the property of the company but also its liabilities. When the transaction's structure is under an SPA there is no local tax related to the transfer of ownership.

Conversely, through an asset purchase agreement ("APA"), under Mexican law, there is indeed a change of ownership with respect to the property. An APA is preferable when the target is a specific asset of the company's business, and the parties can agree on which assets (Real Estate) or liabilities are going to be included in the agreement.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Yes. Unless otherwise provided in the agreement, a freehold property transfer includes the rights to possess, profit from, and subsequently transfer the property. Since a leasing agreement is not terminated by virtue of having a new landlord, any occupational leases, and their income, would be automatically transferred to the new landlord.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Some of the common interests and burdens that can be created over Real Estate pursuant to Mexican law are the following (i) *in rem* rights such as property, co-property, use and habitation rights, usufruct, servitude, mortgages,

which when registered in the Public Registry of Property are enforceable against third parties; and (ii) *in personam* rights such as gratuitous bailment, lease, and deposit.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

Yes, under Mexican law the Trust (*fideicomiso*) allows the trustor to transfer the ownership of the Real Estate property to the fiduciary, a Mexican financial institution, who in compliance with the trust agreement must grant the agreed benefits related to the Real Estate in favor of the trust beneficiary, who may be a different person than the Trustor.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Although it is not a matter of public disclosure, certain information must be submitted through the Notary Public to the tax authorities, pursuant to the notary publics' statutory obligations to conduct targeted reporting of suspicious transactions and activities under anti-money laundering regulations.

When real rights (in rem) over real estate are created, Notary Publics are mandated to identify the parties involved in the transaction and submit a notice to the Ministry of Finance and Public Credit (*Secretaria de Hacienda y Credito Publico*) if the transaction value surpasses a specified threshold. This threshold is met when the principal amount guaranteed equals or exceeds the equivalent—in local currency—of sixteen thousand times the value of the Measurement and Update Unit (UMA), a unit commonly used in legal and financial contexts in Mexico. As of February 1, 2024, this threshold corresponds to approximately MXN \$1,737,120, based on a conversion rate of 18.2 MXN/USD, equivalent to approximately USD \$95,464. In all cases, the threshold is determined based on the highest value among the agreed price, the cadastral value, or, where applicable, the commercial value of the real estate. It is imperative to note that, under these circumstances, the client or user involved in the transaction must provide detailed information regarding the beneficial owner and, if necessary, furnish official documentation to verify the identity of such owner.

Moreover, pursuant to the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds (LFPIORPI), the creation of personal rights (in personam) for the use or enjoyment of real estate with a monthly value exceeding one thousand six hundred five times the

UMA (approximately MXN \$174,254.85, equivalent to approximately USD \$9,574) also triggers the obligation to identify the beneficial owner. Additionally, such activities are subject to notification—though not the obligation to identify the beneficial owner—to the Ministry of Finance and Public Credit (*Secretaria de Hacienda y Credito Publico*) if the monthly transaction value equals or exceeds three thousand two hundred ten times the UMA (approximately MXN \$348,509.70, equivalent to approximately USD \$19,149).

Mexican financial institutions are similarly obligated to require full disclosure of the ultimate beneficial owner and relevant information as a prerequisite for acting as a settlor or beneficiary within a Real Estate Trust.

However, there is no requirement for public disclosure of ultimate beneficial owners of real estate in Mexico. The information provided to notaries or financial institutions is strictly for compliance purposes and is only shared with authorities under the established anti-money laundering framework. This ensures confidentiality and limits access to such information to regulatory and enforcement agencies.

17. What are the main taxes associated with real estate ownership and transfer of real estate?

The most important tax related to real estate ownership is Property Tax (*Impuesto Predial*), which is a local tax calculated annually based on the cadastral value of the property. The rate varies depending on the municipality and state.

The main taxes related to the transfer of real estate rights are:

- Income Tax (*Impuesto Sobre la Renta*, ISR): This tax is borne by the seller and applies to the capital gains from the sale of the property. In some cases, a gross-up agreement is negotiated to ensure the seller receives the net amount. Certain exemptions may apply, such as when selling a primary residence under specific conditions.
- Value Added Tax (*Impuesto al Valor Agregado*, IVA): VAT is calculated at 16% on the value of construction used for commercial or industrial purposes and is paid by the buyer. However, land and residential properties are exempt from VAT. It is important to note that VAT paid on the acquisition of commercial or industrial buildings is creditable against the buyer's VAT obligations, provided certain requirements are met.
- Property Acquisition Tax (*Impuesto Sobre Adquisición*

de Bienes Inmuebles, ISAI): This is a local tax paid by the buyer, with rates typically ranging from 2% to 6.5%, depending on the State. The Property Acquisition Tax also forms part of the "MOI" (step-up), which may affect the adjusted tax basis of the property for future transactions.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Common terms are usually concerned with improvements to the property, structural and ordinary repairs, the annual rent increases (including limits to maximum increase amount), exchange rate limits, delivery of property, free rent period, interest rate in case of default, non-return of the property penalties, tenant improvements, holdover, renewal, early termination and sublease rights, insurances, security and guaranty deposits, causes of termination, indemnities, environmental liabilities, among others. In commercial leases it is common to agree that voluntary improvements made by the tenant must be authorized by the landlord and, if applicable, remain for the benefit of the property without the right to the payment of compensation. The tenant is responsible for the ordinary upkeep and maintenance of the leased property and in some cases for the payment of insurance and property tax. The landlord is responsible for the structural or major repairs of the leased property.

In terms of the rent increases, it is common to agree on renewing the rents annually in accordance with Mexico's Consumer Price Index (*Índice Nacional de Precios al Consumidor*) if the rent is in Mexican Pesos or CPI (*Consumer Price Index*) if the rent is in US Dollars. Regarding the use of the property, it is not common to allow a change in the way the property will be used.

It is important to note there are term restrictions established by the Civil Code of each State, which are very similar (i.e., a common limitation established in the law of several States for commercial and industrial leases is that they cannot exceed twenty years). Also, after certain years, the tenant has a right of first refusal to keep leasing the property when the lessor is offering the lease to third parties; similarly, there is a right of first refusal if the landlord intends to sell the property. However, the right of first refusal is commonly renounced by the tenant in the contract.

19. What remedies are commonly available for landlords in the event of a tenant breach of a

commercial lease?

In the event of a commercial lease contract breach, landlords have various legal remedies available to enforce their rights and ensure compliance with contractual obligations. Some of the most common remedies include:

- (i) Demanding specific performance of the agreement, which includes the payment of rent, maintenance, or repairs. If the tenant fails to meet these obligations, the landlord may file a lawsuit with the competent courts.
- (ii) Requesting the termination of the agreement, which involves the agreement's termination and the tenant's obligation to vacate the property, in addition to payments for any damages and losses resulting from the breach.
- (iii) To use security deposits or other guarantees to cover any losses incurred.

20. How are use, planning and zoning restrictions on real estate regulated?

The use, planning and zoning restrictions on Real Estate in Mexico are regulated by the three levels of government (Federal, State and Municipal) pursuant to the following: In States the local level of government (the Municipality) has the constitutional faculty to determine the zoning of land which is usually established in urban development plans issued by such Municipalities. However, such urban development plans need to comply with the applicable Federal and State laws which mostly regulate environmental restrictions in use of land.

Mexico City has special regulation since it does not have Municipalities; the urban development plans are determined by Mexico City's Congress.

21. Who can be liable for environmental contamination on real estate?

A claim of civil liability for environmental damages can be brought against the wrongdoer, or someone obligated to prevent such contamination. In case of contamination occurring on Real Estate, the liability will depend on whether the activity producing contamination has been allowed by a permit by a governmental authority. Furthermore, depending on the nature of the wrongdoing, the State or an affected person can bring a claim.

According to Federal Environmental Liability Law (*Ley Federal de Responsabilidad Ambiental*), any individual or legal entity that by its action or omission directly or

indirectly causes damage to the environment will be liable and obligated to repair the damage caused. In the case of Real Estate issued property, the owner can be liable, by omission, for the actions of a third party using the property (such as a lessee), if the third party is able to avoid the liability of the inadequate use of the property.

Environmental liability creates the obligation to take the necessary actions to restore the environment to its baseline before contamination. Moreover, if restoration is impossible, the person must pay environmental compensation. Therefore, for an owner to avoid environmental liability, it is essential to include clauses establishing the exclusion of civil liability for the activities of third parties to whom the property is being leased. Likewise, prospective lessees must ensure that their leasing agreements include representations from the owner that exclude any form of environmental liability; and otherwise, owners normally ask for the lessee to be liable and indemnify lessor in case of environmental damages caused to the properties during the lease.

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Most new residential and non-residential buildings are required to meet minimum energy efficiency results with regards to the building's thermal efficiency. Depending on the type of building, there are specific requirements set forth in the Mexican Official Norms (*Normas Oficiales Mexicanas*) that need to be considered, preferably in the construction phase of a building. These standards are aimed at ensuring that new buildings are built in a manner that reduces energy consumption to either retain heat or allow the building to cool down more easily, depending on the weather conditions.

Additionally, the Energy Transition Law (*Ley de Transición Energética*) establishes voluntary standards and awards the Certificate of Excellence in Energy Efficiency (*Reconocimiento de Excelencia en Eficiencia Energética*) to the buildings that meet high standards of energy efficiency, including standards of efficiency of electric appliances. However, obtaining the referred certificate is not mandatory; instead, it is an incentive created by the Energy Transition Law and promoted by the National Commission for the Efficient Use of Energy (*Comisión Nacional para el Uso Eficiente de la Energía*).

23. Is expropriation of real estate possible?

Yes, the executive branch (federal, state-level and in some cases the municipalities) can expropriate Real Estate for public interest reasons, such as construction of public infrastructure. Upon expropriation, a cause of public utility must have been demonstrated in terms of the Expropriation Law, and the owner must be indemnified for the property. The interpretation of the Supreme Court via court precedents is that the amount of indemnification to be paid to owners due to expropriations should be the commercial value.

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

Under Mexican law, mortgages are never assumed or construed; they are always contractually created. A mortgage is a guarantee-type agreement used to secure the fulfillment of an obligation by granting the value of the Real Estate as collateral. Importantly, this lien allows the encumbered property to remain in possession of its owner.

Mortgages over Real Estate remain in force even when the Real Estate is sold to a different person; and must be registered in the Public Registry of Property to be enforceable against third parties and have a priority interest over the property. If the secured debt is not covered within the agreed term, the mortgagee may enforce the guarantee through a forced sale of the property. Finally, the proceedings of the sale go towards the payment of the amounts due, and any amount remaining goes to the mortgagor.

Pursuant to the Federal Civil Code (*Código Civil Federal*) the mortgage constituted over a loan that produces interest does not guarantee, in addition to the principal, the interest after three years, unless it has been expressly agreed that it will guarantee the interest for a longer period, provided that it does not exceed the statute of limitations on the interest and that this provision has been registered in the Public Registry of Property.

25. Are there material registration costs associated with the creation of mortgages over real estate?

Under Mexican law, mortgages must be formalized by means of a public deed and pay a registration fee to be registered in the Public Registry of Property. The cost of the public deed depends on the Notary Public but is capped with the fees published in the corresponding local Official Gazette. Fees related to the registration in the

Public Registry of Property are determined in the corresponding local tax provisions of the State where the property is located. Both notary's and registration fees are calculated based upon the property's value.

26. Is it possible to create a trust structure for mortgage security over real estate?

It is possible to create a Real Estate Guaranty Trust (*fideicomiso de garantía*) to secure payment obligations of a creditor. In a guaranty trust, the trustor transfers the

property to the fiduciary in order to guaranty its payment obligations in favor of trust beneficiary.

If the trustor (also a debtor) fails to comply with its obligations, the fiduciary may directly transfer the property to the beneficiary following a private procedure by the fiduciary, without being subject to a judicial process.

Is important to clarify that a Real Estate Guaranty Trust is not the same as a mortgage, so much so that usually the mortgage has priority over the guaranty trust when it comes to payment of creditors.

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