



# The Legal 500 Country Comparative Guides

## Mexico

# REAL ESTATE

### Contributor

Von Wobeser y Sierra, S.C.

VON WOBESER

#### Pablo Saez

Partner | [psaez@vwys.com.mx](mailto:psaez@vwys.com.mx)

#### Rodrigo de los Ríos

Counsel | [rdelosrios@vwys.com.mx](mailto:rdelosrios@vwys.com.mx)

#### Roberto Flores

Associate | [rflores@vwys.com.mx](mailto:rflores@vwys.com.mx)

#### Rocío Vega

Associate | [rvega@vwys.com.mx](mailto:rvega@vwys.com.mx)

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

For a full list of jurisdictional Q&As visit [legal500.com/guides](https://legal500.com/guides)

# 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: The law applicable to property in Mexico is the law of its location. Each State of 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 2022 or are there any major anticipated new laws which are expected to materially impact them in the near future?

(i) In October 2023, the Federal Government issued a decree granting tax benefits to taxpayers engaged in the production or manufacturing of specific industries, including agrochemicals, pharmaceuticals, human and animal food, electronic components, among others. This initiative aims to attract foreign investors in Real Estate assets in response to the nearshoring movement in Mexico.

One of the key benefits of the decree is the immediate deduction of investments up to the specified percentages, that goes from 56% to 89%, pursuant to the type of assets, machinery and equipment, according to the key activity in which they are used. This provision applies to fixed assets acquired from the date the decree came into force until December 31, 2024. We consider such measure could be attractive to both landlords and investors.

(ii) Additionally, on October 30, 2023, the Federal Government issued a decree granting tax benefits to taxpayers that invest in the reconstruction and rehabilitation of the areas of the State of Guerrero that were affected by Hurricane Otis.

Notably, the decree grants a tax benefit consisting of

immediately deducting investments made in new or used fixed assets, carried out during the period between October and December 2023, in the fiscal year in which such assets are acquired. This involves applying a 100% rate to the original amount of the investment. However, this deduction is applicable only if these fixed assets are used exclusively and permanently in the affected zones and are intended for replacement, reconstruction or rehabilitation.

It is worth mentioning that taxpayers with damage insurances on fixed assets that are declared as partial or total losses due to Hurricane Otis, can only apply the tax benefit to the amounts additional to those recovered, if any, from insurance indemnity payments and that are invested in fixed assets.

#### 4. How is ownership of real estate proved?

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.

#### 5. Are there any restrictions on who can own real estate?

(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.

In the rest of the country, outside the Restricted Zone, 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 it's 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?

The most common ownership structures for commercial Real Estate are (i) ownership via corporations; (ii) direct ownership by individuals; (iii) co-ownership; and (iv) trusts, including FIBRAS (REITs equivalent in Mexico).

It is important to mention that as of January 2020, article 187 of the Income Tax Law was amended and with this the possibility of having private Real Estate and infrastructure investment trusts (REIT or FIBRA) was practically repealed, since it was established that only FIBRAS issuing certificates that are publicly traded in

Mexico will benefit from the so-called "FIBRA tax regime" (regulated in articles 187 and 188 of the Income Tax Law).

### **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 on the 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) cannot be covered by usual legal due diligence?**

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.

### **11. What is the usual process for transfer of commercial real estate?**

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.

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 automatically transfer?**

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 not a public disclosure, some information should be submitted through the Notary Public to the tax authorities as part of the notary public's obligations to perform 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 obliged to identify the parties of the transaction and to submit a notice to the Ministry of Finance and Public Credit when the value of the transactions crosses a certain threshold. The threshold that triggers the reporting obligations is crossed if the amount guaranteed by the principal is equal to or higher than the equivalent—in local currency—of sixteen thousand times the general daily minimum wage in force for Mexico City. Currently, the threshold amount is approximately MXN\$1,659,840 equivalent to approximately USD\$95,024. In any case, the threshold would be calculated according to the higher of the agreed price, the cadastral value, or, if applicable, the commercial value of the Real Estate. It is important to note that, in the case above, the client or user participating in the transaction must provide information about the beneficial owner and, if applicable, exhibit official documentation to identify such beneficiary.

Furthermore, according to the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds, the constitution of personal rights (*In Personam*) of use or enjoyment of Real Estate for a monthly value greater than the equivalent of one

thousand six hundred five times the minimum wage in force in Mexico City (approximately MX\$166,503 equivalent to approximately USD\$9,532), will also trigger the reporting obligation to identify the beneficial owner. Likewise, the above activities will be subject to notification (not a reporting obligation to identify the beneficial owner) before the Ministry of Finance and Public Credit, when the amount of the monthly act or transaction is equal to or greater than the equivalent of three thousand two hundred ten times the minimum wage in force in Mexico City (approximately MX\$333,005 equivalent to approximately USD\$19,064).

Mexican financial institutions also have the obligation to require the disclosure of the ultimate beneficial owner and all their information in order to be a trustor and/or trust beneficiary under a Real Estate Trust.

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

The most important tax related to Real Estate ownership is property tax. Which is a local tax and is calculated based on the cadastral value of the Real Estate.

The main taxes related to the transfer of Real Estate rights are (i) Income Tax (*Impuesto Sobre la Renta*); (ii) Value Added Tax (*Impuesto al Valor Agregado*); and (iii) Property Acquisition Tax (*Impuesto Sobre Adquisición de Bienes Inmuebles*). Unless otherwise agreed, the Income Tax should be borne by the seller. The Value Added Tax (VAT) should be calculated at the rate of 16% over the value of the buildings for commercial or industrial use and is also borne by buyer. Finally, the Property Acquisition Tax is a local tax, ranging from 0.02% to 0.05%, approximately, depending on the State where the property is located, and is borne by buyer.

### 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 lessee must be authorized by the lessor and, if applicable, remain for the benefit of the property without the right to the payment of compensation. The lessee 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 Lessor 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 lessee 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 lessor intends to sell the property. However, the right of first refusal is commonly renounced by the lessee in the contract.

### **19. 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.

### **20. 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 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.

### **21. 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*).

## 22. 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, the owner must be indemnified for the property. The interpretation of the Supreme Court via court precedents is that the amount of the indemnification to be paid to owners due to expropriations should be the commercial value.

## 23. 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.

## 24. 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.

## 25. 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.

## Contributors

**Pablo Saez**  
**Partner**

[psaez@vwys.com.mx](mailto:psaez@vwys.com.mx)



**Rodrigo de los Ríos**  
**Counsel**

[rdelosrios@vwys.com.mx](mailto:rdelosrios@vwys.com.mx)



**Roberto Flores**  
**Associate**

[rflores@vwys.com.mx](mailto:rflores@vwys.com.mx)



**Rocío Vega**  
**Associate**

[rvega@vwys.com.mx](mailto:rvega@vwys.com.mx)

