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September 2007

*The Good, the Bad, and the Ugly when
Purchasing Real Property in México*

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It was 8:03 at night when she saw the police siren behind her. She could feel her heart pounding against her chest, her hands sweating and the dizziness one feels when one stops breathing. Before the police officer approached her, she knew that this was it.

As a 62 year old woman, Sofia Weinberg purchased a home in Chula Vista, which is a 30 minute drive from her family and part time job in La Jolla. Like many her age, retirement is knocking at the door and with the \$1,700 monthly social security she receives, she cannot afford a home in the city she has called home for the past twelve years. As a single retiring female, she was nervous when she knew she had to relocate to a more affordable location, but at least she had a car...

Through the lights flashing in her rearview mirror, she saw her life flashing through her eyes. She knew her license would be revoked. "Welcome to retirement," she told herself. No job, no affordable housing, and now no mobility. How can someone live in Southern California with no car?

A few months later, Sofia pinched herself as she closed the door to her new home. It never occurred to her that she could live 50 minutes away from La Jolla, buy her ocean view home and legally drive. She felt ready, ready for her new adventure in Baja California, México.¹

This article explores the advantages and difficulties U.S. citizens face when purchasing real property in the prohibited zones (border and shores) in the Mexican republic. First, this article explains that with the increase in retirees and decrease in available retirement options, looking outside of the country might be a viable option many baby boomers will explore. Therefore, Part I explores the retirees' projected income and expenses and suggests Baja California as an affordable alternative for retirement. Part II explains the intricacies involved in purchasing real property as a

¹ This is a compilation of three women's experiences that I spoke to when I visited a development called *Baja Mar* between the cities of Rosarito and Ensenada in Baja California. However, in order to protect their identities, names have been changed and omitted. The interview with these three U.S. women took place in Baja California, México (May 6, 2007 and May 19, 2007).

Mexican foreigner in México's coastal zones. It also explains that even though the Mexican Constitution bans foreigners from purchasing property in coastal and border zones, foreigners can still purchase real property in these restricted zones by utilizing a Mexican trust called a *fideicomiso*. Therefore, this section details the steps needed for the creation of a *fideicomiso* as well as the additional steps foreigners must understand before purchasing a home in Baja California. Finally, Part III suggests that both the State of Baja California and U.S. buyers must actively seek to create a symbiotic and long last relationship with each other. It is recommended that while U.S. buyers retiring in México should acknowledge the potential setbacks they might encounter when buying in México and exercise due diligence before any final real property transaction; in turn, México must also play a part in retaining the influx of expected retirees by guarantying the property title, improving Baja California's infrastructure, heightening security and closely regulating the real estate transactions to foment trust between retirees and Baja California.

I. THE BABY BOOMER GENERATION: THEIR ECONOMICS, RETIREMENT ALTERNATIVES AND MÉXICO?

Like Sofia, many are approaching the age of retirement. However, many retirees endure greater expenses than income and retiring alternative must be sought in order for them to afford retirement. However, before exploring retirees' economical situation, it is important to establish who these baby boomers are to then determine where viable retirement options exist.

A. WHO ARE THE BABY BOOMERS

In 1946, after U.S. soldiers returned from WWII the U.S. experienced a baby boom that continued for eighteen years,² where an estimated 76 million people were born.³ By 1964, these baby boomers embodied about 40% of the population, where more than one third of the U.S. population was less than nineteen years of age.⁴ As of July 1st, 2005 there was an estimated 78.2 million baby boomers in the United States.⁵ The total U.S. population in 2005 was 296,507,061,⁶ making the baby boomers a critical portion of the consuming public. As the baby boom generation approaches retirement, the percentage of people over the age of 65 continues to expand. In fact, about 13% of the total population in 2000 was over the age of 65, this percentage is expected to double by 2030.⁷ Not only are there more people over the age of 65, but the average life expectancy also continues to rise.⁸ The combination of a longer life expectancy and

² See Baby Boom, <http://www.britannica.com/ebc/article-9356300> (last visited Aug. 20, 2007).

³ See Baby Boomers Statistics on Empty Nests and Retirement (May 2004), http://www.escapehomes.com/articles/Baby_Boomers_Statistics_on_Empty_Nests_and_Retirement.htm (last visited Aug. 20, 2007).

⁴ Who are the Baby Boomers, *supra* Note 3.

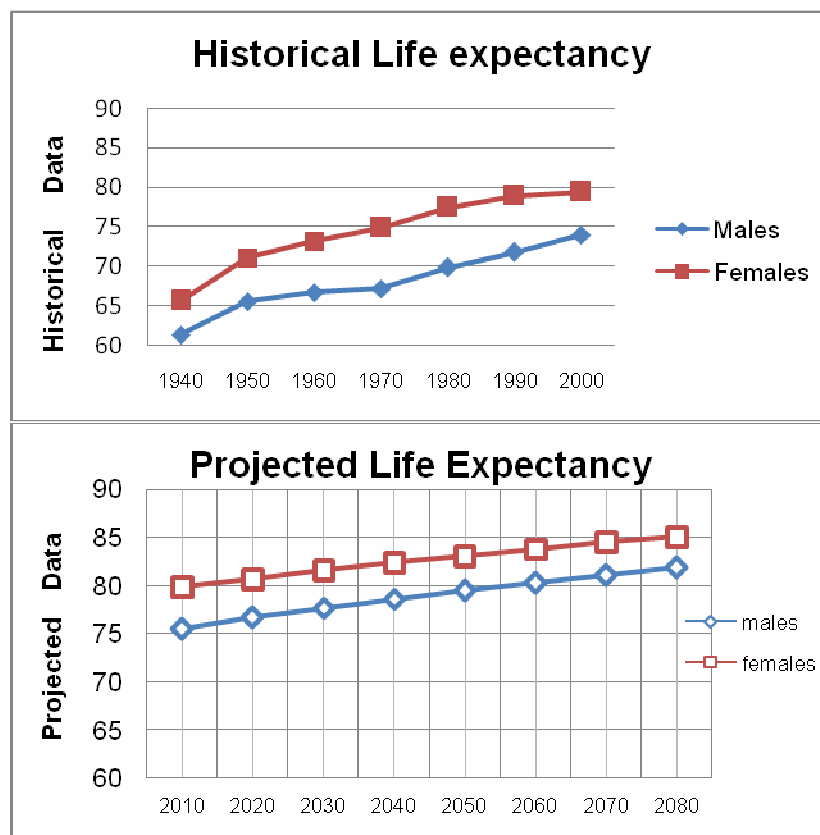
⁵ U.S. CENSUS BUREAU, NATIONAL POPULATION PROJECTIONS TBL. 2: PROJECTIONS OF THE POPULATION BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1999 TO 2100 (MIDDLE SERIES (Jan.13, 2000), *available at* http://www.census.gov/population/projections/nation/detail/d1999_00.pdf (Last visited Aug. 17, 2007).

⁶ *Id.*

⁷ *Id.* at Tbl. 4.

significant increase of the retiring generation is creating a significant problem and out of these, the labor force is expected to linger in comparison to the growing population of retirees, which will lead to fewer workers per retiree.⁹ More specifically, in 2000 there were around 4.8 people aged between 20 and 64 per person aged 65 or older; yet, that number is expected to decline to approximately 2.9 by 2030.¹⁰ Therefore, there will be a substantial increase in the number of baby boomers that will become dependent on government aid and a decrease in available funding because of the expected decrease

⁸ The following graphs illustrate the historical life expectancy and projected life expectancy utilizing the statistics provided by the U.S. SOC. SEC. ONLINE, TBL.V.A3: PERIOD LIFE EXPECTANCY (April 23, 2007), available at <http://www.ssa.gov/OACT/TR/TR07/lr5A3.html#foot2> (last visited Sept. 1, 2007).



⁹ CONGRESS OF THE U.S., CONG. BUDGET OFFICE, BABY BOOMER'S RETIREMENT PROSPECTS: AN OVERVIEW 11 (2003).

¹⁰ U.S. Census Bureau, *supra* note 8.

in the labor force. This will affect baby boomers that lack enough savings to survive retirement. But in order to better understand what percentage and to what extent retirees will be affected, it is critical to adequately understand the baby boomer's overall economics.

B. BABY BOOMER'S ECONOMIC SITUATION

i. Baby Boomer's Projected Income as Retirees:

Retirees are highly dependent on Social Security, Medicare and Medicaid programs partly replace retiree's employment incomes and health care benefits.¹¹ In 2006, retirees that received Social Security benefits obtained a monthly average of \$1,044.¹² More precisely, in 2007, there will be an estimated 50 million Americans receiving over \$602 billion in Social Security benefits.¹³ As mentioned above, this number is further exacerbated by the decrease in youngsters in the work force on the one hand and in increase of retirees and life expectancy on the other.

Even if the government can provide for the Social Security benefits vested in the retiring baby boomers, these new retirees might find financial hardships with the high-priced cost of life. Therefore, it is important to understand who and what these retirees' depend on once they retire. Because many retirees continue to depend on Social Security as their sole retirement plan, they continue to spend more and save less.¹⁴ In fact, about 52% of the workforce have no private pension coverage, 31% have no

¹¹ CONG. BUDGET OFFICE, *supra* Note 10, at 3.

¹² See Social Security Fact Sheet (Jan. 31, 2007),

<http://www.ssa.gov/pressoffice/factsheets/basicfact-alt.pdf> (last visited Aug. 23, 2007).

¹³ *Id.*

¹⁴ CONG. BUDGET OFFICE, *supra* Note 10, at 1.

savings set aside for retirement and 70% have no long term disability insurance;¹⁵ therefore, augmenting retirees' dependency on the government. On the other hand, Social Security payments account for 40% of the total income that people aged 65 and higher receive.¹⁶ By further analyzing this statistic, studies show that about 66% of the people receiving benefits report that half their income derives from Social Security.¹⁷ The more severe concern is reflected in the other 33% receiving Social Security benefits because at least 90% of their income originates from this government aid.¹⁸ This is the true since these 33% of individuals receiving Social Security benefits will collect an average of \$12,480 a year¹⁹ and have no substantial supplemental income. As more boomers retire, their lack of savings presents a growing concern for the United States because less and less retirees are able to afford retirement. As a matter of fact, in 2002, about 10% of the elderly fell below the official poverty level.²⁰ This statistic is likely to increase significantly as more baby boomers retire and less youngsters are available to contribute to the Social Security pool.

ii. Baby Boomer's Projected Expenses as Retirees:

¹⁵ Soc. Sec. Fact Sheet, *supra* note 12.

¹⁶ CONG. BUDGET OFFICE, *supra* Note 10, at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ SOC. SEC. ADMIN., SSA PUBL'N NO. 13-11785, FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY 2006, 7 (2006), available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2006/fast_facts06.pdf (last visited Aug. 27, 2007).

²⁰ *Id.* at 9.

After discussing what retirees' expected income is, one must explore their expenses to get a better understanding of what affordable living entails. In 2004 individuals aged 65 and higher had the following annual expenditures: \$3,897 on healthcare, \$10,266.5 in housing, \$4,896 on transportation, and \$4,194.5 on food.²¹ Annually the total averaged expenditures of this age group in 2004 was around \$31,138. In 2004 the average Social Security aid received was around \$11,000 a year.²² Needless to say, there is a real financial danger knocking in many retirees home when about 33% of the retiring population are over 90% dependent on Social Security as their sole source of income (as explored above) and they lack the savings needed for post-retirement.

C. BABY BOOMER'S RETIREMENT PLANS?

By acknowledging the threatening economical concerns that boomers will face, it is now essential to understand how and where boomers plan to retire. About 55% of them plan to relocate after retirement. Out of these 55%, 51% foresee relocating more than three hours away from their home.²³ Understanding that over half of retirees are willing to relocate at least three hours away poses the question of whether boomers can afford retirement even if they are open to relocating. According to a recent study, only about one-third of boomers foresee having enough money to live comfortably after retirement.

²¹ BUREAU OF LABOR STATISTICS, TBL.3 AGE OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS, CONSUMERS EXPENDITURE SURVEY (2004), 1-2 *available at* <http://www.bls.gov/cex/2004/Standard/age.pdf> (last visited Aug. 25, 2007).

²² SOC. SEC. ADMIN., SSA PUBL'N NO. 13-11785, FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY 2006, 7 (2004), *available at* http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2004/fast_facts04.pdf (last visited Sept. 2, 2007).

²³ Baby Boomers Statistics on Empty Nests and Retirement (2004), http://www.escapehomes.com/articles/Baby_Boomers_Statistics_on_Empty_Nests_and_Retirement.htm (last visited Aug. 6, 2007).

40% of boomers are not sure if they will have enough money for a comfortable retirement, and 25% think they will not be able to afford retirement.²⁴ More importantly, as discussed above, these unsteady feelings about retirement are more than substantiated by the statistics provided by social statistics.²⁵ Therefore, many boomers will have to face a difficult decision regarding retirement. When retirement is not an option in their home city, state or even country relocating to a different place with a lower cost of living might be a solution.

D. ECONOMICAL RETIRING ALTERNATIVES?

According to leading experts, as of 2006 when 78 million boomers reach their retirement age and realize that they do not have the resources to retire, many will start looking to retire outside the United States.²⁶ Baby boomers looking to retire are mostly looking into country's whose economics are somehow linked to the U.S. dollar. Because of how weak the Dollar is becoming against the Euro, Europe is not a tangible solution for many retirees; instead, the most popular choices seem to be México, Panama and Costa Rica. In these countries, the quality of retirement is more palpable than it is in retiree's native country.²⁷

²⁴ *Id.*

²⁵ For more information about the Baby Boomer's expected income and expenses after retirement, see *infra* Part I§B.

²⁶ U.S. Economic Exodus Expected When Baby Boomers Retire (2006), http://www.shelteroffshore.com/index.php/shelter/more/us_economic_exodus_expected_when_baby_boomers_retire/ (last visited Aug. 27, 2007).

²⁷ *Id.*

Experts are calling the significant U.S. immigration into México the land rush of the 21st century.²⁸ The U.S. Department of State estimates that out of the four million Americans living overseas, between 600,000 and one million live in México, which is a number that has tripled in the last decade.²⁹ The Treasury Department estimates that the number of Treasury checks including Social Security, Veteran Administrations, and tax refunds sent to México is "in the ballpark of 750,000."³⁰ Yet, the Dallas Morning News reported that as many as a million U.S. citizens now live in México, which is up fivefold from a decade ago.³¹ Whether it be 600,000 U.S. citizens living in México, or over a million, it is safe to say that each year more U.S. citizens continue to emigrate to our Southern neighbor.

Narrowing the statistics to Baja California,³² more than 16,000 condos, houses and lots are for sale presently or in future projects that represent a \$4.1 billion investment in the 75 mile strip between Ensenada and Tijuana.³³ Mr. Gustavo Torres of RE/MAX Baja Realty estimates that 250,000 Americans live in Baja currently, but explains that no reliable official figure exists.³⁴ Still, other experts claim that U.S. citizens living in Baja California is closer to 400,000.³⁵ Regardless of the exact number of U.S. citizens living in Baja California, up to 80% of sales are to U.S. citizens explained Nathan

²⁸ Will Rogers, Find out where the Baby Boomers are Going and Get There First (2007), <http://baja-relocation.com/retirement.htm> (last visited Sept. 3, 2007).

²⁹ *Id.*

³⁰ *Id.*

³¹ Les Christie, The Rush to a Mexican Retirement is On (Apr. 12, 2005), http://www.baja-relocation.com/newsletter_pages/rush_to_a_mexican_retirement.htm. (last visited Aug. 27, 2007).

³² For more information about Baja California go to *Infra* Part 1§E.

³³ Michael Martinez, Americans Go Gaga for Baja (Oct. 15, 2006), http://www.baja-relocation.com/newsletter_pages/americans_go_gaga_for_baja.htm (last visited Aug. 14, 2007).

³⁴ See e.g., Michael Martinez, *Expatriate Americans find 'gringolandia' in Baja California*, Chicago Tribune (Oct 14 2006), at 1. See also Martinez, *Supra* note 34.

³⁵ Find a Higher Quality of Life in Baja (2007), http://www.baja123.com/RETIREES/page_1239714.html, (last visited Aug. 10, 2007).

Moeder, principle of the London Group Realty Advisor Inc. of San Diego.³⁶ Gabriel Robles, President of the Resort Real Estate Developers Association of Baja California speculated that about 90% of the population in Cabo San Lucas (located in Southern Baja California) is U.S. citizens.³⁷ Likewise, experts foresee that the strip between Rosarito and Ensenada (in Baja California North) will likely become the next Cabo San Lucas.³⁸ Currently, the population in Rosarito (Baja California North) is estimated to have 95,000 individuals, with approximately 35,000 North Americans.³⁹ This means that 36.84% of those living in Rosarito are U.S. citizens.

On March 1, 2007, México's Association of Real Estate Developers estimate that investment in real estate will probably grow somewhere between 5%-8% in 2006. Mitch Creekmore, vice-president and México division manager for Stewart Title Guaranty Co. foresees that more than 15 million U.S. and Canadian citizens travel to México annually.⁴⁰ According the U.S. Department of State, Bureau of Consular Affairs indicates that about 400,000 U.S. citizens have purchased properties in México. However, Mr. Creekmore estimates that this number is closer 1.5 million U.S. citizens, with a significant majority being from California, particularly from San Diego, CA.⁴¹ As

³⁶ See, e.g., Martinez, *supra* note 34. See also Martinez, *supra* note 35.

³⁷ Elizabeth Malloy, *Developers Foresee Cross-Cultural Benefits, Challenges as more Americans Move South*, INVESTING IN MEXICO, May 31, 2007 at 2.

³⁸ See Hilario Ochoa Movis, Op-Ed., *¿Por qué es Importante Invertir en Bienes Raíces en Baja California Sur?*, El Mexicano (2007) available at <http://www.el-mexicano.com.mx/nota.aspx?idNota=126051&Seccid=4&esSecc=true> (last visited Aug. 27, 2007).

³⁹ Rogers, *supra* note 28.

⁴⁰ See HEATHER BERGMAN, U.S. LENDERS PAVE WAY FOR MORE SAN DIEGANS TO INVEST IN 2ND HOMES ALONG MÉXICO'S COAST (Mar. 28, 2005), http://www.baja-relocation.com/newletter_pages/us_lenders_pave_way.htm (last visited June 2, 2007).

⁴¹ *Id.*

the number of baby boomers retire, the number of U.S. citizens owning properties in México, is expected to jump to 12 million within 20 years.⁴²

Even with the crisis in the subprime mortgage industry and the decline in real estate activity this past year,⁴³ real estate is still considered one of the few substantial assets that people possess.⁴⁴ However, even for retirees who may have had paid their mortgage in full, the added expenses associated to owning a home (taxes, maintenance expenses, and the like) might threaten retiree's ability to retain their home. Even those retirees that receive retirement income are not guaranteed a secure retirement because of increasing high health care, insurance, transportation and additional charges. Therefore, the México migration of the boomers is not solely dominated by the rich; rather, the migrants are increasingly working class citizens like teachers, military personnel, technicians and medical workers.⁴⁵

The housing boom in Baja California is mostly fueled by the overpriced real estate market in Southern California.⁴⁶ Numerous of these homeowners had enough equity in their California homes to refinance their second home in Baja California.⁴⁷ Thus, the baby-boomers are retiring and some are seeking retirement options outside their town, state and country. The question now becomes why Baja California?

⁴² Ann Brenoff, *Plunging into Baja* (Oct. 22, 2006), http://www.baja-relocation.com/newsletter_pages/plunging_into_baja.htm (last visited June 29, 2007).

⁴³ See Mark Whitehouse, *'Subprime' Aftermath: Losing the Family Home*, Wall St. J., May 30, 2007, at A14. See also Greg Ip, *Did Greenspan Add to Subprime Woes?*, Wall St. J., June 9, 2007, at B5.

⁴⁴ Richard D. Vogel, *The Migration of Boomers: Death Knell of Another American Dream* (Oct. 28, 2005) http://www.baja-relocation.com/newsletter_pages/migration_of_boomers.htm (last visited July 25, 2007).

⁴⁵ *Id.* at B5.

⁴⁶ David Valenzuela, *Real Estate Boom hits Ensenada Market Heats Up*, http://www.baja-relocation.com/newletter_pages/real_estate_boom.htm (last visited July 5, 2007).

⁴⁷ *Id.*

E. WHY RETIRE IN BAJA CALIFORNIA?

i. Introduction to México

México is a federal country, with 31 states and a Federal District.⁴⁸ In 2000, the country's national population consisted of a total of 97,483,412 individuals.⁴⁹ The Baja California Peninsula⁵⁰ is located in the Southwest of North America and is divided into Baja California Sur (South) and Baja California Norte (North). The peninsula extends about 1250 kilometers or 775 miles from Mexicali in the north to Cabo San Lucas in the South and separates the Pacific Ocean from the Gulf of California (also known as "Sea of Cortés").⁵¹ Baja California's population in 2000 consisted of 2,911,408 individuals.⁵²

⁴⁸ David Santoyo-Amador, Property Taxes in Mexico, <http://www1.worldbank.org/publicsector/decentralization/June2003Seminar/Mexico.pdf> (last visited Sept. 2, 2007).

⁴⁹ CIA World Factbook, United States (June 15, 2007), available at <https://www.cia.gov/library/publications/the-world-factbook/print/us.html> (last visited Sept. 2, 2007).

⁵⁰ Baja Relocation, http://www.baja-relocation.com/baja_california.htm (last visited Sept 3, 2007).



⁵¹ World Atlas, Map of Tijuana, Baja California, Mexico available at http://encarta.msn.com/map_701517083/Tijuana.html (last visited Sept. 4, 2007).

⁵² See e.g., CIA World Factbook, *supra* note 50.

According to the Mexican population survey, that same year, a total of 343,790 foreigners immigrated to México.⁵³ The second largest growth state from 1995-2005 was Baja California, which experienced more than twice the average growth as compared to the rest of the nation.⁵⁴

ii. Affordability

a. Real Estate Comparison

Before exploring the retirement options that baby boomers might explore in Baja California, it is critical to determine their real estate options in the United States. According to the National Association of Realtors in 2004 the median priced single family home's national average was \$195,000.⁵⁵ This national average increased to \$219,000 in 2005 and it further increased to \$221,900 in 2006.⁵⁶ However, the national average is not a good reflector of specific retirement communities. In fact, the western states' median priced single family home was calculated at \$345,400 while the median for the Midwest states was calculated at \$162,600.⁵⁷ Therefore, the regional discrepancies must be considered. Given the fact that this article explores real estate investments in Baja California it is reasonable to narrowly tailor the comparison of the Mexican state of Baja California real estate market to the U.S. state of California market.

⁵³ See Generally INEGI Censo General de Población y Vivienda, Tabulados básicos 46 (2000). See also INEGI, Censo General de Población y Vivienda (1995).

⁵⁴ *Id.* at 6.

⁵⁵ National Association of Realtors, Tbl. 2, Sales Price of Existing Homes (2007), [http://www.realtor.org/Research.nsf/files/EHSreport.pdf/\\$FILE/EHSreport.pdf](http://www.realtor.org/Research.nsf/files/EHSreport.pdf/$FILE/EHSreport.pdf) (last visited Sept. 3, 2007).

⁵⁶ *Id.*

⁵⁷ *Id.*

The total population in California is around 33, 871, 648 out of which 9,816,976 constitute the baby boomers generation.⁵⁸ In other words, around 28.98% of the population in California represents individuals that were born between 1946 and 1964. Like all Californian residents, the boomers must tolerate the high cost of living associated to this state. More specifically, they have to endure the elevated real estate prices. As stated above, the national average for a home sold in 2006 was \$221,900.⁵⁹ In California, the national average metropolitan home in 2006 was \$597,471.15,⁶⁰ which more than doubles the national average.⁶¹ Therefore, Californian boomers will encounter further financial burdens and difficulties post retirement than boomers in other states.

Inversely, Baja California has more luxury to offer at a more reasonable price. As Gabriel Robles, founder and principal of Baja Resort Advisors Ltd, puts it: investing in Baja California "... is not only a safe investment, but there is growth in value, it is cheaper for the same product and we're all share the same ocean."⁶²

⁵⁸ U.S. CENSUS BUREAU, NATIONAL POPULATION PROJECTIONS TBL. 2: ANNUAL ESTIMATES OF THE POPULATION BY AGE AND SEX FOR CALIFORNIA (APRIL 1, 2006), *available at* http://factfinder.census.gov/servlet/QTable?_bm=y&-geo_id=04000US06&-gr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U (last visited Sept. 3, 2007).

⁵⁹ See National Association of Realtors, *supra* note 55.

⁶⁰ National Association of Realtors, Median Sales Price of Existing Single-Family Homes for Metropolitan Areas, [http://www.realtor.org/Research.nsf/files/MSAPRICESF.pdf/\\$FILE/MSAPRICESF.pdf](http://www.realtor.org/Research.nsf/files/MSAPRICESF.pdf/$FILE/MSAPRICESF.pdf) (last visited Sept 3, 2007).

⁶¹ To further understand this statistic, it is important to know the metropolitan areas that were accounted for in this 2006 state average. According to the National Association of Realtors, *supra* note 55, the following are the averages by zone: Anaheim-Santa Ana's average was \$709,000; Los Angeles/Long Beach's average was \$584,800; Riverside/San Bernardino/Otay's was \$400,100; Sacramento's was \$374,800; San Diego/Carlsbad area was \$601,800; San Francisco/Oakland/Fremont was \$736,800; and San Jose/Santa Clara's which was \$775,000.

⁶² Tanya Kurkland, *Baja Resort Advisors Seizes Opportunity to Build up Region*, Investing in Mexico, May 31, 2007, at 5.

As compared to San Diego, where one can buy a condo priced between \$200,000 to \$2 million, in Baja one can find a beautiful oceanfront condo from the low \$80,000. Similarly, the larger and more luxurious condos available in San Diego from the mid \$800,000 to the \$5 million vicinity are available in mid \$300,000 to the low \$1 million in Baja California.⁶³ In fact, Donald Trump plans to build a 526-unit condo hotel, with units ranging from 532 to 2,200 square feet. These condos are selling from the mid-\$200,000s to more than \$1 million.⁶⁴

Currently there are more than 16,000 homes, condos, and lots for sale in actual or projected plans. According to Gustavo Torres of RE/MAX Baja Realty, in the 75 miles between Tijuana and Ensenada there are about 4.1 billion dollars in real estate.⁶⁵ In Baja California Sur, \$2 billion dollars in investments are being made by U.S. and Canadian real estate investors.⁶⁶ In fact, México's National Fund for the Promotion of Tourism (Fonatur) projects that the total investment along both sides of the Sea of Cortes will surpass \$8 billion in the coming 14 years.⁶⁷ As Patrick Osio from the San Diego Metropolitan phrased it: "if that's the investment how much more will it generate?"⁶⁸

⁶³ Tomas Perrin & Gerardo Alcalá, *Who's Responsible for Baja California's Real Estate Boom? Americans and Mexicans of course!* San Diego Metropolitan, (Sept. 2005) available at <http://www.sandiegometro.com/2005/sep/baja.php> (last visited Aug. 30, 2007).

⁶⁴ Pat Broderick, Trump Resorts Seen as Boon for Region (Oct. 11, 2006) http://www.baja-relocation.com/newsletter_pages/trump_resort_seen_as_boon.htm (last visited Sept. 1, 2007).

⁶⁵ Martinez, *supra* note 34.

⁶⁶ *Id.*, *supra* at note 34.

⁶⁷ Patrick Osio, *Baja Housing's Best Customers for US Investors Eager to Buy Mexican Property, Title Insurance and Legal Advice are Critical*, San Diego Metropolitan (Aug., 2005) available at <http://www.sandiegometro.com/2005/aug/connection.php> (last visited Aug. 25, 2007).

⁶⁸ *Id.*

San Felipe, for example, has a population of 25,000 including 5,000 U.S. citizens. These U.S. citizens account for 70% of all spending and have seen their retirement properties appreciate 10% a year.⁶⁹ Similarly, in Rosarito Beach and Ensenada Condos, town-homes, and detached villas are appreciating 20% a year.⁷⁰ Still, experts proclaim that the prices along the Tijuana-Ensenada strip are still a bargain compared to the U.S. and the Sea of Cortes costal properties.⁷¹ Unlike the U.S. where similar properties are priced in the millions, a few miles south one can purchase condos ranged from \$140,000 to \$500,000 with a few selling for more than \$1 million.

b. Cost of Living Comparison Between the U.S. and México

1) *Property Taxes:*

Unlike the U.S. where the annual real property tax rate is about 1.1% of the property value,⁷² while the real property taxes in Baja California are significantly lower.⁷³ The Mexican property tax better known as *predial*, is set by the state, not the local government; therefore, tax rates vary from state to state.⁷⁴ Nationally, the tax rates tend to vary anywhere from 0.1 to 0.30% and the rates are dependent upon the use and location of the property.⁷⁵ One of the reasons for the low tax rate is the fact that the Mexican government has not depended on taxes for part of its revenue.⁷⁶

⁶⁹David Devoss, *Why Mexico Has Come of Age As Retirement Property Market*, Investor's Business Daily (Apr. 20, 2006) available at <http://uscondex.blogspot.com/2006/04/why-mexico-has-come-of-age-as.html> (last visited Sept. 1, 2007).

⁷⁰*Id.*

⁷¹Osio, *supra* note 68.

⁷²CCH STATE TAX LAW EDITORS, U.S. MASTER PROPERTY TAX GUIDE, 203 (CCH Walters Kluwer) (2007).

⁷³Find a Higher Quality of Life in Baja, http://www.baja123.com/RETIREES/page_1239714.html (last visited Sept. 5, 2007).

⁷⁴Santoyo-Amador, *supra* note 49. See also OECD, *Taxing Powers of State and Local Government* (Paris, 1999), at.46-47.

⁷⁵Manuel Perlo-Cohen & Luis R. Zamorano-Ruiz, *La Reforma al Sistema Fiscal Sobre la Propiedad*

More specifically, the property tax in Baja California is about 2.8, which is about 25% of the rate endured in the U.S.⁷⁷ For example, a three bedroom, two and a half bath home priced at 155,000 located two blocks away from the beach, north of Rosario has an annual property tax bill just under \$200.⁷⁸ The second tax involved in real property transactions is the transfer tax. In Baja California, a home buyer is obligated to pay slightly over 2% of transfer taxes of which 1.3% pays the department of public record as a registry fee, while about 1% pays the notary public.⁷⁹ Most sales contracts are written by a notary that reflects a sales price closer to the appraisal (which tends to be lower amount)⁸⁰ so that the tax burden is reduced.⁸¹

2) **Medical Services:**

As many retirees relocate to México, their Medicare and Medicaid benefits are usually not portable to countries outside the United States.⁸² However, México has cheaper medical alternatives to offer. In fact, medical insurance, prescription drugs, surgeries and dental procedures in México cost about 33% of what the cost is in the

Inmobiliaria en Mexicali, Lincoln Institute of Land Policy, 1989-98 (1999).

⁷⁶ Buying Property in Mexico Purchasing Procedures: Real Estate Transactions in Mexico, <http://www.cancun-webs.com/buy.htm> (last visited Sept 2, 2007).

⁷⁷ Carlos Bello Roch, Real Estate Investment (Jan. 2007), http://www.investinmexico.com.mx/pied/cds/pied_bancomext/legal_information/real.htm (last visited Aug. 22, 2007). See also, Real Estate Consultation: Baja California Sur (2007) <http://atlapaz.com/mexico.html> (last visited Sept. 10, 2007).

⁷⁸ Find a Higher Quality of Life in Baja, *supra* note 74. See also Bello Roch, *supra* note 78 at 2.

⁷⁹ Specializing in foreign investor representation: Real Property Taxation in Mexico (July 18, 2007), http://www.mexicomatters.net/mexicorealestate/17_mexicotaxespropertytransfer.php (last visited Aug. 25, 2007).

⁸⁰ *Id.*

⁸¹ Generally, the difference between reported price and actual sales price is sometimes paid in cash so that the taxes paid are further minimized.

⁸² For an in depth explanation of the available alternatives to retirees and the ability to extend their Medicare coverage to México see e.g., David Warner & Lauren Jahnke, *Toward Better Access to Health Insurance Coverage for U.S. Retirees in Mexico*, 43 *Salud Pública de México* (Jan-Feb 2001), at 2-3. Also available at http://www.insp.mx/salud/43/eng/i431_7.pdf (last visited Sept. 4, 2007).

U.S.; still, the medical training practiced in Meexico are of the highest standards and provide word class specialists and care.⁸³

3) Gasoline, Transportation and Related Services

Even though gasoline is slightly higher in México, there is substantial savings in automotive repairs, which cost about 80 to 90% less than garages in the United States.⁸⁴ Additionally, taxi cabs that pick up multiple passengers cost about 55 cents to go from one end of town to the other.⁸⁵ Similarly, buses cost about 20% of the U.S. Bus fares, while the bus departures and routes are more extensive than their northern neighbor's.⁸⁶

iii. Distance

Another reason for which U.S. and Canadian citizens chose México is because it is only a drive away. With Ensenada being about 70 miles south of San Diego⁸⁷ these foreigners can come and go from Southern California to Baja California North with the same gas tank. México's contemporaneous infrastructure contains superior highways than many parts of Latin America and allows foreigners to connect via telephone, internet and the like to the rest of the world.⁸⁸ Yet, as baby boomer expert Will Rogers puts it: "This level of infrastructure isn't available in Nicaragua, or in Guatemala, and this

⁸³ Mexicomatters, Specializing in Foreign Investor Representation: The Economics of Living and or Working in Mexico, http://www.mexicomatters.net/retirementmexico/02_livingandorworkinginmexico.php (last visited Sept. 29, 2007).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Fonatur, Desert Inn Baja California, <http://desertinns.com/index.cfm> (last visited Sept. 5, 2007).

⁸⁸ Rogers, *supra* note 26.

is a very important determining factor for the retirees who do not want to be inconvenienced by inconveniences.”⁸⁹

iv. Food

Food is an added bonus to living in México. The food in México is significantly cheaper than it is in the U.S. In fact, one can buy more than two pounds of shrimp for \$16.00; Tortillerias sell fresh tortillas for less than \$1.00 a kilo; fresh rolls are sold for 25 cents each; premium dark roasted coffee is about \$4.50 a pound; and one can eat at a family restaurant for less than \$4.00 dollars.⁹⁰ In addition to the monetary advantages for food, one can buy fresh seafood directly from local fisherman and door-to-door vendors offer cheeses and desserts.⁹¹ Some might favor the flavors of the Mexican kitchen; however, the food is also healthier in México.⁹² Fresh vegetables and fruits are always available because Mexican produce is picked at its peak and sold daily; whereas the produce in the U.S. is picked green and allowed to ripen in transit.⁹³ Moreover, in México, a few or no preservatives are used to process the food and therefore people digest fewer chemicals.⁹⁴

⁸⁹ *Id.*, *supra* note 26.

⁹⁰ Specializing in Foreign Investor Representation: The Economics of Living and or Working in Mexico, *supra* note 84.

⁹¹ *Id.*, *supra* note 84.

⁹² Rogers, *supra* note 26.

⁹³ *Id.*, *supra* note 84.

⁹⁴ *Id.*, *supra* note 84.

v. **Language and Weather**

Even though Spanish is the country's *de facto* language,⁹⁵ those retiring in México will find that in most border cities (like Tijuana, Ensenada and Rosarito) English is widely spoken.⁹⁶ However, moving to a country where a different language is spoken gives these retirees the opportunity to acquire a second language, while truly immersing themselves into a new culture. Apart from the possibility of learning Spanish, retirees will find that the climate facilitates the acclimation to Baja California. México's weather is warm almost all year round. The weather in Baja California is similar to the San Diego weather, averaging about 75 degrees year round.⁹⁷ Thus, retiree's can avoid combating the snow with the additional cost of heat as well as fighting off the heat waves with the added cost of air conditioning.

In sum, México has a lot to offer retirees and individuals of all ages and economic circumstances. Now that the baby boomers are beginning to retire and begin to experience their expected economical shortcomings,⁹⁸ México tenders them an exciting alternative with a more affordable cost of living reflected in the real estate properties, property taxes, medical services, and transportation. Moreover, the distance, food, and weather that Baja California offers retirees an appealing substitute worth considering.

⁹⁵ México has no *de jure* constitutional official language; however, the *de facto* official language spoken by about 97% of the population is Spanish. See e.g., Wikipedia, Mexico, <http://en.wikipedia.org/wiki/Mexico> (last visited Sept. 23, 2007).

⁹⁶ Pendejadas y Tequila: Mexico Lindo (Oct. 21, 2005), http://pendejadasytequila.blogspot.com/2005/10/mexico-lindo_20.html (last visited Aug. 3, 2007).

⁹⁷ Baja California Weather Forecast, <http://www.concierge.com/tools/weather/detail/?url=bajacalifornia> (last visited July 26, 2007).

⁹⁸ For information about the Baby Boomer's economical situation, see *supra* at Part I§B.

II. Mexican Law for foreign investment in real property

As foreigners, U.S. citizens purchasing property in México have some obstacles to overcome in order to acquire their oceanfront homes. The Mexican Constitution prohibits foreigners from purchasing property in the nation's coastal and border zones;⁹⁹ yet, through a Mexican quasi-equivalent trust, foreigners have found a legal instrument that remedies the restricted zone predicament.¹⁰⁰

A. MÉXICO'S LONG TIME BATTLE WITH FOREIGN LAND OWNERSHIP

From 1821, México's birth as an autonomous country, until the Mexican Revolution of 1910, México lost portions of its terrain to foreigners.¹⁰¹ In order to protect their land, the Mexican government imposed statutory restrictions for foreigners to purchase real estate in the country's border and coastal areas.¹⁰² However, resentment over foreign control and territorial loss experienced by México increased throughout the nation's history which has led to the additional provisions that have existed against foreign ownership in various ways throughout México's history.¹⁰³ Still, it was not until 1917 that these restrictions were finally codified in the first paragraph of Article 27 of the

⁹⁹ Properties within the restricted coastal and border properties will hereinafter be referred to as the restricted zone. For detailed information about the restricted zone *See Infra* at Part II§C.

¹⁰⁰ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

¹⁰¹ *See e.g.*, Gastón García Cantú. *Las Invasiones Norteamericanas en México* (The North American Invasions of México) 125-162 (Era 3rd ed., 1974) (1980). Cantú explains that In 1848, the Treaty of Guadalupe Hidalgo was signed between the United States and México after the Mexican-American War, where México surrendered California, most of Arizona and some parts of Utah, Colorado, Nevada, and New Mexico to the United States. Similarly, in 1953, the Mexican President Santa Ana sold the remaining parts of Arizona to the United States.

¹⁰² *See* Victor Vilaplana, *The Forbidden Zones in México*, 10 Cal. Western L. Rev. 47, 48 (1973) (explaining that the 1824 Ley de Colonización limited the acquisition of real estate in border and coastal areas by foreigners since August 18, 1824). This statute required foreigners for prior approval from the office of the President.

¹⁰³ *See* Roberto Molina Pasquel, *El Fideicomiso de Inmuebles en las Zonas Prohibidas en Favor de Extranjeros* (The *Fideicomiso* Over Immovable Assets in the Prohibited Zones in Favor of Foreigners) 1, 37 (El Foro 1972).

Mexican Constitution.¹⁰⁴ In spite of this new article, foreign ownership restrictions have been overcome by the use of a Mexican trust otherwise known as a *fideicomiso* further discussed below.

B. MÉXICO'S CONSTITUTION

As stated above, since 1917, Article 27 of the Mexican Constitution prohibits foreigners' from purchasing real property in Mexico's international border and coastal regions known as the restricted zone.¹⁰⁵ More specifically, the Constitution provides that the country has original ownership of all the land and water within the national territory including minerals, salts, natural gas, ore deposits, and oil.¹⁰⁶ Yet, section I, paragraph one proclaims that the Mexican Government has discretionary powers to grant foreigners the right to own land inside the restricted zone under the "Calvo Clause."¹⁰⁷ Under said clause, foreigners must agree before the Ministry of Foreign Affairs to consider themselves Mexican nationals and abandon any protection from their country in matters relating to the land.¹⁰⁸

However, in the late 1930's and early 1940's two Mexican presidents first allowed foreigners to purchase land in the restricted zone by implementing the use of a Mexican

¹⁰⁴ See Constitución Política de los Estados Unidos Mexicanos, *supra* note 101. The United States Mexican Political Constitution was enacted on February 5th, 1917 in the city of Querétaro, in the state of Querétaro.

¹⁰⁵ See Constitución Política de los Estados Unidos Mexicanos, *supra* note 101 art. 27§1 proclaims that: "only Mexicans by birth or by naturalization and Mexican commercial societies have the right to acquire ownership of lands, water and their accessions, or to obtain concessions for the exploitation of mines and waters." It further explains that: "Under no circumstances may foreigners acquire ownership of lands or waters within a strip of one hundred kilometers along the {international} borders and fifty kilometers along the coastline. For an in depth interpretation see *e.g.*, Luis Miguel Díaz Gonzales Rubio, *Globalización de las Inversiones Extranjeras, Nuevos Aspectos Jurídicos* 39 (1989).

¹⁰⁶ See Constitución Política de los Estados Unidos Mexicanos, *supra* note 101.

¹⁰⁷ *Id.*, See Constitución Política de los Estados Unidos Mexicanos, *supra* note 101.

¹⁰⁸ *Id.*, see Constitución Política de los Estados Unidos Mexicanos, *supra* note 101.

trust.¹⁰⁹ This trust instrument known as a *fideicomiso* was later popularized during President Luis Echeverría's administration in the mid-1970's.¹¹⁰ Then, with the Mexican devaluation of 1994, México was forced into adopting drastic plans that would instigate a rapid economic recovery.¹¹¹ Therefore, in December of 1994, the country's Foreign Investment Act was amended to further allow foreign investment activities, including the legal regime applicable to *fideicomisos* for commercial activities.¹¹² Experts claim that through the *fideicomiso*, México is and continues to receive significant inflow of foreign capital, which has allowed the economy to stabilize and foment growth.¹¹³

C. MÉXICO'S RESTRICTED ZONE

As explained above, the threat of losing additional property to foreigners was a growing concern for the Mexican government. When legislators added paragraph 1 to Article 27 of the Constitution, it expressly prohibits the acquisition of land and waters for foreigners within the restricted zone including all land located within 100 kilometers (about 62 miles) along the Mexican border and 50 kilometers (about 31 miles) along the nation's coast.¹¹⁴ Given México's geographical configuration, it has been estimated that about 40% of the country falls under the restricted zone.¹¹⁵

D. FIDEICOMISOS

¹⁰⁹ President Lázaro Cárdenas enacted the *Acuerdo* of 1937 and President Avila Camacho enacted the *Acuerdo* of 1941 where both allowed foreigners to purchase real property through the use of a Mexican trust specifically tailored for this purpose. *See e.g.*, Molina Pasquel, *supra* note 104 at 64.

¹¹⁰ Jorge A. Vargas, *Mexican Law: A Treatise for Legal Practitioner and International Investors* 360-361 (St. Paul, Minn., West Group 1998).

¹¹¹ *Id.*, at 351.

¹¹² *Id.* at 371.

¹¹³ *Id.*

¹¹⁴ *See e.g.*, *Constitución Política de los Estados Unidos Mexicanos*, *supra* note 101

¹¹⁵ *See* Vargas, *supra* note 111 at 361.

i. Fideicomiso Generally:

As explained above, foreigners can invest in real property by attaining a bank trust known as a *fideicomiso*,¹¹⁶ which encourages foreign investment by creating a trust that a Mexican national or foreigner can utilize to purchase real property within (and outside of) the restricted zone.¹¹⁷ The *fideicomiso* is a contractual agreement similar to a U.S. trust that has a term of 50 years. A buyer holds the land in trust for this period and it

¹¹⁶ Before introducing the *fideicomiso* setup, it might be important to understand a little bit of México's property makeup. Unlike the United States, México's federally owned agricultural lands, known as Ejidos, were loaned to peasant collectives pursuant to the Mexican Revolution for their sole use (not ownership). See e.g., Bello Roch, *supra* note 78 at 4-6, which explains what property legally known as an ejido entails. As a legal entity, an ejido is governed by meeting and administered by a board consisting of a president, a secretary and a treasurer. The shareholder's meeting or the ejido member's meeting is where each member of the ejido has voting rights with regards to the use of the property owned by the ejido. As of January 1992, the article 27 of the Mexican constitution was amended to bestow title upon the ejidos used for farming and ranching. Furthermore, Article 75 of the new agrarian law states that the ejido may transfer ownership of common use properties to partnerships or companies in which the ejido or its members participate. It is important to note that the title to the property in a joint venture is assigned to the corporation and the ejido no longer owns the real estate property in question. However, Only the property for common use may be purchased. Thus, many foreign investors have entered into joint venture agreements with large ejidos using the ejido population as workers and producing vegetables and fruits, which are subsequently sold throughout the world.

As of 2006, according to the new reforms of the Agrarian Law, Article 49 allows the ejido to sell up to 49% of its property for common use. It has to be approved by the majority of the ejido members through an ejido members meeting, and this ejido member meeting should be notarized by a Public Notary and registered in the corresponding registry of property. In projects not related to agriculture, including tourist developments, there are no restrictions on how much the ejido must hold in capital of the corporation. There is no restriction whatsoever in dealing with individual parcels if a parcel certificate has been duly issued and registered. Leasing of property for common use is permitted. Article 45 of the new agrarian law states that common use of property and individual parcels may be the object of any contract that entails the use of property. Such contracts are limited to a term of 30 years, and may be renewed.

¹¹⁷ See e.g., General Overview of the Trust for Real Estate in Mexico, <http://www.elcid.com/pdfs/financing.pdf> (last visited Sept. 5, 2007). See also Fideicomiso, Can a Foreigner Really Own Property in Mexico?, <http://www.parkstrong.com/fideicomiso.htm> (last visited Aug. 22, 2007) (describing that trusts can be renewed in 50 year increments).

may be renewed for an additional 50 years thereafter.¹¹⁸ After this second time period, the land can be bequeathed to the foreign beneficiary.¹¹⁹

Even though a *fideicomiso* is similar to a U.S. trust, it may only be executed by banking institutions that have been expressly authorized for that purpose.¹²⁰ Moreover, the real property transaction is executed by a contract or through a will that must be in writing and conform to the applicable legislation.¹²¹ It is important to note that the *fideicomiso* must always be recorded at the Public Registry of Property and Commerce,¹²² and México's current Foreign Investment Act of 1993¹²³ requires the Secretariat of Foreign Affairs to furnish a permit for credit institutions to obtain, as fiduciaries, rights over the real property assets located within or outside of the restricted zone.¹²⁴ The beneficiaries of the *fideicomiso* may only be: 1) Mexican mercantile societies without an Exclusion of Foreigners Clause; and 2) Foreign individuals¹²⁵ and/or foreign legal entities (*personas morales extranjeras*).¹²⁶

ii. **History of the Fideicomiso**

¹¹⁸ See e.g., General Overview of the Trust for Real Estate in Mexico, *supra* note 118 at 3. See also Fideicomiso, Can a Foreigner Really Own Property in Mexico?, *supra* note 118.

¹¹⁹ Another way of acquiring real property as a foreigner in the restricted zone is through a Corporation. For Corporations to acquire property, they must be in compliance with the Mexican Foreign Investment Act was enacted in 1993. For more information about this Act See e.g., Vargas, *supra* note 111 at Chapter 4.

¹²⁰ The General Act of Negotiable Instrument and Credit Operations (LGTOC), [D.O.], art. 350 (1996).

¹²¹ *Id.*, at art 346-359

¹²² Vargas, *supra* note 111 at 357.

¹²³ See e.g., Ley de Inversión Extranjera, [D.O.], art 11 (1993). See also Vargas, *supra* note 111 at 362-363.

¹²⁴ See Ley de Inversión Extranjera *supra*, note 124.

¹²⁵ This article primarily focuses on foreign individuals.

¹²⁶ *Id.*

As discussed above in order for foreign individuals to acquire real property in the restricted zone, they must execute a *fideicomiso*. México's initial exposure to the *fideicomiso* was pursuant to the codification of the Credit Institutions Act of 1924, but it was not recognized as a valid, autonomous legal transaction until 1932 with the enactment of the General Act of Credit Instruments and Credit Operations.¹²⁷ Even though previous administrations used different modalities of the *fideicomiso* in order to allow foreigners to purchase property in the restricted zone it was not until President Luis Echeverría Alvarez that this trust was popularized.¹²⁸ President Echevarria made an agreement through that authorized the Secretariat of Foreign Affairs to issue permits through official banks and credit institutions.¹²⁹ These credit institution now act as the fiduciary of the real property located within the restricted zone.¹³⁰

iii. **The Parties Involved for the Creation of a Fideicomiso**

The following three parties are required when creating a *fideicomiso*: a trustor, a trustee and a beneficiary.¹³¹ In this transaction a trustor is an individual or legal entity which transfers real property through a trust ownership.¹³² The trustee must be a bank or lending institution authorized to act under the General Law of Credit Institutions.¹³³ These lending institutions are strictly regulated by the Ministry of Finance and Public

¹²⁷ Vargas, *supra* note 111 at 357

¹²⁸ *Id.* at 360.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See e.g., LGTOC, *supra* note 121. See also General Overview of the Trust for Real Estate in Mexico, *supra* note at 118 at 3.

¹³² See Hector Lara, Fideicomiso: Real Estate Trust within the Mexican Restricted Area (July 22, 2007), available at http://www.mexicomatters.net/mexicorealestate/04a_fideicomiso_banktrust.php (last visited Sept. 4, 2007).

¹³³ General Overview of the Trust for Real Estate in Mexico, *supra* note at 118 at 1.

Credit, Bank of México and the National Banking Commission.¹³⁴ The trustee receives instructions from the Beneficiary and is empowered to act pursuant to the agreement.¹³⁵ The *fideicomiso* authorizes the Beneficiary to act as the sole representative of anything relating to said instrument and as such the foreign buyer/beneficiary has a personal and exclusive right to use, occupy and possess the trust property.¹³⁶ Furthermore, “the Beneficiary may transfer or assign his beneficial interests to any person and may keep all of the profits from the sale of the property, subject, of course, to applicable tax laws and expenses of the state.”¹³⁷

Another party that is always essential to real property transaction in México is the public notary: “*notario público*.” The *notario público* is a government appointed lawyer who processes and certifies all real property transactions. They write and review all of the closing documents and ensure the transfer.¹³⁸ Moreover, a *notario público* handles and registers all powers of attorney, formation of corporations, wills, official witnesses, a statement from the Treasury of Municipality regarding property assessments, water bills and other pertinent taxes that might be due and an appraisal of the property for tax purposes.¹³⁹

It is also important to note that loan officers are also required for those buyers seeking to attain a loan. In the past, many retirees have refinanced their U.S. homes to

¹³⁴ See General Overview of the Trust for Real Estate in Mexico, *supra* note at 118 at 1.

¹³⁵ *Id.*

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at 2.

¹³⁸ Foreign Ownership of Property in Mexico, <http://www.blueroadrunner.com/ownprop.htm> (last visited Sept. 6, 2007).

¹³⁹ *Id.*

acquire their oceanfront property in México. However, for those buyers seeking a loan, it is important to note that real estate financing for buying real property in México is difficult to acquire and the available financial options involve interest rates significantly higher than U.S. prime rates.¹⁴⁰

iv. **Costs Involved for the Creation of a Fideicomiso:**

There are four distinct fees that must be paid when utilizing a *fideicomiso*: 1) the drafting of the trust deed and acceptance of the trustee fee, which is estimated to cost \$500 U.S. dollars; 2) an annual administration fee estimated at \$500; 3) an authorization from the Secretariat of Foreign Affairs fee calculated at \$1,277; and 4) other fees and expenses that run around \$300.¹⁴¹ Therefore, one should expect that the creation of the trust costs around \$1,577 U.S. dollars.

v. **Steps Needed to Create a Fideicomiso:**

Above anything, when creating a *fideicomiso* the following two steps are the most critical: 1) The authorization from the Secretary of Foreign Affairs that appoints article 11 of the Mexican Foreign Investment Law; 2) a deed attested and certified by a Mexican notary, who is obligated to assure the authenticity and lawfulness of the transaction.¹⁴² However the following six-step summary provides an in depth layout of all the steps required for the creation of a *fideicomiso*:

Six Summary Steps Requirement:

¹⁴⁰ Telephone Interview with Diego Bastidas, Financial Consultant at Avezta Inc. (Aug. 25, 2007) (explaining that finding financing to invest in México might sometimes come at a greater cost).

¹⁴¹ See Lara, *supra* note 132.

¹⁴² *Id.*

Step #1	Buyer must obtain a permit from the foreign relations Ministry to acquire the beneficial interest under a <i>fideicomiso</i> ;
Step #2	Buyer must provide the trustee with a copy of: <ul style="list-style-type: none"> • Legal title of the property being purchased; • give trustee a letter stating the official limits and bounds of the property; • location plot of the property; • distance from the Federal Marine Zone; • personal data concerning the purchaser and his/her beneficiaries; • make sure that trustee then applies for a permit with the foreign relations Ministry to establish the <i>fideicomiso</i>; and • trustee shall instruct a local Notary Public or bank to prepare the trust agreement.¹⁴³
Step #3	Buyer must provide Notary Public with the following information: <ul style="list-style-type: none"> • the deed of title of property acquired; • a Commercial Appraisal of the property; • certificate of no encumbrance; • certificate of no duty property taxes; • personal data of seller and buyer.¹⁴⁴
Step #4	Buyer must provide Notary Public with the following information: <ul style="list-style-type: none"> • the deed of title of property acquired; • a Commercial Appraisal of the property; • certificate of no encumbrance; • certificate of no duty property taxes; • personal data of seller and buyer.¹⁴⁵
Step #5	Most importantly, ¹⁴⁶ buyer must verify that all parties sign the public deed of trust and that the Notary Public must record the deed at the appropriate Public Registry of Property where the real estate is located. ¹⁴⁷
Step #6	Finally, the Trustee must register the deed before the Foreign Investment Registry in Mexico City. ¹⁴⁸

¹⁴³ See General Overview of the Trust for Real Estate in Mexico, *supra* note 118 at 2 & 3.

¹⁴⁴ *Id.* at 3.

¹⁴⁵ *Id.*

¹⁴⁶ Telephone Interview with Enrique R. Gritzseuski, Real Estate Developer in Baja California, Mexico (June 21, 2007) (explaining that step #5 is the most critical step that must be recalled by potential buyers).

¹⁴⁷ See General Overview of the Trust for Real Estate, *supra* note 118 at 3 (explaining that if the property was owned by a foreign corporation, the articles of incorporation of the company are also required).

¹⁴⁸ *Id.* (clarifying that if the property was owned by a foreign corporation, the articles of incorporation of the company are also required).

E. PARTIES INVOLVED IN A REAL ESTATE TRANSACTION:

After understanding what a *fideicomiso* is and how it is created, it is essential to take a step back to understand the entire real estate transaction, beginning by identifying the parties required for a legally binding purchase or sale of real property in Mexico. When a foreigner is buying within the restriction zone, there are four parties that a buyer must consider; 1) a real estate company (like RE/MAX); 2) a lawyer that represents the buyer; 3) a Public notary; and 4) a bank.¹⁴⁹ As most U.S. retirees know, through a realtor, a real estate company aids buyers and/or sellers in the sale or buying transaction.¹⁵⁰ In theory, a realtor helps the buyer locate the best living alternatives available in a specific market, in accordance to the cost range set by the buyer for a fee.¹⁵¹ Similarly, realtors help a seller market, list and advertise his or her property for a fee.¹⁵² However, a U.S. buyer purchasing property in México must be aware that unlike the United States, in México realtors are not required to attain proper certifications and are not sanctioned by any specific judicial body.¹⁵³

For this and other reasons, it is critical for a buyer to attain an independent lawyer to represent him or her in the purchase of the home. Through a legal counsel, the buyer's rights will be protected and represented throughout the transaction.

Furthermore, an attorney can be helpful in saving buyers money because they are

¹⁴⁹ Buying Property in Mexico Purchasing Procedures: Real Estate Transaction in Mexico, *supra* Note 77.

¹⁵⁰ Real Estate & Mortgage Resources: The Listing Agent, <http://www.realestateabc.com/homeselling/marketing3a.htm> (last visited Aug. 28, 2007).

¹⁵¹ See *Generally* Filmore W. Galaty, Wellington J. Allaway, & Robert C. Kyle, Study Guide for Modern Real Estate Practice (Dearborn Real Estate Education 2000) (2003).

¹⁵² *Id.*

¹⁵³ Beware of Baja Real Estate "Professionals," http://www.mexicomatters.net/mexicorealestate/05_bewareofbajarealtors.php (last visited Sept 1, 2007).

usually the ones that are aware of the most competitive costs and fees and therefore will make sure to attain the best possible prices.¹⁵⁴

The third party required is a public notary, which is probably new concept for foreigners who have never bought property in México. A public notary, “*notario público*” is an attorney who must pass rigorous examinations and is commissioned by the government to hold high office for life (unless removed). More specifically, public notaries are quasi-government agents and recorders that have numerous functions including: 1) collecting and reviewing the sales of contract, property tax and water payment receipts; 2) ordering a bank appraisal; 3) reviewing the property’s file to verify the legal ownership and search for liens, encumbrances, or anything else that might affect title; 4) they request the public registry to issue a certificate of no-encumbrances: “*Certificado de Libertad de Gravámenes;*” and 5) perform the closing at this office where the *notario* handles the transfer of the deed, tax withholding on the underlying real estate transaction and record the documents at the public registry.¹⁵⁵ To say the least, a notary is essential in a real property transaction in México, as are all the parties involved.¹⁵⁶

¹⁵⁴ See Buying Property in Mexico Purchasing Procedures: Real Estate Transaction in Mexico, *supra* Note 77.

¹⁵⁵ Bello Roch, *supra* note 78.

¹⁵⁶ It is important to remember, that like in any real property transaction, it is important to trust the parties involved in such exchange. It is also recommended that one always check everybody’s references. Moreover, a buyer should never allow either the realtor or the lawyer to pressure them into buying or selling. One must always take one’s time to feel comfortable with the parties, the price and the transaction as a whole. Buying a home is nerve-racking in one’s home country; investing in real property in a foreign country becomes even more difficult. For this reason, it is crucial to not only understand the complexities of the transaction, but to feel comfortable with the parties guiding you through this transaction.

Finally, a bank is legally required for those individuals purchasing within the restricted zone. As explained above,¹⁵⁷ a *fideicomiso* requires that the trustee be a bank or lending institution authorized to act under the General Law of Credit Institutions.¹⁵⁸ However, those individuals acquiring property outside of the restricted zone must keep in mind that a *fideicomiso* is not necessary; therefore, a bank is not necessary.

Once one understands who the parties are and what role they play it is important to know the steps required in a real property transaction in México. The legal steps include: 1) an offer and acceptance or promissory agreement; 2) title search and due diligence as to the property conditions; 3) attain a certificate of no-encumbrances (*Certificado de Libertad de Gravámenes*); 4) closing costs which should be paid by the seller;¹⁵⁹ 5) payment of taxes; 6) formalizing the transaction through a Notary Public who must authenticate title deed, certificate of no encumbrances and certificate of no property tax liability; and 7) record all legal instruments that have been formalized by the notary public with the Public Registry of Property and Commerce.¹⁶⁰

F. TITLE INSURANCE

A title insurance policy is a contract of indemnity that promises to pay for a loss up to the face amount of the policy and covers claims arising out of title problems that could have been discovered in the public records, and those so called non-record defects that could not be discovered in the public records even with the most complete title

¹⁵⁷ See *Infra* at Part II §D§iii

¹⁵⁸ General Overview of the Trust for Real Estate in Mexico, *supra* note 118 at 1.

¹⁵⁹ See Buying Property in Mexico Purchasing Procedures: Real Estate Transactions in Mexico, *supra* note 77.

¹⁶⁰ Manuel F. Pasero & Hector Torres, *Foreign Investment in Mexico's Real Estate: An Introduction to Legal Aspects of Real Estate Transactions*, 35 San Diego L. Rev. 783, 799-800 (1998).

search.¹⁶¹ There are two different types of Title Insurance available in México: 1) insurance on the land (U.S. Style) and 2) Title Insurance available on just the *Fideicomiso* (Bank Trust).¹⁶² A title insurance policy will not only protect the insured for as long as they have an interest in the property, but it will also protect their heirs and devisees for as long as they hold title to the property against matters specifically state or covered in the policy (which typically include 3rd party claims, interests, encumbrances, forgery, faulty acknowledgments, inchoate mechanic's liens).¹⁶³

Even though title insurance has existed for decades, it has only recently been implemented into the Mexican market. In 2000, Mexico's negotiable instruments Law and Commerce Code were changed in ways that allowed expedited foreclosure procedures.¹⁶⁴ Then, further Reforms were enacted in 2003 that provide for regulation of Mexican real estate agents, ethical guidelines for property developers and recognition of U.S. title insurance.¹⁶⁵ In Baja California, most of the condos and residential properties targeting foreign investment now offer title insurance.¹⁶⁶ The cost of said title insurance runs anywhere between 0.5 percent and 1.5 percent of the sales price or about \$4 to \$7 for every \$1,000 of the property value.¹⁶⁷ In Baja California, the primary companies offering title insurance include: Stewart Title Insurance Company, Fidelity National Financial, and First American Title Insurance.

¹⁶¹ Foreign Ownership of Property in Mexico, *supra* note 138.

¹⁶² Marietta Morris Maxfield, *Why You need Title Insurance*, 8 *Probate & Property Magazine* 1, 8 (June 15, 2001).

¹⁶³ See Foreign Ownership of Property in Mexico, *supra* note 138.

¹⁶⁴ David Nervoss, *Why Mexico has Come of Age as a Retirement Property Market*, *Investor's Business Daily: Inside Real Estate*, (Apr. 21, 2006) available at http://www.baja-relocation.com/newsletter_pages/Mexico_has_come_of_age.htm (last visited Sept. 5, 2007).

¹⁶⁵ *Id.*

¹⁶⁶ See Osio, *supra* note 68.

¹⁶⁷ *Id.*, Osio, *supra* note 68.

G. MÉXICO'S VISA REQUIREMENTS

This article will briefly examine the three different types of visas that a foreigner can attain when thinking about retiring in México: the FM-T, FM3 and FM2. Tourists with an FM-T visa (the tourist visa) are allowed to stay in México for periods of 3 to 6 months at a time.¹⁶⁸ On a tourist visa, these foreigners must renew their visa by taking a semi-annual trip to the border.¹⁶⁹ In order to attain a FM-T, one must go to any Mexican Consulate, travel agency, an international border or may also do so when traveling by plane; however, the various requirements are dependent upon one's nationality.¹⁷⁰ It is important to keep in mind that this visa will not allow tourists to work within the country.¹⁷¹

For those who want to stay longer than 6 months at a time without having to make a semi-annual trip to the border, the next step in the immigration process is the FM-3.¹⁷² With an FM3, one is allowed to stay in México as a non-immigrant for a year, with the option of an annual renewal.¹⁷³ The last option offered to those moving to México is applying for the FM-2 visa, where a foreigner is considered a permanent

¹⁶⁸ FM3s, FM2s, FMTs, Inmigrado, Visas & Immigration Procedures for Mexico, http://www.mexconnect.com/mex_/visa.html (last visited Aug. 24, 2007).

See also Rogers, *supra* note 29.

¹⁶⁹ *See* Rogers, *supra* note 29.

¹⁷⁰ Arminda Mancebo, Visas for Immigrants To Mexico, FM2 and FM3 Information for Immigrating to Mexico and immigration and information (2007) *available at* http://www.solutionsabroad.com/a_immigrationmexico.asp (last visited Sept. 2, 2007). It is important to note that In order to extend one's tourists visa, the documents needed include one's passport, a copy of the passport, the original FM-T, and a letter requesting the extension of the term. Furthermore, one must remember that upon returning to one's native country the FM-T must be returned to the authorities.

¹⁷¹ *Id.*

¹⁷² *See e.g.*, Rogers, *supra* note 29.

¹⁷³ FM3s, FM2s, FMTs, Inmigrado Visas & Immigration Procedures for Mexico, *supra* note 167. *See also* Mancebo, *supra* note at 169 (explaining after five years, one may be interested in becoming an immigrant; yet, one can also continue renewing the FM3 annually).

resident.¹⁷⁴ With both an FM-2 and an FM-3 non-Mexican citizens have restricted number of exits from the country and must renew said visa annually.¹⁷⁵ Yet, with either an FM-2 or FM-3, one can be authorized to perform several employment activities including: business, investing, scientist, technicians, professionals, high level management, or members of the board.¹⁷⁶ Yet, a retiree one can acquire an FM-2 or FM-3 if one can prove to the Mexican authorities that one can live solely on the income brought from abroad or earned from Mexican-based investments.¹⁷⁷

H. SUMMARY CHECKLIST FOR THE ACQUISITION OF REAL PROPERTY IN MÉXICO.

Summary steps requirement:	
Step #1	Attain and ensure validity of the title documents of the property by reviewing the following: <ul style="list-style-type: none"> • chain of conveyance; • recordation data; • description of the property; • measures and boundaries of property.¹⁷⁸
Step #2	Verify the zoning regulations affecting the desired property in order to define limitations on the use of the property. ¹⁷⁹ In Baja California Norte (North) always examine the following three zoning laws:: <ul style="list-style-type: none"> • Modern Urban Development Laws; • Construction Laws; • State Urban Development Programs.¹⁸⁰
Step #3	Consider the state laws that regulate environmental restrains imposed on real estate. ¹⁸¹ <ul style="list-style-type: none"> • This requirement is mostly needed for developers creating tourist or industrial activities.¹⁸²

¹⁷⁴ See Mancebo, *supra* note at 169.

¹⁷⁵ See FM3s, FM2s, FMTs, Immigrado Visas & Immigration Procedures for Mexico, *supra* note 167.

¹⁷⁶ See Mancebo, *supra* note at 169.

¹⁷⁷ *Id.*

¹⁷⁸ See Pasero & Torres, *supra* note 159 at 788-789.

¹⁷⁹ *Id.*, *supra* note 159 at 789.

¹⁸⁰ *Id.*, *supra* note 159 at 803.

¹⁸¹ See *Generally* Ley General del Equilibrio Ecológico y la Protección al Ambiente, [D.O.], (Jan. 28 1988).

¹⁸² See Pasero & Torres, *supra* note 159 at 789.

Step #4	Make sure to practice due diligence to discover status of the property's: <ul style="list-style-type: none"> • Water, • sewage and drainage system, • gas • electricity, • and telephone lines.¹⁸³
Step #5	A contractual agreement is usually necessary when purchasing real property. The following three are the most widely used contractual agreements: <ol style="list-style-type: none"> 1. Promissory Agreement that: <ul style="list-style-type: none"> • must be in writing; • all parties must have legal capacity; • agreement must include all basic characteristics agree upon; • and agreement must provide execution period.¹⁸⁴ 2. General Purchase Sale Agreement for the acquisition of property is the simplest way of acquiring property outside the restricted zone.¹⁸⁵ 3. Reserve title and installment sales agreement.¹⁸⁶
Step #6	Title insurance and the creation of a <i>Fideicomiso</i> ¹⁸⁷
Step #7	Property taxes in Baja California: <ul style="list-style-type: none"> • In Baja California, a home buyer is obligated to pay slightly over 2% of transfer taxes of which 1.3% pays the department of public record as a registry fee, while about 1% pays the notary public.¹⁸⁸ • Then, the property owner is obligated to pay about .2% annually of the property price in taxes.¹⁸⁹
Step #8	Formalizing the transaction through a Notary Public requires authentication by: <ul style="list-style-type: none"> • title deed, which must include Notary's explanation of the full value and consequences derived from the execution of the instrument; • certificate of no encumbrances, which must be obtained from the Offices of the Public Registry of Property and Commerce and must guarantee the buyer that the estate is free from mortgages, liens, encumbrances, or other pending claims; • certificate of No Property Tax Liability, which will enable Notary to determine that property tax has been paid prior to property transfer; • Property Appraisal and Topographical survey, which must be prepared and certified by a Mexican banking institution or by a Public Notary.¹⁹⁰
Step #9	Record all legal instruments that have been formalized by the notary public with the Public Registry of Property and Commerce. ¹⁹¹

¹⁸³ *Id.*

¹⁸⁴ See Código Civil Para El Distrito Federal (C.C.D.F.) [D.O.], arts. 2243-2246.

¹⁸⁵ See Pasero & Torres, *supra* note 159 at 791.

¹⁸⁶ Buying Property in Mexico Purchasing Procedures: Real Estate Transactions in Mexico, *supra* note 77. See also Pasero & Torres, *supra* note 159 at 793.

¹⁸⁷ *Supra* at Part II§E, which provides additional information about the requirements of a *fideicomiso*.

¹⁸⁸ Specializing in Foreign Investor Representation: Real Property Taxation in Mexico, *supra* note 80.

¹⁸⁹ See Bello Roch, *supra* note 78 at 2. See also Real Estate Consultation: Baja California Sur, *supra* note 78.

¹⁹⁰ See Pasero & Torres, *supra* note 159 at 796-798.

¹⁹¹ *Id.*, *supra* note 159 at 799-800.

In sum, México's long time battle with foreign land ownership led to the codification of Article 27 of the Mexican Constitution, which prohibits foreigners from purchasing land within the restricted zone. However, through the implementation of a *fideicomiso*, it is now possible for foreigners to acquire real property in both coastal and border zones of the Mexican republic. Still, U.S. buyers must not only be aware of the *fideicomiso* requirements, but additionally, they must understand the necessary steps to follow when purchasing real property in México.

III. THE COMPROMISE BETWEEN BAJA CALIFORNIA AND FOREIGN BUYERS:

A. WHAT FOREIGN BUYERS MUST DO BEFORE THEY INVEST: THEIR HOMEWORK

Before U.S. buyers decide to acquire their property, they must be consciences about the potential problems that have occurred in the past to be better prepared to protect their investments if any setbacks were to occur. Therefore, they must understand that the person that they are mostly counting on is themselves. The only way to fully be capable of engaging in a foreign transaction is by doing one's research and protecting one's investment in the best way possible; in other words inuring one's property should be number one priority.

i. Buyers Must Acknowledge Previous Difficulties that Foreigner Buyers have Endured:

A well known foreign investor horror story occurred in Punta Brenda, Baja California (south of Ensenada). In 2000, the Mexican government evicted U.S. homeowners from their beachfront properties, which caused them to lose \$25 million dollars.¹⁹² It is essential to understand why this incident occurred so that future buyers can avoid similar losses. The initial problem originated with an erroneous map and *ejido*¹⁹³ land transference to Coronel Esteban Cantu in 1973 of land previously titled to two separate owners dating back to 1952.¹⁹⁴ Litigation over the ownership of the land continued for decades, during which time the *ejido* began leasing the land to U.S. citizens and area developers. However, once the Mexican courts reestablished who the rightful owner was, the land was confiscated from the U.S. homeowners.¹⁹⁵ Therefore, U.S. buyers must do everything in their hands to minimize the likeliness of similar occurrences.

ii. **Caveat Emptor (“Let the Buyer Beware”):**

In order to minimize the risk of investing in foreign real estate, one must be aware of the potential consequences arising out of one’s investment. Before analyzing the necessary due diligence requirements it is important to note that when investing in a foreign nation the U.S. buyer alone is responsible for evaluating the quality of the desired property. Even though the amount of real estate scams have decreased greatly over these past 20 years, a buyer must still be cautious for the forgoing reasons: 1)

¹⁹² Michael Paa, Title Insurance and Buying Real Estate in Mexico (May 7, 2007), <http://www.mexidata.info/id1351.html> (last visited Sept. 5, 2007).

¹⁹³ See e.g., Bello Roch *supra* note 117 at to attain a better understanding of the *ejido* system.

¹⁹⁴ See Paa, *supra* note 191.

¹⁹⁵ See Paa, *supra* note 191.

U.S. buyers might not understand the real estate laws and regulations; 2) Mexican realtors are not licensed or sanctioned by any specific judicial body for unethical practices; 3) U.S. realtors that sometimes aid foreign buyers might not be well versed in Mexican transactions; 4) the title insurance industry is not as developed as it is in the U.S., for which buyers might not attain the coverage they expect; and 5) real estate financing is more difficult to obtain and the available financial options involve interest rates significantly higher than U.S. prime rates.¹⁹⁶ However, in order to prevent surprises, the following due diligence steps will protect buyers from mishaps.

iii. Due Diligence/Precautions Foreigners Should Take to Avoid Scams and Similar Drawbacks?

In order to avoid losses such as the one that occurred in Punta Brenda one must always insist upon U.S.-type title insurance that covers more than one legal title to the property. U.S. buyers should remember the following four quick tips when acquiring real property in México: First, U.S. buyers should not forget that they are in a different jurisdiction, where different rules apply; therefore, they should not be deceived by the name of an American franchise. Secondly, buyers should bear in mind that: “*lo barato sale caro*,” in other words, when you buy cheap, it ends up being more expensive. Thirdly, foreigners should not allow themselves to be pressured into buying; rather, they should remember that there will always be another house or condominium, as well as another realtor. Fourthly, U.S. investors should never cut corners. Instead, they should retain all the necessary professional assistance by requesting that all the

¹⁹⁶ Telephone Interview with Diego Bastidas, Financial Consultant at Avezta Inc. (Aug. 25, 2007) (explaining that finding financing to invest in México might sometimes come at a greater cost).

required parties are involved in their real estate transaction: private attorney, bank, public notary and realtor.

In regards to the parties involved, U.S. buyers should always begin by validating the realtor's, attorney's, loan officer's, and public notary's credentials and reputation. Per the realtor, perspective buyers should keep in mind that there is no certification requirement to practice as a real estate professional in México. Therefore, it is imperative to verify the realtor's standing with the Mexican Association of Real Estate Professionals. In regards to the *notario público*, make sure that the necessary paperwork is completed and validated before the notary public.¹⁹⁷ However, one must always remember that public notaries are government officials; thus, keep in mind that an independent attorney is critical to represent the buyer's rights. In regards to the private attorney sought, make sure he or she is licensed in México by asking him or her to produce a "*cédula profesional*", which is the license needed to practice law in México.

Apart from the necessary steps required in a real estate transaction detailed in section II¹⁹⁸ a buyer should take the following extra precautionary steps: 1) make a copy of the registration folio at the public registry of property and obtain a certificate of absence of liens and goods standing from the public registry;¹⁹⁹ 2) make sure that the earnest money be held by a Mexican bank in a conditional deposit subject to the

¹⁹⁷ The paperwork a public notary must complete includes a property appraisal, property survey, certification that the property is free of liens, review of property title history, title insurance and payment of transfer taxes. For additional information, see *supra* Part II§E.

¹⁹⁸ See *supra* Part II§H.

¹⁹⁹ See Bello Roch, *supra* note 78 at 3.

elimination of any contingency express in the agreement; 3) understand the coverage extent of the title insurance; and 4) insist on U.S.-type: inspections, title insurance, and financing protections. The strongest piece of advice one could give inexperienced buyers is to purchase property directly from a developer who has already cleared all clouds in the title and map disputes. However, one must never avoid doing one's own investigations simply because one assumes that the developer has cleared all potential obstacles.

B. WHAT BAJA CALIFORNIA MUST DO IN ORDER TO RETAIN THE EXPECTED INFLUX OF RETIREES

Retirees should not be the only party that would benefit from the retirement boom in Baja California. México as a country and Baja California as a state would gain economically from this phenomenon. Therefore, Baja California should also implement new rules and policies to better protect buyer's investments.

i. Title Guarantee

Title insurance has only recently been implemented into the Mexican market and is essential protection that all buyers must seek. This will be easy to accomplish because in Baja California, most of the condos and residential properties targeting foreign investment now offer title insurance through U.S. franchises including: Stewart Title Insurance Company, Fidelity National Financial and First American Title Insurance.²⁰⁰ However, the state must also actively participate in guarantying title for all real property buyers. Some of the title problems experienced by purchasers' in Baja California have often been caused by two distinct owners having legal title to the same land. According

²⁰⁰ See Osio, *supra* note 68.

to a Mexican developer, when the Mexican government was trying to populate Baja California it promised people willing to relocate to Baja California legal title to the land.

²⁰¹ However, when some of these people did not relocate to Baja California, the Mexican government gave legal title to some of the same properties to other individuals.²⁰² Consequently, some lands have two legal owners with legal and binding titles, which are the cause of most title disputes.²⁰³ Therefore, the state must seek a just solution to these potential land conflicts and should somehow work together with the title insurance companies so that they too can help guarantee a problem-free transaction for buyers. A solution to these obscure double title disputes will create a benefit to the U.S. foreigners who will feel more compelled to invest in Baja California, which in turn will fuel the Baja California economy.

ii. Infrastructure

The relocation of retirees/potential real estate buyers to Baja California has instigated further commercial growth and plans to improve the state's infrastructure.²⁰⁴ The proposed changes include construction and/or the renovation of hotels, golf courses, movie studios, marinas, shopping centers and residential areas.²⁰⁵ In fact, modern highways connecting Tijuana to Ensenada and Mexicali to San Luis Rio Colorado are already in place, while work is in progress to improve the Mexicali-San

²⁰¹ 2nd Telephone Interview, Enrique R. Gritseuski, Commercial Developer in Baja California (Sept. 1, 2007).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Investment Opportunities, <http://www.discoverbajacalifornia.com/investment/infrastructure.htm> (last visited Sept. 5, 2007).

²⁰⁵ *Id.*

Felipe highway.²⁰⁶ Furthermore, there are three international airports in the following cities: Tijuana, Mexicali and San Felipe.²⁰⁷

Moreover, with the amount of restaurants, cafes, museums and golf courses available throughout Baja California, retirees can fill their days with activities.²⁰⁸ In fact cruises, boats and fishing excursions are always easily accessible throughout the state;²⁰⁹ these and other activities allow locals to take advantage of the proximity of the ocean by engaging in ocean related activities. As far as utilities, phones services are highly developed, due to the implementation of satellites, digital networks and optic-fiber networks.²¹⁰ The modern irrigation system in place coupled with the available water supply from the Colorado River guarantee wide-ranged access to water as well.²¹¹ Finally, experts proclaim that the electrical power industry has the productive capacity to supply the demand of power during the next seven years, at least.²¹²

However, in order to retain the anticipated number of retirees expected to relocate to Baja California, it is critical that this Mexican state continues to modernize by creating and further improving the already existing infrastructure. The persons expected to relocate are mostly retirees; therefore, additional movie theaters, shopping centers and the like would aid Baja California's ability to retain these foreigners and further enhance the economy.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *See generally* The Baja California Travel & Living Webzine, <http://www.bajainsider.com> (last visited Aug. 30, 2007).

²⁰⁹ *Id.*

²¹⁰ *See* Investment Opportunities, *supra* note 199.

²¹¹ *Id.*

²¹² *Id.*

iii. Heightened Security

According to a national survey, in 2002 a total of 47,991 violent crimes were denounced to the authorities in Baja California North.²¹³ That same year, a total of 100,296 crimes were denounced in Baja California North alone.²¹⁴ In fact, Baja California North is the state where the most crimes occurred that same year, representing about 47% of the national criminal percentage.²¹⁵ However, it is important to bear in mind that experts estimate that out of every denouncement, there are about three crimes committed.²¹⁶ Moreover, these numbers reflect the crimes rates in Baja California North in 2002; therefore, there is a five year gap between these numbers and the crime rates today, which likely increased.

Therefore, the state should acknowledge the significant high crime incident and try to implement various crime-detering policies to make the state a safer home for all residents. However, retirees should also be aware of the crime incidence in Baja California. In fact, retirees should take additional steps to protect their safety by taking additional security steps including: home alarm systems, private complexes, hiring private security, and the like.

iv. Maintain Reasonable Prices

²¹³ Consejo Ciudadano Para la Seguridad Pública y La Justicia Penal, A.C., *La Inseguridad en 2002*, Revista Entorno, May 2003 at 1, 1-2 *available at* <http://www.coparmex.org.mx/contenidos/publicaciones/Entorno/2003/may03/d.htm> (last visited Sept. 5, 2007).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Pablo Rainah, Las Estadísticas del Secuestro, <http://www.esmas.com/noticierostelevisa/noticieros/338475.html> (last visited Sept. 2, 2007).

In order to retain a steady influx of retirees, Baja California must be able to maintain a reasonable cost of living and property prices. For starters, the cost of living in México should continue to be affordable for foreigners²¹⁷ who otherwise might consider relocating even further away, to a more affordable country like Nicaragua or Guatemala. As far as real property, with the current U.S. housing slowdown instigated by the subprime aftermath,²¹⁸ it would be wise for the Mexican market to maintain their real property prices as they are. If prices were to increase in México, while they decrease in the U.S., the México appeal will likely be minimized.

Conclusion

As the baby boomers begin to retire, it is essential to understand what their economic situation is and will become once they leave the workforce. Because many boomers will not be able to afford retirement they will be forced to relocate to cheaper alternatives. Baja California is an appealing option because of its proximity to the United States, the beautiful ocean that both California and Baja California share, the affordable prices and similar advantages. With the use of a *fideicomiso*, Mexican foreigners can now acquire real property in México's restricted zone. However, the Constitution is not the only obstacle that foreigners must overcome. Some property disputes have created uncertainty when investing in real property in México. Thankfully, the use of title insurances have diminished property disputes significantly in the past twenty years; yet, foreign buyers must understand the benefits and disadvantages to

²¹⁷ For additional information pertaining to the cost of living in México see Part I§Eii.

²¹⁸ See e.g., Kara Scannel & Deborah Solomon, *Unraveling the Subprime Mess*, WALL ST. J., Sept. 4, 2007, at A6. See also Mara Der Hovanesian, *Markets in Turmoil Bonfire of the Builders*, BUS. WK. Aug. 13, 2007 at 26, 26-30.

purchasing in México and protect themselves by acquiring title insurance and exercising due diligence before they finalize any real estate transaction.