



Mexico's New Immigration Law 2012
New Categories, Requirements and
Processes

By Solomon Freimuth

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Mexico's New Immigration Law 2012

New Categories, Requirements and Processes

Articles included in this guide

1

New Mexican Immigration Law in Effect as of November, 2012

[PAGE 3]

2

Newcomers to Mexico - Getting Your First Visa to Live in Mexico

[PAGE 10]

3

Changing or renewing FM3/FM2 to Temporary or Permanent Resident Card

[PAGE 15]

4

Exemption From Capital Gains Taxes on Property Sales

[PAGE 21]

5

About the Author – Solomon Freimuth

[PAGE 24]

6

Other Services

[PAGE 25]

New Mexican Immigration Law In Effect as of November, 2012

One important factor everyone needs to consider about the new Immigration rules is that, since November 8th of 2012 **nobody will be granted RESIDENCY from within the country!**

The exception is those who already hold one of the old residency cards or are renewing. See **Changing or renewing FM3/FM2 to Temporary or Permanent Resident Card.**

This doesn't mean that we can get RESIDENCY at the border; **we will actually have to register with the MEXICAN CONSULATE from outside of Mexico** in order to get Temporary or Permanent Residency, if you don't already have an FM3 or FM2.

The Regulations for the 2011 Mexican Immigration law were published in September 2012 and after reading through them and taking some notes, I prepared a basic summary of the points that I thought were pretty important for the expat community here in Mexico.

Immigration filters

There are going to be basic immigration filters or checkpoints at airports, seaports and terrestrial border crossings, very similar to the border crossings now. For many foreigners, we **will not** need a visa prior to entering Mexico, because Mexico has signed treaties with various countries that Visas aren't needed for their citizens. You can

check that list, in Spanish, here

<http://www.sre.gob.mx/tratados/visas.htm>

American and Canadian citizens and residents don't need visas, neither do most European countries.

Once you get to the immigration filter the immigration authority will give you a temporary document that will prove your migratory status. At the time that you are given this document you will be asked the purpose of your trip to Mexico and the document will reflect that purpose, be it work, pleasure, etc. If you plan on staying in Mexico for more than 30 days you will have to trade the temporary document in at the immigration office closest to your home in Mexico.

At these immigration checkpoints, you may be asked to provide your passport, personal information, reason for trip, place of residence outside of Mexico, where you plan on staying in Mexico, who you will work for in Mexico, be that the case, activities in Mexico, income sources and how you are planning on leaving Mexico. It seems to me that this information is going to be required from you only in doubt about your intentions for coming into Mexico: children, families or well-dressed tourists and business people will probably not get hassled; arriving in the airport after finishing a few too many on the plane might get you an entrance interview. Use common sense.



Temporary and Permanent Residency

One of the major changes in the new immigration policy is the Temporary and Permanent Residency instead of the FM3/FM2. This is the part that most interests the majority of the expat community and upon reading these sections I think everyone is going to be pleased.

On a more technical note, I was a little displeased about some of the ambiguity in the wording in this section. There was a lot of talk about the removal of discretionary decision-making by the immigration offices, but in my opinion that still exists: in many parts of the regulations the wording “can be issued” is present instead of a more definitive “will be issued”.

Let’s get into the nitty-gritty, but first, let me calm the fears of all of the expats who had FM3’s before now and were told that their FM3’s would not transition nicely into Temporary Resident documents: In fact, they will transition nicely, and the regulations made a distinction that holders of No-Inmigrante Visitante documents (FM3) will, upon expiration of their FM3, receive a Temporary Resident Status.

Temporary Resident

The Temporary Resident document will be issued for periods from 1-4 years, based on the decision of the immigration authority. Temporary Residency does not confer automatic permission to work in Mexico, although it may be granted upon request of the foreigner and pending a job offer. People who currently hold FM3’s and FM2’s and who do not fall into any of the categories allowed for Permanent Residency will be eligible at the time of renewal for Temporary Residency.

According to the regulations, and congruent with the law, people in ANY OF the following situations will be eligible for Temporary Residency in Mexico:

* *People with a marital or common-law link to a Mexican citizen or a person who holds a Temporary or Permanent Residency status*

* *People with job offers*

* *People registered in the federal tax registry who are trying to work independently in Mexico*

* *People who have been invited by a government or private institution to participate in a non-lucrative activity*

* *People who can prove their economic independence*

* *People who own real estate in Mexico above a certain value**

* *People who have invested a certain amount* in stock in a Mexican company, production machinery or other assets in Mexico or economic activities**

**exact amounts or details are still ambiguous*

Permanent Resident

Permanent Resident is actually a permanent status, except for children under 3 years old who need to renew their documents yearly until reaching 3 years of age. Permanent Resident status includes express permission to work in Mexico, but changes in employer and updates of activities are required.

Any of the following people are eligible to become Permanent Residents in Mexico:

* *Refugees and political prisoners*

* *People with a marital or common law link to Mexicans or Permanent Residents (after 2 years of Temporary Residency)*

* *Retired people**

* *Grandparents, parents, children or grandchildren of a Mexican who acquired their nationality by birth*

People who have a certain number of points based on the following criteria:*

- *Level of education*
- *Work experience in vital areas with high demand*
- *Other work experience*
- *Investments in Mexico*
- *Aptitude in science or technology*
- *International recognitions or prizes*
- *Fluency in the Spanish language*
- *Knowledge of Mexican culture*

**These parts of the regulations have been left very ambiguous and will apparently be cleared up via further publications in the Diario Oficial de la Federación, at a later date.*

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Visitors

The law talks about visitors as people who are allowed to be in Mexico for up to 180 days and then must leave, specifically saying that after the 180 days they must leave the country. This still applies. Anyone who does not ask for Temporary or Permanent Residency prior to entrance

to Mexico will not be able to change from their Tourist Status to Temporary Resident, UNLESS they acquire a matrimonial link to or have another familiar link to a Mexican citizen or Resident. This could be important for people moving to the country, because they will need to make sure to ask for Residency prior to entry.

I somewhat expect there to be exceptions to this rule, but as of right now I can't find any. We shall see how this evolves.

Penalties

I had heard that there were some tough penalties for non-compliance with the new rules, basically because the time periods given for the documents were much more than before. In my opinion, the new penalties aren't too much worse than the old penalties, but it is important to be aware of them:

- * If you are caught performing unauthorized activities your document CAN BE cancelled and you CAN BE asked to leave the country. (Note "can be" rather than "will be.")
- * If you fail to notify the immigration authority of changes in your marital state, address or work situation within 90 days of the change you can be charged a fine of between 20 and 100 days of minimum wage in Mexico City; about \$1220-\$6100 pesos as of September 2012, or approx. between \$100 and \$500 USD, varying according to the exchange rate.

All of these rules came into effect on November 8th of 2012. Since that date any document renewals or applications will fall under these rules.

As I said, this is a very basic overview of the new system and I have left a lot out of the new regulations, mostly things concerning refugees and human rights issues that aren't completely of interest to the readers of this kit. There will be much discussion on this law during late 2012 and early 2013 and everyone's understanding of the rules will change as we actually get a chance to interact with the new system.



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A banner advertisement for 'Benefits of Living in Mexico'. The left side shows a street scene with colorful buildings and a street lamp. The right side contains text: 'Benefits of Living in Mexico' in orange, 'Sunshine, Relaxation and more.' in black, and 'Get FREE KIT >' in red. A red button with a 'MEX' icon and the text 'Download here' is in the bottom right corner.

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Newcomers to Mexico - Getting Your First Visa to Live in Mexico

The *Secretaría de Gobernación* released the guidelines for the immigration process the day before they took effect, on Nov. 8, 2012. Here is a very general idea of how the new immigration process is going to work.

Getting a new immigration document, i.e. for newcomers to Mexico

If **you didn't have an FM3 or FM2** (*No-Inmigrante* or *Inmigrante*) in your hand or in process before November 9th of 2012 and you want residency in Mexico, you will have to ask for it using the new immigration rules that have been published in relation to the *Ley de Migración* of May 25, 2011. The big change in these immigration rules, apart from the names of the immigration documents, is that in most cases you will no longer be able to change from a "tourist" to a "resident" while in Mexico.

There are two basic steps:

1. Get a visa in your home country
2. Get your residency card when arrive to Mexico

If you come from [one of the countries that Mexico has agreed does not need a "visa"](#) for entry (which include the U.S., Canada, Britain and

many European countries), you will still need to go the nearest Mexican Consulate in your home country in order to pre-process the following types of immigration documents, which are now called “visas”:

- * Temporary Residency for students
- * Temporary Residency for people not planning on working while in Mexico
- * Permanent Residency for people not planning on working while in Mexico

The process for any of these documents is simple enough, but I am going to deal with only the last two hypotheses in this article.

People who plan on living in Mexico and not working

If you are going to live in Mexico but do not plan on working, you are going to need to prove that you have enough money to eat, pay rent and go fishing. To get the “visa” to live in Mexico for an extended period of time and not work, you will need to go to the Mexican Consulate nearest you with the following:

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Identification documents

1. Passport
 2. A color, passport sized photo (1.5” x 1”)
 3. The document showing your legal presence in the country you are in, IF you are not a citizen of that country
-

For Temporary Residency (one of the following):

- Original and copy of proof of investments or bank accounts with an average worth over the previous year equivalent to \$95,000.00 USD;
- Original and copy of documents that prove that the foreigner has had for the previous six months an income from a job (outside of Mexico) or a pension that pays at least \$1,950.00 USD per month;
- Proof of any family bond with another Temporary or Permanent Resident or a marital (or equivalent) bond with a Mexican;
- Original and copy of a notarized public deed showing ownership (or trust rights) to a property in Mexico worth at least \$195,000.00 USD;
- Proof of participation of at least \$100,000.00 USD in a Mexican company;
- Proof of ownership in heavy equipment or machinery in Mexico worth more than \$100,000.00 USD; **OR**
- Proof of doing business in Mexico and legally creating at least 5 jobs for Mexicans.



Please make sure to note the **OR** in that previous list! Any one of the requirements in that list, or the following list, will be sufficient to obtain a “visa”.

These are the requirements for people who are planning on **not working** while in Mexico, the process for people going to Mexico to work are different. Take a look in the next page.

Permanent Resident (one of the following):

- Original and copy of proof of investments or bank accounts with an average worth over the previous year equivalent to \$95,000.00 USD;
- Original and copy of documents that prove that the foreigner has had for the previous six months an income from a job (outside of Mexico) or a pension that pays at least \$2,400.00 USD per month;
- Proof of parent-child bond with a Mexican citizen by birth (this would be birth certificates of everyone involved, plus any other documents proving the citizenship of the Mexican citizen);
- Proof of the same parent-child bond with another Permanent Resident; **OR**
- Proof that you have enough points (based on a points system that still hasn't been published).



Note the **OR** in the list!

How long will this take?

That is a great question, and one that I hate to ever answer. Fortunately for you, I think the new process will be fairly fast. The law requires that the consular visa applications be resolved within 10 days of when you submit them; hopefully this will be the case.

I have my Residency “visa”, how do I get my Residency card?

Come to Mexico. Once you get into Mexico you will have another 30 days to take your “visa” to the nearest Immigration Institute (INM)

office and they will help you with the process of changing the “visa” into a residency card (see below).

What do I need to take to the Immigration office?

To change your non-working “visa” for a Residency card, you will need to take a few things with you to the immigration office:

- * The form that you will fill out online
- * Your passport
- * Your FMM (the tourist card you get when you enter Mexico)
- * Receipt of payment of the corresponding fees
- * Three color photos, “infantil” sized (2.5cm x 3cm)

Once you bring all this paperwork into Immigration, the process is supposed to take only 15 days. I’d guess that for the next couple of months, while everyone is getting used to the new system, it might take a little longer.

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Changing or Renewing FM3/FM2 to Temporary or Permanent Resident Card

For those already residing in Mexico or who already have an FM3/FM2, this article is going to talk about changing the FM3/FM2 to a Temporary or Permanent Resident card, as explained in the handbook published November 8th, 2012.

This article is NOT going to talk about getting a new Resident Visa. Please see **Newcomers to Mexico - Getting Your First Visa to Live in Mexico** in this kit for that process.

My FM3 expires after November 9th, 2012, what do I do?

You are going to have a couple of different options under the new law; you will either be able to change to Temporary or Permanent Resident, depending on your circumstances. You probably will not need to wait until your old document expires either. It seems that the third provisional article of TRAMITES says:

The foreigner with a valid migratory form that accredits a migratory quality and characteristic, may solicit the issuance of a new migratory document by mode of replacement of the migratory document, and will be issued a migratory document with the corresponding equivalent condition as predetermined by the sixth provisional article of the Law and the Regulations.

So, we therefore turn to the Regulations (REGLAMENTO), sixth provisional article and we see that:

For the application of the rules of equivalency predetermined in the sixth transitory article of the Migration Law, the following should be considered:

I. ...

II. Documented foreigners with the migratory form of No Inmigrante will be equated to temporary residents taking into account the effective renewals at the time that the Migration Law enters into effect, and

III. Documented foreigners with the migratory form of Inmigrante will be equated to temporary residents taking into account the effective renewals at the time that the Migration Law enters into effect.

I interpret that to mean that people with No-Inmigrante and Inmigrante documents (FM2's and FM3's) will be able to change to Temporary Resident and their previous renewals will be counted towards their 4 years for their Permanent Residency. We'll see how that is applied in practice.



Then how do I renew my FM2 to become a Temporary or Permanent Resident card?

First, you will have to bring all of the following documents into Immigration with you:

- * Original and copy of FM3 or FM2
- * Copy of your passport
- * [Basic application form](#) [click to follow link]
- * Three “infantil” sized photos (2.5×3 cm), two frontal and one profile, on a white background, with the ears and forehead uncovered, without earrings and without glasses.
- * Document showing that you have enough income to support yourself while you are in Mexico; it seems for the new law, this is \$2,400.00 USD per month. More about this in the next page.
- * Receipt of payment of fees

Fees

The fees will depend on which kind of residency you are applying for and how long you want your status to be valid.

Temporary Resident - 1 year	\$3,130.00 pesos (\$250 USD)
Temporary Resident - 2 years	\$4,690.00 pesos (\$375 USD)
Temporary Resident - 3 years	\$5,940.00 pesos (\$475 USD)
Temporary Resident - 4 years	\$7,040.00 pesos (\$565 USD)
Permanent Resident	\$3,815.00 pesos (\$305 USD)

****All USD are approx. and will change according to exchange rates.***

Fees are charged in pesos

The fees can be paid in any bank in Mexico. Print this form, fill it out and take it to the bank:

<http://www.inm.gob.mx/complementos/derechos/util/generaPdfService.php>

The bank will provide you with a receipt that you will take to the Immigration office.

Proof of Income/Savings

As mentioned above, you will also have to bring in some sort of document showing that you have enough income to support yourself while you are in Mexico.

Under the new guidelines (TRAMITES 34), these are the requirements to renew your Temporary Resident or Permanent Resident document:

- A** If the original document was granted because of a job, then you will need to present proof that the job still exists by means of a letter printed on company letterhead that states how long you will be working for the company.
- B** When the original document is granted because of a family bond or other circumstance, you must produce a letter swearing that the conditions for which the original document was granted still exist. If the original document was granted based on marriage or “concubinage” (Mexico’s version of common-law marriage), the letter must be signed by both parties.

Notice that this didn't specify anything about having a document based on outside income? It seems that means that everyone who was here as a RENTISTA under the FM2 or FM3 (Inmigrante or No-Inmigrante) should fall under the category of "other circumstance."

It seems that RENTISTAS would need to prove their income via a letter from their respective SSA, apostiled and officially translated, stating that the foreigner receives some type of pension (any amount).

Nowhere in the legislation is it mentioned that you need to bring any kind of hand written letter to the INM office- asking for your renewal or replacement, but the local office in Playa del Carmen is requiring it. I suggest it be addressed to the "Subdelegado Local" and mention the characteristics of the document that you wish to obtain: *Residente Temporal, Residente Permanente, etc.*

*The government is constitutionally **PROHIBITED** from acting in any way that is not mentioned in some form of legislation, so because there is no other mention of the previous RENTISTA type document, in my opinion, the government will have to accept it as other circumstances. We shall see how this plays out in the days to come.

If you already have an immigration document, the new rules aren't that bad.

To get a new Resident document might be a little bit harder than getting an FM3/FM2 has been in the past: you have to do so from a

consulate, the income requirements are higher, etc. The flip side of this is that it appears easier to stay in the country once you have an immigration document and you will have to go to immigration fewer times in the coming years. There is a lot of wiggle room in this legislation for the Immigration Authority to apply it in a means that they best see fit, but in general I think some of the changes could, at least, make the process less time consuming for the foreigners who live in Mexico.



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Exemption from Capital Gains Taxes on Property Sales

A question that many expats who own real estate in Mexico will be wondering about is the exemption from capital gains taxes when selling a property and how the new immigration laws affect this exemption.

The Capital Gains Tax and Its Exemption in the Past

Very briefly, if an expat sells a property in Mexico, and the government deems that they are selling this property at a significant profit, they will pay approximately a 28% percent tax *on the profit*. Under the old immigration laws, non-Mexicans would be exempt from this status if they held the FM2 document, which was the second stage, following the FM3.

The question is whether under the new immigration laws, which combine the old FM3 and FM2 into one new visa (**Temporary Resident**), this exemption will continue to be granted, and what status is necessary.

Exemption in the New System

Unfortunately the answer is not 100% clear yet, but we can take a look at what the situation will probably be based on documents which the government has released.

From my understanding, the capital gains tax exemption is currently **not** available for foreigners who hold **Temporary** or **Permanent**

Resident cards. However, in January tax laws are usually updated, and I suspect that the law will be updated to allow anyone having either a **Temporary** or **Permanent Resident** document to have the exemption. I explain my reason for this below.

I will also point out that some people are speculating that the exemption may only be applicable to **Permanent Residents**.

The Laws & Explanation

My personal investigation has encountered the following:

- 1.** The clarification made by the SAT explaining that holders of the FM2 (“Inmigrante” document) were eligible for the mentioned tax exemption was originally made in an interior circular. No further clarification has been made.

That document says that in order to apply the exemption, Notaries must use the networked system called "DeclarNot" in order to check that the person hasn't sold a house in the previous 5 years and that they are authorized to do so. The "DeclarNot" system may be as advanced as to require the identification number/type from the seller; therefore the ruling made by the system would in this case be binding and we will be at its mercy, at least until the system is updated to reflect any changes in the tax law that may occur.

- 2.** Because there has been no further change in the tax dispositions we currently are in a position of uncertainty with the tax law: in Mexico, tributary law is to be applied exactly (Art. 3,

fracc. IV, Mexican Constitution). In many branches of the law, analogy can be applied to places in the law that are left unclear, but in the case of taxes that is not allowed.

3. Even though there has been no change in the law, as far as I know, there is one last consideration: the Notary has the ultimate say in the application of the dispositions of the tax law, because he/she is solely responsible for the payment of the corresponding tax for profits made on the sale of a home by an individual. This means that until the Notaries are comfortable with the new immigration documents, they will probably be hesitant to allow foreigners to use them to get any tax exemption.

Based on the previous 3 points, I do not believe that the income tax exemption is currently available for foreigners who hold Temporary or Permanent Resident cards.

However, tax law is updated every year, usually many times, but specifically in January. Hopefully, we will be included in this year's changes. I would suspect that the law will allow anyone having either a Temporary or Permanent Resident document to have the exemption, but only time will tell. We can expect changes to the tax law in late December 2013.



About the Author



Solomon Freimuth graduated in 2012 from the ***Universidad Interamericana para el Desarrollo*** in Playa del Carmen, Mexico with a degree in Law. He also holds a diploma from that institution in Oral Trial Process, as well as a certificate from the ***Instituto Tecnológico Autónomo de México*** in Finances for Attorneys.

When asked, Solomon says that his legal specialty is “everything to do with foreigners”, a broad category that deals with everything from international law, immigration law, business law, real estate law and even tax law.

Before studying the law in Mexico, Solomon worked in the building administration and construction fields and learned the ins and outs of condominiums and real estate transactions in Mexico from a more practical standpoint.

Solomon moved to Playa del Carmen, Mexico in 2005 from Bend, Oregon after traveling through Mexico and falling in love with the culture, people and food that this country has to offer.

Solomon writes a blog for expats that deals with Mexican legal issues, as well as making contributions to the Top Mexico Real Estate blog.

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