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Romania

REAL ESTATE

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

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ROMANIA
REAL ESTATE

1. Overview

In a strict legal sense, real estate rights in Romania refer to ownership over land and/or buildings or dismemberments of such ownership (habitation, beneficial interest, superficies, easement rights, etc.). In a broader sense, they also refer to rights of use of land and buildings, especially in relation to housing, retail or office space leases.

Prior to 1989, most of real estate assets were owned by the Romanian State, having been illegally seized or expropriated en-masse by the communist regime, with significant parts of the country's agricultural lands collectivised.

After Romania's switch to a market economy, a large part of the Romanian real estate is now in the private domain. The legal regime applicable to property transfers has been significantly clarified and stabilised, following a turbulent time, as state owned enterprises were privatised and individuals filed claims for restitution of collectivised lands and illegally seized assets, in a climate of constant change and interpretable legislation.

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

The Romanian Civil Code (Law no. 287/2009) provides the general rules applicable to real estate ownership and transfer. Land law no. 18/1991 supplements such legal provisions especially in what regards the different treatment applicable to agricultural and buildable (intra-muros) land.

Law no. 17/2014 regarding certain obligations related to the sale of extra-muros land provides the conditions under which agricultural real estate may be transferred. Law no. 50/1991 regarding the authorisation of construction works sets forth the general regime governing building permits and obtaining ownership over constructed buildings, while Law no. 350/2001 on urban planning contains important building restriction provisions.

Rules regarding the registration of real estate ownership are provided in Law no. 7/1996 regarding cadastre and real estate registration.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2021 or are there any major anticipated new laws which are expected to materially impact them in the near future?

One of the significant amendments was the that a recently regulated tax of 80% applicable to the positive difference between the value of the agricultural land on the dates of the sale and the date of the purchase, is also applicable when the transfer of the land is performed under a share deal and a change of control occurs.

A remarkable improvement in 2022 concerns the streamlining of the permitting procedure for renewable power plants, such investments being currently allowed directly in extra muros land, without the requirement for the project land to be converted to intra muros.

4. How is ownership of real estate proved?

On a general note, proof of ownership is made by means of the deed of ownership and should be analysed by reference to the period when the property was acquired due to the successive changes in legislation. In the case of real estate sales and donations, most of deeds of ownership are represented by notarized contracts. Also, other examples of documents of ownership are: (i) a title of ownership issued by the relevant authority in the case of restitution claims, (iii) a decision of a court of law, (iv) a notarized certificate attesting the transfer of the ownership right following a company's merger or spin-off, (v) an auction deed, etc.

For constructions, the deed of ownership may be represented by a (i) building registration certificate, (ii)

building permit and the (iii) acceptance-delivery protocol attesting the completion of construction works.

Ownership rights are enforceable against third parties by means of their registration in the relevant land book. Once the plot-by-plot cadastral measurements have been completed in each Romanian locality, land book registration will have a constitutive effect on ownership rights and the land book registration excerpt will represent the principal means of proving real estate ownership. As of October 31st, 2022, out of the 3181 Romanian localities, only 156 have finalised cadastral measurements – 10 of them being only partially finalised (approximately only 4.9% out of the total number of Romanian localities).

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

Romanian private individuals and/or companies, as well as the Romanian State (including local authorities) may hold real estate under a private ownership right. Also, nationals of EU member states may directly purchase buildable and agricultural land, provided certain conditions are met. Nationals of non-EU states may purchase land only under strict reciprocity conditions, however very few such treaties are in force.

Romanian companies may purchase and/or own properties under a private ownership right, regardless of whether their shareholding structure is composed of Romanian or foreign individuals or legal entities.

Therefore, taking into account the above-mentioned limitation on real estate ownership by foreign nationals, most real estate investments in Romania are made through a special purpose vehicle incorporated in Romania.

However, real estate may also be held under a public property right by the Romanian State e.g. (i) lakes, rivers, beachfronts, (ii) national infrastructure such as main roads, conduits, (iii) special constructions such as military constructions, electric power towers, offshore platforms, etc. Public real estate is inalienable and may not be encumbered.

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

The full ownership right over real estate may be dismembered into certain proprietary interests, such as: (i) usufruct rights (the right of a third party to use and derive profit from real estate, with the bare ownership held by the original owner); (ii) usus or habitation right (such as the right of an individual to use the real estate of the absolute owner, mainly as a dwelling, for as long as the individual is alive); (iii) superficies right (the right of a third party to use the surface of the land to erect buildings/to use the surface of the land underlying a building owned); (iv) easement right, meaning the right established in relation to a subservient land plot for the benefit of another land plot, such as the right of pedestrian and vehicular access, rights to transit utilities, etc.

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

Yes, ownership of land plots is distinct from ownership of buildings – while a land plot and the buildings erected upon it are usually registered in the same land book, the landowner does not necessarily need to own the buildings erected upon it, but the building owner must have a superficies right or a similar proprietary interest in order to own the buildings erected upon another party's land.

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

In order to avoid certain restrictions upon land ownership by non-EU nationals/companies, most real estate investments are usually made through Romanian SPV companies (special purpose vehicles). For example, a company which actually carries on a commercial activity may be either (i) the owner of the property or (ii) a lessee, if the owner is a property developer.

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

A legal due diligence exercise undertaken for property transactions involves assessing the following main areas (examples): (i) validity of title; (ii) lack of encumbrances, including restrictions imposed under legal provisions (e.g. related to archaeological sites, military units, pipes, etc.); (iii) urban planning parameters, validity of building permits and related endorsements; (iv) validity of the applicable urban planning documentation; (v) validity of operating permits for future business activities (e.g. fire permits, sanitary permits, etc.); (vi) lack of restitution claims pursuant to the special legislation of properties' restitution; (vii) validity of land book registrations of the property, etc.

The validity of the seller's title to the properties is

confirmed by checking the seller's current title as well as the chain of title for all the transfers of property back to the original owner or back in time to the available documents, since any potential nullity/flaw in a deed in the chain of ownership may have an impact on the validity of the seller's current ownership title.

On a general note, it is recommended that, aside of the legal due diligence, investors should also consider performing other due diligence exercises, such as an environmental, technical and cadastral due diligence, also depending on the purpose of the project.

10. What legal issues (if any) cannot be covered by usual legal due diligence?

Most of the chains of title cannot be verified back in time further than the interwar period, since the system of cadastral measurements, land books and archives had not been implemented throughout the Romanian territory and documents before 1989 are frequently missing.

Therefore, the last verified historic owner is usually the Romanian State and the subsequent transferees. However, certain individuals may challenge the Romanian State's historic title over real estate. The invalidation of the Romanian State's title may reverberate on the title of the current owner. Therefore, in certain circumstances, the due diligence exercise is limited to ensuring that no claims have been asserted against the Romanian State at the time of the due diligence (however such claims may be filed at any time after the due diligence).

Another issue stems from the fact that restitution of state-owned property was usually made without relying on any accurate cadastral measurements and land plot plans. With property titles issued for multiple plots without a precise localisation, the risk of overlapping current titles exists in almost all localities, except where complete cadastral measurements have been completed.

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

Firstly, the investor analyses whether the transaction will be structured as a share deal or an asset deal.

In the second case, after a due diligence exercise identifies potential risks and remedies, the parties usually sign a Bilateral Promise to Sell before the notary public. The Bilateral Promise to Sell will usually contain certain conditions precedent (e.g. obtaining the consent of the financing bank or the consent of other beneficiaries of proprietary rights, performing or updating land book registration formalities or cadastral measurements, obtaining building permits for the envisaged projects, removing the land plots from agricultural to residential use or vice versa) that must be fulfilled by the buyer or the seller before the main Sale Agreement is executed.

After the conditions precedent are fulfilled or waived by the relevant party, the execution of the main Sale Agreement is performed before a notary public, the execution date of the agreement usually being the date of the property transfer. The notary public usually handles subsequent land book registration formalities. Finally, the purchaser registers its title with the fiscal authorities.

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

A decision on a share deal vs. and asset deal is usually taken based on fiscal considerations and requirements of the financing entity and both types of transactions are rather common in Romania.

If the main economic interest of the transaction is the property itself, an asset deal is usually preferred by the purchaser, as risks inherent in the owner-company's history are eliminated and the seller will directly guarantee against any flaws in the title or nature of the transferred asset.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?

Yes, the purchaser of the property may benefit from the lease agreement concluded by the former landowner with a third-party tenant, unless the lease agreement contains a change of ownership clause which may be invoked by the tenant upon the sale of the property.

The purchaser must also honour all leases registered in the land book or, in the case of agricultural land, in the land registries kept by the local City councils.

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

Rights of use, mortgages, easements and restraints on

alienation/encumbrance are the main contractual burdens that can be created over real estate. Other legal easements may be established as per the applicable legislation (e.g., legal easements for utilities). Creditors and competent authorities may, in certain situations, sequester properties.

Enforcement of such encumbrances is obtained before the competent courts or directly through a court enforcement officer, depending on the nature of the encumbrance.

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

Yes, the Romanian Civil Code provides for a fiduciary relationship in which the first party (the trustor) transfers assets to a second party (the trustee) for the benefit of the third party (the beneficiary). The beneficiary may be the trustee itself.

Banking institutions and investment funds/advisors, insurance companies, notaries public and attorneys may act as trustees. However, fiduciary relationships are not so common in the local real estate market.

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

Under the current legislation, the name of the current owners of real estate assets are publicly disclosed if they are registered with the land book registry, irrespective of whether they are individuals and/or companies/other entities. However, pursuant to Law no. 129/2019 for preventing and combating money laundering and terrorism financing, all the companies registered with the Romanian Trade Registry expressly provided under this law (thus including those companies which own real estate) are required to file a statement in order to clearly identify its ultimate beneficial owner.

On the other hand, real estate companies whose shares are listed on the regulated market or on an alternative trading system are required as per the capital markets legislation to publicly disclose their shareholding structure, including the ultimate beneficial owner.

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

Property ownership is subject to local taxes that vary depending on surface and zoning.

Aside from income tax on gains from the sale of real estate, asset sales are subject to notary taxes and land book tariffs, which are usually calculated as a percentage of the actual sale value of the transferred properties. Such sale value may not be lower than the value indicated in the notary's market surveys of property values for different real estate categories (approx. between 2.2% for smaller values and 0.44% for higher values).

As mentioned, land book registration of real estate transfers is subject to a fixed tariff of 0.5% of the asset's value for companies and 0.15% for individuals.

Depending on the status of the seller and the history of prior transactions, VAT may be applicable to certain real estate transactions. In Romania, the current VAT quota applicable to real estate transactions is 19%. However, as of January 1st, 2023, dwellings with a surface of less than 120 sq. m. and a value of up to EUR 120,000 (RON equivalent) purchased by individuals will be subject to a VAT quota of 5%.

Also, if the seller is an individual and the property's value is higher than RON 450,000 (approx. EUR 92,000) the seller will need to pay a 3% tax applied on the difference between the property's transactional value and the amount of RON 450,000.

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

Commercial leases may be triple net, meaning that the tenant is responsible for paying the building's property taxes, the building insurance and the cost of any maintenance, although property owners usually pay the property taxes.

An incentive for tenants in the form of a cash amount for fit-out is common on the Romanian market. Lease agreements may have one or more break options in favour of the tenant; however, the property owner also has the option to break the lease for reasons such as late payments and recurring minor infringements by the tenant.

Other terms of the lease agreement which are worth mentioning: (i) service charge costs are usually established according to an open-book system while marketing fees are generally fixed, (ii) commercial leases usually prohibit subletting and/or lease assignment, (iii) change of control clauses, (iv) compliance with fire safety obligations and other permits, etc.

Aside from a maximum duration (i.e., 49 years) and several mandatory clauses as provided by the Romanian Civil Code, there is no regulatory control on lease terms and there are no rent controls on the Romanian market.

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

Law no. 350/2001 regarding the territorial planning system provides building restrictions and zoning obligations.

The planning system is mainly structured on three levels, as follows:

General Urban Plan (PUG). The PUG is the most extensive urban plan providing for short-, medium- and long-term planning specifications for a municipality, city or a commune.

Zoning Urban Plan (PUZ). The PUZ is a more detailed plan than a PUG, involving the development of a particular area in the territory of an administrative unit. The PUZ may be mandatory for a certain area if this is provided in the PUG.

Detailed Urban Plan (PUD). The PUD is exclusively drafted to provide details and clarifications on the requirements and regulations set out in the PUG or PUZ, or to set out construction specifications. For individual construction projects, the PUD may derogate from the applicable PUG/PUZ.

The above-mentioned regulations are approved at various levels of local government, usually by deliberative local or county councils. Also, they are valid for the time period stated therein.

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

Romania applies the “polluter pays” principle; therefore, the entity polluting the land must pay any fines and is liable for the damage caused to third parties, including to municipalities.

Purchasers can potentially be liable for the actions of the former owner if they cannot prove that the environmental damage was caused by their predecessors. To assess and limit the extent of environmental liabilities before entering into a transaction, an environmental due diligence exercise is highly recommended.

However, a bona-fides purchaser of real estate assets may still be liable for certain clean-up operations due to the pollution caused by a former owner, as the environment authority may refuse to grant an environmental permit for new activities without certain clean-up and containment operations undertaken by the new owner.

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

Yes, according to Law no. 372/2005 regarding the energy performance of buildings, certain buildings are legally required to have their energy performance assessed. This obligation is imposed for, among others, new and existing buildings, and their units, which are to be built, sold, leased or will undergo major renovations. Minimum energy performance levels need to be met when designing new buildings as well as when renovating existing ones.

22. Is expropriation of real estate possible?

Yes, expropriation of real estate is possible for just cause with compensation due to the expropriated owner at market value. The market value is usually determined by an authorised expert but may be challenged by the expropriated owner before a competent court. However, mention should be made that the judicial procedures before courts of law may usually be rather time-consuming.

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

Yes, mortgages can be instituted over real estate in order to secure the payment of the principal, interest and all related charges such as delay penalties. In order to secure the receivable, the lender may foreclose on a mortgaged asset regardless of whether the borrower is still the owner of the asset or the property has changed one or several hands.

However, in order for the mortgage to be enforceable against third parties, it must be registered in the mortgaged property’s land book.

Moreover, the law stipulates that future constructions (e.g. buildings to be erected) may be subject to a mortgage agreement. Thus, such mortgage will be provisionally registered in the mortgaged property’s land

book.

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

Mortgages over real estate must be provided in a contract executed before the notary public. Notary taxes and tariffs are calculated as a percentage of the mortgage value.

Land book registration is currently subject to a tax of RON 100 (approximately EUR 21) per each immovable asset plus 0.1% of the value of the secured receivable.

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

Yes, the Romanian Civil Code provides that receivables and securities may be transferred to a trustee as part of a trust structure.

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