

# Land Ownership and Real Estate

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## **Ownership Right Over Real Property**

Romanian citizens and companies (regardless of shareholder or management citizenship) have the free and unrestricted right to acquire and own real estate. In the past, Romanian legislation prohibited the acquisition of land and ownership rights thereof by foreign citizens and/or entities. The Constitution of Romania was amended in 2003 so as to allow foreign citizens and/or companies the right to acquire land ownership rights as per the requirements of the E.U. accession process, reciprocal international treaties, through legal (but not testamentary) succession, and as otherwise provided by applicable law.

In this regard, Law no. 312/2005 regarding the right of foreign citizens, of stateless persons, as well as of legal entities to acquire ownership over the land, which entered into force upon Romania's E.U. accession, sets the general rules under which foreign nationals/legal entities may acquire ownership rights over land. The provisions thereof differentiate among different classes of foreign nationals as follows: 1) Romanian residents who are citizens of a member state of the E.U. may acquire land ownership rights in the same manner and under the same conditions as Romanian citizens (i.e. 2007) except for agricultural land and forest (for which other conditions should be met); 2) Romanian non-residents who are citizens of a member state of the E.U. may acquire land ownership rights as of 5 years of Romania's accession to the E.U. (i.e.2012); and 3) all other foreign citizens may acquire land ownership rights under any reciprocal agreements contained in international treaties concluded by Romania and the foreign citizen's State.

In respect of constructions, the relevant law does not provide any special conditions for the acquisition of ownership rights thereon. Foreign citizens may freely acquire ownership rights over building structures, whereas for the appurtenant land a superficies right can be established (the right to use the land) as long as the construction exists.

## **Restitution of Real Property**

From 1991 to 2005, several laws were adopted allowing former owners of real estate whose properties were abusively seized by the State during the period of 1945 to 1989 to reclaim their properties or to obtain fair compensation if actual restitution was not possible.

At the end of 2005, the legislative reform in real property and justice instituted a new method for compensating former owners: the "Proprietatea" Fund. The fund, whose share capital corresponds to the value of compensation owed to former owners, and whose initial sole shareholder was the Romanian State, provides former owners a mean of fair compensation.

Former owners are given shares in the Fund, which they may trade on the capital markets. In the past, the restitution proceedings implied some interdictions and restrictions in which concerns the transfer of the properties object of the procedures and other related operations. In

light of the severe sanctions which could affect even the final ownership title, in the context of a real estate transaction the observance of such restrictions in the past should be checked.

## **Acquiring Real Estate**

Real estate transactions represent complex legal operations which should take into consideration various legal, tax and commercial aspects. In order to acquire real estate, it is necessary to determine the legal status of such asset by analyzing the following documents: current title to the property (sale/purchase agreement, donation, inheritance certificate, title deed, etc.); previous titles within the ownership history of the real estate, from where it may be reconstructed (before confiscation by the communist regime), including restitution under judicial or administrative procedures; recent excerpt from the Land Registry, required for the verification of the entries in the Land Registry (recording of owners, potential encumbrances on the property and any other remarks regarding the property) and cadastral file, required for the verification of the precise area and borders of the property, since, in practice, it happens quite often that actual measurements have not matched to the measurements indicated in the title deed.

A real estate transaction is generally materialized in the conclusion of a sale/purchase agreement. Our legislation provides for an authenticated form of the sale/purchase agreement in respect of land – any contract regarding the transfer of the ownership right over the land which is not concluded in an authenticated form is null and void.

In respect of buildings, the law does not provide for the obligation of an authenticated act; however, the transfer of the buildings may trigger the establishment of a superficies right over the appurtenant land. Nevertheless, in case the appurtenant land is also transferred, then the sale/purchase agreement must also be concluded in an authenticated form. Upon conclusion, such sale/purchase agreements must be registered with the Land Registry.

## **Litigation**

The existence of a litigation over the real estate does not prohibit the transfer or the constitution of any real or receivable right over the respective real estate, except for the situation where the object of the litigation is represented by the reconstitution of the private ownership right or the validity of the ownership title according to the land laws.

## **Lease/Free Use/Concession of Land/Real rights**

Under current law, foreign investors may enjoy the benefits of using and developing land under different legal mechanisms including leases, free-use agreements or concessions.

Privately owned real estates may be leased under a lease agreement concluded by the owner of the property in question for a determinable period of time, which may be extended upon the parties' consent. If the lease term exceeds three years, the agreement should be registered in the Land Registry so as to allow for notice and enforcement against third parties. Should the lease term be lower than 3 years, a certified execution date ensures notice and enforcement against third parties.

State owned real estates may be leased if approval is obtained in the form of a Governmental Decision, while where such immovables are owned by local authorities a Decision of the Local Council or a Decision of the County Council is required. Any such lease agreement must contain language providing for the terms of exploitation in consideration of the real estate's characteristics.

Free use rights over state owned real estate may be granted to non-profit entities that perform charitable activities.

With respect to concessions of privately/publicly owned real estates the applicable legal regime contains strict regulations. As a general rule, concession rights may be granted in favor of investors, Romanian or foreign individuals and legal entities, following a certain procedure established by law upon fulfillment of certain conditions prescribed for by law. The concession agreement may be concluded for a maximum term of 49 years, which may be extended for a period equal to ½ of the initial term. The concession contract must be registered in the Land Registry.

Real rights (e.g. the right to use, the easement right, the superficies right, etc.) may be established through deeds concluded in an authenticated form and for certain real rights an urbanism certificate must be obtained

### **Securities over the Real Estate**

Mortgages over real estate may be established upon the conclusion of an authenticated agreement which should be registered with the Land Registry. The enforcement of the mortgages is regulated by specific provisions.

### **Publication Formalities**

According to the law, for publicity and opposability towards third parties, any act or fact related to a real property (e.g. transfer, security or promissory agreement, etc.) should be registered with the Land Registry. The Land Registry is kept within the real estate offices in the district where the real property is located. All real estate transactions are based on verifications of the Land Registry in order to determine the current legal status of the property, its rightful owners, as well as any existing encumbrances on the property. However, Land Registry recordings do not always guarantee the legal security of a transaction and additional verifications are strongly recommended.

### **Construction Permits and Urbanism Plans**

Civil, industrial or any other type of construction works may be performed on the basis of a construction permit, which may be obtained by the titleholder or any other person holding a right to build on the land. Moreover, starting with February 2009, the construction permit may be obtained only by the titleholder of a real right over the land identified with a cadastral number.

Construction permits are valid for 12 months from issuance date, and the investor must begin the construction works within this period of time. A one time extension of maximum 12 months may be granted subject to payment of 30% of the initial issuance tax. During construction, the investor must observe the technical parameters and characteristics as per the construction permit; any modification thereof requires a new construction permit.

Urbanism documentation (i.e. urbanism plans and corresponding regulations) provides the conditions under which the land may be used for construction; all regulations regarding construction performance are contained therein.