Global Corporate Real Estate Guide - France

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

Select a topic from the menu and explore the questions within.

*This chapter was last reviewed in June 2023.*

# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term "real estate" includes the following:

The land, soil and subsoil

Any buildings or structures built on it

## What laws govern real estate transactions?

Real estate transactions are mainly governed by the relevant provisions of the French Civil Code.

## What is the land registration system?

All documents transferring immovable property must be published at the Land Registry (Services de la publicité foncière). Until a deed of sale is published at the Land Registry, it is not binding upon third parties.

Documents transferring immovable property must be drawn up by, and signed before, French notaries. French notaries benefit from a legal monopoly in respect of such documents. French notaries are also responsible for the formalities on transfer of title, including prior declaration to the local authority benefiting from a right of preemption, obtaining Land Registry searches and checking the root of title over a 30-year period.

## Which authority manages the registration of titles?

Registration of titles is managed by the Land Registry.

## What rights over real property are required to be registered?

All documents transferring or encumbering real estate properties must be published at the Land Registry.

This includes the following:

Sale and purchase agreements

Mortgages

Easements

Specific restrictive covenants

Leases whose duration exceeds 12 years

Co-ownership agreements

## What documents can landowners use to prove ownership over real property?

Land Registry searches can be obtained from the Land Registry through specific requests to obtain information on the name of owners of real estate properties or the different real estate properties owned by an individual or a company.

Within the context of a sale and purchase agreement of real estate property and once publication of the sale is completed with the Land Registry, a copy of the sale and purchase agreement is provided to the new owner.

## Can a title search be conducted online?

All documents published at the Land Registry are available to the public and information about the ownership of real property can be searched. Specific fees are paid to obtain these documents.

## Can foreigners own real property? Are there nationality restrictions on land ownership?

There are generally no restrictions on foreign ownership of French lands subject to very few exceptions where authorizations are to be obtained and where administrative declarations shall be made, as the case may be.

## Can the government expropriate real property?

In some cases, the French administration is entitled to expropriate when the building is located within the perimeter of a public utility operation. There is a very precise administrative procedure.

Land is divided into different zones. In some of these zones, local authorities (municipalities or other local authorities) benefit from a right of preemption.

## How can real estate be held?

Real estate property is held by any of the following means:

Ownership

Lease agreement

## What are the usual structures used in investing in real estate?

Investments in real estate properties are usually made through specific purpose vehicles.

## How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks. However, there are alternative lenders such as debt funds or insurance companies. They represent only a small part of the market.

Usually, the borrower will pay for all the lender’s legal and other costs. The lender usually takes securities over the real estate property and the different related assets (i.e., pledge over the shares in the purchasing company or in the company owning the real estate property, mortgage over the real estate property, assignment of rent paid by existing tenants in the real estate property and indemnities paid by insurance companies).

## Who usually produces the documentation in real estate transactions?

French notaries will prepare legal documentation for the direct sale and acquisition of real estate property. For sale and acquisition of real estate property through the sale and acquisition of shares in companies, and with the exception of mortgage deeds and deeds of release of mortgages, which are also produced by French notaries, the parties’ lawyers usually prepare legal documentation.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

The French Civil Code provides for conditions applicable to all sales of real estate properties but these regulations are not mandatory. As a consequence, parties can waive most of these provisions and agree upon different terms and conditions. As a general rule, the transfer of real property does not entail the transfer of the liabilities related to that said property to the purchaser.

When the real estate property that is being sold was built or renovated less than 10 years prior to the sale, the purchaser is, by law, subrogated in the rights of the vendor vis-à-vis contractors who did participate in the construction or renovation of the real estate property being sold.

Regarding environmental matters, public authorities can require the operator (polluter) to clean up soil and subsoil contamination when the latter ceases its operating of the site or in case of pollution.

Tenants are not usually held liable for environmental damages caused by a previous tenant, unless it carries out the same activity and can be considered the same operator in the existing business.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

The French Civil Code provides for conditions applicable to all sales of real estate properties. Some of these legal provisions are not mandatory. As a consequence, and to some extent, parties can negotiate and agree upon different terms and conditions in the sale and purchase agreement.

Tenants are generally not held liable for a previous tenant’s obligations, unless new tenants continue committing the breaches.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

Offer letter

Parties usually sign an offer letter (Lettre d’intention) for the direct or indirect purchase of real estate property. Such document is usually the first document entered into in relation to a property transaction and includes the purchase price, the tax treatment of the sale, the main terms and conditions of the sale, the different conditions precedent to be fulfilled (as the case may be) and the timing of the transaction, including the timing necessary for the purchaser to complete its due diligence.

Due diligence report

Once the offer letter is signed, the purchaser will usually carry out, through its legal and technical advisors, due diligence with respect to the property and/or the company that is in the process of being sold.

This due diligence will include review of titles, zoning searches, review of building authorizations, review of any leases and carrying out of technical and environmental surveys of the real estate property.

Sale and purchase agreement (under conditions precedent)

After completion of due diligence, a sale and purchase agreement under conditions precedent is usually signed between the vendor and purchaser.

This sale and purchase agreement will contain all necessary terms and conditions for the transaction, including description of the land, the purchase price, the tax treatment of the sale, payment of a deposit (if any) and the list of the conditions precedent to be fulfilled, which usually includes a waiver from the public authorities to the benefit of their preemption right. This sale and purchase agreement will also contain specific conditions precedent to the benefit of the purchaser such as the obtaining of the necessary construction authorizations and some representations and warranties granted by the vendor for specific issues identified during the due diligence process carried out by the purchaser.

Final sale and purchase agreement

Once all the conditions precedent listed in the sale and purchase agreement under conditions precedent are fulfilled, parties will sign the final sale and purchase agreement drawn up by and signed before a French notary (please see response to “What is the land registration system?”).

## What are the warranties given by a seller to a buyer?

The French Civil Code provides for conditions applicable to all sales of real estate properties which are not, to some extent, mandatory. Parties will therefore negotiate and agree upon appropriate terms and conditions in the sale and purchase agreement. Recent trend, however, is for vendors to give limited representations and warranties.

## When is the sale legally binding?

Parties are legally bound as soon as they execute a reciprocal sale and purchase agreement under conditions precedent and/or a final sale and purchase agreement.

However, under French law, a sale is binding between vendor and purchaser as soon as there is an agreement on the subject matter of the transaction and on the price. As a consequence, for instance, an unqualified offer letter made by a purchaser which is duly accepted by the vendor could result in a binding sale and purchase agreement.

## When is title transferred?

Parties are legally bound as soon as they execute a final sale and purchase agreement and transfer of ownership will occur upon signing of this agreement before a French notary.

However, all documents transferring ownership of real estate property must be published at the Land Registry. Until a final sale and purchase agreement is published at the Land Registry, it is not binding on third parties.

## What are the costs usually shouldered by the parties?

Purchasers will usually pay for the following:

Buyer’s agent’s fees

Legal costs borne by the purchaser

Due diligence costs

French notaries fees

Registration duties and/or VAT

Land Registry fees

  Vendors will usually pay for the following:

Legal costs borne by the vendor

Income tax on any profit made on the sale of the real estate property

# Leases

## What are the usual forms of leases?

Ground leases

A ground lease grants an immovable property right (Droit Immobilier) to the tenant. Therefore, it must be drawn up by a French notary and published at the Land Registry. During a ground lease term, the tenant will remain the owner of the construction. Upon termination, the landlord will become the owner of the construction and improvements.

A ground lease (Bail à Construction) is a lease under which the tenant undertakes to construct buildings on the landlord’s plots of land and to maintain these buildings in a good state of repair. The term of the ground lease will be between 18 years and 99 years.

Commercial leases

This security of tenure is granted to tenants who are duly registered at the relevant Commercial and Companies Registry.

The French Commercial Code governs the duration, renewal and termination of commercial leases, rent review, use of the premises, subletting, assignment of the lease and, to some extent, service charges and works.

Other general terms of commercial leases, which are not regulated by specific provisions of the French Commercial Code, are governed by the general provisions of the French Civil Code applicable to lease agreements.

French regulations on commercial leases apply to leases of premises in which a business is carried out by an individual or a company. This business shall be duly registered at the relevant Commercial and Companies Registry.

The duration of commercial leases cannot be less than nine years. However, the landlord and tenant can agree on a longer term. In most cases, institutional investors now enter into commercial leases for a period of 12 years with the lessee waiving the right to give leave before the expiry of a period of 6 years or 9 years.

The French Commercial Code allows short-term leases not exceeding three years (Baux Dérogatoires). These short-term leases, which are outside the scope of regulations on commercial leases, are governed only by the general provisions of the French Civil Code applicable to lease agreements.

Unless specific conditions are met, the landlord cannot terminate commercial leases during this nine-year period. On the other hand, the tenant benefits from a triennial right of termination from which the parties cannot derogate, unless in case of commercial leases for offices spaces, storage premises, single-use premises or for a duration of more than nine years. In these cases, the tenant may contract out of such triennial right of termination. Notice to quit must be delivered by process-server (Huissier de justice) six months in advance.

Security of tenure is an essential aspect of French regulations on commercial leases. Security of tenure is the right of the tenant to obtain renewal of the commercial lease upon its expiry and the landlord cannot refuse to grant such renewal without paying the tenant compensation for eviction (Indemnité d’éviction).

Residential leases

As a matter of general principle, a residential lease is entered into for six years if the landlord is a company, or for three years if the landlord is an individual. The tenant may terminate a residential lease at any time with three months’ prior written notice.

Residential leases are regulated by specific French regulations. Most of these provisions are mandatory and cannot be contracted out by parties.

## Are lease provisions regulated or freely negotiable?

Legal provisions applicable to commercial leases concerning the duration and right of renewal to the benefit of the tenant and to service charges and work that can no longer be recharged to tenants are mandatory and cannot be contracted out by parties. Other legal provisions, which are not covered by the French Commercial Code but by the French Civil Code, are negotiable by parties.

Most of the legal provisions applicable to residential leases are mandatory and cannot be contracted out by parties.

## Is there a maximum term for leases? Can these be extended?

The duration of commercial leases cannot be less than nine years. Parties, however, can provide for a longer term.

If the term of a lease agreement is more than 12 years, it must be drawn up by French notaries and must be published with the Land Registry, thus triggering specific costs (notary fees, registration duties and Land Registry fees).

## What are the usual lease terms?

Most commercial leases are entered into for a nine-year term with a break option at the end of every triennial period to the benefit of the tenant.

Most commercial leases for commercial centers are entered into for a ten-year term with partial waiver of the triennial right to terminate the lease for tenant.

## Are there instances where tenants may demand an extension of the lease?

No.

## On what grounds may a lease be terminated?

As a matter of general principle, the landlord is entitled to terminate leases (either commercial or residential leases) when the tenant breaches the terms and conditions of the lease.

The landlord can terminate a commercial lease if the tenant remains in breach for one month after having received a notice served by court process-server. The court may also allow the tenant more time to cure the breach.

## Must rents be paid in local currency?

As a matter of general principle, foreign currencies cannot be used in agreements in France as it may be considered as a prohibited indexation, except if the currency is in relation with the object of the contract or with the activity of one of the parties to the contract. This prohibition is strictly construed by French courts.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

For commercial leases, rent is usually paid quarterly in advance.

## How is rent reviewed? Are there limits to the increase in rent?

Parties to commercial leases are free to stipulate that rent shall be indexed on an annual basis. However, under French law, an index is only valid if it is directly related to the object of the contract or to the activity of one of the parties.

For commercial leases, the option is between the Commercial Rents Index (Indice des Loyers Commerciaux or ILC) for commercial activities and the Index of Rents for Services Activities (Indice des Loyers des Activités Tertiaries or ILAT) for services activities. These indexes are published by the French State Statistical Institute (INSEE).

Under French law, rent of commercial leases may also be reviewed by the landlord or the tenant three years after the date of entry into force of the rented premises or the date of commencement of the renewed lease. Upon renewal of commercial leases (Renouvellement), increase in rent may be capped or rent may be fixed at market value. The rent increase upon rent review and renewal is limited to 10% per year.

## What are the basic obligations of landlords and tenants?

The following must be borne by landlords:

Repairing and maintaining the structure of the rented premises, identified as major repairs in Article 606 of the French Civil Code

Specific service charges and work listed under Article R 145-35 of the French Commercial Code

The following is usually required of landlords:

Insure the rented premises

Provide tenants with valid notice of termination

The following is usually required of tenants:

Pay rent and service charges on time

Keep the rented premises in good maintenance and repair order

Insure its belongings, merchandise and goods within the rented premises

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

Commercial leases

The prohibition of the right to assign a commercial lease is void if it prevents the tenant from assigning the lease to a purchaser of its business. As a consequence, a provision prohibiting the right to assign will only be valid when the assignee purchases the right to the lease.

Commercial leases usually provide that, in case of assignment, the tenant will remain jointly and severally liable with the assignee for the tenant’s obligations under the lease, in particular, for the payment of rent and service charges.

Unless provided otherwise, subletting of all or part of the rented premises is prohibited. However, in practice, tenants are granted right to sublet to companies of their group.

Specific preemption rights benefiting towns may apply in case of assignment of the business carried out in the rented premises or in case of assignment of the sole right to the lease when the rented premises are located within a protection perimeter of local stores and craft industries.

The tenant benefits from the right of first refusal in the event landlord wishes to sell the rented premises, with respect to retail or craft-industry premises (Locaux à usage commercial ou artisanal). Such right, however, can be contracted out by parties.

Residential leases

The tenant may not assign or sublet without prior consent of the landlord.

Specific preemption right benefiting to the tenant may apply in case of sale of the rented premises.

## What happens in the event of destruction of the leased premises?

Unless otherwise agreed upon between parties, specific provisions of the French Civil Code will apply in the event of destruction of rented premises.

Pursuant to these provisions, where during the term of the lease, rented premises are wholly destroyed by a fortuitous event, the lease is terminated as of right. Where the rented premises are destroyed only in part, the tenant may, according to the circumstances, apply for rent reduction or termination of the lease. In either case, no compensation is owed.

These legal provisions, however, are not mandatory and parties can agree upon other terms and conditions.

## Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the rented premises and usually recovers the cost of insurance premiums from the tenant through service charges. The tenant insures its merchandise, goods and belongings within the rented premises. In such case, a mutual waiver or recourse between the tenant and the landlord is usually provided for in the lease agreement.

## Will the lease survive if the owner sells the leased premises?

In general, leases are continued in the event of the transfer of the leased building to a third party. Registration of leases with the tax authorities will give leases a fixed date (Date certaine) and will give rank to the landlord’s special charge over the tenant’s assets in respect of unpaid rent. In addition, this will make the lease binding against the landlord’s successors in title.

Pursuant to French regulations applicable to residential leases and when specific conditions are met, tenants benefit from a right of preemption when the landlord intends to sell the rented premises.

## Will the lease survive if the leased premises are foreclosed?

Registration of the lease with the tax authorities will give the lease a fixed date. This will also make the lease enforceable against a secured creditor of a landlord who carries out a seizure procedure after this date.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

Land development is set primarily at the town level. Towns will control land use and density of constructions through zoning by-laws (Plans Locaux d’Urbanisme).

The French Zoning Code and the French Construction and Dwelling Code also set specific standards and regulations for the use of land and construction of buildings.

## What environmental laws affect the use and occupation of real estate?

The French Environmental Code set specific standards and regulations affecting the use and occupation of real estate. For instance, specific authorizations and/or administrative approvals and/or declarations are required by environmental legislation for starting or ceasing operation of a classified facility (Installation classée), such as industrial and manufacturing activities.

## What main permits or licenses are required for building or occupying real estate?

As a matter of general principle, a demolition permit and/or a building permit will have to be obtained if a building is to be built or if a building is to be demolished and rebuilt or renovated.

As regards use of premises, especially in the Paris area, the French Construction and Dwelling Code provides that premises with residential use cannot have any other use unless specific authorization is obtained from relevant public authorities.

Specific authorization is also needed to open retail premises with a sales area in excess of 1,000 square meters.

This threshold has been lowered in Paris on an experimental basis and for an initial period of three years starting 1 January 2018, the above specific authorization is required for sales area in excess of 400 square meters only.

## Can an environmental cleanup be required?

Environmental cleanup of plots of land can be required by relevant authorities when a classified facility (Installation classée) ceases to be operated or when pollution is evidenced.

## Are there minimum energy performance requirements for buildings?

Different French laws enacted over the past few years provide for minimum energy efficiency requirements for existing and new buildings.

A specific energy efficiency report (Diagnostic de performance énergétique) has been created, which states the quantity of energy used or to be used according to the type of use of the building. This report shall be communicated to purchasers and tenants.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

An increasing number of technical reports has been created over the past few years.

A specific technical audit record has been created to bring together information (statements, reports and audits) relating to the safety of the buildings and health and safety of the occupants.

Notably, this shall include a statement referring to the presence/absence of construction materials/products containing asbestos, pollution of the land, soil and subsoil and risk statement (Etat des Servitudes 'Risques' et d'Information sur les Sols) in zones within the perimeter of a plan for prevention of risks or in an earthquake zone. In case of sale of a constructed building, these records, which must be given by the vendor to the purchaser, are attached to the preliminary contract and to the final deed of sale.

In most cases, new buildings benefit from environmental labels (HQE or BREAM).

In addition, new regulations require improvements in the energy performance of commercial buildings. Promulgated at the end of 2018, the ELAN law included in the Construction and Housing Code an obligation to reduce the energy consumption of tertiary buildings. This applies to all buildings or business premises for tertiary use and with an operating area of 1,000m or more.

The regulations require a reduction in final energy consumption by applying one of the two methods presented in the Construction and Housing Code:

reduce the final energy consumption of buildings by 40% by 2030, 50% by 2040, and 60% by 2050, compared to a base year that cannot be earlier than 2010; or

achieve a fixed level of energy consumption in absolute value for each type of activity.

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