Global Corporate Real Estate Guide - Bahrain

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# Authors

# Real Estate Law

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

The term "real estate" includes the following:

Land

Any buildings or structures on it which cannot be moved without damage or changing its form

## What laws govern real estate transactions?

Property law is primarily governed by the following laws:

Civil Code (2001)

Property and Land ownership by non-Bahrainis Decree (2001)

Real Estate Registration Law (2013)

Leasing Law (2014)

Real Estate Sector Regulation Law (2017)

## What is the land registration system?

The Survey and Land Registration Bureau is responsible for the registration of land in the Kingdom of Bahrain. It maintains a land register in which each property, its description and legal status is entered. Facts and information recorded in the land register are considered final and conclusive proof as to the matters they describe, by virtue of their inclusion in the land register. Details in the land register cannot be altered except by order of the court or upon receipt of a notarized declaration from a party approved by the Minister of Justice and Islamic Affairs. Material errors in the land register may be corrected by the Director of the Survey and Land Registration Bureau according to the appropriate legal instruments of ownership or disposal.

Land registered in the land registry cannot be acquired through adverse possession or prescription.

Rights of others that encumber the land must be registered on the title to the land. Failure to affect such registration shall render such rights invalid, whether toward the parties concerned or toward third parties.

Title to land registered in the land register kept by the Survey and Land Registration Bureau is guaranteed by the King of Bahrain. Title is indefeasible and ownership is proved conclusively by the information recorded in the land register.

## Which authority manages the registration of titles?

The Survey and Land Registration Bureau manages the registration of titles.

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

Rights in respect of real estate that are not registered may not be enforced. The law requires registration of the following:

Transfers of title

All rights arising from a disposal of land

Gifts of land made by the King of Bahrain

Mortgages

Easements

Restrictive Covenants

Endowments

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

The original physical title deed issued to the owner by the Survey and Land Registration Bureau provides proof of ownership of real property.

## Can a title search be conducted online?

No.

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

Bahrain first began opening its land to foreign ownership in 1999 pursuant to Decree 40 of 1999 when citizens of countries in the Gulf Cooperative Council were allowed to own land and buildings in Bahrain.

In 2001, the King of Bahrain issued a Royal Decree allowing, in principle, foreign ownership on a freehold basis, of land and buildings in designated areas in the Kingdom of Bahrain. However, it was only in 2003 that enabling legislation was passed ratifying the 2001 Royal Decree, nominating designated areas and formalizing the legal mechanism by which foreigners of any nationality could own land in Bahrain on a freehold basis.

Legislative Decree no. 43 of 2003, as amended by Edict no. 67 of 2006 and Edict no. 38 of 2023, entitled “ownership of property and land by non-Bahrainis in the Kingdom of Bahrain”, provides for freehold land ownership in certain designated areas.

Edict no. 13 of 2011, which came into force on 31 March 2011, also allowed the ownership of property in the Kingdom of Bahrain by foreign banks, whether conventional or Islamic, in the context of financing transactions. Such ownership is subject to the following conditions:

the bank must obtain the written consent of the Central Bank of Bahrain before entering into the relevant transaction;

the bank must re-sell the property to a client in the context of real estate financing (further conditions apply where the client is a foreign client);

the duration of the bank's ownership must be limited only to the period of the relevant financing; and

in the event that the client defaults on its financial obligations under the relevant financing agreement and the bank seizes the property, the bank must dispose of the property within 1 year of the termination of the financing agreement, and the Central Bank of Bahrain may only extend this period for 1 more year.

## Can the government expropriate real property?

Legislative Decree no. 39 of 2009, as supplemented by Edict no. 64 of 2021, authorizes the government of Bahrain or a municipality in Bahrain to compulsorily acquire privately held land when it is in the public interest to do so. Acquisitions may only take place for a public purpose and in accordance with this legislative decree.

## How can real estate be held?

Generally, an interest is held by any of the following means:

Freehold

Leasehold

Strata title

Usufruct

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

There are several forms that a business entity can take in the Kingdom of Bahrain. Of these forms, the limited liability company and the joint stock company are the more usual forms used for real estate investment.

## How are real estate transactions usually funded?

Bahrain is an important banking center in the Middle East. Accordingly, there is a wide range of banks that offer financing to the real estate sector, both on a conventional and Islamic basis, using all manner of financing techniques.

Non-recourse, limited-recourse and full-recourse financing, and secured and unsecured financings have been used in various transactions in the past.

Equity is playing a greater role in the financing of real estate transactions, particularly through Islamic funds and Islamic bond (sukuk) issuances.

Bahrain has an active mortgage finance market, providing finance to both foreign and domestic purchasers of residential property.

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

Generally, the seller’s lawyer will prepare the initial draft of the purchase agreement.

## 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?

There is no specific legislation in place to address remediation of contaminated land where contamination was caused by someone other than the current land owner.

At present, an owner or occupier of real estate cannot inherit liability for contamination caused to the land by previous owners, although we sometimes see new owners and occupiers seeking indemnities in respect of the same and in respect of any damage arising from contamination on the land.

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

Yes, but only to the extent that the seller or occupier caused the liability, such as environmental pollution, during its occupation and use of the real estate.

# Acquisition of Real Property

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

Sale and purchase agreement

Sale deed

Due diligence report

Assignment or renewal of a lease

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

Sellers are usually very reluctant to give representations and warranties. In the event they do, they are generally very limited in nature. Therefore, the obligation is on the buyer to undertake comprehensive due diligence.

## When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, except where the contract is conditional upon, for example, financing.

## When is title transferred?

Transfer of title takes place only upon registration by the buyer of the sale deed at the Survey and Land Registration Bureau.

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

The buyer usually pays for the following:

Buyer’s agent’s fees

Legal costs

Due diligence costs for consultants who have prepared building condition reports, valuation appraisals and real estate surveys

Transfer fees

The seller usually pays for the following:

Listing agent’s fees

Legal costs

# Leases

## What are the usual forms of leases?

Industrial leases

Commercial office leases

Retail leases

Residential leases

Development leases/ground leases

## Are lease provisions regulated or freely negotiable?

Leasing Law no. 27 of 2014, as amended by Law no. 10 of 2020 and Law no. 13 of 2020 (the “Leasing Law”), governs all leases in the Kingdom of Bahrain with the exception of leases of agricultural land, hospitality and tourism, and industrial lands subject to Law no. 28 of 1999 and leases of furnished apartments with a term of one month or less.

The Leasing Law does not specify any form that a lease should follow but it requires it to be in writing and registered a month after signing taking into consideration that any subsequent amendments to the lease must also be registered. Registered leases take priority over a non-registered lease in the event of a conflict and also give access to the leasing disputes committee (the “Committee”). However, the Leasing Law does impose several default positions that apply unless agreed otherwise in the lease.

The Leasing Law specifies key elements that need to be in any lease agreement such as a:

Defined lease term – otherwise it shall be presumed to expire when the rent is due.

Specified rent – otherwise it shall be presumed to be a similar rent of similar properties taking into account the condition of the property, purpose and nearby area.

Specified purpose - otherwise the lease shall not be registrable.

In addition, for residential leases the security deposit may not exceed three months’ rent.

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

With the exception of industrial leases, there is no limitation on the duration of that period, i.e., the term of the lease, so long as a term is specified. There are no restrictions on extension or renewal of the term of a lease, other than for industrial leases.

## What are the usual lease terms?

Development leases/ground leases and industrial leases are usually for terms of between 15 and 25 years with no more than one option to renew. Commercial office leases are typically for a term of between two and five years with further options to renew subject to upward rent review, although several A-Grade office buildings have entered into leases with tenants for 10-year terms. Retail and residential leases are usually for one-year terms with the option to renew for further terms of one year each.

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

The default position where a lease is silent on the matter is that a tenant may renew a residential lease with a term less than three years up to a maximum of three years and any other lease with a term less than seven years up to a maximum of seven years. The tenant must notify the landlord of its intention to renew three months before the end of the term. Moreover, the landlord cannot ask the tenant to vacate a residential property before the third anniversary of the lease or any other property before the seventh anniversary of the lease. The parties are however free to agree otherwise in the lease.

## On what grounds may a lease be terminated?

When a lease is made for a fixed period, either the landlord or tenant may, if serious and unforeseen circumstances arise of such nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiry, provided the party seeking termination gives notice to the other party in accordance with the required time limits and pays that party equitable compensation.

If it is the landlord who demands termination of the lease, the tenant will not be compelled to hand back the leased property before he/she has been compensated or obtained an adequate guarantee.

Under the Leasing Law, the landlord has the right to request the tenant to vacate the property in the following instances: a) no rent was paid for two consecutive months unless the Committee finds a good reason for the tenant not to vacate; b) assigned or sub-let without the written consent of the landlord; c) exceeded the number of permitted people in the property; d) improper use of the property; e) health and safety concerns; f) the property is 25 years old and the landlord needs to re-build; g) the property is needed as the landlord’s residence; and h) the tenant has vacated the property for a year.

## Must rents be paid in local currency?

The parties to a lease are free to set the rent in currencies other than Bahraini dinars. However, arrangements for payment of rent in foreign currency are not typical.

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

Rent is typically paid monthly in advance, although the parties remain free to agree otherwise.

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

The Leasing Law imposes restrictions on the landlord’s ability to increase rent. The landlord may only increase rent after the lapse of two years from the lease commencement date or from the date of the last rent increase, whichever is closer. Such increase is capped at 5% for residential leases and 7% for other leases. The landlord can only use the right to increase rent five times during the term of the lease. This provision applies to all existing leases when renewed and the landlord must inform the tenant through registered mail specifying the new rent three months prior to the end of the second anniversary of the lease. The parties are, however, free to agree otherwise and these provisions are default positions only.

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

The following is usually required of landlords:

To handover the property as soon as the lease is signed unless another date was agreed

Repair and maintain the structure of the property

Handover the leased property with its fixtures

Conduct urgent maintenance immediately

Insure the property

Provide tenants with a valid notice of termination if terminating the tenancy

  The following is usually required of tenants:

Pay rent within a week from the date it is due

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access for inspections and landlord's work

Handover the leased property in the same condition as it was received at the end of the term

Notify the landlord of his/her intention to vacate the property three months prior to the end of the term through registered mail

In addition, unless otherwise agreed in the lease, the Civil Code imposes several default obligations on the tenant. It is therefore important to consider the Tenant’s position in the lease regarding the following:

Any improvements made by the tenant will not be accounted for when the tenant vacates the property

Tenant must pay for the electricity, water, telephone, shared services and any other fees

Any sale by the tenant of any rights created by any lease (except for residential) will be transferred to the buyer until the end of the lease term as long as the landlord is not negatively affected

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

A tenant cannot assign a lease without the landlord’s written consent, unless the right to assign is provided for in the lease. Pursuant to the Civil Code, the tenant may not assign his/her lease or sublet the whole or any part of the leased premises unless agreed otherwise. It is common for a lease contract to give a tenant the right to sublet or assign the lease, subject to the landlord’s prior consent. Any sub-lease or assignment must be registered to bind third parties.

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

Article 518 of the Civil Code provides that if during the course of the lease, the leased premises are totally destroyed for a cause beyond the control of either the tenant or the landlord, the lease is terminated.

The same article also provides that if, as a result of a cause not imputable to the tenant, the leased premises is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which it was leased, or if such a use is appreciably diminished, the tenant may, if the landlord does not restore the leased property to its original condition within a reasonable time, claim either a reduction in the rent or revocation of the lease agreement.

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

The parties are free to agree in a lease who will insure the various risks that arise in respect of the leased premises.

Typically, the landlord will be responsible for taking out property risk insurance and third-party/public-liability insurance, although in some cases, the landlord may seek to recoup an apportioned sum of the insurance premium from the various tenants occupying the leased premises. The tenant is usually responsible for insuring its fixtures, fittings and belongings within the leased premises.

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

The Leasing Law states that leases remain valid on transfer of ownership of the property and the new landlord cannot increase the rent or terminate the lease unless in accordance with the provisions of the Leasing Law. The new landlord shall notify the tenant and register the new ownership within 30 days from registration of the title deed with the Registrar.

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

Yes, for the reasons stated in “Will the lease survive if the owner sells the leased premises?”.

# Planning and Environmental Issues

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

The Urban Planning & Development Authority has authority over land development and town planning matters.

The Supreme Council for Environment is the government authority responsible for regulation and control of the environment and activities causing detriment thereto.

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

Environmental laws that affect the use and occupation (as opposed to construction and development) of real estate typically apply to industrial projects operating on industrial land. They deal primarily with emissions, noise pollution and the creation of hazardous materials and waste. However, any activity that gives rise to pollution could fall within the ambit of environmental laws.

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

Building permit

Building Permit Completion Certificate

Civil Defense Certificate of Compliance with Fire Protection Requirements

Municipality Electricity Connection Permission

## Can an environmental cleanup be required?

Polluters can be compelled by the court to pay all the expenses resulting from making good the damage they caused to the environment, although no specific legislation exists to address remediation of contaminated land where contamination was caused by someone other than the current land owner.

## Are there minimum energy performance requirements for buildings?

Yes.

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

Yes – Green Building Manual.

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