Global Corporate Real Estate Guide - Mexico

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# Authors

# Real Estate Law

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

The term “real estate” is generally defined as follows:

Land

All fixtures adhered to the land

Any type of personal and real right to the land such as the right of use or the lifetime usufruct

All infrastructure built over and under the land

All fruit, vegetation and products generated from the land

Any construction built on the land

Land itself in Mexico is classified into two categories: “private” property and “public” property. Private property can be “private” or “social” property. Under the category of social property, there is “Ejido” property and “communal” property.

Private property is owned by individuals or legal entities for their exploitation and use as they may deem convenient.

Ejido property

Ejido property is land granted by the Mexican government to a group of individuals for agricultural and ranching purposes. Ejidos are structured as communities or townships. They have internal administration and surveillance boards, respectively known as the Ejido board (Comisariado Ejidal) and the surveillance committee (Comite de Vigilancia). Ejido property may exist either for the exclusive use of an individual beneficiary (Ejidatario) in the form of “Ejido individual parcels” or for the common benefit of the Ejido community in the form of “Ejido community parcels.”

Communal property

Communal property is land that belongs to the community for its common use and enjoyment.

Except for certain specific cases, Ejido and communal properties are inalienable and not subject to liens or attachments. Both Ejido and communal property require registration with the National Agrarian Registry. This kind of property can be disincorporated from its regime and converted into private property; however, this involves a complex and formal legal procedure. In the event of disincorporation from the Ejido and communal regime, the land would be registered before the Public Registry of Property in the appropriate jurisdiction and subject to civil law provisions.

If a property is disincorporated from an Ejido or communal regime, all the members of the Ejido or community will have a right of first refusal to acquire the disincorporated property, when the owners decide to make the first sale after the disincorporation.

Public property

Public property is the land that belongs to the nation, also known as national property. The national property is property that (i) has not been acquired as private property, (ii) has not been granted by the Mexican government to an Ejido or community, or (iii) is under a federal regime, such as the federal zone, water bodies or federal communication routes.

## What laws govern real estate transactions?

The Mexican legal system is a civil code-based system. A real estate transaction is generally governed by the local civil code and other local laws of the jurisdiction where the property is located.

Real estate transactions in Mexico are subject primarily to civil law as opposed to commercial law, to which they may be subject when the main corporate purpose of the parties involved in a given transaction is to commercialize real estate. Civil law is within the jurisdiction of the states; commercial law falls under federal jurisdiction, governed primarily by the Federal Code of Commerce. There is substantial uniformity among the different civil codes and related statutes of the states.

## What is the land registration system?

Conveyances of title are executed by the parties before a notary public. The civil law notary, as a licensed attorney, has the duty of verifying that: (i) proper title is being conveyed; (ii) the respective no-liens certificate and no property tax debt certificate have been obtained; (iii) a property tax appraisal is done; (iv) the real estate transfer tax is paid; (v) the description of metes and bounds of the property has been properly transcribed in the corresponding background section of the public instrument that contains the title deed (Escritura Pública) whereby title to a property is conveyed; and (vi) all obligations are complied with and information delivered, with respect to anti-money laundering provisions in Mexico. All real estate transactions must be recorded before the Public Registry of Property in the appropriate jurisdiction. Although recording the instrument issued by the notary public containing the corresponding real estate contract is not the operative formality that creates the rights and obligations between the parties, its declaratory effects are necessary for it to be effective vis-à-vis third parties.

## Which authority manages the registration of titles?

Title registration is managed by the Public Registry of Property with jurisdiction over the area in which the property is located. This registry is the administrative entity in charge of maintaining the official records of the legal status of title of real estate. The registry’s records would reveal limitations of domain or use burdening the property such as easements, long-term leases, purchase options, promise agreements and liens or encumbrances.

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

Any legal acts creating or evidencing an interest in real estate are generally considered as recordable instruments, including the following:

Title transfers

Mortgages

Easements

Restrictive covenants

Leases (only under certain circumstances, such as (i) if their term or duration exceeds a certain period, generally six years, or (ii) if a tenant pays rent in advance for a certain period, generally for more than three years)

Co-ownership agreements

Options to purchase

Promise agreements (to purchase and/or sale)

Condominium regimes

Trust agreements whereby a Mexican bank trustee holds direct title to real estate

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

Landownership is evidenced by providing the title deed (Escritura Pública) recorded with the Public Registry of Property regarding private property and a parcel rights certificate recorded with the Agrarian Registry regarding Ejido or communal land.

## Can a title search be conducted online?

Yes, in certain Public Registry of Property offices. However, not all Public Registry of Property offices in Mexico have the infrastructure to conduct online title searches.

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

Pursuant to the Mexican Constitution and the Foreign Investment Law, to acquire ownership of a real property in Mexican territory it is necessary to consider (i) the place where the property is located, (ii) whether the property will be used for residential purposes and (iii) the nature and nationality of the acquirer.

Regarding consideration (i), the Mexican Constitution divides the national territory into two major areas, each with different requirements for nationals and foreigners to acquire ownership, or the use and enjoyment of real property. Such areas are (a) real estate lying within 50 kilometers of the coastline or within 100 kilometers of the land borders (“**Restricted Zone**”), which encompasses approximately 40% of the land in Mexico, and (b) any land or property located outside the Restricted Zone.

Regarding consideration (ii), for acquiring real estate, it is also important to determine if the property will be acquired for residential purposes, whereby a “residential purpose” is defined as intended exclusively for housing for the use of the owner or third parties, or for any other nature, such as agricultural, commercial, industrial, etc.

Finally, and in addition to the location and purpose of the property, Mexican law provides different mechanisms for acquiring real estate in Mexico for (a) Mexican companies with foreign investment or (b) foreign nationals or entities.

Based on the foregoing considerations, foreigners can acquire real properties in Mexico subject to the following requirements:

Mexican companies with foreign investment can acquire ownership of real properties located outside the Restricted Zone, solely if the bylaws of the company contain a provision that in Mexico is known as the “Calvo Clause”. This is an agreement and representation where a foreign national must agree not to seek the protection of their government, otherwise they will forego their rights over the property acquired for the benefit of the Mexican state.

Mexican companies with foreign investment can acquire direct ownership of real properties located within the Restricted Zone, solely when acquired for nonresidential purposes. In this event, the company must file a notice before the Ministry of Foreign Affairs (SRE) within 60 business days after finalizing the acquisition.

Mexican companies with foreign investment cannot acquire direct ownership of real properties located within the Restricted Zone for residential purposes. However, they can acquire indirect ownership, use and enjoyment by means of a real estate trust approved by SRE with local banking institutions acting as trustee.

A foreign national or entity can acquire direct ownership of real properties located outside the Restricted Zone, subject to (1) filing a request before SRE committing to accept the terms of the Calvo Clause and (2) securing a permit from SRE for the acquisition.

A foreign national or entity cannot acquire direct ownership of real properties located within the Restricted Zone. However, they can acquire indirect ownership, use and enjoyment by means of a real estate trust approved by SRE with local banking institutions acting as trustees.

Pursuant to the Mexican Constitution, the state has direct title with respect to minerals, water and hydrocarbon resources that exist below the land’s surface. The exploitation of mineral and water deposits, excluding hydrocarbon fuels, may be carried out by private parties through a concession from the federal government. Concession rights on minerals are recorded in the Public Registry of Mining, while water rights are registered with the National Water Commission (CONAGUA).

Mexican law permits the acquisition of mining and water concession rights by foreign individuals outside of the Restricted Zone under certain conditions. Individuals may acquire direct title over mining and water concession rights by obtaining a special permit from the SRE and by agreeing to the Calvo Clause.

## Can the government expropriate real property?

Yes. Real property can be expropriated by the government if due compensation is paid to the owner.

In addition, pursuant to the Hydrocarbons Law, exploration and production of petroleum (upstream activities) are considered to be of social and public interest, hence, they should prevail over any other activity implying the exploitation of the surface or subsoil of lands affected by the same.

In connection with that and pursuant to the terms of the Hydrocarbons Law and its regulations, for petroleum exploration and production activities, the terms, conditions and the consideration for the use, enjoyment or encumbrance of lands, property or rights necessary to perform such activities must be negotiated by the contractors or entitlement holders (“**Interested Party**”) with the owner of the land, or with the holders of the rights or assets (“**Owner**”). The negotiation will be carried out considering the following process:

The Interested Party will express in writing its interest in using or acquiring the property, land or right to the Owner (“**Expression of Interest**”).

The Interested Party must describe the project that it intends to develop under the corresponding entitlement or exploration and production contract.

The Interested Party must notify the Ministry of Energy (SENER) and the Ministry of Agrarian, Territorial and Urban Development (SEDATU) of the negotiations with the Owner.

The Interested Party may occupy the Owner’s property through a lease, easement, superficial or temporary occupation, sale or any other suitable contract for the development of the project, if it does not contravene the applicable legislation.

The consideration payable to the Owner should cover: (i) the payment for affecting property or rights, as well as the possible damages and lost profits arising from the performance of upstream operations; (ii) the rent regarding the occupation, easements or the use of the land; and (iii) in case of extraction of petroleum projects, a percentage of the revenue of the Interested Party in the project. In such case, SENER, assisted by the National Hydrocarbons Commission, will establish the methodology, guidelines and parameters for the determination of such percentage. The consideration may be paid in cash.

The consideration, and the other terms and conditions for the occupation of property or affecting goods or rights, should be determined through a contract in writing, pursuant to the model contracts issued by SENER considering the opinion of SEDATU.

Furthermore, if the land, assets and rights are comprised within any of the regimes of the Agrarian Law, the provisions of such law will also apply.

The contract reached between the Interested Party and the Owner should be submitted before a civil district judge or before a unitary agrarian court (jointly, “**Courts**”), to have full validity by considering it res judicata. The Courts will validate whether the contract complied with the requirements provided by the applicable regulations.

If the parties do not reach a contract after 180 calendar days as of the date of receiving the Expression of Interest, the Interested Party may file before any of the Courts a request for the creation of a legal petroleum easement, which will comprise the right for individuals to transit and the right of transportation and conduction and storage of materials of any kind. On the other hand, the Interested Party may also request before SEDATU a mediation that should deal with the forms or models of acquisition, occupation, enjoyment or encumbrance of the lands, property or rights as well as the relevant consideration.

## How can real estate be held?

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

Fee simple conveyance

Conveyances with retention of domain

Trusts

Co-ownership

Condominium regime

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

The usual structures used in investing in real estate are the following:

Corporations

Co-ownerships

Trusts

## How are real estate transactions usually funded?

Real estate transactions are usually funded by institutional lenders such as banks, nonbank banks and investment funds. Interest rates are based on the rate published by the central bank. A borrower typically pays for all costs, including the lender’s costs.

A lender usually asks for collateral security in real property and related assets. The formalities to create and perfect a lien depend on the type of goods or assets to be encumbered. Certain liens, including without limitation mortgages over real property, require to be recorded with the applicable Public Registry.

The following are the most common collaterals:

Mortgage or guarantee trust over a real property

Stock pledge on the project entities

Floating pledge over inventory

Pledge without transfer of possession over non-fixed assets

Personal/corporate guarantee granted by the holding entity or the majority stockholder

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

Generally, the purchaser’s attorney will prepare the initial draft of the purchase agreement along with the acting notary public.

## 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?

Other than environmental liabilities, hidden or apparent defects, real estate taxes or liability for lack of governmental permits, an owner or occupier would generally not inherit liability for matters relating to the real estate even if they occurred before the real estate was acquired or occupied. An owner or occupier may also be subject to the loss of rights on real property, if the owner or occupier, or the prior owner or occupier, obtained it illegally, or generally if the real property was used to commit illegal activities, directly or indirectly.

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

Yes, a seller or occupier would in certain scenarios retain environmental liabilities, responsibility for hidden and apparent defects, past due taxes and for indemnifying the buyer for the case of eviction, i.e., when a third party’s prior and better right is recognized by a Mexican court adversely affecting the buyer.

# Acquisition of Real Property

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

The usual documents are the following:

Promissory purchase and sale agreement or letter of intent

The first document in any real estate acquisition is typically a promissory purchase and sale agreement or a binding or nonbinding letter of intent between the buyer and the seller. This promissory agreement — as well as a binding letter of intent — are generally recognized and allowed under the civil codes of the different states, and are binding if they contain all necessary business terms for the transaction, including the description of the property, purchase price, payment terms (i.e., deposit and installments), conditions precedent for closing, the closing date and any other special terms and conditions of the transaction. These agreements would also typically contain conditions for the benefit of the buyer, such as representations, warranties and indemnities by the seller.

Due diligence report

Once the promissory agreement of purchase and sale or the letter of intent is signed, it is generally the responsibility of the buyer, usually through the buyer’s local counsel, to conduct due diligence with respect to the property being acquired. This includes title search, procurement of a no-lien certificate, zoning verification, topographical survey and a review of any other restrictions affecting the property (i.e., construction restrictions, setbacks, owner association regulations, easements, etc.) An independent environmental assessment and an independent engineering review of the property, particularly in the case of properties with older buildings and properties located in an industrial area, are often recommended. The buyer’s counsel will also typically provide a title report to the buyer or assist the buyer in obtaining title insurance. In many cases, the buyer’s counsel will provide a title report to the title insurer, but the title insurance company may also perform its own due diligence.

Title transfer deed that contains the final purchase and sale agreement

The final document executed in any real estate acquisition is a title deed signed before a local notary public (typically selected by the buyer) that formalizes the sale and purchase agreement between the buyer and the seller.

This agreement typically reflects the terms and conditions included in the letter of intent or promissory agreement, including all representations, warranties and indemnities by the seller. When this agreement is signed, title is typically conveyed to the buyer with no reserves, except if, for instance, the seller provides for special conditions precedent or the seller withholds domain of the property conveyed until full payment of the purchase price is received from the buyer.

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

Generally, sellers would only tend to grant limited representations and warranties typically related to the absence of liens and encumbrances, payment of real estate taxes and anti-money laundering. Sellers also typically provide an indemnity to the buyer in case of eviction. Thus, a buyer is generally responsible for conducting extensive due diligence with respect to the legal and physical condition of the property to be acquired. It is also relatively common to include provisions and warranties that deal with liabilities derived from the environmental conditions of the property, hidden defects, conditions of title, absence of legal proceedings, infrastructure and utilities available on site, etc.

## When is the sale legally binding?

Parties are legally bound as soon as they execute the promissory sale and purchase agreement (or a binding letter of intent, which would be considered a promise to purchase and sell) and if all conditions precedent for closing are met, or as soon as the parties execute a private sale and purchase agreement. For the purchase and sale to be effective against third parties, the corresponding title transfer deed has to be recorded with the Public Registry of Property of the state where the real estate is located. Recordation is typically performed by the acting notary public.

## When is title transferred?

Execution of the title transfer deed, whereby the final sale and purchase agreement (or some other form of agreement such as donation, contribution to a trust, etc.) is formalized before a notary public, is the event that marks the transfer of title from the seller to the buyer. However, parties can also agree to transfer the title upon payment of the price in full or upon fulfillment of other conditions.

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

The buyer usually pays for the following costs, that typically range from 5%-7% of the transaction value:

Buyer’s own legal costs

Due diligence costs

Environmental assessments, appraisals and real estate surveys

Registration fees

Appraisal fees

Title insurance fees

Real estate acquisition tax (typically from 2%-5% of the higher of (i) appraised value or (ii) transaction value)

Value-added tax on improvements existing on the land (currently 16%)

Notary public’s fees (typically from 0.25%-1% of the transaction value)

Trustee’s fees and costs (when acquiring through a trust)

The seller usually pays for the following:

Real estate agent’s fees

The seller’s own legal costs

Real property tax up to the closing date

Income tax and single rate corporate tax on any profit made on the sale of the real estate

Government fees for subdivision, regularization, etc., of the real property

# Leases

## What are the usual forms of leases?

Mexican applicable law recognizes these forms of leases:

Civil

Commercial

Administrative

Financial

The civil leases may be determined by exclusion, meaning, when a lease is not commercial, administrative or financial. According to Mexican laws, commercial transactions are all the acquisitions, transfers and leases executed with the intent of commercial speculation.

Commercial leasing of real estate is not recognized, even if there is intent to obtain profit, due to the lack of recognition from Mexican laws and the provisions of the Mexican Supreme Court, which holds that real estate leases are always of a civil nature.

A lease is administrative if the leased premises belong to the Mexican federation, states or municipalities and is regulated by the applicable administrative law.

Financial leases are regulated in the General Law of Auxiliary Credit Organizations and Auxiliary Activities of Credit.

## Are lease provisions regulated or freely negotiable?

Most of the provisions governing lease agreements are included by statute in Mexican civil codes (each state has its own applicable civil code).

However, the parties may freely discuss and determine other different terms to regulate the lease and all its legal consequences, and such provisions agreed by the parties will prevail if these are not specifically determined by each of the civil codes as a provision that should not be changed by the parties.

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

Most state codes provide that a lease term will not exceed a certain term specific depending upon the types of use; generally 10 years for residential use and 20-50 years for commercial and industrial use, depending on the location of the premises. When the parties do not stipulate the term of the lease, the lease may be terminated generally upon two months’ prior written notice from one party to the other if the property is urban; one year’s notice is required if the property is in the countryside.

In addition, the landlord and the tenant may freely agree in the lease agreement the extension options that they may deem mutually agreeable.

## What are the usual lease terms?

Residential leases commonly have a term of one year, while commercial and office leases can range between two to five years (however, for larger retail anchor leases, there are usually longer terms). Industrial leases can go from five through 15 years. Extension options are feasible and standard.

In most states, the relevant State Civil Code provides for maximum terms depending on the use of the leased property, i.e., a maximum of 10 years for residential leases, 15-40 years for commercial leases and 15-50 years for industrial leases.

Lease contracts typically include provisions for delivering and surrendering the premises, yearly rent increases, maintenance and repair obligations, security deposits, labor liability, insurance and, most recently, language related to domain extinction, anti-money laundering, and compliance with environmental, social and governance obligations.

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

Most civil codes provide a one-year statutory extension right for the tenant, if the tenant is up to date with rent payments. Moreover, if upon the termination of the lease term and renewal, if any, the tenant continues with the use and enjoyment of the leased premises without opposition from the landlord, the lease will be deemed to continue for an indefinite time as a month-to-month lease. In leases where the tenant has had possession of the premises for a term of three to five years, and in some cases if tenant has made significant improvements to the premises, the tenant will have the right to be preferred, under equal conditions, over any other interested party for a new lease, if the tenant has fulfilled all of its obligations and paid rent on time.

## On what grounds may a lease be terminated?

A lease may be terminated for any of the following reasons:

Termination or expiration of the term provided in the contract or in law or for satisfying the purpose for which the premises were leased

Express agreement

Nullity

Rescission (termination by default)

Confusion (when the landlord and tenant become the same)

Total loss or destruction of the leased premises

Expropriation of the leased premises

Eviction of the leased premises

A landlord may generally terminate the lease due to the following:

Lack of rent payment

Use of the premises in contravention to the provided nature and purpose

Sublease of the leased premises without consent of the landlord

Damages to the leased premises attributable to the tenant

Alteration of the leased premises without the consent of the landlord

A tenant may generally terminate the lease due to the following:

Lack of maintenance of the leased premises [if the landlord was obliged per the lease to provide maintenance to the leased premises] Total or partial loss of the leased premises

Hidden defects in the leased premises

## Must rents be paid in local currency?

Leases may provide for rent payments in foreign currencies, provided, however, that a Mexican tenant has the legal right to choose to pay such rent in Mexican pesos at the then prevailing official exchange rate, published in the federal official gazette on the payment date in accordance with Article 8 of the Mexican Monetary Law.

For urban properties for residential purposes, the Federal Civil Code provides that the payment of rent must be in local currency.

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

Parties may freely agree on the amounts, interest and terms related to rent payments. If there are no terms of payment, payment for urban property is due monthly and semiannually for rural property.

Under Mexican laws, rent generally must be paid once the leased property is delivered to the tenant. Nevertheless, there is an advance payment to the landlord as a security deposit. This deposit generally is the equivalent of one- or two-months’ rent, which may be subject to annual increase. At the end of the lease, the deposit is returned to the tenant, if the tenant has no outstanding obligations to the landlord or any payments due for services and utilities related to the leased property.

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

The only important rent control statute in Mexico is the one that applies in the federal district and a few other states, which provides that in certain leases, rent may only be increased annually.

Another case where the landlord may increase the rent, even up to 10% compared to the previous rent, is when a tenant renews its lease agreement for one year.

Contractually, it is very typical that lease agreement rents are adjusted annually by the increase presented under a given consumer price index (CPI) identified by the parties, typically referenced to the increase in the CPI of the US if the rent is in dollars, or of the Indice Nacional de Precios al Consumidor if the rent is set in Mexican pesos.

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

The following is usually required of landlords:

Transfer the use or temporary enjoyment of the leased premises to the tenant

Deliver the leased premises in good condition to the tenant

Maintain the leased premises in the same conditions throughout the term of the lease

Perform necessary repairs

Not to disturb the use and enjoyment of the leased premises by the tenant, except in the event of emergency repairs

Guarantee the peaceful use and enjoyment of the leased premises

Be liable for damages and losses in the case of hidden defects of the leased premises

Be liable for damages and losses in the case of eviction

Return the balance of the security deposit if there are no outstanding obligations of the tenant due to the landlord

The following is usually required of tenants:

Pay the rent in the form, place and time set forth in the agreement

Be liable for damages to the leased premises due to the tenant’s fault or negligence, or as a result of negligence on the part of its assignees, employees or subtenants

Use the leased premises only according to its nature and purpose

Notify the landlord of the need for repairs; otherwise, the tenant will be liable for the damages caused by lack of notification

Make repairs resulting from minor damage or normal wear and tear

Obtain the required permits for the operation of the premises

Provide ordinary maintenance to the premises and to the equipment and personal property of the tenant

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

The tenant cannot sublet the leased premises nor assign its rights from the lease without the express written consent of the landlord. If the tenant sublets or assigns its rights without the consent of the landlord, the tenant will be jointly responsible with the subtenant or assignee for all damages caused to the landlord and the leased premises and this could be a cause of rescission of the lease agreement.

If the sublease agreement is entered into as a result of the general authorization from the landlord granted in the original lease agreement, the tenant will remain responsible before the landlord for the liabilities derived from the use and enjoyment of the leased premises by a subtenant. If the landlord expressly approves the sublease agreement through a separate document of the lease agreement, the subtenant will subrogate all the rights and obligations of the tenant, unless otherwise agreed by the parties.

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

In the event of damage or destruction of the leased premises by acts of God or force majeure, totally preventing the use or enjoyment of the leased property for more than two months in most cases, the parties can terminate the lease. The party responsible for causing damage to the leased premises will be responsible to the other party for the damages and losses incurred as a result thereof.

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

Usually, the landlord will obtain the insurance policies covering any fire, damage or casualty to the property and, in certain cases, rental interruption insurance. The tenant will obtain insurance policies covering its personal property and equipment, which is not covered by the insurance policies obtained by the landlord. Typically, the tenant also obtains a civil liability policy and will reimburse the premium cost incurred by the landlord in the purchase of the corresponding insurance policy in the case of a triple net lease.

The tenant is typically responsible for insuring its personnel and personal property to be placed within the leased premises during the term of the lease agreement.

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

If during the term of the lease agreement, title to the leased premises is transferred, the lease agreement will survive under the same terms. In connection with the rental payment, the tenant will continue to have the obligation to pay to the new owner the stipulated rent under the lease agreement, as of the judicial or extrajudicial notification date or the date such transfer was delivered.

If the ownership transfer is for public purposes, the lease agreement will be terminated, but the landlord and the tenant will be indemnified by the expropriating authority, in accordance with the law.

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

Yes. Leases are senior and totally independent from mortgages or foreclosures. The rights and obligations acquired during the lease agreement will prevail and remain effective in the event of a foreclosure. Once a foreclosure occurs, the new owner has the obligation to notify the tenant of the transfer of ownership to legally collect the rent.

# Planning and Environmental Issues

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

In general terms, the municipal authorities have jurisdiction over land use of a specific property (commonly enacting urban land use development plans), but federal and state authorities may also enact different general provisions (such as zoning laws, e.g., the General Law of Human Settlements, Planning and Urban Development or an Urban Code of a Mexican state), which set standards as to the use that may be given to determined areas.

The federal, state and municipal authorities may also establish limits to land uses derived from the enactment of different kinds of environmental regulations. Some examples of this are the enactment of environmental land use programs or the creation of natural protected areas, which establish certain restrictions as to the activities that may be developed in a determined area and/or establish limits to the density of developments, where the same are allowed.

Federal land is regulated by the federal government, and depending on the kind of property, a specific ministry may have authority over land development. As an example, the Ministry of Environment and Natural Resources (SEMARNAT) has authority over the federal maritime land zone, which is the area comprising 20 meters of beach after the maximum tide; or CONAGUA has authority over the federal zone derived from rivers or lagoons whose surface may vary.

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

Several federal, state and municipal laws, regulations and standards may affect the use and occupation of real estate, either directly or indirectly.

The following are among the most important federal environmental laws in this regard:

The General Law of Ecological Balance and Environmental Protection

The General Law of Wildlife

The General Law for the Prevention and Integral Management of Waste

The Law of National Waters

The General Law of National Property

The General Law of Sustainable Forest Development

The Federal Law of Environmental Liability

The Law of the Agency or Industrial Safety and Environmental Protection on the Hydrocarbon Sector

These federal laws commonly have a local version in each state, regulating any areas that are described to be of local jurisdiction by the aforementioned federal laws.

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

At the municipal level, land use and construction licenses are commonly required, as well as an occupancy certificate (or construction work completion) and an operating or business license to be able to perform activities on the premises to be built or occupied, as well as an internal program of civil protection. Other permits, licenses or concessions, commonly required either at the federal or state level, are the following:

Environmental impact authorization

Environmental risk assessment

Consolidated environmental license

Concession for the occupation of a federal zone

Federal permits to build on a federal zone

Permit to discharge wastewater

Concession to exploit a national source of water

## Can an environmental cleanup be required?

Yes. The General Law for the Prevention and Integral Management of Waste establishes that in case of contaminated land where pollution exceeds the applicable standards, cleanup is required.

There are five standards that classify or establish specific limits to the discharge and use of certain pollutants:

PCBs (NOM-133-SEMARNAT-2015)

Hydrocarbons (NOM-138-SEMARNAT/SSA1-2012)

Heavy metals and other hazardous pollutants (NOM-147- SEMARNAT/SSA1-2004)

Special waste handling (NOM-161-SEMARNAT-2011)

Waste waters (NOM-001-SEMARNAT-1996/NOM-002-SEMARNAT-1996/NOM-003-SEMARNAT-1997)

Other pollutants may require a risk study to evaluate if cleanup is required.

Aside from the above, it is important to note that the transfer of contaminated land requires prior authorization from SEMARNAT and that the environmental authorities request remediation either from the owner or current occupier of the property, even if the discharge, generation, management, leak or incorporation of materials and hazardous waste was caused by a third party or by the former owner.

## Are there minimum energy performance requirements for buildings?

Yes. NOM-020-ENER-2011 establishes energy efficiency standards for residential buildings that are applicable to new buildings and expansions of existing ones.

NOM-007-ENER-2014 and NOM-008-ENER-2001 establish energy efficiency standards for nonresidential buildings. Both are applicable to new buildings or expansions of existing ones and do not include buildings that are mainly used for industrial activities.

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

Yes. The Law for Sustainable Use of Energy provides for a voluntary certification process for private parties to apply energy efficiency standards and sustainability measures in their operations before the National Commission for the Efficient Use of Energy and to implement energy efficiency standards in the buildings they occupy.

In addition, the General Climate Change Law established a goal of cutting greenhouse gas emissions by 22% and black carbon emissions by 51% by 2030 with respect to the baseline.

In addition, on a state level, different energy efficiency standards and incentives to increase sustainability practices may be available.

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