Global Corporate Real Estate Guide - Austria

Real Estate Law

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

Austrian civil law provides that the term “real estate” essentially comprises the following:

Land

Any buildings or other constructions firmly connected to the ground (following the superficies solo credit principle)

# What laws govern real estate transactions?

The following laws govern real estate transactions in Austria:

The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch)

The Land Register Act (Grundbuchsgesetz)

The laws governing the acquisition of land by foreigners of the nine federal states (Grundverkehrsgesetze)

The Condominium Act (Wohnungseigentumsgesetz)

The Building Development Contract Act (Bauträgervertragsgesetz)

The building laws of the nine federal states (Bauordnungen)

The Real Estate Investment Fund Act (Immobilien-Investmentfondsgesetz)

The Austrian Tenancy Act (Mietrechtsgesetz)

The Austrian Energy Certificate Act (Energie-Ausweis-Vorlage Gesetz)

The Real Estate Transfer Act (Grunderwerbsteuergesetz)

The Building Right Act (Baurechtsgesetz)

The Spatial Planning Laws of the nine federal states (Raumordnungen)

Brokers Law (Maklerrecht)

Moreover, under Austrian tax law, particularly with regard to stamp duties (Rechtsgeschäftsgebühren), the rulings of the Austrian Administrative Court (especially in the field of tax and fiscal law) and the Austrian Supreme Court (for legal issues in the field of Austrian civil law) have to be taken into account in the handling of real estate transactions.

# What is the land registration system?

The Austrian land register is administered by the district courts (Bezirksgerichte). Each register contains a record of certain rights and encumbrances (e.g., ownership, mortgages, easements, etc.) as well as further information regarding the particular real property. The collection of deeds is also a part of the registration system where the respective documents corresponding with the register entries are gathered and open to the public.

The principle of publicity states that anyone can inspect the land register and request copies. The entries in the land register can be trusted as correct.

# Which authority manages the registration of titles?

The registration of titles is managed by the competent district court of the district in which the real property is located.

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

The following rights or interests in rights regarding real estate can be subject to registration with the land register:

Ownership

Mortgages (Hypotheken)

Easements (Dienstbarkeiten)

Land charges/land rents (Reallasten)

Building or construction rights (Baurechte)

Leases (Mietrechte)

Right to repurchase (Wiederkaufsrecht)

Pre-emption right (Vorkaufsrecht)

Prohibitions of sale and encumbrance (Veräußerungs-und Belastungsverbote)

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

The land register is open to the public. Information on real estate ownership can also be accessed from an electronic register. Excerpts of the land register can be obtained at any district court or from certain institutions with access to the electronic register (such as lawyers or notary publics).

# Can a title search be conducted online?

Yes. The land register excerpts and the respective documents evidencing the respective entry into the register, such as a purchase agreement, have been available in the electronic register since 2005.

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

All nine Austrian federal states have different legal restrictions for the purchase of real estate by non-EU/EEA residents or entities. These restrictions are governed by the laws applicable to the acquisition of land by foreigners of the nine federal states. Additionally, some of the requirements for the purchase of real property in each of the nine Austrian federal states can differ from each other. In general, a foreign purchaser of real estate located in Austria must obtain a specific approval or permit that is issued by the appropriate authorities. This approval requirement only applies to purchasers that are not citizens of EU or EEA member states. Citizens of EU- or EEA-member states are generally exempted from the requirement to obtain such approval.

# Can the government expropriate real property?

In general, property can be expropriated by government and quasi-government authorities (see the Austrian Main Road Act [Bundesstraßengesetz] or the federal building laws).

In case of an expropriation, the government or the quasi-government authority usually has to pay appropriate compensation.

# How can real estate be held?

Generally, an interest in real estate is held by any of the following:

Ownership

Co-ownership (Miteigentum)

Condominium (Wohnungseigentum)

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

The most common corporate structures used to invest in real estate in Austria are the following:

Stock companies

Limited liability companies

Partnerships

Limited partnerships

Private foundations

# How are real estate transactions usually funded?

Generally, real estate financing in Austria is established through a loan agreement entered into between the lender and the borrower. Interest rates are calculated by adding the prime rate and the margin or spread (displayed as a percentage) plus certain costs (if any). The prime rate is based upon a rate periodically announced by the respective central bank (e.g., the three-month EURIBOR). In some cases, interest rate swaps and interest rate caps and floors are used to limit interest rate risks in long-term financing. Typically, it is the borrower’s responsibility to pay for all of the lender’s legal and other costs, such as commitment and processing fees, in arranging property financing. Lending institutions will usually require the borrower to execute certain security documents such as mortgages, charges, liens, pledges and assignments.

# Who usually produces the documentation in real estate transactions?

Usually, the buyer’s lawyer will prepare the initial draft of the purchase agreement. In urban areas, the documentation is generally prepared by a lawyer. In rural areas, it is common that both parties request an impartial notary to prepare 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?

The applicable Austrian laws (e.g., the Waste Management Act [Abfallwirtschaftsgesetz] or the Water Management Act [Wasserrechtsgesetz]) follow the “polluter-pays principle.” The polluter remains liable, even if the property is subsequently sold. If the polluter cannot be determined or cannot remedy the situation, then the authorities can request that respective measures be taken by the owner of the land. These measures can be requested if such owner either consented to the storage of waste materials or tolerated the pollution by a third party without taking adequate measures to prevent it.

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

As pointed out, the buyer of a property may be liable for decontamination measures under public law if the buyer was aware of the contamination or could have been aware when the buyer took over the property. The parties might agree to limit the representations and the warranties of the seller in the purchase agreement. For leasehold properties, the tenant is generally not held liable for a previous tenant’s obligations.

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