Global Corporate Real Estate Guide - Chile

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*This chapter was last reviewed in July 2023.*

# Authors

# Real Estate Law

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

The term “real estate” includes the following types of properties:

Land and estates (referred to by law as natural properties) – these are things that cannot be transported from one place to another, such as soil, land and mines

Adherence properties – these are things that permanently adhere to natural properties, such as buildings and trees; plants are real properties while they adhere to the ground with their roots, unless they are in pots or boxes that can be transported from one place to another

Destined properties – these are movable things that, through a legal fixture, are considered as real estate properties as the result of being continuously used or cultivated, or are for the benefit of a natural property

## What laws govern real estate transactions?

Property law is governed by the following regulations:

The Civil Code is the main statutory piece which governs real estate purchases

When leases are involved and the leased property is an urban premise, Law No. 18,101 regarding Urban Land Lease plays a relevant role; while when the premise is a rural one, Decree Law No. 993 is relevant, as it contains special provisions on the leasing of rural land

Other regulations that are applicable are the Decree Law No. 458, General Law on Urban Planning and Construction; Law No. 21.4427 regarding the Updated Real Estate Co-ownership; and Law No. 19,281, which sets standards for Leases with Purchase Option for housing purposes

## What is the land registration system?

The land registration system in Chile is carried out in the property registry of each one of the real estate registrars (Conservadores de Bienes Raíces), which are public. Requests and applications are paid by the applicant.

There are several of said registrars in Chile, and each registrar has jurisdiction over particular counties. Each property is registered in only one registrar at a time (the one where it is located), although large properties located in more than one jurisdiction shall be recorded in all the registrars in which said property is located.

It should be noted that registration in Chile not only has the purpose of keeping the history of real estate ownership, but it is also the way to transfer property rights (title passes upon registration); hence once the property is registered on behalf of someone, the property is transferred to that person.

Similarly, mortgage rights are granted through registration, and therefore both for acquiring or granting securities over properties, it is mandatory to conclude obtain a acquisition or encumbrance registration.

## Which authority manages the registration of titles?

Title registration is handled by the real estate registrar, a non-governmental office, which is under the supervision of the appeals court of each jurisdiction.

Head of the registrar is the Conservador, who is a counsel of renewed experience, appointed by the judicial branch.

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

The right of ownership and mortgages have to be registered, as otherwise they are ineffective.

The right of use and enjoyment of or other rights that establish trusts that comprise or affect real estate must be recorded as well.

Final decrees that declare adverse possession, seizure of assets or any other rights must be recorded to make them enforceable against third parties.

Easements and long-term leases may be registered, although it is not mandatory to do so (usually it is made to keep record of them and to ease the enforceability of those contracts against third parties, although its registration its not always mandatory).

Some special laws also consider other registrations, but they are specific to certain kind of projects.

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

Land ownership may almost only be proven through presentation of a copy of the property’s registration in the owner’s name, called the ownership registration or registration of dominion (inscripción de dominio), although to ensure ownership, a title’s review has to be carried out.

The reason of this is because — pursuant to our Civil law tradition — property passes upon registration and after 10 years of undisputed registration, registration becomes constructive ownership. Because of that, to ensure ownership, title’s review is made, to attest that 10 years of such undisputed registration exist.

## Can a title search be conducted online?

Generally, it is not possible to conduct a title search online. Currently, some real estate registrars are modernizing and digitizing their registries and, to date, the Real Estate Registrar of Santiago has almost had all documents digitalized since early 1990. Moreover, it is possible to get certain information and request certificates online from such real estate registrar, but there is no online access to the actual registrations, which must be picked up at the registrar office.

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

Yes. Any foreign individual or legal entity may own property, with the exception of certain legal limitations in the case of real estate located along national borders (which cannot be acquired by citizens of the neighboring country). An important requirement is that for the purposes of acquiring the property, the acquiring individual or entity must hold a Chilean taxpayer number (this is a brief process).

## Can the government expropriate real property?

Yes. The government can expropriate land for a public purpose. This is regulated in Article 19, No. 24 of the current Constitution, and the expropriation procedure is described in Decree Law No. 2,186. Chile is under a Constitutional referendum process, which should expire at the end of 2023. However, we do not foresee this mechanism to be substantially altered, as the existing draft as of July 2023 contemplates the same mechanism. Expropriation must indemnify the damages caused to the owner due to the expropriation, which include not only the fair market value of the land, but also constructions and improvements.

Expropriated amounts may be challenged before courts. Usually the main ground to claim is that the amount is lower than the fair market value, or that the indemnification does not consider loss of profits. Courts usually rely on expert reports to determine the market value, while for the loss of profit it is usually not granted.

## How can real estate be held?

Real estate property may be held by the owner (due its ownership over the property) or by a mere holder, such as the tenant or the beneficiary of a right of use and enjoyment. Likewise, it may be held as owner (ownership) or as a security interest (mortgage).

An owner is someone who has registered the property in their name such that the registration acts as an evidence of ownership. A mere holder is someone who, according to the law, holds the property but not as the owner (Civil Code 714). Lease is the most common form of mere possession.

Also, ownership may be total or bare, depending on whether the individual may use, enjoy and dispose of the asset, or only use and enjoy it.

Finally, ownership may be held individually or in community.

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

The Chilean law paradigm is that price is paid and ownership is transferred. However, due to the increase of the market and the transformation of real properties into investment, nowadays most real estate properties are purchased with money lent by a financial institutions, that secures the debt with a mortgage over the property.

If the land is going to be used for construction, once the construction begins (especially with skyscrapers), new mortgages are established over each apartment or office that will be built, and they provide more investment capital for construction.

Thus, at the end of construction, there are as many mortgages as apartments, and when it is time to sell the apartments or offices, part of the debt is paid and the financial institution releases the respective mortgages.

Also, the lender sometimes secures the credit with pledges over the materials of the construction of the building that will be built over the real estate property.

Another common structure is one where a company buys the property and a contractor (such as a construction company) builds on it, for a certain amount. The company that bought the land leases it to the contractor so that the former owner experiences losses during construction stage, but then he/she does not pay taxes at the time of sale due the capital gain for the proceeds of the sale.

Finally, financial leasings (lease to purchase or hire-purchase agreements) are also used to acquire real property, and in that case a financial institution purchases the property and then the tenant pays rent for a certain period of time (equivalent to the payment of the purchase price plus an interest rate), and once the rent for the entire period has been fully paid, the tenant acquires the ownership of the property.

## How are real estate transactions usually funded?

The acquisition of real estate is generally financed through a loan secured by a mortgage that the lender (such as a banking entity or an insurance company) executed at the same time as the deed of sale.

In such a sale, the buyer, seller and lender are all parties to the transaction. If the amount is high, the loan and mortgage may be coupled with bills of exchange, which are traded as lots in the secondary markets, to make the mortgage more profitable for the lender.

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

Generally, the buyer prepares the initial drafts of the purchase agreement. When banks intervene in mid/small transaction (such as the purchase of warehouses or other SME investments), banks are usually the ones that provide the documents of the sale. When transactions involve high amounts (for example when office buildings are purchased as the entire facility), documents are drafted by all the participants.

## 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?

This depends on how the new owner or occupant had acquired ownership. The acquisition methods, as listed in Article 588 of the Civil Code, are as follows:

Occupation

Accession

Property transfer

Inheritance

Adverse possession

Likewise, new owners are liable for the mortgages, encumbrances or the granting of easements, if they acquire the property through a grant of property rights or inheritance. This also applies if the property is purchased on auction, although in that case there is a special procedure to clean it from mortgages (but not from other form of encumbrances).

On the other hand, if the property is acquired by occupation, accession or adverse possession, the property is acquired as new and free of any encumbrances or mortgages.

In case of common expenses in co-ownership properties, new owners or occupants are always liable for their payment.

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

Under Chilean law, the seller represents and warrants that he/she will transfer the property rights to the owner. Therefore, if any post-transfer issue arises that was caused by something that occurred prior to the sale, seller is liable to cure such issues; otherwise, the buyer may claim indemnifications or may ask a court to declare the agreement null and void.

Also, the owner must pay all the debts arising out of the property that remain under the owner’s name, except in the case of property obligations such as common expenses.

# Acquisition of Real Property

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

At the outset, a title study or due diligence over the property is done. Here, the seller, through the seller’s attorney or the real estate broker, must provide the following standard documents for urban properties:

Copies of the deeds of sale or transfer and any other document that transfers title over the last 10 years

Copies of the registrations of the property from the real estate registrar (such copies must correspond to the current registration as well as registrations recorded over the last 10 years)

A certificate of ownership, issued by the real estate registrar, issued no earlier than 30 days before

A certificate of mortgages, encumbrances and prohibitions for the last 30 years, issued no earlier than 30 days prior to the commencement of the due diligence procedure

A certificate of non-municipal expropriation and a certificate from SERVIU with issuance dates no earlier than 30 days prior to the commencement of the due diligence procedure

A copy of the effective possession decree (only if the seller or one of the previous owners acquired the property by inheritance)

A certificate of final receipt for existing buildings on the property (related to the building licenses of the property)

A certificate approving the sale of building floors and apartments, or that the property is part of a joint property ownership regime (if applicable)

Certificate issued by the Treasury stating that there are no recorded debts for the territorial property, and if there are any debts, proof of their payment (this information can also be found online — to confirm that the property has no contribution debts, visit: [www.tesoreria.cl](http://www.tesoreria.cl))

Certificate of Zoning Information (Certificado de Informaciones Previas) for the property that states other characteristics, such as whether height construction is allowed; if it is in a rural or urban zone; if the zoning rules of the property are compatible with commercial use; whether there is historical area protection; and if certain types of establishments may not be built; this document is issued by the Municipal Works Department (Direccion de Obras Municipales or DOM) of the corresponding municipality.

In certain special cases, the following are requested:

For joint ownership – a certificate from the condominium manager certifying that there are no debts for common expenses, and if there are any, documents proving their payment

Titles older than 10 years – when there is a need to verify the regularity of the registrations, marital status of any party, etc.

For legal entities – proof of the representatives’ capacities. If the seller has been a legal entity in previous sales, the capacities of those who appear on its behalf must be proven, through the respective public deed or reduction to public deed of the appropriate document, except if they were partially or completely inserted in the respective deed of sale; if a delegate is involved, his or her capacity to act must also be proven

Powers of attorney – (i) copies of powers of attorney deeds are required if in any of the prior sales, one of the parties appeared represented by proxy, except when the power of attorney has been inserted in the respective deed; (ii) certificate of enforceability of the power of attorney up to the date of the execution of the document

Supplemental records – depending on the sale’s characteristics, additional records may be requested, such as (i) powers of attorney and delegation that are not issued more than one year prior to the respective date of sale, otherwise a certificate from the judicial archive stating that there is no revocation of the power of attorney in the margin of the master deed may be required; (ii) the power of attorney granted by the board of directors of a corporation, identifying the stockholders who actually attended the meeting of the board on that date (sufficient evidence for this is the notarial certificate attesting the board’s conformation pursuant to the public record established on Art. 135 of the Corporations Law); and (iii) the legal entity’s legal records, including copies of public deeds, registrations at the Registry of Commerce, publications in the Official Journal, and other evidence that prove the company’s existence and validity.

The purchase is executed in a purchase deed (mandatory), which shall be executed before a notary. Usually also an escrow agreement is executed, by which the price is held in escrow by the notary until the property is registered in the real estate registrar under the name of the buyer, free of encumbrances other than those recognized in the purchase deed.

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

The seller usually represents and warrants that the property is free of all encumbrances, easements, seizure of assets and mortgages. Representations regarding the absence of expropriations are quite common. The seller also warrants that the property is free of occupants and other furniture or goods. In case of rural properties, the buyer usually warrants that all workers have left the estate.

Finally, the seller represents that the property is free of debt and owed taxes.

## When is the sale legally binding?

The sale is binding the moment the purchase agreement is executed. However, the transfer of the buyer’s ownership rights is made with the registration of the property in the real estate registrar.

## When is title transferred?

Titles are transferred upon registration.

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

Costs are usually split between parties, although there is no mandatory rule in this regard. Usually (a) the buyer pays for half of the notary costs for the execution of the public deed of sale; and (b) the seller pays for half of the notary costs for the execution of the public deed of sale as well as the total cost for registering ownership under his/her name at the property registry of the relevant real estate registrar. Deed costs are usually less than USD 500, while registrations are usually within that range as well.

# Leases

## What are the usual forms of leases?

The most common form of lease agreement is that with a fixed rent for a certain term, and the lease is automatically renewed unless the landlord serves advance written notification in accordance with the lease agreement.

Other forms of lease agreements involve fixed and variable rent (for example, for retailers, the rent usually involves part of the earnings of the leased plot to build the store).

Also, some leases allow the tenant or landlord to early terminate the agreements, under certain circumstances, or without cause, depending on the terms of the negotiation.

Finally, there are also lease agreements that allow the tenant to have a call for the title and ownership of the property, which must be exercised under certain circumstances.

In relation to the formality of the agreements, lease agreements can be executed through private instrument or by public deeds (however, in case of rural properties, the agreement must be either a public deed or has to be signed before witnesses).

When the rent is high or the term is long, the lease agreements are executed by public deed, because this formality assures the tenant that if the landlord sells the property, any new owner (third-party purchaser) will be obligated to comply with the lease terms. If the lease was entered through a private instrument, the third party purchaser is not so obligated and may terminate the lease.

## Are lease provisions regulated or freely negotiable?

Lease provisions are — in most cases — freely negotiable. Leasing in general terms is regulated by the Civil Code; leases of urban properties are further regulated by Law No. 18,101; and Decree Law No. 993 contains special provisions on the leasing of rural land. However, almost all of these rules are supplemental to the intention of the parties, i.e., they apply in the absence of an agreement between the parties, except for very specific mandatory provisions. According to Law No. 18,101, certain rights of the tenants are not renounceable.

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

There is no maximum term for leases, although excessive long-term leases may be characterized as a sham or as a disguised transfer of property.

Another exception corresponds to leased properties under marital property (or belonging to the spouse in the case of a community property marriage), when the property is leased for more than five years (if urban) or eight years (if rural), as in that case it requires both husband and wife’s consent.

## What are the usual lease terms?

The parties may agree to the terms of their choice according to their interests. In general, leases of residential buildings are for one year and the rental period is extended for the same period tacitly and automatically.

Leases for commercial purposes tend to be longer, ranging between two and five years.

Finally, leases for major projects (such are commercial centers or industrial facilities) tend to be for more than 20 years.

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

No. Tenants may not require for extensions of the lease, unless the lease itself contains such provision.

However, if the agreement terminates but none of the parties deem it terminated (one continuing paying while the other accepts payment), the agreement is automatically renewed (in accordance with the agreement) for three-month periods.

## On what grounds may a lease be terminated?

Either party may early terminate the agreement if there is breach of obligations by the other party, or when the parties have stipulated early termination conditions.

Even if it is not provided in the contract, the law gives the tenant the option to terminate the agreement early in the following cases:

When the poor state or quality of the leased premises prevents it from being used for the purpose for which it has been leased

When necessary repairs are not made by landlord

In urban property leases intended for residential purposes with a fixed term exceeding one year and there is a subletting prohibition

## Must rents be paid in local currency?

No. Parties may agree that the rent be paid in foreign currency. Also, it is very common that parties agree for the rent to be paid in UF (Unidades de Fomento), which is a monetary unit that is adjusted according to the inflation on a daily basis (similar to the CPI in the United States).

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

Rent is paid according to the parties’ agreement. If there is no agreement, the law establishes that it be paid according to local practice.

If neither local practice nor the parties are able to establish a rule, lease of urban property is paid monthly and lease of rural property is paid yearly. Also, for urban properties, payments are usually made within the first five days of each month.

That said, usual practice is that rent is paid month by month and in advance to each month (the first five days of each month).

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

There are no limits to rent increases. Normally, rent is agreed in UF as described in “Must rents be paid in local currency?” or in nominative units that adjust for inflation (Chilean pesos + % Consumer Price Index).

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

The following are usually required of landlords:

Deliver the leased property

Keep the property in a state that functions for the purpose it was leased (i.e., the landlord has to perform all necessary repairs)

Maintain the property free from any disturbance or disruption

Reimburse the tenant for costs incurred that are not the tenant’s responsibility

The following are usually required of tenants:

Pay the rent

Use the property according to the terms of the lease, without breaching the purpose of the agreement or agreed objectives

Perform or pay for repairs that are the tenant’s responsibility

Return the property at the end of the lease

Maintain the property in good condition

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

The tenant has no right to assign the lease or sublet the property without the landlord’s express and written consent. If allowed, and the tenant assigns the lease, the assignee must agree to the same conditions as the original tenant.

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

It must be determined whether or not it was the tenant’s fault. If the tenant is at fault, he/she is liable for the damages to the destroyed property, especially for the payment of rent. If there is no tenant fault, the lease is not responsible for the damages. In both cases, the lease expires.

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

The landlord is usually responsible for insuring the leased premises. The tenant may also insure the premises if they choose to do so or if the parties agree.

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

It must be determined whether or not the lease is a public deed or private instrument (as described in our response to "What are the usual forms of leases?"). If the lease is executed in a private document, the purchaser is not obligated to respect it and the new owner may evict the tenant, terminating the lease (the tenant being allowed to claim damages against its former landlord). If it is a public deed, the purchaser will be bound to follow its terms (however, there are specific provisions in case the property is transferred by sale in auction as part of the enforcement of a mortgage, as in such case purchaser is only obliged to honour the lease if it was registered in the Real Estate Registrar prior to the mortgage that caused the auction).

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

Again, this depends on whether or not it was executed as a public or private deed. If the deed is private, it does not survive. If its by public deed, the deed is registered in the Mortgages Encumbrances Registry of the real estate registrar, and the mortgage is registered with a date prior to the deed, then the lease survives.

# Planning and Environmental Issues

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

In terms of urban planning, the DOM of each municipality has the main authority over land development and zoning. DOMs are overseen by the Ministry of Housing and Urban Development.

For environmental matters, the Environment Ministry has the main authority, although the Environment Assessment Service (Servicio de Evaluación Ambiental or SEA) is in charge of evaluating projects with environmental impact in Chile. Finally, the Environmental Superintendence is in charge of overseeing the regulations.

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

In relation to urban planning issues, the applicable laws are the General Law of Urban Planning and Construction, the Organic-Constitutional Law of Municipalities and the General Ordinance of Urban Planning and Construction. At a local level, the Master Plan of the county, and the Law on General Grounds Environment (Law 19,300) govern environmental issues.

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

To build in an urban area, a building license from the DOM is required. For minor work in an urban area, a permit is still necessary, but at a lower charge and with briefer approval periods.

At the end of the construction, and before start using the building, the construction must be reviewed by the DOM, which must issue a certificate of Final Reception of the Work. This certificate is mandatory for using the premises.

Finally, to build in rural areas, a special certificate issued by the Agricultural and Livestock Service (Servicio Agricola y Ganadero or SAG) must be requested.

## Can an environmental cleanup be required?

No, but the city, in accordance with the General Ordinance of Urban Planning and Construction, may take charge of cleaning vacant lots. Also, if a building poses a risk to a community, a dilapidated building claim may be raised.

However, on 1 June 2016, Law No. 20920 regarding “Waste management, the extended liability of the producer and the encouragement of recycling” was published in the Official Gazette. This legal reform attempts to redefine the current approach to waste management in our country and has positioned Chile as a pioneer in Latin America by establishing a recycling public policy.

One of the underlying principles of this act is the “polluter pays” principle, that is, the generator of the pollution is responsible for it’s waste, as well as for internalizing the costs and negative externalities associated with its waste management (Article 2 of the Waste Management Act).

## Are there minimum energy performance requirements for buildings?

Certain minimum energy performance requirements are described in Decree No. 327, and vary according to building type. Also, currently being discussed in Congress is a law that expressly regulates energy performance requirements.

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

There are some regulatory measures such as Decree D.S. No. 157, of 2007, which establishes rules for the recovery of neighborhoods, and the Environmental Law, which establishes controls for the projects’ sustainability and also creates a fund for their protection (Art. 66).

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