Global Corporate Real Estate Guide - Chile

Real Estate Law

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# 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.

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