Global Corporate Real Estate Guide - Philippines

Real Estate Law

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

Under the Civil Code of the Philippines (the "Civil Code") the term “real estate” covers the following:

Land, buildings, roads and constructions of all kinds adhered to the soil

Trees, plants and growing fruits, while they are attached to the land or form an integral part of immovable property

Everything attached to immovable property in a fixed manner, in such a way that it cannot be separated from said immovable without breaking the material or deterioration of the object

Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable property in such a manner that it reveals the intention to attach them permanently to the land or its structures

Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works

Animal houses, pigeon houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it (the animals in these places are included)

Fertilizer used on a piece of land

Mines, quarries and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant

Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake or coast

Contracts for public works, and servitudes and other real rights over immovable property

# What laws govern real estate transactions?

There are a number of laws that govern real estate transactions in the Philippines, including the following:

Real estate transactions are generally governed by the Civil Code.

Registration of title over private land, as well as registration of any interest in registered land that is less than ownership (such as mortgages and leases), are governed by Presidential Decree No. 1529, or the Property Registration Decree.

Real estate transactions involving alienable or disposable land of the public domain are governed by various laws, including the Commonwealth Act No. 141 or the Public Land.

The development of and ownership of units in condominium projects are governed by Republic Act No. 4726 or the Condominium Act.

Lease of private land by foreign investors is governed by the Foreign Investors’ Lease Act.

Homebuyers planning to buy property from real estate developers or contractors that offer installment schemes for payment are covered by the Realty Installment Buyer Protection Act.

# What is the land registration system?

The Philippines uses the Torrens system of land registration. Under this system, a Torrens title is conclusive against third parties, including the government. A holder of a Torrens title in good faith is guaranteed that his/her title is indefeasible, unassailable and imprescriptible. (For purposes of the discussion below, “registered land” refers to land that is registered under the Torrens system).

To bring unregistered land into the Torrens system and obtain original registration of title to the land, the owner of the unregistered land must apply for registration with the proper court. If, after a hearing, the court finds that the applicant has title proper for registration, a decree of confirmation and registration is entered to bind the land and quiet the title to the land. The Land Registration Authority (LRA) will then issue the corresponding decree, which is subsequently transcribed by the relevant register of deeds as an “Original Certificate of Title.”

When the registered land becomes the subject of a sale, mortgage, lease or other registrable transaction, the instrument evidencing the transaction is filed with the relevant register of deeds for registration. In case of a sale or any form of transfer of ownership, the original certificate of title is cancelled and a new one, a Transfer Certificate of Title, is issued. In case of a lease, mortgage or any other type of encumbrance, the transaction is merely annotated on the Original Certificate of Title.

There is no separate registration with respect to title to real property other than land. However, an owner of a building or other improvements standing on registered land (pursuant to a lease or some other right on the land) that is owned by another person may annotate his/her ownership of the building or other improvements on the certificate of title covering the land. Such annotation constitutes notice that the building or structure is owned by the person named in the annotation, and not by the landowner. Without such annotation, there is a rebuttable presumption that the landowner owns the buildings or improvements standing on his land.

# Which authority manages the registration of titles?

The application for (original) registration of title to land under the Torrens system is made with the regional trial court having jurisdiction over the place where the land is located.

The LRA issues decrees of registration pursuant to final judgments of the courts in land registration proceedings and causes the issuance by the registers of deeds of the corresponding certificate of title. It exercises supervision and control over all registers of deeds.

The office of the Register of Deeds constitutes a public repository of records and instruments affecting registered or unregistered lands in the province or city where such office is situated. It is the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real property which complies with all the requisites for registration.

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

Registration of unregistered land under the Torrens system is voluntary on the part of the landowner. However, to be able to enjoy the protection afforded by the Torrens system, landowners must register their title under this system. Registration of a transaction involving registered land (such as sale, mortgage or lease) is also not compulsory. However, as in the case of landowners opting to register their title under the Torrens system, persons dealing with registered land generally register their interests under the Torrens system. The registration of such interests with the relevant register of deeds constitutes constructive notice of such interests to all persons. Proof of the registration is the annotation of the interests on the certificate of title covering the land.

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

Ownership of registered land is evidenced by either an original or transfer certificate of title issued by the relevant register of deeds.

Ownership of a condominium unit is evidenced by a condominium certificate of title.

With respect to real property other than land and condominium units, there is no system that is equivalent to the Torrens system for registration under which a document is issued to evidence the owner’s title.

# Can a title search be conducted online?

The LRA recently launched an online portal which makes it possible to obtain a certified true copy of a certificate of title covering a parcel of land located anywhere in the Philippines from any Register of Deeds.  However, the portal is not yet fully operational and the process of centralizing and digitizing the records of all Registers of Deeds is ongoing. Currently, there are still certain areas in the Philippines that are not yet part of the centralized records system. For those areas, title search is still done by going to the Register of Deeds of the city or municipality where the land is located and applying for a certified true copy of the certificate of title.

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

Ownership of land

Foreigners cannot own land in the Philippines. Land may be owned only by a Philippine citizen, or a domestic partnership or association wholly owned by citizens of the Philippines, or a corporation organized under the laws of the Philippines at least 60% of the capital stock outstanding and entitlement  to vote of which is owned and held by Philippine citizens.

Ownership of condominium units

The Condominium Act imposes restrictions on foreign ownership of units in a condominium project. “Condominium” is defined as an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. As the ownership of a condominium unit includes an undivided interest in common in the land on which the condominium project stands, the Condominium Act mirrors the foreign restriction on ownership of land in the Philippines. Thus, under the Condominium Act, there is also a 40% foreign equity restriction, computed as follows:

If the common areas in the condominium project are to be owned by the owners of the separate units as co-owners, then units in the condominium project may be owned only by Philippine citizens or corporations at least 60% of the capital stock of which belongs to Philippine citizens

On the other hand, if the common areas in a condominium project are to be held by a condominium corporation (in which owners of units automatically become members), then foreigners may own units in the condominium project, provided that such ownership will not cause the foreign shareholding in the condominium corporation to exceed 40%

Ownership of other types of real property

The foregoing restrictions on ownership of land and condominium units do not apply to ownership of other types of real property (e.g., buildings or other improvements on land). Foreigners can own such other types of real property.

# Can the government expropriate real property?

Yes, the Philippine government may expropriate private property (including real property) for public use, subject to compliance with due process of law and the payment of just compensation. The taking of private property for expropriation may be validly done only if there is a genuine necessity that is public in character.

# How can real estate be held?

Usually, an interest in real property is held by any of the following means:

Freehold

Leasehold

Significantly, pursuant to Republic Act No. 11231, or the Agricultural Free Patent Reform Act, agricultural free patents are now considered as titles in fee simple and shall not be subject to any restriction on encumbrance or alienation.

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

The usual structure used in investing in real estate is the corporation.

# How are real estate transactions usually funded?

Depending on the type and size, real estate transactions are usually funded through loans obtained from banks, shareholder loans, and/or equity.

Banks typically require security arrangements on the real estate and related assets (e.g., mortgage, pledge and assignments of leases and rents).

# Who usually produces the documentation in real estate transactions?

Generally, the buyer’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?

As a general rule, a registered owner receiving a certificate of title pursuant to a court-issued decree of registration, or a subsequent purchaser of registered land taking a certificate of title for value and in good faith, holds the title free from all encumbrances except those annotated on the certificate of title and any of the following encumbrances that may subsist:

Liens, claims or rights arising or existing under the laws and the Constitution of the Philippines, which are not by law required to appear of record in the Registry of Deeds to be valid against subsequent purchasers of encumbrancers of record

Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone

Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined

Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, any law on agrarian reform

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

A seller can retain liabilities relating to the real estate even after they have disposed of it. For example, liability for any violation of environmental law or regulation attaches to the person indicated as the project owner in the applications for the relevant environment permits. It is therefore important that the relevant government agencies are notified of any transfer of ownership of the project to avoid liability arising from still being the owner on record of the project.

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