Global Corporate Real Estate Guide - Belgium

Real Estate Law

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

The term "real estate" includes the following:

The land (and underground)

The building or structures on it, including movable property permanently fixed to the buildings

# What laws govern real estate transactions?

Property laws are governed mainly by the Civil Code, which was recently reformed. However, since property laws are regulated as a federal matter, they can be influenced by regional legislators (the Flemish, Walloon and Brussels regions). For example, certain aspects of lease laws may vary depending on the region.

# What is the land registration system?

Each property is identified on a state-wide land registry system. For each property, a land registry excerpt can be requested. The land registry is a tax instrument and does not constitute proof of title.

Second, all transfers of title and/or leases of more than nine years or entailing a prepaid rent of more than three years, are transcribed in the mortgage registers.

# Which authority manages the registration of titles?

The registration of titles is governed by the mortgage registrar in each mortgage registry office. Generally, only notarial and other authenticated deeds will be transcribed in the mortgage registers.

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

All rights in real estate need to be transcribed in the mortgage register. Furthermore, certain personal rights such as leases of more than nine years or entailing a prepaid rent of more than three years also need to be transcribed.

The following are real rights that need to be registered:

Full ownership

Surface right (opstal/superficie)

Long lease (erfpacht/emphytéose)

Usufruct (vruchtgebruik/usufruit)

Easements (erfdienstbaarheden/servitudes)

Co-ownership (mede-eigendom/co-propriété)

Mortgages (hypotheek/hypothèque)

Contracts granting a preferential right, a pre-emption right or an option in respect of real rights on real estate property need to be transcribed.

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

Ownership of real property is proven by an extract of the mortgage register, which reflects the ownership history over 30 years, which includes all previous owners over such 30-year period. The 30-year period results from the fact that acquisitive prescription takes 30 years.

# Can a title search be conducted online?

No. The mortgage registry is not yet available online.

The land registry is available online and can give an indication of title, although it does not constitute formal title evidence.

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

Yes. Foreigners can own real property in Belgium. There are no general restrictions on landownership relating to nationality existing under Belgian law.

Investors qualifying as "foreign investors" under Belgium's foreign direct investment screening rules may, however, be prohibited from completing transactions involving real property related to Belgium's critical infrastructure, or may only be permitted to complete such transactions subject to restrictions. In this context, a foreign investor is defined as (i) a natural person with its main residence outside of the EU, (ii) an undertaking constituted or organized under the laws of a non-EU country, or (iii) an undertaking who has an ultimate beneficial owner (UBO) with its main residence outside of the EU.

# Can the government expropriate real property?

Yes. Property can be expropriated by the government and quasi-governmental authorities, but appropriate compensation must be paid.

# How can real estate be held?

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

Full ownership

Leasehold, i.e., a personal right or use on the property

Long lease, which is a long-term leasehold that is a real and not a personal right with a minimum duration of 15 years and a maximum duration of 99 years for the use of the property as an owner

Surface right, which is a real right on the volumes (built or not) on, above or below the land of another person, in order to build constructions or plantations, for a maximum duration of 99 years

Co-ownership

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

The following structures for investing in real estate are common:

Straightforward sale and purchase of the real property

Acquisition of the real property through the acquisition of the shares of the special purpose vehicle holding the property

Traditionally, a lot of real estate was acquired under a "split acquisition structure" involving two acquisition vehicles, one of which acquired a long lease right on the real property and the second acquired the residual ownership rights on the property (This structure is no longer accepted for new acquisitions where both components are acquired by two related investors. For the transfer of existing split acquisition structures, a number of alternatives exist, which depend on the exact situation.)

In addition to the above common structures, the following regulated real estate investment structures exist:

A heavily regulated real estate investment trust (REIT) regime has been in existence for a long time through a stock quoted company investing in real estate (vastgoedbevak/sicafi).

A "regulated real estate company" (gereglementeerde vastgoedvennootschap/société immobilière réglementée), which is a kind of REIT which was introduced in 2014. It was introduced in part to ensure that Belgian REITs would not become subject to the Alternative Investment Fund Managers Directive, which better addresses the economic reality of the situation.

The "specialized real estate investment fund" (gespecialiseerd vastgoedbeleggingsfonds (GVBF)/fonds d'investissement immobilier spécialisé (FIIS)), is a REIT attractive from a tax perspective and is aimed at institutional investors. The fund has a closed character, is not listed on a stock exchange, and has fewer restrictions than the above-mentioned structures.

# How are real estate transactions usually funded?

Real estate transactions are usually funded through a mix of equity and debt. Financing is mostly performed through banks, at fixed or variable rates. Typically, it will be the borrower's responsibility to pay for all of the lender's legal and other costs such as commitment and processing fees.

Lending institutions typically take security such as a mortgage (often for 10% of the value of the borrowed amount); a mortgage mandate (for the balance); a pledge on receivables; a pledge on shares; a pledge on accounts; or any combination of the above.

Banks are regulated by federal legislation.

Increasingly alternative lenders are also providing real estate financing.

# Who usually produces the documentation in real estate transactions?

Generally, the buyer's lawyer will prepare the initial draft of the purchase agreement, except in auction processes where the seller's lawyer will often prepare the first draft of documentation. As for the draft of the notarial deed of transfer, this is regulated by professional rules governing notaries and the purchasing notary would normally pass and draft the purchase deed.

# 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?

Yes. Under current soil legislation in three Belgian regions (Flemish Region, Walloon Region and Brussels Region), the authorities can request an owner (and/or occupier) to decontaminate the soil, even though the contamination was not caused by them under certain circumstances, and without prejudice to recourse they may have against the original polluter.

Similarly, breaches of zoning regulation or violations of building permit conditions may create liability for the purchaser.

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

Yes. A property owner may remain liable for certain aspects of the property after it has been sold. For example, a property owner may remain liable for pollution they may have caused.

Furthermore, in a real estate sale,, contractual provisions exonerating a seller from liability for hidden defects will not be effective if the seller had knowledge of such defects. In such an instance, the seller will remain liable to the buyer for such defects. In addition, a professional seller of real estate will be deemed to have knowledge of hidden defects unless the professional seller prove "invincible ignorance."

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