Global Corporate Real Estate Guide - Peru

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

Select a topic from the menu and explore the questions within.

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# Real Estate Law

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

The term “real estate” includes the following:

Land

Any buildings or structures on it

The use that will be assigned to the land and buildings (including regulatory matters)

The guarantees regarding land

Any agreement regarding any operation over this concept (acquisitions, use, guarantees, financing, etc.)

## What laws govern real estate transactions?

Real estate transactions are governed primarily by the Peruvian Civil Code.

For instance, Legislative Decree No. 1568, Legislative Decree of the Horizontal Property Regime (Régimen de Propiedad Horizontal) establishes a regime for exclusively owned real estate units characterized by the sharing of common goods and services. In addition, Law No. 27157 establishes the rules for building regularization and factory declaration. Law No. 29090, or the Law of Urban Renovation and Construction, regulates the requirements and legal procedures to obtain an urban renovation license and the resolution before the corresponding municipality.

Another example is Law No. 28976 or the Master Law of Functioning Licenses (whose unified text was approved by Article 1 of Supreme Decree No. 163-2020-PCM), which, jointly with its regulation, establishes the criteria for municipalities to grant functioning licenses for each business. Law No. 28611, or the Environment Act, was approved in 2005 and established the legal framework that governs environmental affairs in Peru. This law regulates a series of well-known environmental principles and acknowledges environmental rights.

## What is the land registration system?

The National Superintendence of Public Registry (Superintendencia Nacional de los Registros Publicos (Sunarp)) is the centralized public entity in charge of Peruvian public registry and has nearly 60 offices in the whole Peruvian territory. Sunarp maintains a public land title registration system where ownership can be verified and where registration of deeds records can be found. In addition, registered in this system are all the relevant real estate matters of the land, such as the rights of use granted to third parties, guarantees and liens.

There is one register entry for each registered land.

## Which authority manages the registration of titles?

As mentioned in “What is the land registration system?”, Sunarp manages all registration matters.

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

By general rule, rights are not required to be registered, because according to Peruvian legislation, the public registry only declares rights; it does not constitute them. The same applies to real estate rights, except mortgages (where for the creation of the security interest, the mortgage needs to be registered). However, third parties in good faith who do not have notice because the right is not registered are not bound by unregistered interests over property. Article 2014 of the Civil Code requires parties to review not only the entries of a property file (asientos registrales) but all the documents recorded in Sunarp, to be covered by this good faith principle.

Except for mortgages (which must be registered to be valid), owners usually register any document creating or evidencing an interest in real estate. This includes the following:

Transfers

Mortgages

Easements

Restrictive covenants

Leases

Trusts

Injunctions

Seizures and lawsuits filed regarding the land

Judicial decisions and arbitrators’ awards

Leases

Agreements of reserve of property

Co-ownership agreements

Options to purchase

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

Sunarp can issue the Certificate of Land Registry (Certificado Registral Inmobiliario), for which administrative officers perform a title search to determine ownership of the land. However, this document does not guarantee any rights to the applicant because of the possibility of errors, as it is only a secondary service provided by Sunarp. A title search by a separate law firm is always recommended.

## Can a title search be conducted online?

Yes, but not all registered records are available to the public online. Sometimes, records need to be obtained physically at the Sunarp offices. There may be a charge for some of the available online records.

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

According to Article No. 71 of the Peruvian Constitution, foreigners are treated the same as Peruvians in regard to property ownership, except that foreigners cannot, directly or indirectly, acquire or possess title, mines, land, forests, water, fuel or energy sources within 50 kilometers of the country’s borders.

## Can the government expropriate real property?

According to Article No. 70 of the current Peruvian Constitution, expropriation can be done if it is required due to reasons of national security or public need that are legally declared and there is compensation in cash paid to the owner. The paid amount can be challenged in Peruvian courts.

Legislative Decree No. 1192, which approves the Framework Law for the Acquisition and Expropriation of Real Estate, the transfer of state-owned real estate, release of interferences and other measures for the execution of infrastructure works, seeks to standardize expropriation proceedings to make it easier and encourage the development of infrastructure projects.

## How can real estate be held?

Generally, an interest is held through any of the following means:

Freehold

Condominium/co-ownership

Adverse possession (usucapio)

Leasehold or any other title that grants the use

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

Corporations

Co-ownership or co-tenancy

Partnership

Trusts

## How are real estate transactions usually funded?

Most real estate financing is arranged through institutional lenders such as banks, trust companies, pension funds, investment funds and insurance companies. Applicable interest rates are agreed as fixed or variable and are set by the lending institution. Financing institutions are generally exonerated from observing the maximum interest rate limit set by the Peruvian Reserve Central Bank (i.e., this maximum rate applies to persons or entities not part of the Peruvian financing system). Typically, the borrower is responsible for paying for all of the lender’s legal and other costs, such as commitment and processing fees, in arranging actual property financing. Interest rates are usually expressed as an annual rate.

Lending institutions typically take collateral security over real estate property and other related assets, cash flows, and assignment of leases, and rents. Typical security includes a mortgage or the transferring of assets to a trust as security.

## 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?

The general rule in the law of torts in Peru is that whoever causes damage is liable for it. However, there are some exceptions regarding unpaid sums: (i) for tax duties over lands, the current owner or occupier, depending on the tax nature, has to pay the unpaid amounts from previous owners/occupiers; and (ii) for unpaid public services, the current owner has to pay the unpaid amounts from previous owners.

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

The seller does not retain any liabilities aside from the general rule of torts (whoever causes damage is liable for it independent of its title regarding the real estate).

# Acquisition of Real Property

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

The following documents are involved:

Due diligence report

Usually, the first step in a transaction is due diligence on the real estate, which the buyer requests. This includes a title and zoning review and a review of any burdens and liens on the property. The buyer’s lawyer will also provide a title opinion to the buyer.

Purchase and sale agreement

When the due diligence is satisfactory to the buyer, negotiations for the real estate acquisition commences, normally by execution of the purchase and sale agreements between the buyer and the seller.

This agreement should contain all the necessary business terms for the transaction, including the description of the land, purchase price, deposit (if any), the closing date and any other special terms. These agreements also typically contain conditions for the benefit of the buyer as well as representations and warranties by the seller.

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

The recent trend is for sellers to give limited representations and warranties. So, if a contingency to closing is not satisfied during due diligence, which cannot be removed before the purchase, the seller warrants to indemnify the buyer in case the contingency prejudices the buyer.

However, a seller indemnity is not normal and customary. What is normal and customary is that once the land is sold, the seller does not assume any responsibility because the buyer has performed its own due diligence (barring willful misconduct during negotiations).

Notwithstanding the general rule above, the Peruvian Civil Code requires the seller to compensate the buyer if the buyer is latter deprived of the use and possession of the real estate by virtue of a judicial decision confirming that a third party obtained a right over the real estate before the sale.

## When is the sale legally binding?

Parties are legally bound as soon as they execute the sale and purchase agreement, unless otherwise agreed.

## When is title transferred?

Generally, title is transferred as soon as the buyer and seller execute the sale and purchase agreement, unless there is an agreement of “reserve of property” or unless otherwise agreed by the parties; for instance, the parties may agree that the title will be transferred at the registration of the sale.

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

The buyer usually pays for the following:

The buyer’s legal fees

Due diligence costs for consultants who have prepared building condition reports, review of titles, valuation appraisals, and real estate surveys

Due diligence inquiries made to governmental entities

Notarial and registration fees

Transfer taxes

The seller usually pays for the following:

The seller’s legal fees

Income tax on any profit made on the sale of the real estate

# Leases

## What are the usual forms of leases?

Current law does not treat leases differently based upon their purpose (use). In that sense, leases for either housing, office or commercial purposes are treated identically from the point of view of the Peruvian Civil Code. Therefore, the peculiarities applicable to different lease uses may be found in special rules to establish certain parameters for a particular activity that is part of the use. However, a lease is only one of the different methods for granting the use of a certain property to third parties in Peru. In addition to lease agreements, other arrangements, such as financial leasing, loans, atypical use concessions or the establishment of in rem rights established by law (e.g., usufruct, surface right, easement).

Notwithstanding the foregoing, leases are most commonly used for granting real estate rights in Peru which are typically housing leases, leases for office and leases for commercial establishments.

## Are lease provisions regulated or freely negotiable?

The Peruvian Civil Code regulates leases in Peru and establishes a model for a lease agreement. In such regulation (model), mandatory rules (rules of forced compliance) and supplementary rules (applicable only if the parties do not agree otherwise) can be found. Note that there are very few mandatory provisions (e.g., the maximum term of every lease is 10 years). However, there are many supplementary rules in the said regulation (e.g., the use of leased property).

Accordingly, the contracting parties are free to agree on the content and scope of the leases. However, the parties need to respect the mandatory provisions prescribed by the law because the provisions in the lease that violate these rules are invalid.

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

A lease can be subject to a definite term or an indefinite term. In the case of a lease subject to a definite term, such term may not exceed 10 years. When the asset subject to the lease belongs to a state entity or a legally incapacitated person, the term may not exceed six years. In any case, any term or extension that exceeds such limits is understood to be reduced to the mentioned maximum terms.

In the case of a lease subject to an indefinite term, any of the parties may terminate the lease agreement by giving 30 days' prior notice to the other party through a notary public. Once such term elapses, the lease agreement is considered to be terminated.

## What are the usual lease terms?

The lease terms depend solely on the agreement of the contracting parties.

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

No. However, when the agreed period (the same that cannot exceed 10 years) is interrupted (i.e., periods when the tenant was unable to use the property due to actions of the landlord), the tenant may claim in the courts (or in arbitration, if such dispute resolution method was agreed between the parties ) the recognition of such periods.

## On what grounds may a lease be terminated?

A landlord can generally terminate the lease when the tenant breaches the lease terms, which usually includes non-payment of the rent agreed in the lease, the use of the property that was not permitted by the lease and assigning or subletting the property without the landlord’s consent .

Similarly, the tenant may terminate the lease in case of default by the landlord, such as where the landlord is unable to provide the tenant with uninterrupted peaceful possession of the leased property or the leased property was delivered with damages that precluded its use. On the other hand, depending on the respective parties interests, the parties may agree that any one of them or both have the right to unilaterally terminate the contract without cause and without the duty to indemnify the other party, having only to submit a notice to the other party in advance.

Finally, the parties may mutually agree to terminate the lease at any time.

## Must rents be paid in local currency?

The parties may agree that the rent can be paid in local or foreign currency.

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

This will depend on the agreement of the parties. Rent is usually paid monthly, in advance, at the beginning of the month.

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

There are no legally established limits on increasing rent. The parties are free to agree on any method to increase rent.

However, rent is usually fixed for the initial term. Rent for agreed upon renewals or extensions may also be fixed or may be adjusted to reflect the market value at the time of renewal or extension.

Nevertheless, leases commonly allow for rent to be increased automatically at specified times based on the criteria stipulated by the parties in the lease.

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

The following is usually required of landlords:

Grant the use of the property to the tenant and ensure that the tenant can maintain effective use of the property

Repair and maintain the structure of the property

Provide tenants with a valid notice of termination (in writing) if terminating the lease

The following is usually required of tenants:

Pay rent on time

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access (often by appointment) for inspections and to perform landlord required work

Return the property to the landlord promptly upon expiration of the lease term

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

As a rule, the tenant is forbidden from subletting the leased property to third parties. However, the parties may agree in the lease that the tenant may sublet the leased property or the landlord may grant permission to sublet later through an addendum to the lease.

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

In the event of destruction, the following two possible scenarios can arise:

If the leased property is substantially damaged or destroyed by causes not attributable to either party (e.g., act of God), the lease is often terminated.

If the leased property is damaged or destroyed due to causes attributable to one of the parties, then the lease is terminated and the party causing such damage may be liable to the other party for the damages caused to the other party as a result of the damage or destruction.

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

The Peruvian Civil Code does not stipulate the party in a lease that is obligated to insure the leased property. Therefore, if the property is required to be insured by one of the parties, the obligation of that party should be documented in the lease. The obligation to insure is generally assumed by the party that that has use and control of the property to be insured. For example, if it is a lease for office space, the tenant usually insures the leased office area and the landlord insures the common areas of the building (if any).

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

Lease agreements survive and are binding upon the new owner only if the lease agreement has been registered in the Public Records (i.e., the electronic entry of property in the Public Records). If the lease has not been registered, the new owner can choose to honor the lease agreement or terminate the lease agreement.

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

If a foreclosure is the result of a prior registered mortgage or lien over the property, the lease will not survive at the option of the beneficiary of the foreclosure.

# Planning and Environmental Issues

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

There are zoning regulations for each district in Peru. These rules are driven by certain environmental, cultural and social aspects and seek to determine where specific structures may be built. If a new project is not zoned correctly, it is necessary to go through a local governmental process to request the rezoning of the area.

The regulation of land zoning is the responsibility of provincial municipalities. These municipalities are authorized to approve the use of land within their jurisdiction. It must be noted that provincial municipalities control aspects of land development through official plans and laws (regulations).

In particular, the district municipalities are responsible, within the zoning jurisdictional limits approved by the provincial municipalities, for approving building, demolition and operation permits. For example, note that building permits must be obtained before construction commences.

Also, in order to obtain a building permit the building project must meet the technical requirements established in the National Building Regulation, approved by Supreme Decree No. 011-2006-VIVIENDA and its amendments, issued by the national government through its Ministry of Housing.

Additionally, environmental regulation for buildings or structures (including the construction phase) and land use is dictated by the national government through the Ministry of Environment, the Ministry of Housing and the Ministry of Production (for shopping centers). Also, municipalities have some regulatory powers on environmental issues such as emissions and solid waste.

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

Environmental regulations depend on: (i) the jurisdiction of the relevant entities to regulate such matter; and (ii) the issues or impact that any real estate project might have on the environment and its components.

For instance, the Environment Act, approved by Law No. 28611 in 2005, establishes the legal framework that governs environmental affairs in Peru. This law regulates a series of well-known environmental principles and acknowledges environmental rights.

In accordance with the Environmental Impact Assessment Act approved by Law No. 27446 and its regulations approved by Supreme Decree No. 019-2009-MINAM, any individual or legal entity that intends to develop an investment project that may generate environmental impact must obtain an environmental certification, which can be: (i) an Environmental Impact Declaration for projects that entail small or insignificant environmental impact; (ii) a Semi-Detailed Environmental Impact Assessment for projects that entail considerable environmental impact; and (iii) an environmental impact assessment for projects that entail significant environmental impact. The activities subject to an environmental certification are listed in Appendix II of the above-mentioned regulations.

The following projects conducted by any real estate company are subject to such environmental certification:

Shopping centers that comprise areas larger than 5 hectares or a net average density of 1,600 people per hectare

Shopping and/or financial centers and offices that compromise areas with a net average density of 5,000 people per hectare or with 1,000 parking spaces

Certain kinds of land development

Residential type urban allotments on land reclaimed from the sea and integrated into the urban area

Residential urban developments to be carried out in areas that do not have a connection to the public drinking water or sewerage network

The National Service for Environmental Certification of Sustainable Investments of Peru is in charge of granting the environmental certifications for the above-mentioned projects.

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

If the land is undeveloped (nonurban lands), a license to develop is required before applying for the building permit. For undeveloped land, the ability to develop depends on whether the land has been approved as developable by the provincial municipality.

If this is the case, obtaining an urban development license to convert the developable rural area into an urban area must be requested. Conversion is achieved by developing accessibility routes and enabling water distribution, electricity and other infrastructure facilities.

Once the land is developed, construction projects are possible. However, new construction requires a building permit before the commencement of construction. If anything is to be demolished, it is also necessary to have a demolition license. Additionally, in some types of projects, an environmental certification is a requirement for obtaining a building permit.

Merely occupying real estate does not require a license. However, if the building is intended to be commercial (offices, malls, shops, factories, etc.), an operating license is required.

It should be noted that all aforementioned permits and licenses are issued by the district municipalities.

## Can an environmental cleanup be required?

Generally, environmental cleanup may be required where authorities find environmental risks and seek to reduce or mitigate potential dangers to human health.

The Ministry of Environment passed Supreme Decree No. 011-2017-MINAM (2 December 2017) and Supreme Decree No. 012-2017-MINAM (2 December 2017), which regulate the application of the Environmental Quality Standards for Soil (EQS-Soil). These environmental quality standards provide a broad framework for projects that may cause or potentially generate a risk of land contamination. These EQS-Soil are applicable to construction activities on real estate that can potentially generate soil pollution.

In projects to be developed in areas where past activities could have potentially contaminated the soil, the project owner must evaluate the existence of contaminated sites within the direct area of influence of the project through the execution of the identification phase. This identification phase provides a baseline for the existing contamination within the framework of development. In addition, they must include in their environmental management instruments methods to prevent soil contamination.

If the project owner could potentially contaminate the soil, it must evaluate the existence of contaminated sites linked to its activities.

## Are there minimum energy performance requirements for buildings?

As noted earlier, all new construction must comply with the technical guidelines established in the National Building Regulation. In addition, for the granting of the construction license, the respective district municipality determines, through its technical team, whether the project has power outlets and other technical aspects necessary for the viability of the project purpose.

It must be noted that to date, there are some voluntary standards for environmentally sustainable buildings (i.e., green buildings).

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

It always depends on the rules governing building parameters. As mentioned, these rules are contemplated in the National Building Regulation, the same that is issued by the national government. Regarding environmental matters, two particular points must be highlighted:

Solid waste for construction activities

The environmental obligations regarding solid and hazardous waste management are set forth in: (i) the general Solid Waste Act, approved by Legislative Decree No. 27314 and its regulations, approved by Supreme Decree No. 014-2017-MINAM; and (ii) the regulations for solid waste management for construction and demolition works, approved by Supreme Decree No. 002-2022-VIVIENDA.

As a rule, the solid waste generator (both for hazardous and nonhazardous waste) is responsible for its adequate management, treatment and disposal. Any solid waste generated in the construction, rehabilitation, restoration, renovation or demolition of buildings and infrastructure is considered “construction solid waste.” Furthermore, any construction solid waste that qualifies as explosive, corrosive, reactive, toxic, radioactive, pathogenic or liable to spontaneous combustion is considered “hazardous” (such as asbestos waste, paint removers, aerosols, grease removers, paint and solvent containers, fluorescent tubes and PVC remains).

The movement or transportation of hazardous and nonhazardous construction solid waste outside the limits of a construction complex must be done exclusively through specialized companies (“Empresas Operadoras de Residuos Sólidos” or EO-RS) registered before the Ministry of Environment. Indeed, construction companies are free to contract with any registered EO-RS to provide solid waste services such as transportation, transfer, treatment or disposal.

The construction company, as generator of the construction solid waste, is obligated to: (i) verify that the EO-RS has all applicable authorizations; and (ii) submit, within the time limit, the annual sworn statement of solid waste management, the solid waste management plan and the applicable hazardous solid waste manifest.

According to Supreme Decree No. 002-2022-VIVIENDA, the disposal of solid waste on public property (beaches, plazas, parks, roads and paths, etc.), archaeological sites, protected natural areas and their buffer zones and water sources (sea, lakes and rivers) is forbidden. In addition, this regulation establishes: (i) certain technical specifications for the storage, movement, transportation and disposal of construction solid wastes with which the construction company and the EO-RS must comply; and (ii) the form of treatment for particulate matter generated during excavation and construction activities.

Archaeological heritage

Peru holds a vast archaeological heritage already identified and still undiscovered. The Peruvian Constitution and the Cultural Heritage Act, approved by Law No. 28296, and its regulations approved by Supreme Decree No. 011-2006-ED, protect all evidence of pre-Hispanic occupation, independent of their location (ground, underground or underwater) and whether they have already been discovered or identified. The government agency responsible for identifying, registering, researching, preserving and promoting archaeological evidence is the Ministry of Culture.

During the design and development of activities that involve the removal of soil (such as the construction of shopping centers and residential and office buildings), there is a possibility of discovering archaeological sites or features. Thus, given the government’s limited resources for identifying all undiscovered archaeological sites located in Peru, the Ministry of Culture requires private companies to carry out archaeological surveys. Consequently, the project area must be free of any archaeological sites or features prior to the commencement of any activity that requires the removal of soil. For this purpose, the titleholder must obtain a certificate of nonexistence of archaeological remains (CIRA) prior to the start of activities. A CIRA is not required in areas with preexisting infrastructure.

The CIRA will certify that on the surface of the evaluated area, no archaeological sites or features were discovered, or will identify their exact location and extension to implement precautionary measures. The CIRA is valid for an unlimited period but will become void should any archaeological artifacts accidentally be discovered during the construction work or due to any natural cause. In those cases, the company must stop the construction work immediately and notify the Ministry of Culture. Failure to stop activities will generate applicable civil and criminal liabilities. Under certain exceptional circumstances, Peruvian legislation allows the removal of archaeological sites or features when the area is required for the development of projects that are of national interest.

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