Global Corporate Real Estate Guide - Spain

Real Estate Law

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

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

The term “real estate” includes the following:

Land

Any buildings or structures on the land

# What laws govern real estate transactions?

Real estate transactions are governed in general terms by Spanish common law contained in the Civil Code and in some supplementary legislation such as mortgage law. However, some specific regulations approved by the different autonomous communities may also be applicable.

# What is the land registration system?

In all provinces, there are property registries keeping record of ownership and rights regarding real estate assets filed with the relevant property registry. The information contained in each property registry is open to the public and can be checked by any interested party. At the same time, it is enforceable vis-à-vis any third party so that a potential purchaser or beneficiary of a right over a registered property cannot allege ignorance of the contents of property registry information.

# Which authority manages the registration of titles?

Title registration is managed by each property registry, covering a specific area of the relevant province. An administrative body is in charge of governing and coordinating the activity of the Spanish Property Registries.

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

In general terms, real estate rights are not required to be registered to be effective, but in practice, any transfer of real estate assets is registered to benefit from the publicity (as described in “What is the land registration system?”) provided by the property registry. However, some specific real estate rights need to be registered to be effective, such as mortgages or rights to build (derecho de superficie).

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

The official document showing ownership over real estate property is the notarized deed of transfer.

Some other documents commonly used to evidence registration of title are the certificate issued by the relevant property registry and the property registry’s excerpt (the latter is only for general information purposes and has no value as proof).

# Can a title search be conducted online?

Yes. All Spanish property registries can be checked online. The relevant excerpt containing information on title and charges for the registered property is normally issued within 24 hours.

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

In line with the principle of freedom of capital movement provided for under current EC law, current Spanish law has adapted its foreign investment rules to a system of general liberalization, without distinguishing between EU residents and non-EU residents. Foreign individuals are required to obtain a Spanish tax identification number to acquire real property in Spain.

Depending on the specific investment carried out, a number of administrative requirements must be met, generally after an investment (or liquidation of an investment) is made, with the Spanish Foreign Investment Registry.

# Can the government expropriate real property?

Yes. Real estate property can be expropriated by administrative authorities. However, expropriation is always subject to justified cause and must be executed through a specific procedure. One of the purposes of such procedure is to determine the fair value of the expropriated property and pay appropriate compensation.

# How can real estate be held?

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

Freehold or other rights in rem, either securing an obligation (mortgage) or granting a limited right over the property (usufruct or right to build)

Leasehold (which in turn can also be registered with the property registry)

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

Companies or special purpose vehicles (SPVs)

Funds

Other tax-efficient structures

# How are real estate transactions usually funded?

Most real estate transactions are funded by banks and institutional lenders securing repayment by means of mortgages and some other complementary collaterals, like pledges over incoming rents (in case the purchased property is leased).

Due to the recent credit restrictions, some entities, like family-owned businesses, which are not so dependent on external financing, are becoming active players in the real estate investment market in Spain.

# Who usually produces the documentation in real estate transactions?

Generally, the purchaser’s lawyers prepare the initial draft of the purchase agreement. Such agreement, when final, is inserted in a public deed authorized by a notary public.

# 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 usual contractual regime excludes this possibility.

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

It is usually agreed that the seller retains liability for events that may have an impact on the purchaser or occupier after the transfer or occupation takes place (tax or environmental matters, for instance), normally subject to a time limit.

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