Global Corporate Real Estate Guide - Singapore

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# Authors

# Real Estate Law

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

The term “real estate” includes the following:

Land

Any buildings upon the land

All substances under the land

A column of airspace above the land as is reasonably necessary for the owner’s use and enjoyment

Clearly delineated airspace (enabling the ownership of flats)

Subterranean space

## What laws govern real estate transactions?

Property law in Singapore is governed by both common law and statutes. Depending on the nature of the transaction and the type of property, these include the following:

The Land Titles Act 1993 (relating to the registration of titles to land)

The Conveyancing and Law of Property Act 1886 (relating to conveyance of property)

The Residential Property Act 1976 (relating to the restriction of ownership of residential property by foreign persons)

The Sale of Commercial Properties Act 1979 (relating to the sale of non-residential properties)

The Land Titles (Strata) Act 1967 (relating to strata titles)

The Building Control Act 1989 (relating to building works)

The Housing Developers (Control and Licensing) Act 1965 (relating to the licensing and control of housing developers)

The Building Maintenance and Strata Management Act 2004

## What is the land registration system?

There are currently two land registration systems in Singapore – the older common law deeds registration system and the more relevant land titles system.

Under the deeds registration system, interest in land only passes when a deed is signed, sealed and delivered. Registration of deeds under this system is not mandatory, although there are benefits of registration.

In contrast, under the land titles system, registration is mandatory to effect the transfer of an estate or an interest in land. All registration documents must be lodged manually and/or electronically. As of 31 December 2002, almost all land in Singapore is registered under or has been converted to the land titles system. The central feature of the land titles system is the principle that the registered proprietor has “indefeasible title”. This means that any person who becomes the proprietor of registered land will hold that land free from all encumbrances, liens, estates and interests whatsoever except such as may be registered or notified in the land register. This is subject to certain limited exceptions such as fraud or forgery to which the proprietor or his/her agent was a party. Upon registration, the land register (with any manual folio duly authenticated under the hand and seal of the registrar of titles and print-out of any computer folio issued by the registrar bearing a facsimile of the registrar's seal) shall be regarded as conclusive evidence that the person named the proprietor therein is at the relevant time entitled to the estate or interest in the land therein specified and described (Section 36 of the Land Titles Act). Only recognized interests in land may be registered. These include transfers of freehold land, leases, mortgages and charges, easements and writs of execution against a registered proprietor’s land. It should also be noted that interests appearing in the land register shall have priority according to the order of their registration or notification, irrespective of the dates of the instruments by which those interests were created or are evidenced (Section 48 of the Land Titles Act).

## Which authority manages the registration of titles?

Title registration is managed by both the Registry of Deeds under the common law deeds registration and the Land Titles Registry in the land titles system. Both registries are under the purview of the Singapore Land Authority.

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

Under the Land Titles Act, any transfer of interests and interests recognized by the Act can only be effected by registration.

Interests that may be registered under the Act include:

Transfers of land, mortgages and charges

Leases exceeding seven years

Easements

Restrictive covenants

Caveats

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

Ownership over real property in Singapore can be proven by title documents issued by the Singapore Land Authority. Title is usually issued within seven working days from the date of registration.

Records of ownership of all properties in Singapore are also maintained in the land register, which may be accessed by anyone upon the payment of a prescribed fee.

## Can a title search be conducted online?

Yes. The Integrated Land Information Service (the “INLIS”) offered by the Singapore Land Authority provides a variety of online information relating to the property, including ownership details and encumbrances. It is available upon payment of a prescribed fee.

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

Since 1973, the Singapore government has been imposing restrictions on foreign ownership of private residential property in Singapore. Foreigners may not acquire or purchase restricted residential property without obtaining approval from the Minister for Law. Under the Residential Property Act (the “RPA”), a foreign person means any person who is not:

A Singapore citizen

A Singapore company (defined under the RPA as a company incorporated in Singapore and all its director and members being citizens of Singapore)

A Singapore limited liability partnership

A Singapore society

The following comprises restricted residential property:

Vacant residential land

Landed houses with land titles (e.g., a detached house, semi-detached house, terrace house, etc.)

Landed houses with strata titles in a non-condominium development (e.g., strata terrace houses)

Shop houses that are not strata subdivided and are erected on land other than land that has been declared as non-residential property pursuant to the Residential Property Notification

Foreign individuals and entities may acquire non-restricted residential property (e.g., an apartment within a building or a unit in an approved condominium development) without the approval of the Controller of Residential Property or Minister for Law. In addition, there are no restrictions on the following:

Any land (whether vacant or not), house, building or other premises which is zoned or permitted to be used for industrial or commercial purposes or both such purposes

Any hotel registered under the Hotels Act 1954

Such other land or building as the Minister may, by notification in the Gazette, declare to be industrial, commercial or non-residential property

There are also no restrictions on the sale of commercial property in Singapore to foreigners.

## Can the government expropriate real property?

The Land Acquisition Act confers extensive powers on the government for the compulsory acquisition of land in exchange for compensation. The amount of compensation depends on numerous factors, including the market value of the property. For guidelines on determining the amount, refer also to ss 33 to 36 of the Land Acquisition Act.

In circumstances where land is leased from the government, the contractual terms for re-entry or termination of the lease will apply.

## How can real estate be held?

Land in Singapore is owned by either:

The state, or held through its statutory agencies (i.e., the Singapore Land Authority, the Urban Redevelopment Authority, Jurong Town Corporation and the Housing Development Board)

Private individuals or entities

Interest in land may be:

Estates in fee simple

Estates in perpetuity

Leasehold estates

Temporary occupation licenses

Tenancies

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

There are numerous structures available, depending on the purpose and form of the real estate investment.

Generally, the following can invest in real estate:

Corporations

Local and offshore entities

Joint venture companies

Single-purpose vehicles

Co-ownership (joint tenancy or tenancy in common)

Partnership

Private equity funds

Trusts, including Real Estate Investment Trusts (REITs)

## How are real estate transactions usually funded?

Most real estate transactions are financed via institutional lenders such as banks and finance companies. In exchange for funds, lending institutions may take primary and collateral security in real property and related assets.

In a bid to prevent the overheating of the Singapore property market, the Monetary Authority of Singapore laid down several guidelines pertaining to loan regulations, including:

For loans on residential properties where an option to purchase is granted on or after 6 July 2018 and where the loan tenure is less than 30 years (or 25 years for Housing Development Board flats), imposing a loan-to-value (LTV) limit of:

75% for housing loans to individuals with no outstanding housing loans;

45% for housing loans to individuals with one outstanding housing loan; and

35% to individuals with two or more outstanding housing loans.

Loans with longer tenure exceeding 30 years (or 25 years for Housing Development floor flats), or where the loan period extends beyond the borrower's age of 65 years, face even tighter LTV limits of 55%, 25% and 15% for the 3 respective categories above. The LTV limit for housing loans to non-individuals is 15%.

Imposing minimum cash payment of:

5% of the valuation limit, for buyers who have no outstanding housing loans at the time of applying for a housing loan for a new property purchase, where the loan-to-value limit is 75%;

10% of the valuation limit, for buyers who have no outstanding housing loans at the time of applying for a housing loan for a new property purchase, where the loan-to-value limit is 55%;

25% of the valuation limit for buyers who have one or more outstanding housing loans at the time of applying for a housing loan for a new property purchase

In addition, a total debt servicing ratio (TDSR) of 55% of the borrower's monthly income is imposed on property loans extended by institutional lenders where the option to purchase the property is granted on or after 16 December 2021. The method for computing the TDSR is standardized and institutional lenders are required to:

Take into account the monthly repayment for the property loan for which the borrower is applying plus the monthly repayments on all other outstanding property and non-property debt obligations of the borrower

Apply a specified medium-term interest rate to the property loan for which the borrower is applying when calculating the TDSR

Apply a haircut of at least 30% to all variable income (e.g., bonuses) and rental income

Apply haircuts to and amortize the value of any eligible financial assets taken into consideration in assessing the borrower’s debt servicing ability to convert them into “income streams” in computing the TDSR

TDSR rules apply to all loans applied on or after 29 June 2013 by individuals. It does not apply to loans for companies, as they are subject to a different set of credit assessment criteria. However, financial institutions are required to apply TDSR rules to the individual if the borrower is a sole proprietor or an individual setting up a company solely to purchase property.

## Who usually produces the documentation in real estate transactions?

Generally, the seller’s lawyer will prepare the initial draft of the purchase agreement and the landlord's lawyer will provide the initial draft of the lease 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?

Depending on the type of liability in question, the general rule is caveat emptor unless the contract otherwise provides. The contract may apportion the risk between the parties or require the vendor to disclose any inherent liabilities.

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

This would depend on the liability in question such as contractual liability in respect of an obligation that has not been performed.

# Acquisition of Real Property

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

Option to purchase

The option to purchase from the vendor on the payment of a stipulated sum enables the potential purchaser time to determine if he/she wishes to proceed with the purchase of the property and/or determine if financing is available for the purchase. During this period of consideration, the vendor is prevented from selling the property to another party. Upon exercise of the option by the purchaser, the parties become bound to the sale and purchase of the property on the terms set out in the option agreement.

Sale and purchase agreement

Unlike an option to purchase, the sale and purchase agreement will bind the parties to the sale and purchase of the property on the terms of the agreement upon the execution of the sale and purchase agreement.

Other ancillary documents

This includes the assignment or novation of leases, builders’ warranties, etc.

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

Unless the sale and purchase agreement otherwise states, the general rule is caveat emptor. This is especially true in respect of the physical condition of the property. The seller is generally not expected to give warranties beyond the fact that he/she possesses good title to the property, and need not make any warranties as to the condition of the premises. However, the seller has a duty to disclose all latent defects in the title of the property.

## When is the sale legally binding?

The sale is legally binding once the sale and purchase agreement has been executed by the parties, or when the option to purchase has been exercised by the purchaser.

## When is title transferred?

The purchaser does not obtain legal title to the land until the transaction is completed by a formal conveyance from the vendor or a registered transfer under the Land Titles Act. However, the purchaser may be said to possess an equitable title in the land if there is a valid and enforceable contract and if specific performance would be granted by the court.

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

The buyer usually pays for:

Legal costs

Due diligence in relation to the property

Property valuation costs

Registration fees and stamp duty

Costs relating to buyer’s financing requirements

The seller usually pays for:

Property agent’s fees

Legal costs

Stamp duty fees (certain cases)

Costs relating to the discharge of any encumbrance

# Leases

## What are the usual forms of leases?

The forms of leases include:

Fixed-term lease

Periodic lease

Tenancy at will

Tenancy at sufferance

Reversionary leases

Tenancy by estoppel

The fixed-term lease, which is the most common form of lease, is where the maximum duration of the tenancy is fixed from the commencement of the lease and ends automatically upon expiration of the term, unless renewed in accordance with the lease agreement.

In addition to leases, licenses are commonly granted to allow for certain rights of occupation (e.g., licenses for signage).

## Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and the parties may freely set out the terms that should govern the lease. However, in the absence of any express terms, both parties may be subject to certain “implied terms” and “usual covenants.”

The Land Titles Act also provides for certain implied terms in favor of the landlord in every registered lease, unless the contrary has been agreed upon by both parties.

For retail leases, in March 2021 a Code of Conduct for the Leasing of Retail Premises in Singapore (Code) was introduced by the Singapore Business Federation. The objectives of the Code are to provide:

Guidelines to retail landlords and tenants to enable fair and balanced lease negotiations

A governance framework to ensure compliance with this Code

An accessible dispute resolution framework for both retail landlords and tenants.

Compliance with the Code is currently not mandatory, though a recommendation has been made to the government by the Fair Tenancy Pro Tem Committee to make compliance with the Code mandatory for leases of qualifying retail premises (as defined in the Code).

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

There is no maximum term for leases, so presumably there could be a lease for life for a rent amount.

## What are the usual lease terms?

The duration of each lease varies depending on factors such as the purpose of the lease and the type of property.

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

Generally, tenants may not demand an extension of the lease unless there is an “option to renew” clause within the lease agreement for a further term and the tenant has properly exercised that option or the parties have agreed to an extension.

## On what grounds may a lease be terminated?

A landlord can generally terminate the lease under the following circumstances:

The agreed-upon term of the lease has expired

Appropriate notice has been given by him/her (for periodic leases)

There is frustration of the lease agreement

The tenant commits a repudiatory breach of the lease agreement

He/she has the contractual right to termination

## Must rents be paid in local currency?

The contract will provide for the payment of rent in a stipulated currency, but rent can be paid in any currency as long as both parties mutually agree upon the mode of payment.

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

Rent is usually paid on a monthly basis in advance.

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

Rent is usually fixed for the initial term and reviews may also be fixed periodically or adjusted to reflect the market value at the time of renewal or extension. The arrangement depends on the terms found in the lease agreement, as are the limits, if any, to the increase in rent (usually by way of a rent review clause).

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

The following is usually required of landlords:

Provide the tenant with the “quiet enjoyment” of the premises

Keep common property in reasonable state of repair

Insure the building

The following is usually required of tenants:

Pay the rent and other monies due under the lease on time

Keep the premises in a “tenantable condition”

Inform the landlord if repairs are needed and give the landlord access to view the state of repairs and carry out the repairs

Reinstate the premises

Comply with all relevant rules and regulations

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

A lease may be assigned or transferred provided that the lease agreement contains no express term not to. Typically, leases will contain a provision prohibiting or restricting an assignment/subletting.

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

Generally, the lease agreement should contain a provision allowing the tenant an abatement of rent for the duration that the tenant is unable to occupy the premises. However, where the damage is so extensive that it (i) takes too long to repair; or (ii) cannot be repaired, the landlord usually reserves a right to terminate the lease.

In certain exceptional instances, physical catastrophes and other supervening events not contemplated by both parties could serve to frustrate the lease agreement so that rent is no longer payable.

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

The tenant is usually responsible for insuring the leased premises, in the joint names of the landlord and the tenant (or naming the landlord as an additional insured).

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

Leases for a term exceeding seven years are registrable interests, which may be registered in the prescribed form under the Land Titles Act. Once registered, the new buyer would have notice of the interest and will be bound to take the property with the lease, if he/she so chooses.

If the lease is a registered lease, the terms will be binding on the new owner. For unregistered leases, leases will have to be assigned or novated to the new owner.

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

In relation to unregistered leases, the official assignee may disclaim any land burdened with onerous covenants that is part of a bankrupt’s estate and a liquidator may do the same for any land that is part of the property of a company being wound up.

# Planning and Environmental Issues

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

Land development in Singapore is governed by the Ministry of National Development and the Ministry of Law via their respective agencies (the Urban Redevelopment Authority of Singapore, the Building and Construction Authority and the Singapore Land Authority). The Ministry of Sustainability and the Environment enforces environmental regulations primarily via its agency, the National Environment Agency.

Together, these three ministries and their respective agencies work together to develop land in Singapore in a fashion that is compliant with environmental regulations.

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

There are numerous laws, including:

The National Environment Agency Act

The Environmental Protection and Management Act

The Environmental Public Health Act

The Urban Redevelopment Authority Act

The Planning Act

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

The main permits and licenses include:

General builder license and specialist builder license

Permit to commence structural works

Temporary occupation permit

Certificate of statutory completion

Additionally, plans relating to building and design in general have to be submitted to the Building and Construction Authority for approval before the actual work commences.

## Can an environmental cleanup be required?

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

Certain authorities also require companies in some industries to conduct environmental baseline studies (EBS) to assess the level of contamination of the leased premises. If a site is found to be contaminated, the responsible parties involved would be required to remediate the property to meet the prevailing Dutch Standards or the first EBS level at the commencement of the original lease term.

## Are there minimum energy performance requirements for buildings?

Yes. New buildings in Singapore are required to adhere to the minimum environmental sustainability standard set by the BCA Green Mark Certified Level, while projects developed on land sold under the Government Land Sales Programme sites in certain strategic areas of Singapore will be subject to higher Green Mark standards. There is further a new “Green Mark Pearl Award” to recognise collaborations between developers, building owners and tenants that successfully increase green tenanted gross floor area to between 50 and 70% for each building.

On 30 June 2022, the government has introduced the SGD 63 million Green Mark Incentive Scheme for Existing Buildings 2.0,  with the objective to raise energy performance of existing buildings and to have 80% of existing buildings in Singapore classified as green.

The scheme will provide grant supports to building owners on their goals to attain higher energy performance by lowering the upfront capital costs for energy efficiency retrofits and improving the returns on investment. The scheme will be available from 30 June 2022 until the available funds have been fully committed or by 31 March 2027 (whichever is earlier).

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

There are various regulatory measures and incentives including:

Mandatory submission of periodic energy audits, building information and energy consumption data under the Building Control Act

Mandatory energy management system under the Energy Conservation Act

Regulation of the district cooling systems under the District Cooling Act

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