Global Corporate Real Estate Guide - Venezuela

Real Estate Law

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

The term “real estate” includes the following:

Land

Any buildings or structures on the land

Personal property permanently incorporated into the land that is deemed to be real property due to its use or purpose

# What laws govern real estate transactions?

The Civil Code governs the purchase, sale and the lease of real property. The Law to Regulate and Control Leasing of Homes governs the lease of urban and suburban properties. The Law on Commercial Real Estate Lease specifically governs the lease of “real estate properties intended for commercial purposes” within the context of that law.

In addition, there are various laws that govern real estate transactions subject to special regimes and there are also rules applicable to specific real estate transactions contained in various laws.

Some examples are the Law on Lands and Agrarian Development, the Law on the Sale of Plots, the Law on Condominiums and the Special Law for the Protection of Home Mortgages.

The Venezuelan Civil Code is a Napoleonic code.

# What is the land registration system?

There is a system of public registry of deeds where one can verify the ownership of, and which serves to record the rights to, real property.

The real folio system is used, whereby the subject of the recordings is the property and not the owners. This system enables the establishment of legal transfers of real property, the charges and encumbrances created on them and their respective payments, as well as the judicial measures and data regarding the suspensions thereof.

In zones with no cadastre surveys, the recording is made by means of the personal folio.

# Which authority manages the registration of titles?

The Ministry of the Interior and Justice handles the registration of deeds through the Autonomous Service of Registries and Notaries. There are real estate registry offices in various regions of the country and the deeds are recorded in the competent real estate registry office based on the property’s location.

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

Documents, actions and decisions must be subject to registration formalities. Those not registered are not enforceable vis-à-vis third parties.

The following transactions are subject to registration:

The purchase and sale, and any other action whereby title to real property is transferred

The creation and cancellation of mortgages

The establishment or modification of easements, rights of use or dwelling and usufruct

The judicial awarding of real property

Lease contracts for terms of more than six years

However, the purchase, sale and lease of real property, even if not registered, are valid between the parties because the consent of the contracting parties for a contract to exist suffices. Almost all sales and transfers of title to real property are registered for them to be valid vis-à-vis third parties.

Moreover, registration is required for the validity of the creation, modification and cancellation of mortgages.

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

Deeds and documents that are duly registered prove title to the real property, both vis-à-vis the persons who sign the documents and third parties. Private documents, including those executed before notaries, may be enforced against the other parties, their assignees or heirs.

When the document is executed, the registry office delivers to the signatory the original copy of the document. The document executed is recorded in the protocols or books kept by the Real Estate Registry Office, which may issue certified copies thereof.

# Can a title search be conducted online?

All the entries recorded are available to the public and the information regarding the title chain of the real property may be obtained by an interested party upon a review of the books and protocols. The real estate registrar may also issue certified data regarding the title chain and encumbrances on the real property, upon payment of a fee.

At this time, no electronic or digital entry system has been implemented, so no online registrations or searches can be made.

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

Generally, there are no restrictions for foreign citizens to own land in Venezuela, save for certain exceptions. For example, foreign citizens cannot own real property without the written authorization of the executive branch of the government in the “security zones” referred to in the Law for the Reform of the Organic Law of National Security, namely: a strip adjacent to the sea, lakes and navigable rivers; the zone surrounding military facilities, airspace and basic industries; the transmission corridors of oil pipelines, gas pipelines, polyducts, aqueducts and main power lines; and any other zone deemed necessary for the security and defense of the republic.

# Can the government expropriate real property?

Government authorities may expropriate real property, but they must first pay an appropriate indemnification and follow the procedure provided in the Law on Expropriation for Reasons of Public or Social Interest. However, in recent years, a considerable number of urban and rural properties have been expropriated without observing the procedures provided in this law and without previously paying the fair indemnity provided by law.

# How can real estate be held?

Generally, rights (over real property) are held pursuant to the following:

Absolute ownership

Lease

Ownership in condominium or community property system

In recent years, the government has implemented the awarding of real property to certain persons who are mostly of low income and in need; this allows them to use the property but does not give them the right to dispose of that property (they cannot sell or mortgage it).

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

The following usual structures are used in investing in real estate:

Civil associations or partnerships

Stock corporations

# How are real estate transactions usually funded?

Most of the financing for real estate is granted through financial institutions. The sale of some houses is financed with preferential rates. The rates may be fixed or variable. The borrower must pay the legal costs and administrative expenses arising from the financing.

To guarantee the loan, a real estate mortgage is established. Occasionally, collateral guarantees are established, such as the assignment of rental fees and personal guarantees.

# Who usually produces the documentation in real estate transactions?

Generally, a lawyer for the seller prepares the initial draft of the sales agreement. When a financial institution grants the credit for paying the price and a real estate mortgage is created, the financial institution’s lawyers prepare the documentation.

# 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?

To the extent that damages have been caused to the environment due to matters related to the real property and the liabilities of the parties involved in the transaction have not been defined, it is possible that the new owner or occupant be deemed by the competent authorities as responsible for the event that caused the contamination, if the buyer cannot prove that the contaminating event took place before the acquisition of the property.

If there is a mortgage on the real property that is sold, it will remain guaranteeing the debt. The mortgagee may foreclose the mortgage and cause the real property to be subject to judicial auction to collect its credit, even when the real property has been disposed of in favor of a third party.

If a mortgaged property is to be bought at a judicial auction, it is necessary to summon the mortgagees in the mortgage foreclosure proceedings. If the mortgagees are not summoned, the mortgage will subsist.

In the event of a sale of leased real property, the tenant has a preferential right to acquire the real property. If the tenant does not exercise its preferential right to acquire the leased property, the new owner must honor the lease agreement until the expiration of the lease term.

Regarding real property subject to the condominium system, condominium expenses that are owed will be the liability of the owner of the property, even if these have been incurred before the purchase of the property.

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

A seller may continue having liabilities related to a real property, even after selling it. In fact, the administrative, criminal and civil liability arising from environmental pollution due to activities related to the real property remains with the seller, regardless of whether the property has been sold. Additionally, the seller and the buyer may contractually provide that the buyer’s liability for environmental pollution subsists after the sale of the property.

The seller is also responsible for any debt guaranteed by a mortgage created by such owner over the real property.

For the properties held under a lease, the tenant is not generally deemed to be liable for the obligations of the previous tenant.

Regarding buildings, the constructor is liable for a term of 10 years for any ruin or deterioration of the building or due to defects of the soil. The promoter and seller of the work or building that have built or caused the construction thereof and the banks and other financial institutions that have funded the work will have the same liability as the constructor of the building.

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