Global Corporate Real Estate Guide - Luxembourg

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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 or structures of any kind on the land

## What laws govern real estate transactions?

The laws governing real estate transactions can be divided into the following two categories:

General legislation:

Constitution of the Grand Duchy of Luxembourg (“**Constitution**”)

The Luxembourg Civil Code (LCC), which contains the general rules of contract law

The Criminal Code

Specific laws and regulations (including the following):

Law dated 25 September 1905 on the transcription of real property rights, as amended, and the related grand-ducal decree of the same date laying down regulations for the implementation of the law

Law dated 26 June 1953 in relation to the designation of persons and property in the deeds to be transcribed or registered at the Luxembourg mortgage office

Law dated 16 May 1975 on the status of divided co-ownership, as amended

Regulation dated 3 September 1985 regarding the selling of floor-plan buildings (Immeuble en l’état futur d’achèvement), as amended

## What is the land registration system?

There are three public authorities involved in the Luxembourg land registration system:

Public notaries

The Luxembourg land tax registry (Administration de l’enregistrement, des domaines et de la TVA (AED)

The cadastral authority (Administration du cadastre et de la topographie (ACT)

The land registration procedure involves the following three steps:

The sale of land property must be conducted before a public notary, who will carry out inquiries into the seller, the existence of mortgages or any other charges on the property (including the preemptive right of public authorities, as the case may be) and will document the sale by a written deed of transfer (“**notarial deed**”).

The notarial deed will then be submitted to the AED for registration and transcription purposes.

Ownership and the relevant related information (size of the land, geographic situations) are then transmitted to the ACT for registration in public records.

## Which authority manages the registration of titles?

Title registration and transcription are jointly handled by the following authorities:

The AED, through its registration office and its mortgages office (Bureaux de la Conservation et des Hypothèques)

The ACT

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

The following rights over real property are required to be registered:

Transfer of property ownership (sale, donation)

Ownership sharing agreements (usufruct)

Mortgage over real estate properties

Long-term leases (with a duration exceeding nine years)

Building lease rights (Droit de superficie) and emphyteusis right (Emphytéose)

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

Landowners can prove their ownership over real estate property via the notarial deeds or their transcription by the AED. Another way to prove ownership is by a document evidencing the transcription which can be obtained from the AED upon the owner’s written request.

## Can a title search be conducted online?

Yes, but only public administrations, administrations of municipalities, public entities operating in the real estate sector, geometers, bailiffs and notaries may perform an online title search with the Mortgage Register.

However, the ACT lists every land parcel in the Grand Duchy of Luxembourg and it is possible to order, for free and on the basis of one request a day, a copy of the cadastral excerpt (extrait cadastral) in relation to a specific land parcel on the following website: <https://extraits.geoportail.lu/>.

This document shows the name of the owner of the land parcel as registered with the ACT.

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

Foreigners (individuals and legal entities) are entitled to own real estate property, directly or indirectly, in the same way as nationals. There are no nationality restrictions under Luxembourg law on landownership.

## Can the government expropriate real property?

Real estate property can be expropriated from the owner by the government only in case of public interest. Appropriate financial compensation must be paid to an expropriated owner according to Article 16 of the Constitution and Article 545 of the LCC, notably according to administrative procedure and regulations and, in particular, the Luxembourg Law of 15 March 1979 on expropriation for public utility, as amended.

## How can real estate be held?

Generally, an interest in real estate is held by any of the following means:

Ownership

Undivided property co-ownership (indivision)

Long-term lease (including emphyteusis)

Short-term lease

Building lease

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

The usual structures used in Luxembourg for investing in real estate are either regulated or unregulated vehicles.

Unregulated real estate investment vehicles include the following:

Corporate companies — this is most commonly used by professional, institutional and private investors for the acquisition of real estate

Public limited company (Société Anonyme) or private limited company (Société à responsabilité limitée) — in practice, these are the most popular corporate forms in the Luxembourg real estate market

Securitization vehicles — this is where a wide range of assets, tangible or intangible, movable or immovable, including real estate, are to be securitized

Regulated real estate investment vehicles include the following:

Undertakings for collective investment (UCIs) — Real estate UCIs must invest their funds in real estate, open their shares or units to the public by means of a public or private offer, and have the exclusive objective of investing in real estate assets in accordance with the principle of risk diversification.

Specialized investment funds (SIFs) — SIFs are considered one of the most successful tools in the real estate market, being operationally flexible and fiscally efficient.

Sociétés d’investissement en capital à risque (SICARs) — For example, companies investing in risk capital — real estate investments need to have risk capital characteristics to be classified as eligible assets. However, SICARs can invest 100% of their assets in one target investment as they do not need to comply with risk diversification requirements.

Reserved alternative investment funds (RAIFs) — RAIFs are recent investment vehicles and are not subject to prior approval and subsequent supervision from Luxembourg’s Commission de Surveillance du Secteur Financier but they are required to appoint a regulated alternative investment fund manager (AIFM). Such flexibility represents a real advantage for investors, who are entitled to promptly acquire a real estate asset through such investment vehicle while benefiting from the protection ensured by the full application of the AIFM Directive, as implemented in Luxembourg.

## How are real estate transactions usually funded?

Short-term or long-term bank loans, mortgages, multicurrency and revolving credit line facilities represent the main source of financing for real estate investments in Luxembourg. However, external financing and equity may be pushed down in the form of intercompany loans, profit participating loans and other types of hybrid financing.

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

If a notarial deed is required, the notary will prepare the documentation. Lawyers often prepare a letter of intent (compromis de vente).

If private seal documentation is sufficient for the transaction, lawyers usually draft 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?

An owner is liable for matters relating to the real estate from the date of acquisition, even if such matters occurred before the real estate asset was purchased. Therefore, in general, the purchaser inherits the liabilities for matters that may have occurred prior to its ownership. However, in most real estate transactions and especially relating to pollution matters, sales contracts often set forth that the real estate is sold without liability to the purchaser. As a result, such a clause allows the purchaser to shift liability to the selling property owner.

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

Under Luxembourg law, the liabilities of the seller can be divided into two categories:

General provisions

The LCC provides for a guarantee in respect of latent defects (Garantie des vices cachés) of the sold property that renders it unfit for the purpose for which it was intended, or that affects the use of this property. The seller would be liable if the buyer would not have acquired the property, or would have paid a lower price if the purchaser was made aware of such condition. The seller is not liable for latent defects that the buyer was able to discover.

Liabilities relating to the purchase of buildings under construction

The seller/constructor of a building to be constructed is liable for hidden defects for 10 years upon acceptance of the construction used by the purchaser, pursuant to the LCC.

The action arising under this guarantee may be exercised by subsequent purchasers only against the original seller and the constructor that performed the work

# Acquisition of Real Property

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

The usual documents involved in such transactions are as follows:

Letter of intent (not mandatory but commonly used)

Notarial deed (mandatory for transcription purposes)

Security documentation, if any (e.g., mortgages, pledge agreement, bank account or share pledge)

The following documents are usually prepared for purchases of buildings under construction (Article 1601-1 and the following articles of the LCC):

Construction plans

Description of the technical characteristics and data of the building and the materials to be used

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

The main warranties given by a seller to a buyer are as follows:

Quiet and peaceful possession of the property

Warranty against latent defects of the property (garantie des vices cachés)

Warranty in case of eviction from the premises

Warranty in case of pollution

## When is the sale legally binding?

According to the provisions of the LCC, parties are legally bound as soon as they execute the letter of intent (Compromis de vente). If this document reflects the parties’ reciprocal consent to sell and acquire and indicates the real estate asset and the price, the letter of intent is considered as a sale.

As a rule, the letter of intent commits the parties to complete the sale before a notary within a certain time, subject to the conditions precedent that the parties agree upon.

The letter of intent usually provides for a penalty clause pursuant to which the party that fails to execute the notarial deed would be indebted to pay (usually 10%) of the purchase price to the other party.

If there is no letter of intent, the sale is legally binding upon execution of the notarial deed relating to the sale (Acte notarié de vente).

## When is title transferred?

The transfer of ownership usually takes place upon execution of the letter of intent, if the parties have executed such document before the notarial deed.

However, parties may insert a clause in the letter of intent stating that the title will only be transferred upon execution of the notarial deed.

If there is no letter of intent, the title is transferred upon execution of the notarial deed.

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

The buyer usually pays for the following:

Notary fees

Registration fees for a total amount of 6% of the property sale price. This fee is composed of 5% of the registration fees increased by 2/10th, which brings the total 6% of the property sale price

Transcription fees of 1% of the property sale price

Where applicable, agent fees (generally range from 2% to 5% of the purchase price)

Please note that an additional tax (surtaxe communale) corresponding to 50% of the registration fees (i.e., 3% of the property sale price) may be applicable on the sale of certain real estate (e.g., commercial buildings) located in the territory of Luxembourg City.

# Leases

## What are the usual forms of leases?

There are four main types of real estate leases:

Commercial leases (bail commercial) — the landlord provides the tenant with premises for the purpose of trade activities

Residential leases (bail à loyer) — the landlord provides the tenant with premises for residential purposes

Agricultural leases (bail à ferme) — the landlord provides the tenant with land for the purpose of cultivating and harvesting it

Leases subject to common law (baux de droit commun) — the landlord provides the tenant with premises for office use

## Are lease provisions regulated or freely negotiable?

Lease provisions are mostly freely negotiable (especially regarding commercial leases), but there are some legal provisions arising out of the LCC or specific sectorial laws with which the parties have to comply, which may differ depending on the type of lease. For instance, the lease period for residential leases may be set by the parties, but the renewal provisions of the lease agreement are regulated.

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

According to Luxembourg law, there is no maximum term for leases. The lease agreement may be open-ended or with a fixed term and Luxembourg law does not prohibit the extension of fixed term leases. The extension can be set forth contractually either expressly or by tacit renewal. However, for legal certainty, Luxembourg legal rules prohibit lease commitments that are perpetual.

## What are the usual lease terms?

The terms for leases that are for a fixed term and not for an indefinite period are in practice as follows:

Three years (house and big apartment) or between one and two years (small apartment) for residential leases

Three years with tacit renewal up to nine years for commercial leases and office leases

Leases can be concluded either for a limited or unlimited duration. If not specifically indicated, commercial leases are presumed to be concluded for an undetermined period.

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

For commercial and residential leases, the lease term may be extended once:

Preferential renewal (renouvellement préférentiel) - When the business lease agreement comes to an end, the tenant may claim for a preference right for the renewal of the business lease agreement. The landlord may refuse the renewal of the lease agreement for certain reasons (e.g., nonpayment of rent, occupation by the landlord of the premises, etc.). The landlord may refuse the renewal of a lease after nine years of occupation without reason if pay an eviction indemnity is paid to the tenant. This eviction indemnity can be paid by a third party (e.g., a new tenant who will occupy the premises).

For residential leases, if the landlord terminates the lease agreement for personal needs, the tenant may claim an extension of the notice period for a maximum of one year before a Luxembourg court.

## On what grounds may a lease be terminated?

For commercial and office leases, parties are bound for the duration of the lease and may not terminate the lease contract before the end of the lease term. However, if there is a major breach, a party may request termination before a court.

A landlord may terminate a residential lease for any of the following reasons:

Personal needs (wanting to use the leased premises for themselves or their family)

A serious and legitimate ground (motif grave et légitime) (e.g., demolition of the building in case of unhealthy conditions)

If the tenant does not comply with its obligations under the lease agreement

The tenant may terminate the lease agreement if the landlord does not comply with the terms and conditions of the lease contract.

## Must rents be paid in local currency?

Rent may be paid in local or foreign currency. In theory, rent may also be paid in goods or wares of any kind (mostly applicable in agricultural leases).

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

Parties are free to specify the period of rent payments in the lease agreement. In practice, rent in Luxembourg is mostly paid on a monthly basis for residential leases and on a quarterly or yearly basis for commercial leases.

There is no mandatory legal provision regarding timing of payment. The parties generally agree that the rent has to be paid before or at the beginning of the month for which the rent is due.

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

For commercial leases, there are no legal provisions relating to the review of rent.

Regarding inflation, the landlord may insert an indexation clause in the lease agreement so that the rent will automatically be modified in case of a variation in the inflation index.

For residential leases, rent can be reviewed only every two years. Luxembourg law distinguishes two cases for residential rent review:

For lease agreements concluded before 1 November 2006, a written notice has to be sent to the tenant, who has three months to accept the rent increase or terminate the lease ; if the rent increase exceeds 10% of the current lease amount, this increase must be split over the next three years (e.g., a 3.3% increase per year).

For lease agreements concluded after 1 November 2006, the 10% limit does not apply, so the landlord may increase the rent above 10% without the three-year split described above. In any case, the aggregate annual amount of the rent may not exceed 5% of the amount invested by the landlord to acquire the building. The landlord must first send a notice to the tenant and if the parties cannot come to an agreement within a month, a mediator (commission des loyers) may intervene, whose decision may be appealed before a Luxembourg court. A bill of law amending the provisions of the law on residential leases is currently being discussed.

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

The following is usually required of landlords:

Deliver the leased premises in a good state.

Proceed with major repairs to provide the tenant with leased premises in a good state.

Guarantee the right to peacefully use the leased premises.

Guarantee the tenant against hidden defects and conformity defects (défauts de conformité).

The following are usually required of tenants:

Use the leased premises according to the “prudent person rule“ (en bon père de famille), for the purpose indicated in the lease agreement.

Pay the rent.

For residential leases, proceed with minor repairs, except if damage are due to normal wear and tear (vétusté), the landlord shall proceed with such repairs.

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

The tenant is allowed to sublet the leased premises or to transfer the lease contract, unless it is expressly prohibited in the lease agreement.

Leases often contain a clause prohibiting subletting. Notwithstanding such prohibition clause, subletting a commercial lease agreement is possible under the following conditions:

Subletting is carried out together with the sale or succession of the business ongoing in the premises (fonds de commerce)

An identical business remains carried out in such premises

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

If, during the term of the lease, the leased premises are totally destroyed by force majeure, the lease contract is automatically terminated. If the leased premises are only partially damaged, the tenant may request either (i) a reduction in rent or (ii) termination of the lease.

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

The landlord is responsible for insuring the leased premises (i.e., the building) and the tenant is responsible for insuring all furniture and other items in the leased premises.

The tenant is responsible for any damage (even to the building) caused by fire and, therefore, has the responsibility to be insured against such risk.

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

If the leased premises are sold by the landlord during the lease, the lease agreement is transferred to the purchaser. The new landlord may not terminate the lease agreement except if this is expressly allowed in the lease contract.

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

The lease will survive in the event of foreclosure.

# Planning and Environmental Issues

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

The Ministry of Environment, Climate and Sustainable Development is the main Luxembourg authority responsible for land development and environmental regulation. Three administrations in this ministry, the Environment Agency, the Nature Conservation Agency and the Water Management Agency, as well as local authorities, promote and implement the environmental policies.

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

The main environmental laws relating to the use and occupation of real estate are the following:

Law of 10 June 1999 relating to classified establishments (Commodo/Incommodo), as amended

Law of 30 July 2013 on land planning, as amended

Law of 19 July 2004 relating to the organization of communities and the development of cities, as amended

In addition, there is a Luxembourg Environmental Code, which compiles all legislation and regulations on environmental matters.

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

The main permit required in Luxembourg for performing construction on real estate is the construction permit (Autorisation de construire). Legal entities and individuals must apply before local administration to obtain this mandatory permit for the construction, arrangement, transformation or expansion of houses and residential or commercial buildings.

Certain activities, installations or constructions require a special authorization (commodo/incommodo procedure). The law provides a list of these classified establishments categorized in accordance with their potential polluting or other hazardous activities. If any modification to the activity occurs, the classified establishment has to notify the competent authority which decides if a new authorization is required.

Permits (the general development plan or the so-called plan d’aménagement du territoire) relating to municipalities’ lands, which have to be approved by the Communal Council and by the minister for Home Affairs.

A specific permit is also required for building in a “green zone.”

## Can an environmental cleanup be required?

Most of the legal provisions on environmental cleanup can be found in the framework of hazardous activities. Luxembourg law allows investigations from environmental authorities and imposes certain obligations on companies with hazardous activities such as site rehabilitation at the end of the activity.

## Are there minimum energy performance requirements for buildings?

In a sale or lease, sellers or landlords must provide an energy performance certificate (EPC).

This EPC is required for all newly constructed buildings and existing buildings.

The EPC is issued by qualified experts and remains valid for a period of 10 years.

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

It is possible to obtain state financial aid for energy-saving structures (i.e., photovoltaic systems, heat pumps) relating to newly constructed and existing buildings.

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