Global Corporate Real Estate Guide - Saudi Arabia

Real Estate Law

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

The term “real estate” includes the following:

The land and what is under and above the land

Any buildings, fixed structures or

Plants, such as trees

The term excludes the following:

Natural resources

Unauthorized buildings/heights

# What laws govern real estate transactions?

In all provinces of Saudi Arabia, property law is primarily governed by Islamic Shariah, a comprehensive and complete system of laws that governs, among other things, all aspects of commerce, trade and contract.

In certain circumstances, specific legislation exists, to the extent that it does not contradict Islamic Shariah, for matters such as:

Off-plan sales: Under the Off-Plan Sales Law, developers that want to market or sell real estate units in a real estate development project on an off-plan basis need to first obtain a license from the Wafi Center. Among a number of other requirements (i.e., details of the project, prior experience, credit worthiness), a key requirement is setting up an escrow account with a Saudi bank (along with an escrow agreement between the developer and the escrow bank).

Real estate brokers: the Real Estate Brokerage Law regulates real estate brokerage and a number of real estate activities, such as real estate marketing, real estate management, real estate advisory, real estate auctions and facilities management.

The following are key highlights of the Real Estate Brokerage Law:

The Real Estate Brokerage Law requires that the entities practicing the activities regulated by the law obtain a license from the Real Estate General Authority. Under the law, practicing real estate brokerage is not limited to Saudi nationals or Saudi companies.

A real estate brokerage entity is not allowed to sell or broker the sale of any property unless it is in possession of copies of the title deeds. Additionally, it must also document the brokerage agreement and register the agreement in the Real Estate General Authority’s electronic portal.

A real estate brokerage entity is not allowed to receive more than 2.5% of the value of the sold property in commission, unless otherwise agreed in the brokerage agreement. Likewise, the brokerage entity in a leasing agreement is not allowed to receive over 2.5% of the first-year’s rent as a leasing commission, unless the parties agreed to this.

Real estate offices violating these rules may be punished by a fine not exceeding SAR 200,000, closure of the office for a certain period not exceeding one year, or the permanent revocation of the license of the office.

Real estate mortgage: For a mortgage to be valid, its creation must be in exchange for a debt, which may include a contingent, future or prospective debt. The benefit of the property may be mortgaged separately from the property itself.

The mortgage over a property includes all things ancillary to that property, including any improvements made to the property after the date on which the mortgage is created. A single property may be mortgaged to a number of mortgagees if their priorities fall in a particular order, determined by the date of the notation of the mortgage on the title deed or the date of the registration of the mortgage.

A mortgage is terminated upon the occurrence of any of the following events:

The termination of the debt (Should the debt, having been terminated, be reinstated for whatever reason, the mortgage in respect of that debt will be reinstated as well. Such reinstatement will be without prejudice to the rights of any bona fide third party that acquires rights over the mortgaged property in the time between the termination of the mortgage and its reinstatement.)

The merger of the rights and obligations of the mortgagor and mortgagee in a single person (However, if the consolidation of debt is reversed, the mortgage is reinstated.)

An authenticated waiver by the creditor

Upon the total destruction of the mortgaged property

# What is the land registration system?

Saudi law recognizes both freehold title to land and a leasehold interest in land.

In May 2022, a new real estate registration law was issued for the establishment of a formal system of land registration in Saudi Arabia. This new law governs registration and indefeasibility of freehold title to land as well as the registration of title deed interests. The Real Estate General Authority is authorized to implement this law and has contracted with the National Real Estate Registration Services Company on certain operational aspects of implementation. As of the date of this update, implementation of the law has commenced on a designated area basis, with certain neighborhoods announced as being subject to the new law. We expect it will take a few years before this law is implemented throughout Saudi Arabia.

Currently, the following applies in the majority of Saudi Arabia, excluding any neighborhoods that are designated as being subject to the new real estate registration system:

Title to real estate may be transferred without formal registration.

Recording of a transfer of freehold title to land can only be made with a notary public.

At present, evidence of ownership of the freehold title to land is generally recorded in a document known as a title deed, which is issued by the office of the notary public. Title deeds describe the land using words alone and do not include a map or diagram depicting the boundaries and location of the land in the context of surrounding lands. However, the local municipalities maintain official survey maps (korooki) identifying all plots of land within their district. A korooki is often used to verify whether the land described in the deed title matches the physical land identified in the official survey map.

In the absence of a centralized land registry in Saudi Arabia, there is no certainty or indefeasibility of title. Instead, there is only evidence of title, the best evidence of which is the title deed issued by the notary public. However, as title to real estate may be transferred under Saudi law without the need for formal registration, only a court judgment issued in respect of ownership of title offers conclusive evidence as to ownership and only as of the time such judgment is issued.

# Which authority manages the registration of titles?

The office of the notary public for the district in which the land in question is located manages registration of titles.

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

Until such time as a centralized land registry is formed, only mortgages are generally registered on title deeds. Additionally, lease agreements are required to be registered for such lease agreements to be enforceable. However, lease agreements are registered online through the Ejar system and not on title deeds.

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

Evidence of ownership of the freehold title to land is generally recorded in a document known as a title deed, which is issued by the office of the notary public.

# Can a title search be conducted online?

Yes, but only where a title deed has been updated to the electronic form.

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

The law now recognizes the following two distinct groups of foreign nationals:

Citizens of the Gulf Cooperation Council (GCC) or companies domiciled in a GCC member country and wholly owned by citizens of the GCC

Foreigners of any other nationality, companies domiciled outside the GCC and companies owned by foreigners of any other nationality

**Citizens of the GCC**

Citizens of the GCC (i.e., Oman, UAE, Kuwait, Bahrain and Qatar) and companies in the GCC that are wholly owned by citizens of the GCC may now, pursuant to Royal Decree No. 22 dated 3/4/1432H (8 March 2011) (“**1432 Royal Decree**”), own and lease real estate in Saudi Arabia on the same basis and with the same rights as citizens of Saudi Arabia, subject to the following limitations:

Land must be developed or be used within four years (this may be extended) of the date of registration of the real estate in the name of the buyer.

Land must not be disposed of for a period of four years from the date of registration in the name of the buyer or until the land is used, developed or built upon, whichever is the earlier (authority can be granted to dispose of land earlier).

Note that built property such as villas, apartments and offices can be disposed of at any time.

Ownership of real estate in Makkah and Al Madīnah is still restricted to Saudi nationals only.

The 1432 Royal Decree implements the GCC Economic Agreement with respect to landownership and became effective three months after approval by the Higher Counsel (majlis al a’ala). After inquiries were made, the offices of the notary public in Riyadh confirmed that the Royal Decree is now in effect and is being applied by the offices of the notary public in the Kingdom of Saudi Arabia.

The 1432 Royal Decree supersedes previous laws on the issue and clarifies the status of GCC citizens and their ability to purchase real estate in Saudi Arabia.

**Other foreigners**

There are significant restrictions in Saudi Arabia on the ownership of freehold title to land by foreigners. There are no limitations on the leasing of land, by foreigners, except in Makkah and Al Madīnah.

Only in the following limited circumstances can foreign companies and individuals own or develop land in the Kingdom of Saudi Arabia:

Foreign individuals who are residents of Saudi Arabia may own property solely for the purpose of their own residence. This is subject to the issuance of a permit from the Ministry of Interior.

Foreign companies with licenses to conduct business in Saudi Arabia may own real estate as part of their business as well as to accommodate employees of their business.

Upon obtaining the necessary license, foreign companies may invest in and develop real estate if the development value exceeds SAR 30 million and the development is completed within five years of acquiring the land on which the development will be built.

Subject to reciprocity, foreign diplomatic missions may own land for their official premises and employee housing.

The Ministry of Foreign Affairs will approve landownership by certain unspecified international and regional organizations.

Additional restrictions apply to the holy cities of Makkah and Al Madīnah, as follows:

Only Saudi nationals may own freehold title to real estate.

Other than through inheritance, non-Saudis are prohibited from obtaining freehold title to easements or to otherwise use real estate.

Muslim non-Saudis may lease property for a period of two years (such leases can be renewed for similar periods).

# Can the government expropriate real property?

Property can be expropriated by government and quasi-government authorities with the payment of appropriate compensation.

# How can real estate be held?

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

Freehold

Leasehold

Ownership of estate units (i.e., strata title)

Usufruct

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

Joint-stock company

Limited liability company

Real estate funds

Real estate joint contribution/fractional ownership

# How are real estate transactions usually funded?

Saudi Arabia has some of the region’s largest banks. Many of these banks offer financing to the real estate sector, both on a conventional and Islamic basis, using all types of financing techniques.

Nonrecourse, limited-recourse and full-recourse financing, as well as secured and unsecured financings are used in different transactions. In the wake of the global financial crisis, over-collateralized security and full-recourse financing have become more common. Borrowers are not able to borrow as much as during the global financial crisis due to the requirement of lower loan-to-value ratios.

Equity is playing a greater role in the financing of real estate transactions, particularly through Islamic funds and Islamic bond (sukuk) issuances.

Despite the strong demand for housing, Saudi Arabia has a nascent mortgage finance market and strict consumer lending practices. This strict lending environment is expected to increase once the Registered Real Estate Mortgage Law is properly implemented and applied by the relevant authorities in Saudi Arabia.

# Who usually produces the documentation in real estate transactions?

Generally, the seller’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?

There is no specific legislation in place to address the remediation of contaminated land where contamination was caused by someone other than the current landowner.

Nevertheless, new owners and occupiers sometimes seek indemnities in respect of environmental liability and in respect of any damage arising from contamination on the land.

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

Yes, but only to the extent that the seller or occupier caused the liability, such as environmental pollution, during its occupation and use of real estate.

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