

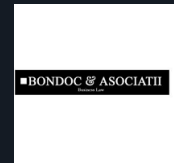
Legal 500

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Romania

Real Estate

Contributor



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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Romania.

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Romania: Real Estate

1. Overview

Prior to 1989, most of real estate assets were owned by the Romanian State. After Romania's switch to a market economy, a large part of the Romanian real estate is now privately owned. During the last years, the legal regime applicable to property transfers has been significantly clarified and stabilised.

In terms of legislation, there is a new code on urbanism and construction law under way of being approved by the Parliament, which is expected to improve the permitting process and urbanistic integration of the new projects, a systemic problem in Romania.

As far as the market is concerned, Romania has experienced in the last years an accelerated increase of real estate investments across the board (in housing, retail, logistics, office, and notably, industrial sectors, which seems to take off after years of stagnation). Romania's investment volume reached 85% of the full-year 2023 activity by the end of the first half of 2024, according to CBRE¹ and, according to Colliers². Also, real estate transactions in Romania have increased two and a half times in the first half of 2024 compared to the same period in 2023 and it is projected the total value of real estate deals in 2024 exceed EUR 1 billion. ESG criteria are becoming increasingly important in real estate projects and transactions while the main challenge remain the high cost of debt financing.

Footnote(s):

¹ [Romania Real Estate Market Outlook H1 2024 | CBRE Romania](#)

² [Investment Market – Market Report 2024](#)

2. What is the main legislation relating to real estate ownership?

The Romanian Civil Code provides the general rules applicable to real estate ownership and transfer. Land law no. 18/1991 adds provisions regarding the different treatment applicable to agricultural and buildable land. Law no. 17/2014 provides the conditions under which agricultural real estate may be transferred.

Law no. 50/1991 sets forth the general regime governing

building permits and ownership over buildings, while Law no. 350/2001 regulates the urban planning rules.

Specific provisions in respect to real estate transactions are also included in the Romanian Fiscal Code and Law no. 36/1995.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the near future?

Most of the recent legal developments were aimed at facilitating the permitting of renewable projects (e.g., exemptions from pre-approving a zoning plan, exceptions from interdictions to build on agricultural land outside the build-up area), however, all such developments were enacted pre-December 2023.

The draft Urbanism Code, a piece of legislation intended to put together and reshape the relevant construction permitting legal framework, is on the way of being adopted by the Parliament, although little progress appears to have been made in the last year.

Another draft regulation that is expected in the coming period is an amendment of the Methodological Norms for the application of Government Emergency Ordinance no. 34/2013 on permanent grassland, aiming to create the regulatory framework for the implementation of the agrivoltaics / dual use concept for grassland that would accommodate both agricultural business and renewable investments.

Furthermore, there is a proposed amendment of the legislation in light of some possible abusive behaviors in the market. It is that, at the conclusion of the pre-sale agreement, the developer may request maximum 10% down payment, as a rule.

Finally, the Parliament is to adopt a law regulating REITs (real estate investment funds) for the first time in Romania (it was already approved in the Senate) as "pass-through" entities for real estate investment, which would bring a significant tax benefit to investors.

4. How is ownership of real estate proved and are ownership records available for public inspection?

Proof of ownership is made by means of written title (in most of the cases, notarial contracts) and should be analysed by reference to the period when the property was acquired due to the successive changes in legislation. Alternative ownership titles to notarial contracts are: (i) a title of ownership issued by the relevant authority in the case of restitution claims, (iii) a decision of a court of law, (iv) a notarized certificate attesting the transfer of the ownership right following a company's merger or spinoff, (v) an auction deed, etc.

For constructions, the deed of ownership consists in (i) the building registration certificate, (ii) building permit and the (iii) acceptance-delivery protocol attesting the completion of construction works.

Currently, for most of the territory of Romania, ownership rights are enforceable against third parties by means of their registration in the relevant land book. Once the systematic cadastral measurements have been completed in each Romanian locality, real estate rights transfer / creation will occur by registration in the land book. As of May 8th, 2024, out of the 3181 Romanian localities, only 239 have finalized cadastral measurements.

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

Romanian private individuals and/or companies (irrespective of their shareholding) may freely hold real estate assets. Also, citizens and legal persons of EU member states may freely purchase buildable and agricultural land the same as Romanian citizens/companies. Citizens and legal persons of non-EU states may purchase land only under strict reciprocity conditions, however very few such treaties are in force.

In the light of the above but also for administrative/tax reasons, most real estate investments in Romania are made through a SPV incorporated in Romania.

Certain categories of real estate assets may only be held under a public property regime by the Romanian State, e.g. underground precious metals deposits, beachfronts, national infrastructure such as main roads, etc. Public real estate is inalienable and may not be encumbered.

6. What types of proprietary interests in real estate can be created?

In Romania, there is (i) private ownership right of both private persons and public bodies/authorities and (ii) public ownership right that belongs only to the state and local authorities. Unlike the private property, the public property is destined or presumed to serve a public purpose / use, and as such it cannot be transferred, encumbered or subject to forced enforcement. However, the use of public property can be granted to private persons under a concession right by way of a public auction.

The full private ownership right may be "dismembered" into certain proprietary interests, such as: (i) usufruct rights (the general right of use); (ii) *usus* or habitation right (specific rights of use); (iii) superficies right (the right of a third party to use the surface of a third party land to erect buildings); (iv) easement right (such as the right of way, pathway to transit utilities, etc.); (v) concession right applicable to land owned by public authorities (a right and at the same time an obligation for a person, granted following a public tender procedure, to use/exploit real estate assets for a certain purpose, including erecting constructions).

7. Is ownership of real estate and the buildings on it separate?

While a land plot and the buildings erected upon are usually registered in the same land book, the landowner does not necessarily need to own the buildings erected upon it. The building owner may have a superficies right or a similar proprietary interest on the land owned by a third party.

When there is no superficies or other contractual arrangement in place, the accession rules will apply (a set of rules in the Civil Code for determining who will own the building erected on someone else's land).

8. What are common ownership structures for ownership of commercial real estate?

The main structure is a holding SPV incorporated in Romania, which allows to avoid restrictions of direct land ownership by foreigners and to streamline the management of the investment. Other means can be real estate investment funds (not yet fully and specifically regulated), joint ventures (usually incorporated as SPVs), or trusts.

Also, the properties may be used under freehold or leasehold type of rights (e.g., usufruct, superficies or concession rights etc.).

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

A legal due diligence involves assessing the following main areas: (i) validity of title; (ii) lack of encumbrances, including legal restrictions (e.g. archaeological sites, military units, pipes and electric lines, etc.); (iii) validity of the urban planning and building permit documentation; (iv) validity of operating permits (e.g. fire permits, sanitary permits, etc.); (v) lack of restitution claims; (vii) validity of land book registrations etc.

The validity of the seller's title is confirmed by checking the seller's current title as well as the chain of title back to the original owner or back in time to the available documents.

Relevant aspects in the legal due diligence may include environmental liability, zoning and land use considerations, title defects, or regulatory compliance. These issues often require expertise from specialists, like environmental consultants, tax attorneys, and regulatory experts, in addition to the usual due diligence team.

10. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

In most cases, the title chains cannot be traced back in time beyond the original restitution title issued after the fall or the communist regime. Therefore, the restitution title issued under the restitution laws starting with 1991 is usually regarded as original title.

However, the invalidation of the Romanian State's title may reverberate on the title of the current owner. Therefore, the due diligence exercise includes also confirming that no claims have been asserted against the Romanian State at the time of the due diligence.

Another issue stems from the fact that restitution of property was usually made without relying on any accurate cadastral measurements and plot plans. As such, the risk of overlapping between current titles exists in almost all localities, except where complete cadastral measurements have been completed.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

As a rule, in case of a real estate transfer (asset transfer, not share transfer), after or even before due diligence, the parties would typically sign a pre-sale purchase agreement (usually in notarised form). The pre-sale purchase agreement contains the conditions precedent for the sale (e.g. obtaining the required consents, updating the land book registration, obtaining building permits, remedy actions, conversion of land in *intra muros* etc.).

After the conditions precedent are fulfilled or waived, the execution of the sale agreement is performed before a notary public, date at which also the ownership is transferred. The notary public usually handles subsequent land book registration formalities. Finally, the purchaser registers its title with the fiscal authorities.

The risk is transferred to the buyer upon handover of the real estate, usually at the moment the ownership right is transferred.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

A decision on a share deal vs. and asset deal is usually taken based on transaction profile, fiscal and commercial risk considerations and requirements of the financing entity and both types are common in Romania.

For large value transactions where the targets own real estate portfolios, a share deal is preferred and easier to implement.

If the main economic interest of the transaction is a specific asset, an asset deal is usually preferred, as a share deal comes with a higher level of complexity and historical risks.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Both the buyer and the tenant are bound to continue the leases registered in the land book, the transfer of the land operating an automatic subrogation of the buyer as landlord, unless the lease agreement provides for its termination in case of a sale.

For agricultural lands, the law requires registration in the land registries kept by the local city councils.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Rights of use, mortgages, easements and restraints/prohibitions on alienation/encumbrance are the main contractual burdens. Other legal easements may be established as per the applicable legislation (e.g., legal easements for utilities). Creditors may, in certain situations, sequester properties. To make enforceable such rights towards third parties, they are registered with the land book.

Enforcement of such encumbrances is obtained before the competent courts or directly through a court enforcement officer, depending on their nature.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

The Romanian Civil Code provides for a fiduciary relationship (Romanian: *fiducia*) in which the trustor transfers assets to the trustee for the benefit of the beneficiary (which can be the trustee itself). Banking institutions, investment funds/advisors, insurance companies, notaries public and attorneys may act as trustees. The trust agreement must be registered, under the sanction of absolute nullity, at the specialized department of the local public administration authority.

However, fiduciary relationships are not common in the local real estate market for the time being, while it is common to have 'dismember' the ownership right in other *in rem* rights.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Only the name of the current and direct owners of real estate are publicly registered with the land book.

However, all the companies registered with the Romania are required to file a statement with the Trade Registry declaring their ultimate beneficial owner.

Also, real estate companies whose shares are listed on the regulated market or on an alternative trading system are required to publicly disclose their shareholding structure, including the ultimate beneficial owner.

17. What are the main taxes associated with real estate ownership and transfer of real estate?

Property ownership is subject to local taxes that vary depending on surface and location but are generally moderate in value for the time being.

Asset sales are subject to notary taxes and land book tariffs, which are usually calculated as a percentage of the actual sale value of the transferred properties (contractual value must be above a legal minimum). Thus, notary taxes for more valuable real estate is 0,6% + a fixed fee of approx. EUR 1,300.

As mentioned, land book registration of real estate transfers is subject to a fixed tariff of 0.5% of the asset's value for companies and 0.15% for individuals.

In Romania, there are two relevant taxes when it comes to the transfer of real estate assets, as following:

- a. Specific tax on the income from each transfer by natural persons, which is 1%, or 3% of the sale value if the asset was held less than 3 years. There is specific income tax for the companies that pay the usual profit tax (16% rate) applicable to all profits derived in the relevant period.
- b. Depending on the status of the seller and the history of prior transactions, VAT may be applicable. The standard VAT quota is 19%. The legal entities can choose not to pay the VAT when they opt for the reverse taxation system (where VAT is calculated and recorded by the buyer both as collected and deductible tax).

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Many commercial leases may be triple net, (tenant is responsible for property taxes, insurance and the cost of maintenance).

An incentive for tenants as a cash amount for fit-out is common. Lease agreements may have break options in favour of the tenant. Also, a topic that is often debated in negotiations is the allocation of repair obligations and related risks of disturbances.

Other terms of the lease agreement which are worth mentioning: (i) service charge costs are usually established according to an open-book system while marketing fees are generally fixed, (ii) commercial leases usually prohibit subletting and/or lease assignment, (iii)

change of control clauses, (iv) compliance with fire safety obligations to be allocated contractually with respect to the leased premises, etc.

Aside from a maximum duration set by law to 49 years for all leases and minimum legal prior notice terms for termination of lease contracts concluded on undetermined period, the other provisions of the lease agreement can be, as a rule, customised.

19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

The remedies can be: (i) contractual claims for unpaid rent and other claim for damages caused by tenant; (ii) security deposit / enforcement of the bank guarantee customarily provided by tenants; (iii) lease termination.

To the extent registered with the fiscal authorities or is concluded in an authenticated form, the lease stands for writ of execution for the due rent, the landlord being able to directly start enforcement proceedings for the recovery of outstanding rent.

20. How are use, planning and zoning restrictions on real estate regulated?

Law no. 350/2001 provides building restrictions and zoning obligations. The planning system is mainly structured on three levels: (i) General Urban Plan (PUG); (ii) Zoning Urban Plan (PUZ) and (iii) Detailed Urban Plan (PUD).

PUG is the most extensive urban plan providing for short-, medium- and long-term planning specifications for a municipality, city or a commune.

PUZ is a more detailed plan than PUG, involving the development of a particular area in the territory of an administrative unit. PUZ may be mandatory for a certain area if this is provided in the PUG.

PUD is exclusively drafted to provide details and clarifications on the requirements and regulations set out in the PUG or PUZ, or to set out construction specifications. For individual construction projects, PUD may derogate from the applicable PUG/PUZ.

The above-mentioned regulations are approved at various levels of local government, usually by local or county councils.

There is a specific level of protection applicable to

historical monuments, which are subject to much more restrictions regarding construction works.

Also, land is designated for agricultural use or construction purposes, on one hand, and is split between *extra muros* land (where construction is not allowed, except for some industrial facilities) and *intra muros* land (where construction is allowed, subject to the designated areas by PUG and detailed characterises by PUZ or PUD).

21. Who can be liable for environmental contamination on real estate?

Romania applies the "polluter pays" principle; therefore, the entity polluting the property must pay any fines and is liable for the damage caused to third parties.

Purchasers can potentially be liable for the actions of the former owner if they cannot prove that the environmental damage was caused by their predecessors. To assess and limit the extent of environmental liabilities before entering into a transaction, an environmental due diligence exercise is highly recommended.

However, a *bona fide* purchaser of real estate assets may still be liable for certain clean-up operations due to the pollution caused by a former owner, as the environment authority may refuse to grant an environmental permit for new activities without certain clean-up/ containment operations undertaken by the new owner.

Many buyers and investors now seek indemnities or warranties related to environmental liabilities to mitigate future risks, also following the new ESG trends.

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

According to Law no. 372/2005, certain buildings are legally required to have their energy performance assessed. This obligation is imposed for, among others, new and existing buildings, and their units, which are to be built, sold, leased or will undergo major renovations. Minimum energy performance levels need to be met when designing new buildings as well as when renovating existing ones.

23. Is expropriation of real estate possible?

Expropriation of real estate is possible for good cause, based on a public utility declaration and with

compensation due to the expropriated owner at market value. The market value is usually determined by an authorised expert but may be challenged by the expropriated owner before a competent court.

There is a general expropriation law in Romania (Law 33/1994) based on which the public utility must be declared separately and specific expropriation legislation, for instance, related to energy, telecom or other strategic infrastructure where public utility is already declared by law (Law no. 255/2010).

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

Mortgage over real estate is created by an authenticated deed subject to the registration with the relevant land book, which ensures enforceability. Once the systematic cadastral measurements will be completed, mortgage will be created by registration with the land book.

In order to secure the receivable, the lender may foreclose on a mortgaged asset regardless of whether the borrower is still the owner of the asset, or the property has changed hands meanwhile, one time or several times.

Moreover, future constructions (e.g. buildings to be erected) may be also subject to a mortgage and it is possible to have a promise of mortgage registered with the land book.

The mortgage can be created over any real estate rights that are transferrable and extends also on their accessories such as improvements or insurance of the mortgaged asset. There are also the legal mortgages

created by effect of the law in the benefit of certain categories of persons such as (i) the seller of a real estate for the unpaid (portion of) the purchase price, (ii) the promissory purchaser for the advance payment paid under the pre-sale agreement, or (iii) architects and construction contractors for the payment of the outstanding price by the beneficiaries of their works/services.

25. Are there material registration costs associated with the creation of mortgages over real estate?

Mortgages over real estate are created by a contract executed before the notary public. Notary fees may vary between 0.85% of the mortgage secured amount for small value properties to 0.5% of the mortgage secured amount plus a small, fixed fee for the other properties.

Land book registration is currently subject to a tax of approximately EUR 20 per each immovable asset plus 0.1% of the mortgage secured amount.

No fees are due for the registration of the legal mortgages.

26. Is it possible to create a trust structure for mortgage security over real estate?

The Romanian Civil Code provides that receivables and securities may be transferred to a trustee (Romanian: *fiduciar*) as part of a trust structure.

However, this relatively new possibility introduced in 2011 remains to be tested in practice.

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