



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Romania: Real Estate

This country-specific Q&A provides an overview to real estate laws and regulations that may occur in Romania.

It will cover the most pertinent issues including ownership structures, restrictions, transfers, taxes and environmental contamination.

This Q&A is part of the global guide to Real Estate. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/real-estate>



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1. Overview

In a strict legal sense, real estate rights in Romania refer to ownership over land and/or buildings or dismemberments of such ownership (usus, usufruct, superficies, easement rights, etc.). In a broader sense, it also refers to rights of use over land and buildings, especially in relation to housing, retail or office space leases.

Prior to 1989, the majority of real estate assets were owned by the Romanian State, having been illegally seized or expropriated en-masse by the communist regime, with significant parts of the country's agricultural lands collectivised.



After Romania's switch to a market economy, a turbulent time followed as state owned enterprises were privatised and individuals filed claims for restitution of collectivised lands and illegally seized assets, in a climate of constant change and interpretable legislation.

Until Romania's accession to the EU ownership over land by foreign nationals was restricted. However since 2012 such ownership transfers were in most part liberalised in relation to citizens of EU member states. Transfer of real estate to nationals of non-EU states is still subject to conditions of reciprocity – such reciprocity still has for the most part not been implemented by instruments of international public law.

Beginning 2010 the real estate restitution process has generally settled down and a large part of Romanian real estate is now in the private domain. Such real estate is freely transferable under market conditions between Romanian and EU individuals/legal persons. The legal regime applicable to such transfers has been significantly clarified and stabilised.

2. How is ownership of real estate proved?

Ownership of real estate is proved by the ownership deed. This is usually a notarized contract in case of real estate sales and donations, an inheritance certificate issued by a notary public, an ownership title issued by the relevant authority in case of restitution claims filed by administrative procedure or a court decision in case of ownership claims filed in front of the courts of law.

For constructions, the ownership deed is represented by the duly executed reception minute at the completion of the works.

Ownership rights are opposable to third parties by means of their registration in the relevant land book. Once plot-by-plot cadastral measurements will be completed in each Romanian locality, land book registration will have a constitutive effect on ownership rights and the land book registration excerpt will constitute the principal mean of proving real estate ownership. As of the date hereof, of 3181 Romanian localities only 30 have finalised cadastral measurements.

3. Are there any restrictions on who can own real estate?

Real estate can be owned under a public ownership right only by the Romanian State (either by central government or local municipalities). The Romanian Constitution and other national legislation provide the types of real estate subject to a public ownership right – e.g. lakes, rivers, beachfronts, national infrastructure such as main roads, conduits, etc. Publicly owned real estate is inalienable and cannot be encumbered.

All real estate not determined by law as publicly owned is deemed to be privately owned. Real estate may be privately owned by the Romanian State and by certain private individuals and companies and is usually freely transferable among such entities.

Romanian nationals may own and transfer real estate under a private ownership right without restriction. Nationals of EU member states may directly purchase buildable and agricultural land providing certain conditions are met, such as proving registration as an independent European farmer in case of transfer of agricultural lands. Nationals of non-EU states may purchase land only under strict reciprocity conditions. Very few such treaties are in force.

All Romanian companies may purchase and/or own real estate under a private ownership right, regardless if their shareholding structure is composed of Romanian or foreign natural or legal persons. Therefore, taking account the above-mentioned limitation on real estate ownership by foreign nationals, most real estate investments in Romania are performed through a special purpose vehicle incorporated in Romania.

Minors may own real estate, but they may only conclude significant transactions with the approval of their parents or legal guardian starting 14 years of age.

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

The full ownership right over real estate may be dismembered into certain proprietary interests, such as: (i) usufruct rights (the right of a third party to use and derive profit from real estate, with the nude ownership held by the original owner); (ii) usus or habitation right (such as the right of an individual to use the real estate of the nude owner, principally as dwelling, for as long as the individual is alive); (iii) superficies right

(the right of a third party to use the surface of the land to construct buildings/to use the surface of the land underneath an owned building); (iv) easement or servitude right, meaning the right established in relation to a subservient land plot for the benefit of another land plot, such as person and vehicle access rights, utilities transit rights, etc

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

Yes, ownership rights of real estate and buildings are separate - while a land plot and the buildings erected upon it are usually registered in the same land book, the owner of the land does not necessarily need to own the buildings erected upon it, but the building owner must have a superficies right or similar proprietary interest in order to own buildings constructed upon another party's land.

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

In order to avoid certain restrictions upon land ownership by non-EU nationals/companies (see point 4 above) most real estate investments are usually performed through a Romanian-registered company (a special purpose vehicle incorporated in Romania). If the developer is also going to use the facilities for its own business activities (e.g. hypermarket chains) then the special purpose vehicle will usually lease out the building to the group company which performs the actual commercial activity in exchange for a rent set at arm's length.

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

A legal due diligence exercise undertaken in view of real estate transactions involves checking the following main areas: (i) validity of ownership title; (ii) lack of (unpermitted) encumbrances, including restrictions imposed by legal provisions (e.g. related to archaeological sites); (iii) urbanism parameters, validity of construction permits and related endorsements (if the real estate includes buildings or is purchased in view of further development); (iv) validity of operating permits for carrying out future business activity (e.g. fire permits, sanitary permits, etc.).

The validity of the seller's ownership title over the real estate is confirmed by checking

the seller's current title and the archive of all titles leading through all transfers in the property chain back to the original owner or back in time to a period in relation to which no claims could reasonably arise. This is because any potential nullity/ flaw in a deed in the chain of ownership may reverberate on the validity of the seller's current ownership title.

8. What legal issues (if any) cannot be covered by usual legal due diligence?

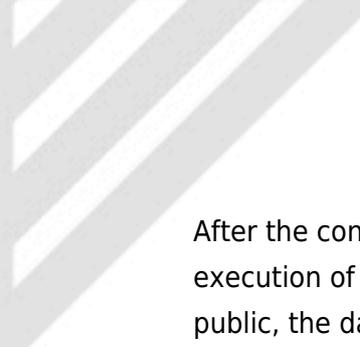
Although a due diligence exercise usually involves checking the validity of each former owner's title (see point 8 above) most property titles chains cannot be verified further back than the last 50 years, since the system of cadastral measurements, land books and archives had not been implemented throughout the entire Romanian territory prior to 1989. Archives relating to the Romanian State's ownership over certain assets have also been lost or destroyed.

Therefore, the last verified historic owner is usually the Romanian State and subsequent transfers. However, certain individuals may challenge the Romanian State's historic title over the real estate. The invalidation of the Romanian State's title may reverberate on the title of the current owner. Therefore, in certain circumstances, due diligence is limited to ensuring no claims exist against the Romanian State at the moment of due diligence performance (however such claims may be filed at any time after the due diligence).

Another issue stems from the fact that the restitution process of state-owned property has been usually carried out without relying on any precise cadastral measurements and land plot plans. With property titles issued for multiple plots without precise localisation, a risk of overlap of current titles exists in almost all localities, except in the ones where complete cadastral measurements have been completed.

9. What is the usual process for transfer of commercial real estate?

After a due diligence exercise identifies potential risks and remedies, the parties usually sign a Sale Purchase Pre-Agreement in front of the notary public. The Sale Purchase Pre-Agreement will usually contain certain conditions precedent that have to be fulfilled by the buyer or the seller before the main Asset Sale-Purchase Agreement is executed.



After the conditions precedent are completed or waived by the competent party, the execution of the main Asset Sale-Purchase Agreement is performed before a notary public, the date of the agreement's execution usually being the date of the real estate transfer. The notary public usually handles subsequent land book registration formalities. As a last step, the purchaser registers ownership with the fiscal authorities.

10. **Is it common for commercial 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 fiscal considerations and requirements of the financing entity and both types of transactions are rather common in Romania.

If the main economic interest of the transaction is the real estate asset itself, an asset deal is usually preferred by the purchaser, as risks inherent in the owner-company history are eliminated and the seller will directly guarantee for any flaws in the title or nature of the transferred asset.

11. **On the sale of interests in land does the benefit of any occupational leases and income automatically transfer?**

Yes, the purchaser of real estate may benefit from the lease agreement concluded by the former land owner with a third party tenant, unless the lease agreement provides a change of ownership clause which may be exercised by the tenant upon sale of the real estate.

The purchaser is also obligated to honour all leases registered in the land book or, in the case of agricultural land, in the agricultural registry.

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

Usage rights, mortgages, easements and interdictions to sell/encumber are the main contractual burdens that can be created over real estate. Other legal servitudes may be established as per the applicable legislation. Creditors and competent authorities may, in

certain situations, sequester real estate assets.

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

13. Are split of legal and beneficial ownership of real estate (ie Trust structures) recognised?

Yes, the Romanian Civil Code provides for a fiduciary relationship in which the first party (the trustor) transfers assets to a second party (the trustee) for the benefit of the third party (the beneficiary). The beneficiary may be the trustee itself.

Banking institutions and investment funds/advisors, insurance companies, notary publics and attorneys may act as trustees.

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

On-going real estate ownership is subject to local taxes that vary depending on surface and zoning.

Aside from income tax related to gains from sale of real estate, asset sales are subject to notary taxes and tariffs, which are usually calculated as a percentage of the actual sale value of the transferred real estate. Such sale value cannot be smaller than that indicated in a notary table of real estate value for different real estate categories.

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

Depending on the status of the seller and the history of prior transactions, VAT may be applicable to certain real estate transactions.

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

Commercial leases may be triple net, meaning the tenant is responsible for paying the building's property taxes, building insurance and the cost of any maintenance, although the property owners usually pays property taxes.

An incentive for the tenant in the form of a cash amount for fit-out is common on the Romanian market. Lease agreements have one or more break options in favour of the tenant; however the property owner also has the option to break the lease for reasons such as late payments and recurring minor infringements by the tenant.

Usually, the tenant may prematurely break the lease by paying the remainder of the rent up to the first break option/end of the lease.

The terms of the lease agreement usually prohibit subletting.

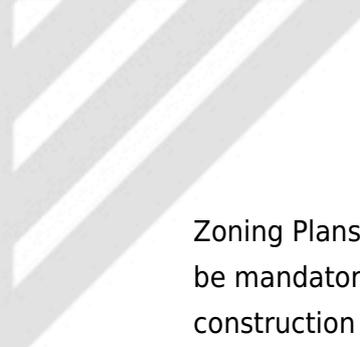
Aside from maximum duration (i.e. 49 years) and several mandatory clauses as provided by the Romanian Civil Code, there is no regulatory control on lease terms and there are no rent controls on the Romanian market.

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

Romanian legislation provides a hierarchical system of regulations that contain urban planning parameters and related restrictions.

At the highest level, Law 350/2001 regarding territorial planning provides building restrictions and zoning obligations. Such restrictions are further detailed and derogated by County Zoning Plans and/or Area Zoning Plans. At a subsequent level, the General Urban Plan of a town further derogates from the County Zoning Plans and/or Area Zoning Plans by providing local zoning and construction restrictions, usually at the level of the entire city/town.

15. Areas as wide as several city blocks may be regulated, at a subsequent level, by Urban



Zoning Plans, which derogate from the General Urban Plan. The Urban Zoning Plan may be mandatory for a certain area if provided in the General Urban Plan. For individual construction projects, Detailed Urban Plans may derogate from the General Urban Plan/Urban Zoning Plans in force.

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

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

Romania applies the principle of “the polluter is liable for damages”; therefore the entity polluting the land has to pay fines and is liable for damages caused to third parties, including to municipalities.

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

18. Is expropriation of real estate possible?

Yes, expropriation of real estate is possible for just cause with compensation due to the expropriated owner at market value. The market value is usually determined by an authorised expert and may be challenged by the expropriated owner before a competent court.

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

Yes, mortgages can be instituted over real estate in order to guarantee the value of the loan principal, interest and all accessory payments such as delay penalties. In order to guarantee the receivable, the lender may foreclose upon a mortgaged asset no matter if the borrower is still the owner of the asset or if the property has changed one or several hands.

However, in order for the mortgage to be opposable to third parties, it has to be registered in the mortgaged property's land book.

Mortgages over real estate must be provided in a contract executed in front of the notary public. Mortgage agreements represent an executory title over real estate, meaning foreclosure may be enacted directly by a court enforcement officer, without any court approval being necessary and without a contradictory procedure (although the debtor has the right to contest and, thus, suspend foreclosure by filing a claim with the court of law).

20. **Are there material costs associated with the creation of mortgages over real estate?**

Mortgages over real estate must be provided in a contract executed in front of the notary public. Notary taxes and tariffs are computed as a percentage of the value of the mortgage.

Land book registration is at the date hereof subject to a tax of RON 300 (approximately EUR 65) plus 0.1% of the value of the guaranteed receivable.

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

Yes, the Romanian Civil Code provides that receivables and securities may be transferred to a trustee as part of a trust structure.

22. **What is the main legislation relating to commercial real estate ownership?**

The Romanian Civil Code (Law no. 287/2009) provides the general rules applicable to real estate ownership and transfer thereof. Land law no. 18/1991 supplements such legal provisions especially in what regards the different treatment applicable to agricultural and buildable (intra-muros) land.

Law no. 17/2014 regarding certain obligations related to the sale of extra-muros land



provides conditions in which agricultural real estate may be transferred. Law no. 50/1991 regarding construction authorisation contains the general regime related to building permits and obtaining ownership over constructed buildings, while Law no. 350/2001 regarding urbanism contains important building restriction provisions.

Rules regarding the publicity of real estate ownership are provided in Law no. 7/1996 regarding cadastre and real estate publicity.