

Public and private property in Romania



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IN ROMANIA, BOTH THE STATE AND THE administrative and territorial units (cities and counties) own properties consisting of real estate that, according to certain legal principles, belongs either to the public or the private domain.

PUBLIC PROPERTY

Public property includes all real estate that under the law or by its nature is of public use or interest. The state's public property therefore includes areas such as roads, beaches and parks.

According to the principles of the Romanian constitution, real estate in the public domain:

- may not be alienated;
- may not be subject to enforcement procedures;
- may not be encumbered by security interests; and
- may not be acquired by third parties, under sanction of having the transfer deed declared null and void.

Assets in the public domain may be exploited by private parties by means of concession or lease. Generally, such contracts are awarded after public tender procedures.

Real estate assets owned by the state but not of public use represent the state's own private property – ie the state and the cities act as private owners of such property. The major

difference between these and assets of public use is that the state's privately owned real estate can be alienated by sale.

PRIVATE PROPERTY

Save for public property, any real estate can be subject to private property rights. As a general rule, any legal or natural entity may be the holder of private property rights.

Rules for foreigners acquiring real estate

Foreign individuals and companies from the EU may own land in Romania provided that they reside in Romania. Non-residents will be able to purchase land only from 1 January 2012, five years after Romania's accession to the EU.

Agricultural land and forests can be purchased by EU residents who are registered as farmers or agribusiness professionals and reside in Romania. Other persons from the EU will be able to purchase agricultural land and forests only from 1 January 2014.

Foreign individuals and companies outside the EU can own land according to the terms of the various international treaties to which Romania is party.

Foreign natural persons can also acquire real estate by inheritance. Furthermore, any foreign individual or company may own buildings and/or acquire the right to use land (based on lease agreements, concession agreements and so on).

The most practical way for foreign investors to acquire land in Romania is to set up a special purpose vehicle with headquarters in Romania. This will be a Romanian legal entity and will thus be entitled to acquire land without any legal barriers.

Special features of land acquisition

Generally, transferring the ownership of private real estate is free. However, there are special rules for certain categories of property (eg for the transfer of real estate that belongs to the cultural patrimony).

The law imposes that transfer deeds be concluded as authentic deeds (ie signed

in front of a Romanian public notary who must authenticate them). Failure to do so results in the transfer deed becoming null and void.

Limitations to the free transferability of real estate

Privately owned assets may be freely transacted. However, exceptions from the rule of free circulation have been implemented, based on specific statutes.

When property rights are established over certain types of agricultural land under Land Law No 18/1991 (law regulating restitution of agricultural lands), the land is temporarily taken out of the general civil circuit and may not be alienated for a ten-year period from the beginning of the year following the year in which the property is registered, under penalty of absolute nullity.

Another restriction concerning the free circulation of land is contained in the Forestry Code, which sets forth a pre-emption right in favour of the state when forestry lands are purchased.

As a general rule, pending litigation related to a real estate asset does not represent an obstacle to the transfer of that asset's ownership. However, should the legal claim regard the validity of the ownership title, the asset cannot be sold before a court ruling.

Claims for properties confiscated by the Communist regime

Real estate investors should also consider the critical issue of claims filed by former owners for real estate abusively expropriated by the Communist regime.

Beginning in 1991, the Romanian parliament issued a series of acts regulating the restitution of such properties. These include:

- Land Law No 18/1991, which initially affected only agricultural land and subsequently included forest lands;
- Law No 1/2000, on the reconstitution of ownership of agricultural and forest lands;

- Law No 10/2001, which regulates the legal status of certain properties abusively taken over by the state between 6 March 1945 and 22 December 1989; and
- Law No 247/2005, which is designed to complete and harmonise the general legal framework of the restitution of property.

The principle set forth by these laws is the restitution in kind of the confiscated assets, specifically the reconstitution of the ownership rights of the original locations or sites. Should restitution in kind not be possible, the former owners shall be granted compensation.

Real estate publicity

Romania has a public record system in which both rights and encumbrances over real estate (ie ownership rights, rights of use, mortgages, etc) must be registered in order to be enforceable against third parties. To this end, Romania has

implemented a cadastre, a unitary and mandatory system providing a technical, economic and legal record of real estate in Romania. The cadastral record is based on information regarding the plot, construction and ownership of all real estate.

The general cadastre record system is designed to provide a public record of all transactions and relevant legal issues related to real estate located in the same territorial units. These details are listed in the Land Book, which provides:

- a description of the property, including the ordering number, the cadastral number, the size, categories of use, any buildings, and the location of the estate compared to neighbouring areas; and
- the history of the ownership title, including the name of the owner, the legal act or fact that gave rise to the ownership right, property movements, rights of way, and so on.

If a certain real estate right is recorded in the Land Book, it is presumed to exist if it was acquired or set up in good faith and if nothing is proven to the contrary. If a right is erased from the Land Book, it is presumed that such a right does not exist.

An investor acquiring real estate rights for a project (eg the concession and the lease) must register those rights with the Land Book to ensure their effectiveness against third parties. Furthermore, when contemplating land for use in a project, reviewing records in the Land Book may reveal issues that significantly influence the project's development (eg the fact that the estate is subject to an interdiction to alienate and to set mortgages, the fact that the estate is conceded to a third party, etc).

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