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GUIDES 2022**

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Armenia

REAL ESTATE

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

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ARMENIA REAL ESTATE



1. Overview

According to the Civil code of the Republic of Armenia, Immovable property (immovables) are land parcels, subsoil parcels, separate water objects, forests, perennial plantings, underground and overground buildings, structures, and other property fixed to land,, i.e., objects that cannot be separated from the land without causing damage to that property or land or changing their purpose, terminating or making it impossible to its further use according to the intended purpose of use.

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

The general legal acts regulating legal relationships related to real estate ownership, are

- Constitution of the RA,
- The Civil code of the RA,
- The law of the RA "On state registration of rights to the property",
- The land code of the RA.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2021 or are there any major anticipated new laws which are expected to materially impact them in the near future?

A new draft of the decision of the RA Government, which is likely to be adopted, may be interesting for the real estate investors and lenders,. With this regard it is necessary to highlight, that according to the RA law on amending the law of citizenship of RA of 07 July 2022, citizenship of the Republic of Armenia can be granted to persons who, inter alia, have made significant contributions in the field of economy. The description and evaluation criteria of the significant contribution in the relevant field shall be defined by the decision of the

Government of the RA: the draft of the decision "On defining the description and evaluation criteria of a significant contribution in the fields of economy, science, education, culture, healthcare, sports" is in circulation: under this draft citizenship of the RA may be granted based on a definite investment as well; by this the RA Government intends to include the purchase by an individual of real estate worth at least USD 150,000 in the grounds for obtaining Armenian citizenship. The draft is likely to be subject for additional improvements and amendments, however, the relevant Government decision is in process and shall be accepted within 6 months after 29 July 2022.

4. How is ownership of real estate proved?

According to the Civil code of the RA, the right of ownership (and other property rights as well) to immovable property is subject to state registration, that is to say, after acquisition of the right of ownership, the relevant agreement is subject to state registration in definite period (*generally, it is 30 working days*): in other words, the State recognizes acquirer's right of ownership as soon as it receives state registration. Exceptions are the certificate of inheritance, which proves the right of ownership of the acquirer before its state registration, also the property acquired during marriage (common/joint ownership), even though the right to the property is registered for only one spouse.

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

Certain restrictions are established by the Armenian legislation for the foreign individuals, particularly these restrictions are established only with regard to purchase of lands. This is not a limitation for purchase of apartments and/or residential or public non-residential areas (premises). According to the RA Constitution, foreign citizens and stateless persons shall not have the right of ownership over land, except for the cases prescribed by the law. More detailed provision on the restriction is contained in the Land Code which re-states

that foreign citizens and stateless persons cannot obtain property rights on land (*lands for agricultural purposes, lands for subsoil use, land for industrial use, lands of energy, communication, transport objects and public infrastructure facilities, lands for forestry, lands for water*), but may have right of use over it. Furthermore, foreign persons with a special status of residence in the RA may own the land.

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

In Armenia the right of ownership and other property rights to immovable property, limitations on these rights, their arising, transfer, and termination are subject to state registration, for example the right of ownership, the right of use, mortgage, servitudes, and also other rights to immovable property in cases provided by the Civil code and other laws.

Property that is owned by two or more persons belongs to them by right of common ownership. Property may be in common ownership with a definition of the ownership share of each of the owners in the right of ownership (share ownership) or without the definition of such ownership shares (joint ownership). Common ownership of property is share ownership except for cases when a statute provides for the formation of joint ownership to this property.

Possession and use of property that is in share ownership shall be conducted by agreement of all its participants, and, in case of its failure, by the court decision.

Disposition of property that is in share ownership shall be made by agreement of all its participants.

With the right of ownership owner has the exclusive right of possession, use and disposition of his property, taking into account the above-mentioned clauses. Other subjects with various rights to the property have limited rights.

Generally, the following proprietary rights can be created in real estate: (these are main rights that can arise according to Civil code of the RA, for additional information regarding the certain type of rights, please see Q13)

- The right of ownership,
- The right of construction on a land plot,
- The right of use of the property,
- Servitudes,
- The right of pledge,
- The right of purchase of a property under

construction.

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

The general rule is that the ownership of real estate and the building on it is unified. However, real estate and the buildings on it may have separate owners, accordingly, various rights may arise over them. Besides since 2012 it is obligatory in Armenia for completing state registration of rights to the property (building) to have a right to the relevant land part as well.

After accepting the new incorporation of the RA law “On state registration of rights to the property”, entered into force since 01.01.2012, the required documents for state registration shall be complete, i.e., the right to a property (any building or construction) of the right holder requesting the registration cannot be registered, if the documents confirming any right to the plot attached with a building are not presented or are not available at the registration body (requirement of completeness of legal documents).

Civil code of the RA also provides regulations regarding the rights of the building owner, which is located in the land plot owned by another subject. Civil code defines that, in this case, the owner of a building located on land belonging to another person has the right of use of the part of the land parcel upon which building is located.

Of course, the unified ownership of land and the buildings on it is not an exclusive rule. A common example is a building (for car parking) owned by individuals and located in municipal land. In such cases, generally, the land where the building is located belongs to the building’s owner by the right of use (lease).

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

Armenian legislation does not limit the structure for ownership of commercial real estate, therefore, holder of the ownership right can be individuals, legal entities, local self-governmental authorities, the RA. At the same time, for the best way of business management, mostly commercial real estate holders are legal entities.

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

The main objective of legal due diligence is to identify and handle actual and potential legal risks of the target

real estate and obstacles to the acquisition thereof. In general, during due diligence the below mentioned simultaneous processes are implemented:

- Receipt of the cadastral case documents of the target real estate and study of its cadastral history. Generally, it is better to request all the documents (acquisition or alienation/based documents, as well any other document, related to that property and included to the cadastral case) , but in some cases, depending on the task, specific documents may be requested only.
- Receipt of the data from the RA Judicial department regarding the cases with participation of target real estate owner(s), as well as study and analyze of publicly available judicial cases with their participation,
- Receipt of construction related documents from local self-government bodies, if the target real estate is an apartment in a building in construction or a new object in construction, or a new constructed object,
- Study of the target real estate (*land plot*) by the cadastral and satellite maps and comparison of the date (*in any case if the target is a land plot, we offer clients to involve specialists for exact determination of the boundaries of the land in nature*),
- Depending on the task, receipt of data from public service supplier companies regarding any invisible infrastructure (pipes, lines and etc) - with regard to future construction matters,
- Direct study of the target real estate (visit to the location - if requires),
- Study of the publicly available e-resources (administrative acts, publications and etc) related to the ownership holder.

As a result of the above-mentioned processes, a conclusion-report is completed regarding the legal risks of target real estate. Even though the main focus of the report are legal issues and obstacles, it also addresses some factual aspects that might be of importance to the target real estate and the task.

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

In the scope of Due Diligence of a real estate, the rule of the presumption of the validity and authenticity of the received documents applies, accordingly the legality of the transactions made by the parties, the authority of other parties to the agreements to sign (notarial part),

as well as the legality of the RA Government decisions and administrative acts, based on which acquired property rights, are not a subject for analyse.

Although the legal due diligence is being implemented as fully as possible (on the principle of collecting and studying as much information and documents as possible), there may arise certain circumstances that cannot be determined in the scope of legal due diligence and it is possible that such circumstances interfere or may interfere to the person for whom the process was performed, e.g., legal issues related to the study of the grounds for claims by the Prosecutor general's office of the RA in the scope of proceedings of confiscation of property of illegal origin, or absence/not providing of real estate certain concerning documents from state authority, which may affect the rights of other persons (*for example, after changing of GPS systems in state cadaster maps, rarely, but in some cases state authority provided wrong data on real estate: in one such case, after receiving and studying the cadastral documents of the real estates located in the neighborhood of the target real estate, finding out the contrary materials and submitting the application- affirmations, only after these way state authority corrected the wrong data from official documentation only.*)

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

The usual process for real estate transfer is as follows:

- Negotiation process for agreeing general terms by the parties, preparation of letter of intent and heads of terms, general study of underlying documents
- Due diligence of the target real estate,
- Preparation of SPA and the necessary package,
- Conclusion of agreement and carry out the state registration process,
- Ensuring post-deal agreements and registrations (if requires, e.g., closing of installment payment limitation and etc.),
- Closing the case and handover of real estate.

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

Yes, mainly for the purpose of optimization of tax obligations or payment obligation of cadastral value of the land (if applicable).

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

Yes, once the transfer of ownership receives state registration, according to the Civil code of the RA it is the new owner who receives the benefits from the use of the land. However, for the fulfillment of obligations of the land user, it is highly recommended to ensure the relevant notification.

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

Besides the Q5 answers, common rights are as follows: ownership, lease (sublease), mortgage, right of construction to the land, uncompensated use, use of housing premises, servitudes, entrusted management of property, right of contractor/for selling the real estate under construction/ (in case of state registration of architectural design task and construction permit), the right to purchase real estate under construction, right of leasing (financial lease).

As a burden (restrictions) to the real estate are the mortgage, servitudes, purpose and operational use of the real estate, constructor's duties for the buildings in construction.

According to the Civil code, a person has the right to self-protection of civil law rights by all means not forbidden by law. The means of self-protection must be proportional to the violation and not go outside the bounds of the actions necessary for stopping the violation. Property rights of a person who is not owner, shall be protected from violation of them by any person, including the owner, by the procedure provided by Civil code.

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

Armenian law recognizes (non-directly) split of legal and beneficial ownership in the scope of proceedings of confiscation of property of illegal origin and a scenario may develop of confiscation of illegal property, belonging to a person by beneficial ownership. This, again, is not a separate type of ownership recognized by the state.

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

According to Armenian legislation such restrictions or requirements are not applied to owners of real estate.

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

The main tax for keeping real estate is the immovable property tax, which is a local tax paid to the budgets of communities of the RA. The calculation may vary, depending on the designated purpose of the land, size of area, the presence of buildings and structures on it and etc.

The tax for relevant transfer of real estate, depends on the applicable tax regime, which may be the VAT, profit tax, income tax.

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

The common terms are the imperative conditions defined by Civil code of Armenia, such as lease agreement form (notary form [1], subject for state registration), subject of the agreement, rent amount, rights and duties of the parties, improvements of the property. In case the other party (landlord) is a local self-governmental body or state, it must comply with certain agreement forms, defined by the RA Government decisions.

No regulation by the Civil code or by the law "On state registration of rights to the property" is established regarding the regulatory control of the terms of lease, except the rent amount. Generally, the yearly rent amount shall be no less than 2.5% of the 80% of the amount of the cadastral value of immovable property, otherwise the State Revenue Committee of the RA shall have a ground for starting an administrative actions. This mandatory term is established by the RA Tax code and regulates tax relationships, but not civil relationships.

Footnotes:

1. Also applies without notary verification option: it is possible to conclude the agreement at the Committee of Cadastre if the parties directly (without representatives) are physically in the service office of Cadastre. The agreement

subject to conclusion must be drafted based on the template approved by RA Government decision.

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

Use, planning and zoning restrictions on real estate are regulated by the following acts:

1. the RA Land code,
2. law of the RA "On Urban planning",
3. other legal acts adopted by the RA Government with regard to the operational requirements,
4. the decisions of self-governmental bodies with regard to the planning/zoning/ documents of communities, such as planning documents, limited areas for urbaning and etc.

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

The liable person for the contamination is the physical person responsible for it or in case of legal entities head of its executive body. The RA Code of administrative offences establishes penalties for environmental contamination on real estate. Though, in certain circumstances even the RA Criminal Code may be applied.

21. 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 the RA law "On energy saving and renewable energy", the mandatory technical requirements of energy saving and energy performance in newly built residential multi-apartment buildings, as well as in objects built (reconstructed, repaired) at the expense of state funds, must be observed by designers, contractors and recipients for exploitation. Mandatory technical requirements for energy saving and energy performance are defined by the Government of the RA.

The scope of these mandatory technical regulation covers the following types of economic activities regarding the buildings:

- Construction of residential and non-residential buildings,
- installation of electrical systems,
- installation of heating, gas supply, air quality

systems,

- Other specialized construction activities not included in other classifiers.

The mandatory technical regulation does not apply to the buildings, such as churches, buildings of a zone of special significance or with an architectural or historical-cultural value, or buildings with a total area equal or less than 50 square meters and etc.

22. Is expropriation of real estate possible?

Alienation of property with a view to ensuring overriding public interests shall be carried out in exceptional cases and under the procedure prescribed by law, only with prior and equivalent compensation. This is a constitutional clause; besides, expropriation relationships are regulated by the RA law "On alienation of the property for the purpose of securing the superior public interest".

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

First of all, A contract of mortgage is subject to notarial certification. The right of pledge under a contract of mortgage of real estate is subject to state registration as well. The fundamental protection clause is established by the RA Constitution, according to which everyone shall have the right to effective judicial protection of his or her rights and freedoms. Besides, the means of protection of civil law rights are established by the RA Civil code.

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

The main mortgage's costs refer to the charges coming from the relationships of private sector – bank service fees, interest amounts, percentage rate and etc.

The registration costs are the following:

1. notarial costs,
2. state duties,
3. service (cadastral) fees for state registration.

Overall, it can start from USD 40-50 (for agricultural lands) and for the real estate with other designated purpose of use – from USD 200-300.

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

Armenian law does not recognize trust structure.

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