

Commercial real estate in Argentina: overview

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A Q&A guide to corporate real estate law in Argentina.

The Q&A gives a high level overview of the corporate real estate market trends; real estate investment structures, including REITs; legislation; title and public registers of title; confidential information; state guarantee of title; tenure; sale of real estate; seller's liability; due diligence; warranties; cost; taxes and mitigation, including VAT and stamp duty/transfer tax; climate change targets; third party outsourcing; restrictions on foreign ownership or occupation; finance; leases; planning law and consents; and proposals for reform.

To compare answers across multiple jurisdictions, visit the *Corporate Real Estate Country Q&A tool*.

This Q&A is part of the multi-jurisdictional guide to corporate real estate law. For a full list of jurisdictional Q&As visit www.practicallaw.com/real-estate-mjg.

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 - Association of Housing Businessmen (Asociación de Empresarios de la Vivienda)
 - Argentine Construction Chamber (Cámara Argentina de la Construcción)

- Ministry of Social Development and Environment - Secretariat of Environment and Sustainable Development (Ministerio de Desarrollo Social y Medio Ambiente - Secretaría de Ambiente y Desarrollo Sustentable)
 - Undersecretariat of Urban Development and Housing (Subsecretariade Desarrollo Urbano y Vivienda)
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The corporate real estate market

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Trends

The main trends in the real estate market include:

- **Residential sector.** The residential sector has been thriving in recent years, however it has suffered during the last 12 months. This is due to certain foreign exchange currency restrictions and high rates of inflation in Argentina. Inflation is increasingly becoming the main concern of developers facing new real estate projects. Due to an increase in the price of land and in the cost of construction, investment in the residential sector has considerably decreased over the last months.
- **Commercial office sector.** Interest in the construction of new office buildings has also decreased for the same reasons as in relation to the residential sector. In addition, business activity is currently slow in Argentina, which further weakens the office market because it is directly linked to business activity.
- **Hotels sector.** Tourism has boomed in Argentina in recent years, making Argentina one of the top tourist destinations in Latin America. As a result, there is a huge interest in the development of hotels. The largest projects are located in Buenos Aires, which is one of South America's most visited city by tourists, and in other main tourist destinations. Over the last years, condo hotels have become one of the most preferred structures among the investors.
- **Rural sector.** This is traditionally a very active sector in Argentina, due to government intervention restricting meat exports and affecting wheat and soya prices, expansion of real estate in the rural sector has recently declined. Also, following the enactment of Law No. 26,737 in December 2012, the ownership and possession of rural lands by foreign persons has been restricted, which will negatively affect foreign real estate investment (*see Question 22, Rural land ownership by foreign persons*).
- **Shopping centres.** There are many opportunities for shopping centre developments, especially in medium-sized towns in the provinces.

Deals

The most significant recent deals are:

- **Acquisition of Grupo Posadas.** Groupe Accor has acquired the hotels owned by Grupo Posadas in Argentina, including the Hotel Caesar, the Hotel Caesar Cerrito and the hotel project One in Village Pilar.
- **High-rise office space in Catalinas Norte.** Catalinas Norte is the key office space area in Buenos Aires. Constantini Group is constructing what is meant to be the tallest building in the city.

Real estate investment

2. How is real estate investment carried out in your jurisdiction and what structures do investors use?

Common structures

There are three major business structures through which an investor (either a physical person or a legal entity) can participate in the real estate market:

- Direct acquisition of real estate.
- Participation as shareholder in a company that owns real estate.
- Participation in a real estate trust that invests in Argentinean real estate.

REITs

Real estate investment trusts (REITs) do not exist in Argentina, at least as they are known in other countries (for example, offering tax benefits, and so on).

Institutional investors

Institutional investors are essentially trust managers and investment companies. They are involved in the real estate market as developers of:

- Residential buildings.
- Office buildings.
- Shopping centres.

- Developments in rural areas.

Private investors

The role of private investors is often limited to residential and office markets. Lately, however, interest in hotel investments and shopping centres has increased. Investors willing to take part in these projects generally:

- Provide the necessary funds to finance the construction.
- Receive units of apartments, offices or hotel rooms, when the developer ends the project or receive a percentage of the project's revenue.

Real estate legislation

3. What is the main real estate legislation that applies in your jurisdiction?

The main sources of real estate law are the:

- National Constitution (1853).
- Civil Code (1869).
- Condominium Property Act (*Act 13,512*).
- Registration of Condominium Property Act (*Act 19,724*).
- National Real Estate Act (*Executive Order 20,440/73*).
- Real Estate Register Act (*Act 17,801*).
- Act related to Trusts (*Act 24,441*).
- Division of Land Act (*Act 14,005*).
- Horizontal Property Act (*Act 20,276*).
- Urban Planning Code (*Act 449*).
- Urban Leases Act (*Act 23,091*).
- Rural Leases Act (*Act 13,246*).
- Building Codes of each province.

- Rural Land Law 26,737 and Decree 274/2012.

Title to real estate

Title and registers

4. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate property is not distinguishable from land ownership. Therefore, buildings and other constructions on a particular piece of land cannot be owned independently from the corresponding land. Buildings are considered fixtures which belong to the owner of the land, under statutory provisions of the Civil Code.

Titleholders are considered to own the land and everything below and above the land, subject to specific legal restrictions (for example, restrictions relating to aerospace, utilities and mining).

Therefore, the land itself, and any buildings on it, are registered together.

Evidencing title

5. How is title to real estate evidenced?

Legal title to real estate requires both the:

- Execution of a sale deed, passed before a notary public.
- Transfer of the property.

Legal title is effective from the date of grant. However, to be fully enforceable against third parties, the title must be filed and registered with the Real Estate Register of the relevant province.

Information in the public register

6. What are the main information and documents registered in the public register of title?

The main information and documents which must be registered in the public Real Estate Register are:

- Public deeds creating, transferring, declaring, modifying or terminating interests in real property.
- Judicial decisions establishing attachments or other precautionary measures on real property, or restraining orders preventing the owners from disposing of the property.

- Preliminary sales agreements of real estate property under the Registration of Condominium Property Act, or of real estate divided into lots under the Division of Land Act.

Protection from disclosure

7. Can confidential information or documents be protected from disclosure in the public register of title?

There is no obligation to register all documents. Only the most relevant information must be included in the Real Estate Register.

Persons with a legitimate interest in discovering the legal status of the property, documents, precautionary measures or restraining orders can request a special judicial authorisation to obtain a copy of the relevant title deed, recorded in the Notary's College (*Colegio de Escribanos*) in the province where the deed was granted.

The information available at the Real Estate Register can be obtained through reports or certificates issued by it.

State guarantee of title

8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?

There is no specific state guarantee concerning the accuracy of records made by officers based on public deeds or other documents. However, any party incurring loss due to a registration error can sue the state for damages caused by the inaccuracy of the Real Estate Register.

Title insurance is not yet available and it is unlikely that it will be available in the near future.

Tenure

9. How can real estate be held (that is, what types of tenure exist)?

Ownership of real estate is governed by the Civil Code, which applies to all real estate located in Argentina. Under the Civil Code:

- Legal titles which exist *in rem* can only be created by law.
- There are a limited number of *in rem* titles that can be admitted and registered (for example, mortgages, leasehold rights, servitudes and usufruct).

All real estate rights are derived from ownership and generally comprise:

- **Ownership rights.** Similar to common law, these rights are defined as those pursuant to which a certain thing is subject to the absolute will and discretion of a given person (subject to any specified legal

restrictions).

- **Personal rights.** These rights may also exist in relation to real estate (for example, leases and gratuitous use).

Sale of real estate

Main stages and documents

10. What are the main stages and documents in the sale of real estate?

Marketing

Real estate brokers are usually hired for the sale and purchase of real estate or for lease transactions. Real estate is usually marketed in newspapers, or directly marketed to clients and investors.

Commercial negotiation

Commercial negotiations depend on the size, value and purpose of the property that is being sold or leased.

Pre-contractual arrangements

A buyer's offer to purchase real estate property, made through a broker, often includes a reserve. Under the reserve, the potential buyer provides a deposit to the seller or broker of a certain amount of money, as proof that the offer is reliable (*see below, Sale contract*). If the agreement is not completed for reasons attributed to the potential buyer (unless they have been specifically waived in the reserve), the potential buyer will lose the amount of money deposited as reserve (usually 5% to 10% of the purchase price offered).

The reserve, once accepted by the seller, creates a period of exclusivity for the potential buyer against rival buyers and limits the disposal faculty of the seller regarding the property during this period of exclusivity. If the seller accepts the reserve, but subsequently withdraws his acceptance of the offer, the seller must reimburse the deposit/reserve received from the potential buyer plus an additional amount equal to the deposit/reserve.

Sale contract

The purchase agreement is a contract by which the seller agrees to deliver and convey a real estate property to the buyer in exchange for a purchase price. Through the purchase agreement, both parties are bound to execute the corresponding public transfer deed. To assure protection against the seller's

bankruptcy or reorganisation proceedings, the buyer must pay at least 25% of the purchase price under the reserve. Once this has been paid, if the seller refuses to execute the public transfer deed on time, the buyer is entitled to initiate judicial proceeding to force the execution of the deed.

When legally binding

The offer is based on conditions offered or foreseen in the reserve. The broker then takes the real estate off the market until the seller decides whether to accept the offer. Once the seller accepts the reserve, there are several alternatives as to when the parties become legally bound, depending on the payment conditions.

Registration

To be enforceable against third parties, the public deed of transfer of title must be registered in the relevant provincial Real Estate Register.

When title transfers

The transfer of title to real property is made before a notary public, through a deed that must be registered in the Real Estate Register in the province in which the real estate property is located.

Between the parties, the transfer is completed once the public deed is executed.

In relation to third parties, see above, *Registration*.

Seller's liability to the buyer

11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

Buyers of real estate are, by law, granted an eviction guarantee. This entitles the buyer to sue the seller for damages if the buyer loses the real estate acquired due to a judicial decision supporting a third party's claim to a better title to the property.

The seller is also responsible to the buyer for hidden defects in the real estate property, provided the defects:

- Are relevant.
- Existed before the sale and were not specifically declared to the buyer.

The existence of hidden defects means the buyer can file legal proceedings to either:

- Terminate the agreement, with a refund of the purchase price plus interest.
- Reduce the purchase price but continue with the purchase.

The time limit for either lawsuit is three months from the date the buyer becomes aware of the defect.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition?

Before the execution of any arrangement, it is advisable to perform a detailed audit or due diligence relating to the following issues:

- The parties of the transaction.
- The object or purpose of the transaction (that is, the real estate property itself, including the ownership background, its conditions, its legal and administrative status, and any environmental concerns).
- Any issues related to the target project or development (for example, feasibility and the applicable regulatory framework).

The legal audit should be completed simultaneously with other similar analysis and studies carried out by the following professionals:

- Notary public.
- Accounting and financial advisors.
- Architects.
- Engineers.
- Land surveyor.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

The seller must warrant that:

- The seller holds perfect title to the real estate property (that is, that there are no doubts regarding the seller's capacity to sell).
- There are no liens, encumbrances or judicial proceedings that prohibit the seller from freely disposing of the property.
- The property is free from occupants or tenants.

The seller can also warrant that, under municipal zoning regulations, the real estate property can be used for a specific commercial activity.

Inheriting liability

14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it?

The buyer can inherit liability for damage relating to the real estate, if the damage occurred before the purchase. The Civil Code provides for objective liability in certain cases, which means the owner is presumed responsible for damage caused by defects in the property, unless he can prove guilt of either:

- The seller.
- A third party.

Therefore, the buyer has the burden of proving that the damage to the property existed before the purchase or is the fault of a third party. However, the parties can contractually agree that the seller will not be responsible for the damage caused before the purchase, except if the damage was deliberately caused by the seller (*dolus*).

If it is not possible to determine precisely the extent of the damage caused by each party, the Environmental General Act (*Act 25,675*) establishes joint and several liability of the seller and the buyer, irrespective of any potential right of recovery between the parties.

Retention of liability after disposal

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

The seller is liable for any damage caused to the real estate property, up to the date the property is legally transferred to the buyer (however, see *Question 4*).

However, the seller is responsible for hidden defects in the real estate property, if both of the following applies (*Civil Code*):

- The defects are relevant.
- The buyer claims for the damage within three months from the date it becomes aware of the defect(s) and the defect(s) has not been duly declared by the seller at the purchase contract.

The parties can set out who will be liable for hidden defects in the purchase contract. However, the seller retains liability for environmental damage from any hazardous waste it created, as it is responsible for managing that hazardous waste from the moment it is created until its final disposal.

Seller and buyer costs

16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

Buyer's costs

The buyer usually pays:

- The costs of the title search carried out by the notary public.
- Fees to the notary public (since the notary public is usually appointed by the buyer) which typically vary from 0.8% to 1% of the value of the property.
- 50% of the stamp tax.
- Between 1% and 5%, as agreed in each case, of the price paid as commission to the relevant real estate brokers. Purchases of urban real estate property are generally subject to a commission of between 1.5% and 3%, while commission on rural estate purchases may vary between 1% and 2%.

Seller's costs

The seller usually pays:

- 50% of the stamp tax.
- Between 1% and 5%, as agreed in each case, of the price paid as commission to the real estate brokers.
- The cost of the certificates of title to the real estate property, and the certificates reflecting that there are no restraining orders preventing the owner from disposing of the property.
- Taxes, fees and services to be paid in relation to the property.

However, the parties can decide on their share of the above costs.

Real estate taxes and mitigation

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate?

VAT is generally not payable on the sale of real estate property.

However, VAT may be payable on improvements made by construction companies to the owned real estate properties when the property is sold. In these circumstances, the taxable base (that is, the amount that is subject to tax) is determined by the agreed value of the improvements, as provided in the purchase agreement (provided the agreed value is not lower than the increase in the fiscal value of the property due to the improvement or its proportional cost). The general applicable VAT rate is 21%, although improvements for housing purposes are levied at a 10.5% rate.

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase and who pays?

Stamp tax is payable on any sale or purchase agreement that bears the signature of both parties, at the rate specified by the province.

Parties can be legally exempt from stamp tax by structuring the purchase as an individual offer (usually executed by the seller) with a corresponding letter of acceptance. These documents must be:

- Separate from each other.
- Only signed by the corresponding party.

The taxable base is the total value of the transaction as set out in the purchase agreement. The applicable rate varies (usually about 3% of the purchase price) depending on the province.

Local tax authorities can claim the total stamp tax due from either party to the transaction. However, it is customary for each party to simply pay 50% of the due stamp tax (*see Question 16*).

To pay the applicable tax, a tax return must be filed. The payment term depends on the relevant province, usually ranging from ten to 20 working days.

Subject to certain limitations, the purchase agreement for a family's only residence is exempt from stamp tax in some provinces.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

The most common methods used to mitigate tax liabilities when acquiring a real estate portfolio are:

- To fulfill the procedure outlined in Act 11,867 on the transfer of going concerns. This procedure involves a notification to the tax authority.
- The creation of an escrow account to cover any potential tax liabilities. The buyer usually requests an indemnity letter from the seller.
- For the buyer to request from the seller an indemnity letter against potential tax claims.
- Holding business premises.

Holding business premises

Climate change targets

20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

There are currently no targets to reduce greenhouse gas emissions from buildings.

However in:

- 2003: The Province of Buenos Aires enacted Act 13,059 to implement an energy efficient system for insulating buildings (although the regulatory details of this law are not yet defined).
- 2013: The City of Buenos Aires enacted Act 4,428 to introduce tax benefits to those buildings with green areas on the roof or terrace.
- 2013: A draft law was passed in the legislature of the city of Buenos Aires which would force buildings with at least six floors to have their own power unit.
- 2013: A draft law was passed in the legislature of the city of Buenos Aires which promotes sustainable construction. The Bill is currently being analysed.

Third party outsourcing

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties through outsourcing transactions?

Companies usually hire real estate brokers and advisers to manage their real estate portfolios and their accommodation needs.

Restrictions on foreign ownership or occupation

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

Rural land ownership by foreign persons

In December 2012, the National Congress enacted Law No. 26,737, which sets out the protection regime of the national domain over the property, possession or control of rural land in Argentina (Protection Regime). The Law was further regulated on 29 February 2012, by Regulatory Decree No. 274/2012.

The Protection Regime considers as foreign ownership any purchase, transfer, assignment of possession rights of rural lands, to be made in favour of "foreign persons". Foreign persons are defined to include foreign individuals and legal entities controlled by foreign capital, subject to certain requirements set out under the Law. Some specific exceptions for foreign persons are provided (for instance, for foreign persons with ten years of continuous, permanent and verified residence in Argentina).

As from the effective date of the Law (5 January 2012), any purchase, transfer or assignment of possession rights of rural lands in favour of foreign persons must be previously authorised by the Argentine Registry of Rural Land.

The principal restrictions under the Law are that:

- Foreign persons (physical or legal) cannot own or possess more than 15% of the rural lands in Argentina.
- Foreign persons (physical or legal) of the same nationality cannot own or possess more than 30% of those 15%.
- Foreign persons (physical or legal) can own only up to 1000 hectares in the "nucleus area" (as defined under Decree No. 274/2012) or the "equivalent surface" in Argentina.
- Foreign persons (physical or legal) cannot own or possess rural lands containing, or bordering, large and permanent bodies of water, unless specifically authorised.
- Foreign individuals or legal entities cannot own or possess rural lands which are located in border security zones, unless specifically authorised (*see below, Authorisations required for border areas*).

According to the Law, all acts executed in violation of the Law are absolutely and irrevocably null and void, and create no right of indemnification in favour of the authors and participants of the illegal act.

The Law also provides that the Argentine Registry of Rural Land is empowered to initiate administrative proceedings to investigate possible breaches of the Law. The results of the investigation must be notified to the potential violator, following which it will have ten business days to collect and submit evidence. The National Director of the National Register of Rural Land will analyse the incident, and apply the penalty which it deems appropriate (if any). The penalties vary between warnings, fines and special disqualification orders from six months to two years.

Authorisations required for border areas

The purchase of real estate property by foreign persons in frontier security zones (that is, zones that are between 150 kilometres from terrestrial borders and 50 kilometres from shorelines) is subject to prior and special authorisation issued by the National Commission for Security Zones.

Corporate law considerations

To become a shareholder of an Argentine company, foreign companies must:

- Register with the competent Argentine Public Registry of Commerce.
- Demonstrate that the foreign company:
 - performs its main activity outside Argentina;
 - holds sufficient assets outside Argentina;
 - has decided, at board level, to register the company in Argentina; and
 - provides details about its shareholders.

In addition, if a foreign company develops habitual business in Argentina, it must either (*section 123, Business Association Act*):

- Register a branch in Argentina.
- Establish a local subsidiary.

Issues on change of control

23. Does change of control of a company affect its holdings of real estate?

A company's change of control does not affect its holdings of real estate, except in the case of foreign shareholding (in relation to rural land, see *Question 22, Rural land ownership by foreign persons*). Foreign-controlled local companies in frontier security zones are considered to be foreign companies.

Compulsory purchases

24. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

The National Constitution (Constitution) empowers the government to compulsorily purchase real estate for public use (*Article 17, Constitution*):

- In certain circumstances provided by law, and with prior express approval of Congress.
- If compensation is paid.

Public use comprises any activity for public welfare (for example, construction of a new highway) (*National Expropriation Act (Act 21,499) (Expropriation Act)*).

The following steps are taken during a compulsory purchase:

- A declaration of public use by law.
- The filing of expropriation judicial proceedings.
- A price appraisal of the property determined previously by a court.
- A court order for the expropriation and determining the amount of compensation.
- The property being taken from the owner after payment of the compensation.

Compensation must be determined by a court order which takes into consideration the value of the real estate property when both the:

- Property is taken.
- Compensation is actually paid.

The compensation must reflect both (*Expropriation Act*):

- The market value of the real estate property.
- Any damages that are a direct consequence of the expropriation (that is, the compulsory purchase).

However, any type of compensation that could be a product of lost profits is excluded from the calculation of compensation (*Expropriation Act*).

Municipal taxes

25. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Business premises can be subject to several municipal contributions, which vary according to the province in which the business is located.

The main contribution levied on business premises is the inspection of security and hygiene contribution. This is usually calculated by applying a fixed rate on the company's gross income. The rate is usually 0.5%.

Business premises may also pay other contributions, depending on their commercial activity and location. These contributions include the:

- Contribution for lighting, sweeping and cleaning of streets.
- Contribution for publicity and propaganda made.

Real estate finance

26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

Acquisitions of large real estate portfolios or companies holding real estate are generally financed with equity. It is common for small groups of investors to collectively create trusts for financing the acquisition of large real estate portfolios.

27. How is real estate commonly used to raise finance?

It is uncommon to use real estate to raise finance. However, it is possible for real estate to be used as a collateral guarantee for the receiving of finance.

28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

Finance is generally acquired in residential and office construction projects using a guarantee trust, in which the real estate is transferred to a trustee. These trusts are generally created by a property developer, who may later become trustor or trustee.

Investors assume a role of both a:

- Trustor, by providing the necessary funds for the construction.
- Beneficiary, by being entitled to either receive a unit (such as an apartment, a lot, and so on) at the end of the project, or receive revenue from the project.

29. Is real estate securitisation common in your jurisdiction?

Real estate securitisation is not common in Argentina.

Real estate leases

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable?

Parties cannot agree to set aside the provisions of the Urban Leases Act, which regulates contractual lease provisions (such as minimum and maximum terms).

31. What are the formal legal requirements to execute a lease?

Since a lease is a private agreement, it can be executed without any specific requirements, except that the lease agreement must be in writing and duly signed.

Rent levels and reviews

32. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?

The following are prohibited, whatever the cause:

- Currency updates of the rent.
- Price indexation (that is, a normalised average price for a given class of goods or services, during a certain amount of time. The index measures the economy's price level or the cost of living).
- Costs variation.
- Debt restatement.

The effect of inflation is usually mitigated in real estate business contracts, mainly through the following mechanisms:

- Price escalation clauses in leases.
- Price variation according to the cost of the lease.

These rules are based on the use and custom of the local real estate market and have been supported by local courts.

VAT is payable on real estate leases at a rate of 21%. In some cases, VAT may be subject to certain exemptions in relation to residential, agricultural and governmental uses.

Length of term and security of occupation

33. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

Urban leases have a minimum term of:

- Two years, if leased for residential purposes.
- Three years, if leased for commercial purposes.

In both cases, the maximum term is ten years. Parties cannot agree to lease terms shorter than the minimum or longer than the maximum.

Unless expressly agreed, the tenant cannot renew the term of the lease at its termination.

Restrictions on disposal

34. What restrictions typically apply to the disposal of the lease by the tenant?

In both rural and residential leases, it is often expressly agreed that, without the express written agreement of the landlord, the tenant cannot:

- Sublet the real estate property.
- Assign its rights under the lease agreement.

In the absence of this agreement, the tenant can sublease the real estate.

Use of premises within a corporate group

35. Can tenants usually share their business premises with companies in the same corporate group?

If the real estate is leased to a well known company (that is, a company with a known brand, track record and commercial activity) for business purposes, it is usual to allow the tenant to sublease or assign the agreement in favour of companies of the same corporate group, but the original lessee remains the tenant under the lease as guarantor of the sublease or assignment.

Repair and insurance responsibilities

36. Who is usually responsible for keeping the leased premises in good repair?

The tenant is required to make general repairs as necessary for the regular use of the real estate property. However, it is generally understood that the owner pays for extraordinary repairs (that is, repairs which go beyond the necessary repairs for regular use of the property). There is an exception to this principle when the repairs are due to the tenant's fault or negligence. In these circumstances, the tenant must pay these costs.

Improvements to the real estate cannot be made without the express agreement of the landlord.

37. Who is usually responsible for insuring the leased premises?

The lessee (tenant) is usually responsible for obtaining general fire and civil liability insurance (covering damages that might occur in the leased real estate). The lessor (landlord) is nominated as the beneficiary of those insurance policies (unless something else has been agreed in the purchase agreement).

Grounds for termination

38. On what grounds can the landlord usually terminate the lease? Can the tenant terminate the lease in certain circumstances?

Both the landlord and the tenant can terminate the lease in the following circumstances:

- An act of force majeure.
- Total eviction from the real estate.
- Partial eviction from the real estate (that is, an eviction resulting from the landlord depriving the tenant of use of a portion of the leased premises).
- In accordance with an express clause setting out when the lease can be terminated.

Landlord

The landlord can terminate the lease due to:

- Non-payment of rents (if this has been agreed in the lease agreement).
- Performance of harmful works or unauthorised improvements to the premises.
- Changes to the agreed use.
- Abandonment of, or damage to, the real estate.

Tenant

The tenant can terminate the lease due to:

- A unilateral decision to terminate the agreement (paying a fee that will vary on termination, and after six months of the lease have elapsed).
- Existing defects in the real estate that hinder its use.

Tenant's insolvency

39. What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

The Reorganisation and Bankruptcy Act (*Act 24,522*) (Bankruptcy Act) refers to preventive and bankruptcy proceedings, among others, in relation to both physical persons and companies. Under the Bankruptcy Act, insolvency rules are mandatory and therefore cannot be modified by agreement between the parties.

Preventive proceedings

There is no specific regulation established by law. Therefore preventive proceedings (that is, proceedings foreseen in the Bankruptcy Act to avoid the bankruptcy of the debtor) are subject to general bankruptcy rules. Under these rules, the preventative proceedings can continue after the filing of bankruptcy proceedings until the declaration of the tenant's bankruptcy, if the tenant requests this within a certain time. In this case, the debtor tenant will continue performing his obligations under the lease agreement.

Tenant's bankruptcy

If the real estate is for commercial use, the lease agreement is suspended on the tenant's bankruptcy until the judge makes a final order (unless the judge orders the immediate continuation of the lease after the bankruptcy). The landlord must appear before the bankruptcy judge and state his desire to continue or terminate the agreement. If the court does not make a decision within a certain term established by law, the lease will terminate.

Planning law

40. What authorities regulate planning control and which legislation applies?

The authorities responsible for planning control vary depending on the:

- Province in which the real estate is located.
- Urban distribution (that is, guidelines to be followed for city planning).

The municipalities (that is, locally elected governing bodies) are generally responsible for controlling and regulating the construction. The following are the most significant rules for construction and planning:

- Urban Planning Code.
- Building Codes.
- Authorisation Code.

- Environmental Impact Act.
- Internal regulations.

41. What planning consents are required and for which types of development?

The following planning consents are required:

- Use Certificate, approved (180-day duration).
- Conditional Use Certificate (365-day duration).
- Other authorisations specific to the activity involved.

In addition, real estate developments require an Environmental Aptitude Certificate which:

- Determines whether or not to carry out the plan, programme or project.
- Sets the conditions to be performed to protect the environment and natural resources (if the plan, programme or project is to be carried out).

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

In relation to initial planning consents, the main authorisation and consultation procedures are overseen by:

- General Management of Works Control and Cadastre (*Dirección General de Fiscalización de Obras y Catastro*).
- General Management of Authorisations and Permits (*Dirección General de Habilitación y Permisos*).

The Environmental Aptitude Certificate is a required initial consent (*see Question 41*).

Third party rights

Third parties can take legal action to stop a project, by filing precautionary measures. Interested and/or potentially affected parties can file complaints if the project may eventually affect their rights or the rights of the community in general. The courts resolve these matters on a case by case basis.

Public inquiries

After analysing and concluding that the activities, projects, programmes or enterprises have a significant environmental effect, the government must convene a public hearing within ten working days (*Environmental Impact Act*).

Initial decision

From the moment the application is received, the Environmental Aptitude Certificate takes about 180 days to be issued.

Appeals

There is a right of appeal against planning decisions, but there is no specific appeal system under the Environmental Impact Act. Planning decisions can thus be appealed through standard administrative proceedings (*Administrative and Tributary Litigious Code of the City of Buenos Aires*).

Reform

43. Are there any proposals to reform real estate law in your jurisdiction?

A draft bill of the Civil Code was filed in 2012. At present, the Congress' Bicameral Commission for the Updating and Unification of the Civil and Commercial Codes are still analysing the new draft code. It is expected that a unified final version will be issued in the coming months. Under the new bill all real estate projects will be unified under the Horizontal Property Act and the purchase agreement will be sufficient documentation to oppose third parties. There are currently several proposals in the House of Representatives to modify the Horizontal Property Act. See also *Question 20* for reforms in the areas of energy efficiency and sustainable construction.

Real estate organisations

Argentine Real Estate Chamber (*Cámara Inmobiliaria Argentina*)

Main activities. This body was founded in 1980 by a real estate broker, to create an entity that would represent the industry. It has a direct link to the government and helps to preserve the common interest of the sector.

W www.cia.org.ar

Association of Housing Businessmen (*Asociación de Empresarios de la Vivienda*)

Main activities. This institution offers a web service related to the housing sector.

W www.aevivienda.org.ar

Argentine Construction Chamber (*Cámara Argentina de la Construcción*)

Main activities. This institution offers a web service related to the construction sector.

W www.camarco.org.ar

Ministry of Social Development and Environment - Secretariat of Environment and Sustainable Development (*Ministerio de Desarrollo Social y Medio Ambiente - Secretaría de Ambiente y Desarrollo Sustentable*)

Main activities. This body regulates environmental issues.

W www.desarrollosocial.gov.ar

Undersecretariat of Urban Development and Housing (*Subsecretariade Desarrollo Urbano y Vivienda*)

Main activities. This body assists urban construction projects, including supervision and co-ordination. It participates in the development of construction projects and the commitment to develop urban and housing programmes in public, national and provincial areas.

W www.vivienda.gov.ar

Online resources

W www.infoleg.gov.ar

Description. This is an official website of the Ministry of Economy and Finance where up-to-date original language text of legislation can be obtained.

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