



## **ISSUES IN OWNERSHIP OF REAL ESTATE**

### **BRAZIL**

#### **Demarest e Almeida**

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- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Yes, fee simple property ownership is permitted in Brazil.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

Except with regard to transfer of title by certain corporate acts, which may be directly annotated with the Real Estate Registrar, Brazilian law requires that ownership to real estate is performed through the execution and registration, by the parties, of a public deed.

However, it is very common in Brazil that the parties adjust that the payment will be done in installments and, therefore, prior to the execution of the public deed, the parties use to execute a private agreement through which both parties commit to sell and purchase the real estate, and upon payment of the last installment, the public deed is executed and presented for registration before the Real Estate Registrar.

**3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Brazil real property title is handled through a “Registered Land” system. The acquisition and transfer of a real estate property is perfected by means of possession of the property and recordation of the title with the competent Real Estate Registry Office. The Real Estate Registry Offices maintain a record of all transactions registered involving a certain property. Title search may be conducted upon request to the Real Estate Registry Office of the jurisdiction the property is recorded before entering into real estate transactions, by any interested party.

**4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Currently, there is no title insurance in Brazil.

**5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?**

Limited liability companies ("Sociedade por Quotas de Responsabilidade Limitada") and corporations are the most common forms of entities used.

**6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?**

Federal Law n. 8668/93 provides for Real Estate Investment Funds (*Fundos de Investimento Imobiliário* - the "REIF"), which are non-corporate vehicles, investing most of their equities in real state assets or related rights. They are close-end funds that issue negotiable shares representing the assets thereof, listed either on stock exchanges or over-the-counter markets.

The management of REIF is entrusted to a financial institution duly authorized by CVM (Brazilian SEC), which holds the assets and rights on a fiduciary basis on behalf of the REIF's shareholders, which means that such assets and rights are to be kept separated from the administrator institution's own assets. The funding of the transactions is made by means of the issuance by the REIF of shares representing the real estate and its gains and earnings.

The offering of the shares issued by a REIF requires the registration of the REIF as well as the offering of shares with the CVM, according to CVM Regulation n. 205/94, as amended.

Setting-up a REIF takes approximately 60 to 90 days, comprising registration with the CVM and listing on the stock exchange or the over-the-counter market entity.

**7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?**

Any transfer of interest in real estate is subject, upon being recorded, to a transfer tax (ITBI) on the value of the property represented by the corresponding transfer document, which may be a deed or a private agreement (see answer to question 2 above). The ITBI is a Municipal Tax thus being ruled by each municipality and its respective regulations may contain exemptions to transfer tax liability. Such exemptions are availed of presenting a transfer tax affidavit to the Real Estate Registry Office together with the request for recording the deed.

**8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

The transfer tax referred to above may also be applicable to certain transfers of an interest in an entity which owns real estate.

**9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

Although subject to non significant variations, most Brazilian Municipalities levy a tax of two (2) percent of the value of the property which is declared in the deed. This amount is paid by the buyer, unless the parties agree otherwise.

**10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

No.