



ISSUES IN OWNERSHIP OF REAL ESTATE

Luxembourg Bonn Schmitt Steichen

CONTACT INFORMATION

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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?

Luxembourg law does not know the common law concept of “fee simple ownership”. However, full and absolute property of real estate is possible under Luxembourg law, and entails the right to use the property (*Usus*), to collect the incomes generated by the property (*Fructus*), and to dispose of it (*Abusus*). The property right is protected by the Constitution. Restrictions of the property right are limited and entail for example expropriation by the government for serious public interest grounds.

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

Property of real estate may be transferred for example by inheritance, donation, or by sale/purchase. Sale/purchase or donation of real estate must be made by public deed (*i.e.* before a notary), and the transfer must be registered with the *Administration de l’Enregistrement et des Domaines*.

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

Ownership of real property is recorded and may be searched at the *Administration du Cadastre et de la Topographie* (the land register). This administration delivers on request

several kind of information/excerpts related to real estate property, such as the exact location and extent, the identity of former and current owners, the year of construction, surveying plans and topographical plans.

Search of real estate property related information is generally performed by notaries and real estate agents. However, the register is public and therefore, any person may apply for documents/information.

In order to verify whether a property is mortgaged, it must be referred to the *Administration de l'Enregistrement et des Domaines*. This search may only be performed with the exact name and date of birth of the last known owner, and with the cadastral references. As indicated above, this information is available at the *Administration du Cadastre et de la Topographie* (the land register).

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?

There is no title insurance system available in Luxembourg. Purchasers normally rely on the notary perfecting the purchase deed, who is responsible for checking ownership of real property at the land register (see question 3 above), and whose professional liability may be triggered in case of fault.

Notary fees must be borne by the buyer.

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?

In Luxembourg, real estate investments may be vehicled by real estate funds. Investment in real estate may include (i) direct investment in real property; (ii) share ownership of real estate companies whose exclusive object must be the acquisition, sale and leasing of their real property, assuming that such participations are at least as realisable as those real estate interests held directly by such funds; (iii) and various long term real estate related interests such as rights to ground rents, long term leases, and option rights over real estate investment.

Real estate funds must diversify their investments to an extent that an adequate spread of the investment risks is assured.

The prospectus describing the fund must contain a detailed description of the investment risks relating to the fund's investment policy and must provide details of the type of commissions, expenses and charges to be borne by the fund, and how they are calculated and charged.

Besides real estate funds, commercial companies, such as public limited companies (*société anonyme*) and limited liability companies (*société à responsabilité limitée*), as well as civil companies (*société civile immobilière*) are usually used to own, manage, and transfer real estate.

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

Luxembourg law does not provide for specific regulation on real estate investment trusts (REIT) so far. Nevertheless, trusts are recognised in Luxembourg; the law of 27 July 2003 has implemented the Hague Trust convention.

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

Registration tax (*droit d'enregistrement*) varying between 6 and 7,2 % is levied on buyers regarding transfers of property of real estate. However, conditional upon self occupation of the property for 5 years at least, registration tax may be significantly reduced for Luxembourg residents.

Notary fees and stamp duties are due by the buyer.

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?

In Luxembourg, no such taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own 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?

In general, regulation and taxation of real estate is low in Luxembourg, and stable throughout political subdivisions.

Transfer of property by sale/purchase is submitted to registration tax and notary fees. Under certain conditions, registration tax may be significantly reduced for Luxembourg residents (see question 8).

Transfer of property by inheritance is submitted to inheritance taxes which vary depending on the relation between the deceased and the heir. Inheritance from ascendants to descendants, or between spouses having common children are exempt from inheritance taxes. Maximum inheritance rate (applicable between strangers, *i.e.* persons without family bonds) is 15 %.

Due to an important increase of property prices in Luxembourg over the last 15 years, tax measures have been taken to reduce speculation regarding real estate.

Land tax (*impôt foncier*) is due on an annual basis. The applicable rate is fixed by the municipality where the property is located, and depends on the value of the property. Rates are usually low.

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

The information available at the *Administration du Cadastre et de la Topographie* relates to the direct, registered owner of a property. Where the registered owner is a legal entity, only the identity of this entity is usually indicated. There is no requirement to disclose the identity of the shareholders/beneficial owners.