

GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

**Iason Skouzos + Partners
Law Firm**

LIMITED LIABILITY COMPANY, L.T.D. (E.P.E.)

ACQUISITION & OCCUPATION
OF REAL ESTATE

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OF REAL ESTATE
Costs, evaluation & taxation

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TAXATION OF INDIVIDUALS



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■ REAL ESTATE



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INVEST
IN GREECE
AGENCY

ACQUISITION & OCCUPATION OF REAL ESTATE

Basic legal framework, property rights, procedural issues of acquisition, restrictions

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The basic legal framework governing real rights in immovable property.

The right to property, as a fundamental right, is under the protection of the State, as provided in the Greek Constitution, Article 17, whereas it is stipulated that property rights cannot be exercised against the public interest.

Within this context, the Constitution imposes a restriction or deprivation of property (expropriation) for the sake of public interest, always under the prerequisite of a prior compensation of the owner.

Furthermore, the most significant source of property law lies in the third book of the Civil Code (articles 947-1345). Other provisions and property law rules exist in other books of the Civil Code, and the Code of Civil Procedure, as well as in various special laws.

The rights in real estate

Real property rights, i.e. rights which provide to the beneficiary direct and absolute power, are the ownership (article of C.C 999), the servitudes (articles of C.C 1118) and the mortgage (article of C.C 1257). Furthermore, the following distinctions are also met:

- the full ownership, which constitutes a universal real right. It may be absolute (100% ownership of the property) or a joint ownership (ownership belonging to two or more persons, i.e. the joint owners).
- the bare ownership, which is a limited real right and constitutes a part of full ownership, as the bare owner lacks the advantages of the usufruct, which means he cannot use or exploit his property. Usufruct, if not otherwise determined, is inactivated when the usufructuary dies. Following the death or resignation of the usufructuary, usufruct is unified with bare ownership and the bare owner becomes full owner of the property.
- the usufruct, which is a personal servitude and constitutes also a part of full ownership. The usufructuary may use and derive benefit from the property that belongs to the bare owner. However, the usufructuary must preserve the property intact, i.e. he cannot alter the property's shape, form, size, etc, although he is not responsible for any deterioration or wear due to natural causes. Usufruct is constituted with a legal act while the person is alive, or in the event of death, or due to ordinary or extraordinary usucaption.
- The right of habitation, which is a personal servitude and consists of the right of residence in the property belonging to another, until the time of death of the beneficiary.
- The easements, which consist of a limited real right that belongs to the current owner of a specific property (dominant estate), in order that the latter is served at the expense of another property (servient estate).
- The mortgage, which is a limited real right that provides the beneficiary with the power to claim his preferential satisfaction from the value of the property that is burdened by mortgage. It must be conceptually and practically distinguished from a pre-notice of a mortgage, which is a mortgage by legal title, that is subject to the suspensive condition of final adjudication of the secured claim to the creditor and the switch into a mortgage within ninety (90) days from the fulfillment of the condition. Only when the mortgagee's claim has been finally adjudicated, the current pre-notice of a mortgage can be turned into a mortgage.

Division of real property

Properties may be divided into the following ways; the above real property rights apply to all of them.

a) horizontal property (applicable mainly to apartment buildings).

It is a form of divided ownership. It applies when there is ownership of a separate part of the building (e.g. a building floor or parts of a floor – apartment). Horizontal ownership includes obligatory joint ownership of the common areas of the whole building, such as the plot, the staircase etc. Horizontal ownership is constituted with a notarial constitution act or a court decision. In such a case, the separate parts/independent properties bear a per thousand rate (1/1000) of joint ownership on the plot.

b) simple – vertical property.

It is a type of divided property. It describes the different ownerships/properties on separate buildings (or parts of these buildings) that were constructed on a single land plot (field, ground). From 1992 and on, this type of property is applicable only for plots included in the urban plan (article 6 par. 2 of Law 2052/1992).

c) complex – vertical property.

When the buildings that exist (or are under construction) on one single plot are also divided horizontally in floors, apartments, etc. Each co-proprietor is both owner of a floor or an apartment in one of the separate buildings and joint owner of a percentage on the whole plot and the other commonly owned and used things.

The most common ways of acquiring ownership of property in Greece.

The following ways of acquiring property are the most common under Greek Law:

1) acquisition by contract, i.e. a written agreement between the owner and the buyer on the transfer of ownership from a legitimate source, that must be made before a notary and be recorded (or registered).

2) acquisition by virtue of succession, whether testate or intestate,

3) acquisition by gift or by parental grant,

4) acquisition of property by auction, i.e. by act of compulsory enforcement, brought against the debtor's property, where the ownership of property is finally acquired by the highest-bidder.

5) acquisition by the person who, in good faith, is in possession with legal title of a property for a decade (regular or ordinary usucaption),

6) acquisition by the person who is in possession of the property for twenty years (extraordinary usucaption).

7) acquisition of title by annexation of a land's part to the adjacent land, i.e. the removal of property from an individual or legal entity and the administration to another by an act of authority (cases of such annexation are the settlement of land, the expropriation and the redistribution).

8) acquisition of property by adjudication, i.e. the award of property with a formative Court order (cases of adjudication are the distribution, the regulation limits and building to adjacent properties).

9) acquisition of property by the system of so called "consideration" (antiparochi), that counts more than half a century of life in Greece and has been linked mainly to the phase of intensive building in major cities during the decades of 70' and 80'.

By signing the contract of "consideration" (construction contract) between the land owner and the contractor, the first undertakes to transfer a certain share (percentage) of an undivided land (co-ownership), along with part of the individual properties to be built, to the contractor, who undertakes to construct the building. In practice, this system gives the opportunity to owners of plots to construct buildings with the help of a constructor who instead of money gets apartments in the building.

City-planning and environmental limitations in real estate property.

The Constitution of Greece in Article 24 provides for special preventive or repressive measures, in order to preserve the natural and cultural environment.

In particular, special reference is made to the protection of forests, the master planning of the country, the arrangement, the development, the urbanization and the expansion of towns and residential areas, as well as at the protection of traditional sites and monuments. Within the above mentioned protection, transfer of ownership and granting of limited real rights in real estate property may be prohibited, limited or subject to a special permit of the Authorities, under special laws.

Such restrictions and prohibitions are found mainly in the following cases:

Border Areas

By combination of articles 25 par. 1 and 26 par. 2 of Law 1892/1990, as amended by article 114 of Law 3978/2011, the acquisition of real rights in regions of Greek territory designated as border areas, is permitted to individuals and legal entities that are Greek or have their citizenship or place of business within the Member States of the European Union and the European Free Trade Association without any limitations, as well as to third countries nationals but under the prerequisite of a prior authorization by the Greek state. According to article 24 of Law 1892/1990, as amended by article 114 par.1 of Law 3978/2011, as border areas are defined the former counties of Dodecanese, Evros, Thesprotia, Kastoria, Kilkis, Lesbos, Xanthi, Preveza, Rodopi, Samos, Florina, and Chios, the islands Thira and Skyros, the former provinces of Nevrokopi of the former county of Drama, Pogoni and Konitsa of the former county of Ioannina, Almopia and Edessa of the former county of Pella and Sintiki of the former county of Serres. With a Presidential Decree, that is issued following a proposal of the ministers of Foreign Affairs, Finance, National Defense, National Economy Competitiveness and Maritime Affairs, Protection of the Citizen, and Agricultural Development and Food, the classification of one of the above areas as border area may be waived. With a similar Presidential Decree, other areas may be also classified as border areas. Furthermore, according to article 28 of Law 1892/1990, as recently amended by Law 4061/2012 and Law 4126/2013, for the acquisition of real or contractual rights *inter vivos* by individuals or corporate entities in private islands or islets, as well as for the acquisition of real estate in private islands or islets, wherever they are situated, a permission of the Minister of National Defense is required, which is granted following an approval of all the General Staffs. As far as public islets are concerned, their ownership cannot be transferred, but the option of their lease is possible, under the above mentioned conditions. Any other matter related to the issuance of the above permission is regulated by joint decision of the Ministers of National Defense and of Public Order and Citizen Protection. Any failure to meet the above conditions implies the invalidity of the relevant transaction, according to article 174 of the Civil Code. The application for granting of the permission is submitted by the interested party to the Minister of National Defense. In case of acquisition of real rights in the area, the issuance of a certificate from the competent Real Estate Service (Ktimatiki Ypiresia) is required, certifying that the State does not preserve any ownership rights on the area.

Forest Areas

The Constitution in article 24 par. 1 prohibits the alteration of use of forests, except where rural development or other uses imposed for the public interest prevail for the benefit of the national economy. Furthermore, in accordance with articles 35 and 72 of Law 998/1979, it is provided that private forests or forest areas or parts thereof that were destroyed by fire, cannot be transferred by segmentation or by fractional with a transaction *inter vivos* for a period of thirty (30) years of their destruction, while for the owners of private forests and forest areas bigger than fifty (50) acres that they want to convey to others by sale, it is established a right of preference of the Greek State to acquire them on equal terms.

City-planning restrictions

Under articles 24 par. 2 and 3 of the Constitution, the master planning of the country, and the arrangement, the development, the urbanization and the expansion of towns shall be under the

regulatory authority and the control of the State, in the aim of serving the functionality and the development of settlements and of securing the best possible living conditions.

To designate an area as residential and enable the city-planning, the properties included therein must participate, without compensation, at the disposal of land necessary for the creation of roads, squares and spaces for charitable purposes, as well as at the expenditure for the implementation of key public urban projects, as required by law.

By combination of articles 6 par. 1 of Law N.651/1977, 3 par. 1 of Law of Emergency 625/1968 and 2 par.1 of Law Decree 690/1948 it is provided that the transfer of ownership of land in order to create non integral plots is prohibited.

Archaeological Sites

The Constitution, in Article 24, par. 6, provides that monuments, traditional areas and historic elements are protected by the State. The necessary measures to be taken for the restriction of private property in order to realize the above purpose, as well as the nature and the method of compensation of private owners, are set by Law.

To permit construction in cities (municipalities) or villages (communes) or rural areas, that have been designated as sites of archaeological interest or that are located near archaeological or ancient monuments, a written consent of the archaeological service is required, after a survey is carried out.

In case of an impediment, or of a building of over 250 sq.m or of height of more than two floors, the case is referred by recommendation of Antiquities at the local Council of monuments . If the opinion of this Council is negative, the interested party has the right to object against it.

Environmental Restrictions

The Constitution provides that the protection of natural and cultural environment constitutes a duty of the State (Article 24 par. 1). For this purpose, the State has an obligation to take special preventive or repressive measures in the context of the “principle of sustainable development”. Law 4014/2011 provides a special status of environmental licensing of projects and activities, including the constructions and operations that may have an impact on the environment. Also, in accordance with Laws 3661/2008, 3851/2010 and 3889/2010, as from year 2011, the issuance of the Energy Performance Certificate for all buildings, which are used for residence (permanent or holiday), offices, commercial purposes, etc. is required, with several exceptions provided. The issue of this certificate is mandatory for all new buildings or for buildings that are being totally renovated and is required before the property can be leased or transferred.

Protection of the coast and beaches

In Law 2971/2001, it is provided that the coast and the beaches are properties of common use, that belong to the State, which is responsible for their protection and management, as the main destination of these zones is the unimpeded access to them.

For this reason, it is expressly provided that the construction of buildings and other structures on the coast and the beaches is not allowed, except for the pursuit of objectives related to public interest, environmental and cultural purposes.

The same law provides that if individuals claim ownership rights in areas designated as belonging on the coast, then those rights are necessarily expropriated in favor of the State.

In the same spirit, all kinds of buildings that have been constructed or erected without a permit on the coast or on the beaches, after the determination of the above-mentioned expropriation, are demolished, regardless of time of their construction or their real usage.

The recordation of the transfer of ownership and other real estate transactions.

The recordation, i.e. the inclusion in public records, kept by public officials, of acts of any change of the real property ownership rights, ensures the compliance with the publicity of the property relations, as well as the protection of transactions.

According to article 1192 of Civil Code, the acts that must be recorded are the following: 1) the inter vivos transactions, including donations causa mortis, by which a real right on a property is established, transferred or abolished, 2) the adjudications or the annexations by the authorities or the award of ownership or other real rights on the property, 3) the judicial distribution of a property, 4) the final court decisions, that include sentence to a statement of will as far as a real right transaction is concerned and 5) the final court decisions that acknowledge ownership or other real right on a property, acquired by extraordinary adverse possession –usucaption. The Civil Code also provides for the recordation of the act of the inheritance acceptance, when a property or a real right is involved, as well as for the recordation of the property leases for a period longer than nine (9) years (articles 1193 and 1208 of C.C).

Non recordation of the above mentioned acts of articles 1192 and 1193 of C.C has as a result the non transfer of the property's ownership, and the non establishment or abolishment of any other real right.

Mortgages are not recorded, but are registered in special Books of Mortgages.

There are two different recordation systems in Greece, the system of Land Registry Office ("Ypothikofylakeio") and the system of Hellenic National Land Registry (cadastre, "ktimatologio"). Their main difference, which leads undoubtedly to the supremacy of the second system is that the first system is based on registrations on individuals, while the second system, is based on listings on real estate, which facilitates the direct control of the legal status of a property and creates a greater certainty and transparency at the trading transactions.

In Greece, currently both of systems operate in parallel, but the purpose of the State is to abolish the system of transfers and mortgages of Land Registry Offices and replace it by the centralized system of Hellenic National Land Registry (cadastre). The cadastral survey has been completed for only certain areas of the territory, while the rest is in progress. For the inclusion in a Cadastral Sheet of an act that has to be transcribed, an application is required, filed at the competent Office of Cadastre.

Along with the application, the following documents must be attached:

- a) the act that has to be transcribed at the cadastral sheets,
- b) the summary of the aforementioned act
- c) Documents proving the legalization of the person signing the application and
- d) the official extract of the cadastral diagram.

After the payment of the transcription fees, all applications are registered on the same day in the calendar of the cadastre, followed by registration in the cadastral books in chronological order of submission.

The process and costs of obtaining a property by transfer in Greece.

The procedure of a property acquisition usually has the following steps:

1. Finding of the property, with the possible contribution of an estate agent. Law 4072/2012 in its articles 197-204 introduced various changes to the rules governing the exercise of broker activity in Greece. More specifically, article 198 provides for several conditions to the practice of the profession of an estate agent, while according to article 200 the real estate contract has to be made in writing. The estate agent's fee is not specified by any law, but is freely traded and subject to an agreement (article 200, par.2b). Usually a fee of a percentage of 2% of actual price paid for the property is agreed, but this may vary, depending on property value and other factors.

2. Legal due diligence (title search) of the property.

After finding the property of his choice and before signing any contract, the buyer should assign to a lawyer the complete legal due diligence of the property.

It is noted that the obligation for the presence of a lawyer before the notary applies where the contractual value of the property is above €29.347,03 for the jurisdiction of Athens & Piraeus. For all other jurisdictions the relevant threshold is €11.738,81.

The title search takes place at the Land Registry Office and/or at the Cadastre Office at the property's region and includes the right of the vendor and his predecessors in title (for a time

period of at least 20 years, which is the time of the basic rule of prescription of rights, according to article of C.C 249), and any encumbrances (such as mortgages, pre-notices of a mortgage, foreclosures and court claims) against those persons.

3. Technical survey of the property.

When the property to be transferred is land or lies off the town plan, it is necessary to recruit an engineer, who will check whether the property meets the legal conditions for construction. Also, it is advisable to check the compliance with the new arrangements for settlement of illegal constructions.

4. The property transfer tax return.

Before signing the contract, the buyer or an authorized person has to submit at the competent Tax Office the property transfer tax return, that is drafted by the notary and is signed by both the seller and the buyer. After the transfer tax is paid, the department of Capital of the Tax Office grants a copy of this transfer tax return, that must be attached to the notary's contractual act.

5. The signature and the recordation of the notarial act of property transfer.

The signature of the act of property transfer takes place before a notary, after the collection of necessary legal and appropriate supporting documents, such as an official copy of the building permit, a solemn protestation by the seller, concerning the statement of his property income before the competent tax authorities, a certificate of conformity for payment of Local Authorities taxes, a certificate for the declaration of inheritance tax or gift tax to the competent tax authority, when the property is acquired by virtue of succession or gift, a tax and insurance certificate for the seller, a certificate of payment of the transfer taxes to the competent Tax Authority of the property, an Energy Performance Certificate, etc.

5. The recordation of the transfer title takes places either at the Land Registry Office or at the Hellenic National Land Registry (cadastre) of the region where the property is located, after the submission of the notarial act and a summary of it, along with an application and the payment of the recordation fees. The certificates of recordation of the transfer act are granted within a reasonable period of time.

Illegal constructions – amnesty laws

In Greece, construction of buildings in excess of structural requirements and constraints provided by law, is quite widespread and common. For instance, it is very common that a flat is built in excess of the building permission and, for example, it has an actual surface of 200 sq.m. although the building permission is for 150 sq.m. Also, it is very common that houses or other buildings are constructed with no permission at all. This abnormality is so common, that on the one hand the State loses income related to property ownership and use and on the other hand, if the law was enforced, the demolition of such constructions would create a serious social problem. For this reason and because of the wide request for settlement of these sites, recently the Greek legislator has issued a series of acts for the administrative settlement of planning breaches and exceedances:

a) By Law 3843/2010, it was enacted, upon payment of excise fine, the fit and maintenance for forty (40) years (and not the permanent legitimation, as it was considered to be unconstitutional) of what is referred to as "semi-open" spaces and the spaces in the basement, ground or other level of the building, located within the approved building volume, under the building permit issued or revised until 02.07.2009, that have evolved in areas of principal use, in excess of the conditions and limits of construction of the building and under certain conditions prescribed by the Law, if their use is not prohibited by the city-planning provisions for land use.

b) Moreover, Law 4014/2011 provides the suspension of sanctions for thirty (30) years, after paying a fine, as specified in this law, for buildings of which the main structure has been completed until 28.07.2011 and have been built in excess of either the building permit or the conditions or restrictions of the construction of property or without planning permission at all. These recent enactments give an amnesty to these violations and will allow owners of buildings with illegal constructions to transfer them, lease them etc.

Granting of residence permits to property owners in Greece

According to article 36A of Law 3386/2005, as recently inserted by article 6 of Law 4146/2013, a resident of a third country may be granted with a five year residence permit in Greece, if he has a visa (in cases that it is required) and he possesses either by person or by total participation in a legal entity, real estate property in Greece, of an objective value no less than 250.000€.

The permit is also granted in cases of conclusion of a timeshare lease of Law 1652/1986, or of a lease of hotel accommodation or furnished residencies of Law 4002/2011, for a period of at least 10 years.

The permit is issued following a decision of the General Secratry of Decentralized Administration and it can also cover the members of family of the beneficiary.

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