

Legal Framework

The fundamental principles of Polish law regarding real estate are codified in the Polish Civil Code and supported by a wide range of legislation regulating all special issues regarding in particular transfer of the legal title, development and management of real estate. Case law (rulings of the Supreme Court and courts of appeal) is used for the interpretation of ambiguous regulations.

Titles to Real Estates

The Polish Civil Code distinguishes between several legal institutions that give a title to use and dispose of real estate. The most common are:

- titles to the most extensive rights to the real estate, i.e. the ownership and the perpetual usufruct
- limited property rights to another person's real estate in the scope strictly defined by law including usufruct, easement (servitude) and mortgage
- rights to use another person's real estate arising from a contractual relationship, e.g. lease and tenancy

Ownership

Ownership gives the most extensive legal title to the real property and allows the owner to, in particular (subject to some limitations prescribed by law):

- use the real estate
- collect profits and other revenues,
- encumber the real estate
- freely transfer the ownership to others

Transfer

In order to transfer the ownership of real estate the contract must be concluded in the form of a notarial deed. The notary public will collect stamp duty and a notarial fee.

The ownership is disclosed in the Land and Mortgage Register but the transfer of ownership is effective when an appropriate contract is concluded.

The detailed information regarding the rules of transfer of the ownership of real estate is presented in Section 5.

Perpetual Usufruct

The scope of the perpetual usufruct is similar to ownership. Differences include:

- in principle, the perpetual usufruct can only be established on land owned by the State Treasury or by a unit of local government
- the maximum time period of perpetual usufruct is 99 years (but it can be given for a shorter period of at least 40 years in special circumstances) and it can be prolonged
- buildings and other facilities erected on real estate by a perpetual usufructuary become their property (the same applies to buildings and other facilities which the perpetual usufructuary acquired at the time when the contract for putting land into perpetual usufruct was executed)
- the ownership of buildings and facilities erected on real estate held in perpetual usufruct can only be transferred together with the right of the perpetual usufruct of that real estate

In addition to other charges and taxes related to property, the perpetual usufructuary is obliged to pay a specific annual charge for the perpetual usufruct. The amount of annual charges depends on the price of real estate and the percentage rate determined for the contractual purpose for which the estate was given.

Establishment and Transfer

The perpetual usufruct is created by means of a contract between the State Treasury or a unit of local government and a holder of perpetual usufruct.

The contract should be concluded in the form of a notarial deed and it should specify the manner in which the land will be used (for commercial, residential or other purposes). If the land is used in a manner contrary to the contract, the public authority may terminate the contract.

Perpetual usufruct can be transferred and in such a case a notarial deed is required.

The perpetual usufruct is disclosed in the Land and Mortgage Register, but (unlike ownership) the transfer of the right of perpetual usufruct occurs on the basis of an entry made in the Land and Mortgage Register, but with effect from the date of submitting an application for this entry.

The detailed information regarding the rules of transfer of perpetual usufruct of real estate is presented in Section 5.

The Limited Property Rights

The exhaustive list of the limited property rights is set out in the Polish Civil Code and it consists of, among others, usufruct, easement and mortgage.

Limited property rights can be divided into two categories:

- rights entitling control of the real estate – i.e. usufruct, easement
- rights giving the ability to satisfy the claims of its holder from the subject matter of such rights – i.e. mortgage.

The form of a notarial deed for the establishment of a limited property right on real estate is only required for the declaration of the owner.

An entry in the Land and Mortgage Registry is required only for the limited property right of a mortgage.

Usufruct

The user is entitled to use real estate and gather profits from it, and the owner is entitled to rent. Usufruct is disclosed in the Land and Mortgage Register.

Usufruct is largely similar to a lease (*dzierżawa*), but unlike lease:

- it is effective against third parties (*erga omnes*)
- the scope of the rights and obligations of the user is rather rigid (the parties of the usufruct can change it only in a strictly defined by law and limited extent), whereas the tenancy can, in principle, be freely formed by the parties of this legal relationship

Usufruct expires if it is not exercised for 10 years.

Transfer

Usufruct cannot be transferred.

Easement

Like all limited property rights, easements restrict the ability of using a servient estate by its owner. There are three kinds of easement:

- Personal servitude encumbers the servient estate in order to meet the specific needs of the natural person. It is established in favor of a specific natural person and expires with the death of the beneficiary at the latest.
- Land easement encumbers the servient estate in order to increase the usefulness of the dominant estate. It is established in favor of the owner of the dominant real estate.
- Transmission easement is established in order to use the transmission facilities for supplying or discharging liquids, steam, gas, electricity, etc. It is established in favor of a business entity that intends to construct or owns such transmission facilities.

In addition, the easements can be active (consisting in the use of the servient estate within the specified range, for example, in the form of transit, of passage, necessary road) or passive by nature (prohibiting the owner of the servient estate from undertaking certain behaviors, e.g. a prohibition of construction on the real estate near its border).

Transfer

The land easement is established in favor of every subsequent owner (perpetual usufructuary) of the dominant real estate, which means that it is related to the ownership of the real estate.

Transmission easement is transferred to the acquirer of an enterprise or the acquirer of the facilities.

Personal servitude is non-transferrable, nor can the right to exercise it be transferred.



Mortgage

The mortgage secures the receivables resulting from a specific legal relationship under which the mortgage creditor may claim satisfaction from the real estate, with priority over the personal creditors of each subsequent owner of real estate. This means that the sale of the property by the debtor does not affect the right of a mortgage creditor who can claim satisfaction from anyone who becomes the owner or perpetual usufructuary of the real estate, with priority over the personal creditors of the property’s owner.

To establish a mortgage, an entry in the Land and Mortgage Registry is required.

Transfer

Generally, the mortgage is transferred on the acquirer of the mortgage debt together with the mortgage debt. In such cases, an entry in the Land and Mortgage Registry is required.

The mortgage cannot be transferred without the debt, which protects the creditors.

Contractual Relations – Tenancy and Lease

The tenancy (*najem*), as well as the lease (*dzierżawa*), give the legal title to use the real estate owned by a third party for a fixed or non-fixed term, in return for rent.

These two contractual relations are similar, but in Polish law there are some important differences between them. The table below shows the main distinctive features of the tenancy and the lease.



Tenancy	Lease
The right to use the real estate.	The right to use the real estate and to collect profits (e.g. in form of the agricultural produce or corporate profits).
Only items can be the subject of the tenancy.	The items and rights may be the subject of the lease.
The subject of the tenancy cannot be the enterprise or the agricultural enterprise.	The subject of the lease may be the enterprise or the agricultural enterprise.
If the tenancy is established for a: <ul style="list-style-type: none">fixed period, it may be terminated only in situations specified in the agreementnon-fixed period, it may be terminated with the notice periods stipulated in the agreement (if it is not regulated by the parties, the statutory notice periods apply)	<p>The lease of the agricultural land can be terminated with one year's notice at the end of the lease year.</p> <p>In other cases, the lease may be terminated with six months' notice before the end of the lease year. The parties may agree otherwise.</p> <p>In the case of a lease established for a fixed term, it may be terminated only in situations specified in the agreement.</p>
	Specific statutory protection of the lessee (e.g. the possibility of reducing the rent in case of income reduction, the preemption right for the lessee of the agricultural land).
The tenant may hand over the item to a third party for use free of charge or sublet it if the contract does not prohibit it.	The lessee cannot hand over the leased object for use free of charge or sublease it to a third party without the lessor's consent.

The Polish Civil Code gives the parties a lot of freedom in determining the specific terms of the contractual relationship between them. The standard commercial lease/tenancy agreement shall, in particular, include:

- Description of the parties
 - Property address and its description
 - Length of lease/tenancy
 - Amount of monthly rent, valorization
 - Amount of the maintenance fees
 - Amount of security deposit
 - Penalties for non-performance of the contract
- The scope of the maintenance services
 - Termination
 - Notice to renew the lease/tenancy or vacate the property
 - Notice for the landlord to enter the property
 - Repair policy
 - Assignment and sublease conditions
 - Limitation of liability

There are special provisions regarding the tenancy of the residential premises which strengthen the tenant’s position (for example, the possibility to terminate such agreements is limited).

Both lease and tenancy can be disclosed in the Land and Mortgage Register.

Land and Mortgage Register

The land and mortgage register is the public register which contains information about every piece of real estate, allowing everyone interested to determine its status. Specifically, it includes the description of the property, ownership, perpetual usufruct, usufruct, easements, registered claims and rights arising out of agreements, administrative decisions, court rulings and mortgages.

The land and mortgage register is maintained by district courts. Thus, for example, in order to disclose or delete a right in the register, a court procedure is required. The fee for a change of an entry in the land and mortgage register is usually PLN100-200.

The land and mortgage register is publicly available via the Internet, but in order to search the data, the number of the land and mortgage register kept for particular real estate will be required.

Land and mortgage register is governed by several principles, the most important of which are the:

- Principle of public availability – one cannot plead ignorance of entries in a land and mortgage register or applications reported therein.
- Principle of presumption of the veracity of entries – it is assumed that rights disclosed in a land and mortgage register are revealed in accordance with the actual legal status and a right that has been deleted does not exist.
- Warranty of authenticity of a land and mortgage register – in cases of discrepancy between the real estate legal status reported in a land and mortgage register and the actual legal status, the content of the land and mortgage register favours the person who has acquired the ownership (or other rights in rem) of the real property through a legal transaction executed with the person authorised according to the content of the land and mortgage register.
- Principle of priority of the revealed rights – a limited right in rem to real property, revealed in a land and mortgage register, has precedence over the same type of right in rem not reported in the register.

Foreign Investors

Generally, until 1 May 2016, the acquisition by a foreigner (natural person, company, partnership) of real property or more than 50% of shares or voting rights in a company owning real property located in Poland requires a permit from the minister of internal affairs (sometimes together with other ministers). This requirement does not apply to foreigners from member states of the European Economic Area (EEA) and Switzerland, except for the acquisition of agricultural or forestry real estate. Furthermore, an entity established in an EEA country, including Poland, is not obliged to obtain consent, even if 100% of the share capital is owned by a foreign (non-EEA) investor. The application for the permit from the minister of internal affairs and administration is subject to a fee of PLN1,570.

Sale of Real Estate

Letter of Intent, Term Sheet

In accordance with generally accepted practice, the larger real estate sale transactions (the “real estate sale transactions” shall mean “the sale of the ownership or the right of perpetual usufruct”) are preceded by execution of a letter of intent and/or a term sheet. There are no form requirements regarding such documents. Moreover, the potential purchaser is often expecting an exclusivity agreement defining a period during which the seller shall refrain from negotiating with third parties.

Due Diligence

It is very common that real estate due diligence is performed by the party interested in making a purchase before the conclusion of the preliminary or final sale agreement. The typical due diligence covers:

- regulatory issues (decisions and certificates, local zoning plan)
- legal status of the real estate
- construction process
- insurance
- contractual relations (e.g. leases)
- environmental issues
- technical issues

Preliminary Sale Agreement

Once the business partners are ready to enter into an agreement subject to the fulfilment of certain conditions and at a given date, a preliminary sale agreement is concluded. The conclusion of such an agreement gives the parties a right to demand the remedying of damage suffered by relying on the execution of the final contract. Moreover, if the preliminary agreement is concluded in the form of a notarial deed, and meets other requirements on which the validity of the final agreement depends, the entitled party may even demand execution of the final agreement.

The preliminary agreement shall contain all essential terms of the transaction including the designation of the real estate, purchase price or a method of its calculation, and representations and warranties to be inserted into the final sale agreement.

A preliminary agreement may be registered in the land and mortgage register to inform the public about the mutual transfer of rights and obligations of parties thereto in connection with the real estate.

Preemption Right, Conditional Sale Agreement

A preemption right provides an entity (i.e. municipality, Agricultural Property Agency, neighbors (from January 1 2016 in the case of agricultural real estates) or third party) with a right of first refusal, allowing it to acquire the real property in question for the same price as the price at which the real property is offered to potential buyers.

In cases where the preemption right is reserved, a conditional sale agreement has to be concluded between the parties to the transaction. The preemption right holder shall be notified about the conclusion of such a conditional agreement. A final sale agreement transferring a title to the real estate can be concluded if the preemption right is not exercised by the entitled entity (i.e. it is waived or not exercised within the specified period of time).

The preemption right may arise (i) by statute – any sale without notification of the pre-emption right holder will be invalid, or (ii) by contract - any sale without notification of the preemption right holder will be valid, but a claim for damages can be made or the sale can be declared ineffective against the preemption right holder.

The most common situations in which the preemption right may occur:

1. In favour of the municipality in cases of:

- undeveloped real property originally purchased from the State Treasury or local authorities,
- undeveloped land held in perpetual usufruct,
- land for which a public use is provided for in the zoning plan (if the preemption right is registered in the Land and Mortgage Register), or
- real property is entered in the register of landmarked (listed) buildings (if the preemption right is registered in the Land and Mortgage Register).

2. In favour of the Agricultural Property Agency and neighbors (from January 1 2016) in cases of agricultural land.

3. In favour of the administrator of the economic zone in cases of real estate located in special economic zones.

4. In favour of any third party in cases where the preemption right is reserved in the contract.

In recent years, the preemption right is rarely exercised by the Polish authorities.

Final Sale Agreement

The most important rule is that, according to the Polish Civil Code, the transfer of real estate must be in the form of a notarial deed or it will be null and void.

Upon execution of a sale agreement, the legal title to the real estate is transferred from the seller to the purchaser in exchange for the payment of consideration.

The (final) sale agreement shall contain:

- description of the parties
- description of the object of sale including the land and mortgage register maintained for the property and entries therein
- price, payment date and mechanism (i.e. via an escrow account, in instalments, by direct payment of the seller's creditors or secured creditors (against mortgage release))

- representation and warranties (including corporate approvals, encumbrances on the property, third-party rights, environmental and hazardous soil contamination, compliance with building regulations, taxes, lease agreements or other agreements, litigation, technical standards)
- motion to the relevant district court to register the purchaser in the land and mortgage register as the new owner (perpetual usufructary) of the real estate

Planning and Development of Real Estate

Generally, real estate shall be used in accordance with the policy of the local authorities. Such policy is expressed in the study of a local zoning and in the zoning plan which is adopted on the grounds of mentioned study of a local zoning or – most often – in zoning decisions.

Zoning Plan

The local zoning plan is an act of local law which means that it is generally binding. Such zoning plan shall be adopted by the local authorities (municipality) in lengthy and complex proceedings provided by law. Local zoning plans may be changed, but the same procedure as during the adoption of the plan is required.

The local zoning plan consists of text and graphics. It covers an area of the municipality or its part. It contains information regarding:

- the existing infrastructure
- planned and allowed development
- the purpose of use of each part of the land covered by such plan
- rules of environment protection
- protected areas where constriction is prohibited or limited

Because most of Poland is currently not covered by any zoning plan, the issuance of the zoning decision (which is a substitute for a zoning plan) is required in order to obtain the construction permit necessary for the development of real estate.



Zoning Decision

The zoning decision:

- shall be obtained if an investment is planned for an area where there is no zoning plan
- is issued by the competent local authorities
- is necessary to obtain a construction permit
- requires a number of conditions to be fulfilled, including securing utility connections for the investment (at least the signing of contracts with grid operators is required) and architectural compliance with neighboring estates
- specifies its validity period – it expires if another developer obtains a construction permit for the site, or if a zoning plan is adopted and the planning does not comply with the new plan
- may be obtained by any interested party, irrespective of whether such a party holds a legal title to the site
- is transferable to third parties, therefore, it is possible to acquire property with a valid zoning decision for a specific piece of real estate
- must be preceded by a formal application filed with the authorities by the investor; the procedure usually takes a few months

Construction

Generally, the construction of a building may be conducted upon prior:

- notification of the relevant public authority (in the case of smaller investments, for example free-standing single-family houses), or
- issuance of a construction permit in the form of the administrative decision.

Notification

Although, in addition to the notification, it is necessary to submit a number of documents related to the planned investment, it is a faster and simplified procedure.

The notification must be made at least 30 days before the planned start of construction work. During this time, objections (in the form of the decision) may be raised. The relevant public authority may also request completion of the submitted documentation. If, after 30 days, there is no response from the relevant public authority, the investor may begin construction work.

Construction Permit

Most commonly, obtaining a construction permit is necessary. The construction permit is an administrative decision which:

- constitutes an indispensable precondition for the commencement of construction works
- must strictly comply with the conditions of the applicable zoning plan or zoning decision and technical requirements

- must be preceded by a formal application filed with the authorities by the investor within the period of validity of the related zoning decision; the investor has to prove that the real property is at their disposal for building purposes
- is usually composed of two basic elements: (i) approval of the designs and (ii) permission to start construction work
- will expire if the construction work to which it relates is not commenced within three years from the date on which the construction permit became final, and also if this construction work is subsequently suspended for a period of more than three years

In order to obtain a construction permit, a developer needs to hold a legal title to the site (not necessarily an ownership title – it may be even a simple lease).

The authority shall issue a construction permit within 65 days of the application being filed.

The building authority has the power to inspect the building site works at any time.

In cases of agricultural land, before the construction permit is issued, the site must be excluded from agricultural use.

The construction permit is transferable to third parties only if the following conditions are fulfilled:

- consent of both parties has been obtained;
- the transferee has accepted all the conditions contained in the construction permit; and
- the transferee is able to prove that the real property is at their disposal for building purposes (e.g. on the basis of an ownership title, perpetual usufruct or a lease).

The transfer procedure lasts approximately one month.

Occupancy Permit

The occupancy permit allows the use of the building or other structures.

The investor is the only party to the proceedings for the issuance of an occupancy permit.

The relevant authorities carry out obligatory inspections of the development and verify whether it has been constructed in accordance with the terms and conditions of the construction permit prior to the issuance of the occupancy permit. Moreover, the developer also has to inform the Sanitary Inspectorate and Fire Marshal of the completion of the construction works and of the intention to use the premises. If there are no objections within 14 days of the notification date, this is treated as tacit consent to the use of the premises.

Using a building or other structures without notifying the relevant authorities or without the required occupancy permit is considered illegal.

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