

Real Estate Switzerland

Real Estate in Switzerland is big business; property prices are rising steadily and many homes are selling for no less than CHF 1 million (around £702,000). As with all practice areas, real estate brings a myriad of legal considerations and potential obstacles, and so to find out what these are in Switzerland, *Lawyer Monthly* speaks to Dr. Wolfgang Müller MBA, Partner, and Dr. Christian Eichenberger, LL.M., MRICS, Associate, at Meyerlustenberger Lachenal, one of the country's leading law firms, with offices in Zurich, Geneva, Zug and Lausanne.

What main types of dispute have you seen within the real estate sector over the last year?

We have represented clients in all kinds of real estate disputes over the last year. We have seen, however, an increase in disputes regarding commercial rents, liabilities for defects out of work contracts and broker fees on the one hand and an increase in disputes between owners and investors against public authorities in the field of zoning and planning law on the other hand. As to the latter, we have, for example, challenged on behalf of industrial clients planning measures taken by local municipalities in connection with land that was scheduled for realignment.

What is the most common form of dispute resolution – litigation or arbitration?

All in all, litigation still prevails in rental matters. In connection with real estate development projects and, generally spoken, in cases in which the parties are aware of the fact that they (inevitably) will have to do business with each other again in the future, the parties prefer arbitration, mediation or some other kind of out-of-court dispute resolution. For example, we have recently been involved in a case in which the principal for some reasons was forced to early terminate a general contractor agreement in one project while the parties had many other ongoing projects and agreements. The parties finally settled the case out of court after an expert report was delivered and settlement talks were conducted in which not only the parties took part, but also an independent expert and a representative of the financing bank.

What are the key differences between the public and private sector in terms of the real estate industry? Do the challenges and complexities involved vary at all?

Public entities (such as Swiss Federal Railways (SBB)) have played a very active role in the field of real

estate development in Switzerland in the last few years. For historic reasons, SBB owns land which is no longer needed for public infrastructure purposes. SBB has acted with a high degree of professionalism handling challenges and complexities that private developers also face. On the other hand there are smaller entities such as municipalities which own – taken together – also rather big real estate portfolios. Human resources, however, are often scarce with these smaller entities and therefore the asset management may sometimes be less focused than in the private sector.

Differences between public and private sector in terms of real estate industry do exist as to educational backgrounds. Public real estate management is often in the hands of lawyers while asset management in the private sector is often in the hands of economists and architects.

Is investor appetite growing in your country, and if so, why do you think this is and can it continue?

Investor appetite may depend on the sector the investor focuses on and on the strategy the investor pursues. In general, demand for real estate is still exceeding supply in many market segments resulting in low returns for investors. Although there are certain signs of a bubble in certain market segments it is widely anticipated that the current situation will not change for a while.

Do you foresee any changes in legislation for the real estate sector?

Yes, there have been many changes recently and we expect the activity of legislators to persist in the future. Recent changes in legislation were related to such important issues like second homes, joint and several liability of general contractors, banking regulation, planning and zoning law and environmental law.

As to second homes, for example, an amendment to the constitution was adopted on 11 March 2012 according to which no more than 20 per cent of all residential units and the gross residential floor area in any municipality may be used as second homes. On 1 January 2013, a first version of a federal ordinance on second homes was entered into force. Many questions remained, however, unanswered and in June 2013, consultation proceedings on a federal act on second homes and a revised ordinance on second homes were instigated. Discussions regarding the respective changes in legislation and their effects on the real estate market (in particular the construction and the asset markets) will therefore be going on for the next months to come. **LM**

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