

**International
Comparative
Legal Guides**



Practical cross-border insights into real estate law

**Real Estate
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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

Switzerland is a civil law country. Real estate is mainly governed by written laws on a federal level, such as the Swiss Civil Code, the Swiss Code of Obligations, the Act on the Acquisition of Real Estate by Persons Abroad (the so-called Lex Koller), the Debt Enforcement and Bankruptcy Act and the Ordinance on the Land Register.

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

As mentioned above, Switzerland is a civil law country. Hence, there is, in principle, no common law in Switzerland. Nevertheless, there is case law that offers guidance on the interpretation of written laws. In particular, such case law has an impact in the field of landlord-tenant law where a lot of cases are produced, in particular, in the Western (French-speaking) part of Switzerland.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

International laws do not play an important role with respect to real estate in Switzerland. The Agreement on the Free Movement of Persons, however, has an impact on the Lex Koller mentioned above.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

The Lex Koller (see the answers to questions 1.1 and 1.3 above) restricts the acquisition of Swiss residential and other non-commercial real estate by foreign (i.e. non-Swiss) persons while the acquisition of business premises is, as a rule, unrestricted

under the Lex Koller. In recent years, it has been debated whether the Lex Koller should be abolished altogether on the one hand, or made even stricter on the other. Swiss Parliament decided to maintain the Lex Koller since it is widely recognised that the Lex Koller is the only effective measure to reduce the demand for Swiss residential properties and thus to reduce the risk of “over-heating” residential real estate markets.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

The most important types of rights over land, on the one hand, are ownership, co-ownership (in particular, in the form of the condominium-principled co-ownership), building rights and usufructuary rights. On the other hand, lease contracts play a major role for both residential and commercial properties. The latter are purely contractual between the parties unless they are annotated in the land register.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

Yes, in the case of a building right, the right to real estate diverges from the right to a building constructed thereon. In such a scenario, there are two owners: one that owns the soil; and the other that owns the building built thereon.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

Beneficial ownership cannot be based on property law provisions because Swiss law does not know a legal principle comparable to the common law concept of trust (even if trusts under foreign law are, under certain conditions, recognised under Swiss law – in the case of assets under a trust established abroad that are entered in the name of the trustees in the land register in Switzerland, reference shall be made to the trust relationship by means of an annotation; a trust relationship that is not annotated in the land register in such a way may be considered invalid against *bona fide* third parties). Any beneficial ownership is therefore of a purely contractual nature under Swiss law, which means, in particular, that the right of the beneficiary

is not based on an *in rem* title to the property, but only on a contractual claim against the holder of the property rights. If that holder disposes of the property in violation of the contractual provisions, the beneficiary is limited to a claim for damages. Although a purchase of property on a fiduciary basis is considered to be valid, such fiduciary purchase is void where the parties intended to circumvent legal provisions; this may especially be the case if a non-resident foreigner or a company with a registered office abroad, respectively, intends to acquire a Swiss property in breach of the Lex Koller without disposing of the necessary permit (see question 2.1 above). A common method of acquiring a beneficial interest in land is by purchasing shares or the majority of shares in a real estate company; the ownership of the property in an economical sense is transferred simply by conveying the shares of the company owning the property. However, in such a case, the restrictions of the Lex Koller also apply. See question 2.1 above regarding the failed attempt to amend Lex Koller.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

In principle, all privately owned land is registered in the land register. However, no rights of private ownership apply to public waters or to land not suitable for cultivation, such as rocks and scree, fern and glaciers, or springs rising therefrom, unless proof to the contrary is produced. Immovable property that is not privately owned and is in public use will be recorded in the land register only if rights *in rem* attaching to such property are to be registered or if cantonal law provides for its registration.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no explicit state guarantee of title. However, the land register is assumed to be complete and correct and everyone may, in good faith, rely on it. Therefore, the state (i.e. the respective canton) is liable for any losses arising from the undue maintenance of the land register.

4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

All acquisition of land ownership must be recorded in the land register. The consequence of non-registration is that the title remains with the seller – hence, the respective transaction is not yet closed. In addition, all rights relating to the property and relevant to everyone (not just to a contractual party) must be registered in the land register.

4.4 What rights in land are not required to be registered?

Emption rights, pre-emption rights, repurchase rights and lease agreements, for example, are rights in land that are not required to be registered.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes

or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

No, there is no such probationary period following first registration under Swiss law.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Transfer of title occurs upon the respective entry into the “journal” of the land register, provided, however, that the application is later registered in the “main register” of the land register.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Except for mortgages that have an assigned rank among each other, irrespective of the time of registration, registered rights obtain priority over other rights in accordance with the “rule of seniority”, which means, in principle, “first in time, first in right”. Such rule, however, can be contracted away.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

For land register purposes, the cantons are divided into districts. Hence, the 26 cantons are responsible for setting up the land registries, the demarcation of the districts, the appointment and remuneration of officials and supervision arrangements.

5.2 How do the owners of registered real estate prove their title?

The owner is shown in the land register, which is deemed to be correct and complete (“public faith”, see question 4.2 above). No further proof is necessary.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

The cantons can allow their land registries to communicate and conduct transactions electronically. The transferor of real estate (e.g. the seller) must file to the land register an application for the registration of the new owner (e.g. the buyer) and furnish supporting documents (e.g. the purchase and sale deed).

5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

Yes, the state (i.e. the respective canton) is liable for any losses arising from the undue maintenance of the land register.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

Any person is entitled to obtain the following information from the register without showing a legitimate interest:

- (1) the name and description of the immovable property;
- (2) the name and identity of the owner;
- (3) the form of ownership and the date of acquisition;
- (4) the charges and mortgages; and
- (5) the notifications (subject to exceptions).

A person showing a legitimate interest is entitled to consult the full land register or to be provided with an extract. Hence, a buyer could also directly obtain from the land register all the information it might reasonably need regarding encumbrances and other rights affecting real estate. Furnishing evidence to establish a legitimate interest, however, takes time. In practice, it is thus more convenient for the buyer to get an extract from the land register via the seller or, in certain cantons, via the notary public. Accordingly, the land register cannot simply be searched without reason; a legitimate interest must be proven for a particular property in order to get a full land register extract.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

Lawyers who assist the seller and/or the buyer in: conducting a due diligence; and drafting and/or reviewing the contract documents, are often involved. In addition, notaries publicly draft and notarise the purchase and sale deed. Other parties involved are, for example, banks, realtors, technical/environmental consultants and appraisers.

6.2 How and on what basis are these persons remunerated?

The fees of the notaries public are subject to the respective laws of the cantons. Realtors normally receive a certain percentage of the purchase price for their brokerage services. Lawyers, consultants and appraisers are normally remunerated on an hourly basis.

6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

In Switzerland, it has always been possible to access reasonable finance for real estate transactions, even following the 2008 financial crisis. While real estate as an asset class is still attractive to insurance companies and pension funds, standards put in place by the Swiss National Bank and the Swiss Bankers Association have meant that banks have been forced to be more prudent when lending money to private individuals (see the answer to question 8.1 below).

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

As the time of the negative interest rates is over and interest rates are suddenly rising, real estate does not remain the only attractive asset class and other investments should now be considered as well. However, even though the demand for owner-occupied housing has decreased, as residential property buyers are directly feeling the strong rise in inflation in the form of higher financing costs, the demand for residential property in general is still high.

After COVID-19 and the resulting trend towards working from home, which led to a decline in the demand for office space and new leases concerning office space were only signed hesitantly, the booming labour market is now stopping the downward trend. After the lifting of the COVID-19 measures at the beginning of 2022, many employees returned to the offices; as a result, companies have set aside their demand-side restraint.

Although this does not mean that uncertainties about office space demand are no longer present, demand for office property has increased sharply over the course of 2022. In addition to the pent-up demand for space, employment growth had recently risen further to 3.2% as per the end of the second quarter of 2022 (see Credit Suisse Real Estate Monitor Q3 2022).

Furthermore, the energy crisis is taking over. The extreme rise in the prices of fossil fuels leads to a rethinking of the current situation amongst the property owners, and not only households being heated by heat pumps are benefitting from the greater energy efficiency of electric pumps. The demand for photovoltaic modules in Switzerland is also very high, since photovoltaic systems contribute to some security and provide protection against the high electricity prices.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Construction activities in general continue to fall, mainly due to a significant increase in construction prices, respectively high costs for material, and construction delays due to supply bottlenecks. The decline in construction activity for owner-occupied properties as well as for rental apartments, together with the generally increasing demand for housing lead to a fall in the number of vacant apartments. Construction activity regarding office space is expected to decline because fewer applications for construction permits have been filed in the second half of 2022.

Even after COVID-19, the negative trend for retail stores continues; even though online trade decreased, it can be viewed as a normalisation after the growth during the pandemic. However, the trend goes clearly towards less surface for the stationary retail market.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The purchase and sale deed needs to be notarised by a notary public, and the seller (or the notary public, respectively) must file to the land register an application for the registration of the new owner (i.e. the buyer).

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

There is no formal duty of disclosure. However, the seller is under a duty to act in good faith, which implies, for example, that it must answer questions of the buyer relating to the transaction truly and accurately.

7.3 Can the seller be liable to the buyer for misrepresentation?

Yes; if the seller does not disclose important information or gives false information, it may be liable for misrepresentation.

7.4 Do sellers usually give any form of title “guarantee” or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

According to the Swiss Code of Obligations, the seller is liable to the buyer for any breach of warranty and for any defects that would materially or legally negate or substantially reduce the value of the purchase object or its fitness for the designated purpose. Such warranty is, however, in practice, often contracted away (at least to some extent) in real estate asset transactions. However, any agreement to exclude or limit the warranty obligation is void if the seller has fraudulently concealed the failure to comply with the warranty. Other than that, any additional warranty is a result of the negotiations and depends on the type of property that is sold (e.g. rent, soil contamination, etc.).

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

The seller retains no connection with the property after sale. However, if the property gains tax has not been secured in the contract, the seller must make sure to pay the relevant taxes. Otherwise, a liability may only arise from the warranties given as described in question 7.4 above or from post-closing obligations agreed upon in the sale contract.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In addition to paying the purchase price, the buyer must pay the fees and taxes, as provided for by law and/or contract.

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The measures against the continued increase of residential property prices and the amount of mortgage loans introduced by the Swiss National Bank (SNB) and the Swiss Bankers Association (SBA) in 2014 are, in principle, still in place today.

These measures have shown effects and a certain slow down (fewer transactions, decreasing prices) was seen in some areas and segments of the residential and commercial real estate market (see also the answers to questions 6.3 and 6.5 above). Recently, the SNB did further increase interest rates and set an end to the long-lasting negative interest rates in Switzerland. Higher interest rates (currently at 0.5%) make investments in real estate less attractive than during the period of the negative interest rates; however, real estate still remains an investment to be considered.

Furthermore, at the end of March 2020, the Federal Council approved the SNB's request to deactivate the capital buffer in order to give the banks the greatest possible flexibility in lending in connection with the COVID-19 pandemic. This capital buffer has been reactivated. From 30 September 2022, banks must hold additional capital of 2.5% for residential mortgages, in order to combat the increasing risks on the mortgage and real estate markets.

In August 2019, the Swiss Financial Market Supervisory Authority (FINMA) recognised the adjusted self-regulation by the SBA in the area of mortgage lending for investment properties as a binding minimum standard. This self-regulation requires borrowers to provide a minimum down payment of at least a quarter of the loan-to-value ratio, instead of the current 10%. The lower cost of market principle continues to apply, whereby any difference between a higher acquisition price and lower loan-to-value ratio is to be financed entirely with the borrower's own funds. In addition, the mortgage is now to be amortised to two-thirds of the loan-to-value ratio of the property within a maximum of 10 years (currently 15 years). The tightened rules only apply to new borrowers, but not to existing loans or to the existing standards relating to owner-occupied residential property. The rules came into force on 1 January 2020.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

In Switzerland, the main method by which a real estate lender seeks to protect itself from default by the borrower is the mortgage.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

If the creditor's debt is secured by a mortgage, the pledged property is seized and sold at auction by the debt enforcement office (the respective foreclosure proceedings are governed by the Debt Enforcement and Bankruptcy Act and its respective ordinances). In a security agreement, the lender and borrower may, however, also agree on the private realisation of the collateral. In the latter case, there are no court proceedings to be initiated to realise the mortgaged property.

8.4 What minimum formalities are required for real estate lending?

The establishment of a new mortgage certificate is to be notarised, and a respective application is to be filed with the land register. At the same time, there are no formalities in place regarding entering into a credit facility.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Mortgages have a certain assigned rank among each other. In general, the claims based on mortgage certificates prevail over unsecured or unprivileged claims.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

Under the Swiss Debt Enforcement and Bankruptcy Act, the following acts that disadvantage certain creditors, carried out by the debtor or security provider before the opening of bankruptcy proceedings, can be voidable (*anfechtbar*):

- The debtor or security provider disposes of assets against no consideration or against inadequate consideration in the year before the adjudication of bankruptcy or an equivalent event.
- The debtor or security provider carries out certain acts within one year from the opening of bankruptcy proceedings, while it is over-indebted, including, *inter alia*, the granting of collateral for previously unsecured debt.
- The debtor or security provider carries out any act during the five years before the opening of bankruptcy proceedings that has the purpose of disadvantaging creditors or preferring certain creditors to the detriment of others (that is, avoidance is the intent).

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

According to Art. 17 of the Swiss Debt Enforcement and Bankruptcy Act, an appeal on the grounds of incorrect application of the law or inappropriate exercise of discretion is, in principle, possible against any order made by a debt enforcement or a bankruptcy office. No charge is made for the respective appeal proceedings (Art. 20a of the Debt Enforcement Act). A party that, however, appeals in temerity or in bad faith, or its legal representative, can be fined up to 1,500 Swiss francs. Against this backdrop, some borrowers seek every opportunity to appeal (without taking a big financial risk) in order to hold up the enforcement action by the lender. We have seen cases in which it took the lender up to five years to enforce a mortgage.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

If insolvency proceedings are initiated, all debts are due with the exception of those secured by the borrower's real estate by collateral. In addition to the principal debt, the creditor can claim the interest up to the opening date and the collection costs. A real estate lender generally secures its credit with a mortgage; those debts are paid in advance (hence prior to all other creditors) and thus treated preferably.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

Lending money is a risky business as the only obligation of the

borrower by law is the repayment of the money in the same amount. In commercial relations, the borrower must pay interest as well. It is not common in Switzerland to give shares as collateral; in connection with real estate, the credit is generally secured by a mortgage.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The acquisition of real estate or the majority (in certain cantons even a minority stake) of the shares in a Swiss real estate company may be subject to real estate transfer tax of between 1% and 3%, depending on the canton where the property is located. Certain cantons do not apply to a real estate transfer tax, such as Zurich, which abolished real estate transfer tax a few years ago. The tax is normally payable by the buyer. Often, the buyer and seller are jointly and severally liable for the real estate transfer tax. Contractual agreements are possible with respect to the internal allocation of the tax burden between buyer and seller. In certain cantons, tax laws may foresee a lien on the property to secure the transfer taxes. Also, registration fees of the land register may depend on the value of the property.

9.2 When is the transfer tax paid?

It depends on the regulations of the respective canton. In an asset deal, the transfer tax is sometimes paid through the notary public. In some cantons, the notary is personally liable for the payment of the transfer tax.

9.3 Are transfers of real estate by individuals subject to income tax?

Yes, the gain realised through the real estate transfer is subject to tax either as a special real estate income tax or – in exceptional cases – as normal income tax.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Transfers of real estate are, as a rule, exempt from VAT. However, a waiver of exemption and option for VAT on the purchase price of the building(s) is possible, provided that the real estate is not used for private purposes. As a result, the investor will be able to reclaim Swiss input VAT on the purchase price (the current VAT rate is 7.7%). A careful analysis regarding VAT in connection with Swiss real estate transactions is required as VAT consequences can be very relevant in economic terms.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

There are no other taxes. It should be noted, however, that the buyer and seller are jointly liable for Swiss income tax on brokerage fees paid to a foreign (non-Swiss) broker involved in the transaction. The tax liability is limited to 3% of the purchase price of the property.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The real estate transfer tax, if any, is owed in case of an asset or share deal (see the answer to question 9.1 above). It may, however, be possible to reduce or eliminate taxes on capital gains if a company holding a property instead of the property itself is sold.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

Real estate transactions regularly require an in-depth analysis with regard to income tax, VAT and tax-optimised financing and structuring. The relevant issues depend on the specific case.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

The laws that regulate leases of business premises are, on one hand, the Swiss Code of Obligations (Arts 253 to 301) and, on the other hand, the Ordinance regarding the Lease of Residential and Business Premises. There is no separate Swiss act that deals with the leases of business premises only.

10.2 What types of business lease exist?

In practice, various types of business leases exist, such as fixed-term leases or leases that last for an indefinite period of time, ordinary leases or leases that come close to double or triple net lease agreements.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

- (a) Length of term: business leases typically last for five or 10 years, possibly with an option of one additional five-year period.
- (b) Rent increases: the parties often agree on indexed rents based on the Swiss consumer price index.
- (c) Tenant's right to sell or sub-lease: subject to the landlord's approval, the tenant is entitled to sublet the premises.
- (d) Insurance: we often see clauses according to which the tenant must provide liability insurance.
- (e)(i) Change of control of the tenant: in principle, change of control does not affect the commercial lease agreement.
- (e)(ii) Transfer of lease as a result of corporate restructuring: in a merger, a lease agreement is transferred to the new (restructured) entity. The acquiring legal entity shall, however, secure claims of the creditors involved in the merger, if creditors so demand, within three months after the merger becomes legally effective.
- (f) Repairs: generally speaking, and as a basic rule, the landlord is responsible for major repairs; however, exceptions may apply with leases that come close to double and triple net lease agreements.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Under certain circumstances, and if opted for VAT, the rent to be paid for business leases may be subject to VAT (which is currently at 7.7%).

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Depending on the circumstances of the case at hand, business leases can indeed be terminated at expiry, on default or by either party giving notice. The tenant may request the extension of a fixed-term or open-ended lease where termination of the lease would cause a degree of hardship for it that cannot be justified by the interests of the landlord. A commercial lease may be extended by up to six years.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

As a basic rule, the lease passes to the acquirer together with ownership of the property sold. The new owner may, however, serve notice to terminate a lease on commercial premises as of the next legally admissible termination date if it claims an urgent need to use the premises itself. If the new owner terminates sooner than is permitted under the contract with the existing landlord, the latter is liable for all resulting losses.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

In Switzerland, there are commonly no such provisions in lease agreements.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.

The trend towards co-working space has also arrived in Switzerland. There are increasingly more such places, especially in business cities like Zurich and Geneva.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

The laws that regulate leases of business premises are, on one hand, the Swiss Code of Obligations (Arts 253 to 301) and, on the other hand, the Ordinance regarding the Lease of Residential and Business Premises. There is no separate Swiss act that deals with the leases of residential premises only.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

No, they do not.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

The typical provisions are as follows: (a) an indefinite term with a notice period of three months; (b) an official benchmark interest rate applies (specific laws can apply in the canton of Geneva); (c) it is possible to extend the term for a maximum of four years; and (d) insurance and repairs are to be paid by the tenant via net rent or ancillary costs, if agreed upon accordingly.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

For valid reasons rendering the performance of the contract intolerable, the landlord may terminate any residential lease observing a notice period of three months. The landlord must take court action (eviction proceedings) in order to achieve vacant possession if the circumstances exist for the right to be exercised.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

The Swiss system of zoning and planning is performed on four levels (federal, cantonal, regional and local). On each level, respective laws exist. Environmental protection is mainly addressed on a federal level.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

If the rules of expropriation are followed, the state can force landowners to sell land to it in order to achieve certain goals that are in the public's interest. The basic rules of expropriation are as follows: the state needs to establish that: (i) there is a sufficient legal basis for the expropriation; (ii) the expropriation is in

the public's interest; (iii) the expropriation is in accordance with the principle of proportionality; (iv) the goal of the state cannot be achieved by other reasonable measures; and (v) the landowner is fully compensated.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land/building use and/or occupation and environmental regulation are, in most cases, controlled by authorities determined by the cantons and the communities. In order to get reliable information on these matters, the respective authorities must be contacted. Further information is available online.

12.4 What main permits or licences are required for building works and/or the use of real estate?

In most cases, a permit is necessary to build, modify, demolish or change the use of a building.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

It depends on the circumstances of the case at hand. Implied permission is rarely seen.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

Time and costs vary from canton to canton and community to community. They range (depending on the project) from several hundred to several hundred thousand Swiss francs.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

There are regulations on the protection of historic monuments on a federal, cantonal and community level. They do not directly affect the transfer of rights in real estate. The buyer should, however, be aware that certain modifications to a building may be impossible and/or subject to negotiations with the authorities. Hence a change of use – provided that the change has been permitted – is only possible without any affection as long as the buyer does not make any modifications to the protected property, which is not common in practice.

12.8 How can, e.g., a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

Yes, each canton has a public register of contaminated real estate. Increasingly more of such registers are available online. However, the fact that a property is not entered into such register does not necessarily mean that the property is not contaminated or polluted. Cleaning up may also be mandatory in connection with construction activities.

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

A property must be cleaned up if it is listed in the public register of contaminated real estate as being polluted. When it comes to the sale or division of immovable property located on a site that is entered in the register of polluted sites, an authorisation of the competent authorities is to be obtained.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

The assessment and management of the energy performance is regulated on a cantonal level. In general, it is not mandatory for the owners to perform respective tests.

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Under the heading “energy strategy 2050”, a comprehensive set of documents has been produced in recent years. As part of the energy strategy 2050, the revised CO2 Act came into force on 1 January 2013. However, a further revision of the CO2 Act was rejected in June 2021 and, consequently, the existing CO2 Act was extended until 2024. Nevertheless, the Federal Council made good progress in advancing the energy strategy 2050 during 2022. The Federal Council has been working on a genuine redesign of the legal regime for renewable energies, which is intended to improve the instruments for promoting electricity generation from renewable sources, improve energy efficiency and reduce energy consumption (for more details see question 13.3 below).

13.2 Are there any national greenhouse gas emissions reduction targets?

Based on the Kyoto protocol, the CO2 Act aims to reduce greenhouse gas emissions by 2030 by 50% compared to 1990 levels. Over this period, the Federal Council intends to achieve a minimum of 30% in Switzerland and a maximum of 20% abroad with various actions.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

In 2022, the Federal Council made good progress in implementing the energy strategy 2050. Several federal laws and

ordinances are affected by the planned revisions and adjustments, some of which have already entered into force, on 1 January 2022. This applies in particular to the amendments to the Federal Energy Ordinance, which essentially contain legal clarifications on structure planning and the national interest in hydropower plants, and to the amendments to the Ordinance on the Promotion of Electricity Production from Renewable Energy Sources, which concern the remuneration system for photovoltaic plants.

The revised Spatial Planning Ordinance came into force on 1 July 2022. It is now easier to install solar systems on a reservoir in an alpine environment or on certain infrastructure (flat roofs in commercial areas, facades, dams or even noise barriers).

The Federal Council also proposes to revise the Energy Act and the Electricity Supply Act, as well as the corresponding ordinances. The aim of the revision project is, on the one hand, to speed up the planning and approval procedures for the largest hydroelectric and wind power plants; on the other hand, the expansion of solar plants is to be promoted through tax incentives and the expansion of the notification procedure. The consultation procedure ended on 23 May 2022, but no official notification of the outcome has yet been published.

Further consultations ended in July and August 2022. These aim to strengthen the instruments for promoting electricity generation from renewable energies. It is envisaged that the revised ordinances will enter into force at the beginning of 2023.

Moreover, the Environmental Protection Law also contains provisions relating to construction work and buildings and the Environmental Compatibility Assessment Law provides that any construction or building measures that materially influence the environment must undergo an environmental compatibility assessment.

14 COVID-19

14.1 Please detail any laws that govern real estate in your jurisdiction which were introduced in response to the effect of the Coronavirus (COVID-19) pandemic and which remain in place.

There were various measures, restrictions and bans in place on the basis of the epidemic, such as temporary regulations regarding the question of whether tenants were obliged to pay rent during the lockdown as publicly accessible establishments and businesses such as shops, restaurants, museums, etc. were shut down for several months. However, relevant legislation resolving the question has never been implemented and hence it is still up to the courts to decide in any case. Furthermore, the Federal Council issued the COVID-19 Ordinance on Hardship Measures in order to be able to bridge COVID-19-related financial bottlenecks; federal hardship measures were granted in the form of loans, sureties or guarantees, and non-repayable contributions, provided that certain conditions were met.

In the meantime, all nationwide restrictions and bans have been lifted. The cantons can take measures again if required; however, there are currently no laws in place governing real estate.



Wolfgang Müller is a partner at MLL Legal and heads the real estate team. His practice focuses on real estate, in particular, real estate M&A, and capital markets. Wolfgang Müller graduated from the University of Zurich in 1990, and in 1992 was conferred a doctoral degree by the University of Zurich (Dr. iur.). He was admitted to the Bar in Switzerland in 1993. After having successfully completed his MBA at the Australian School of Business in Sydney/Australia and the University of Michigan Business School in Ann Arbor/USA, he joined MLL in 1997 and has been a partner since 2004. Wolfgang Müller is, among others, recommended by *The Legal 500* as a leading individual for real estate and construction in Switzerland.

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Cosima Trabichet-Castan has been a Partner with MLL Legal since 2020, after having completed her legal internship and worked as an associate with the firm for six years. She specialises in real estate law, advising clients on high-value real estate transactions and construction projects, as well as on rental law and property development issues. Her proficiency in the field of rental law allowed her to be appointed as an assistant judge at the Geneva Court for landlord and tenant disputes in 2016. In 2019, she obtained a Master's Degree in real estate from the Geneva Institute for Real Estate Studies (IEI), allowing her to strengthen her expertise in this area of the law. She became a Chartered Valuation Surveyor (MRICS) at the end of 2021. Cosima Trabichet-Castan has studied law both in Switzerland and in Canada. She is fluent in French, English, German and Spanish.

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