



# Commercial real estate law and rules in Montenegro

## 1. Parties and Ownership - Who can own real estate and what types of ownership are there?

### Parties

Any domestic physical or legal person may acquire ownership rights over real estate such as residential and business buildings, apartments, business premises, garages, parking spaces (within the building), land plots and other real estate except for natural resources which are in state ownership. In addition to that, the law prescribes that some resources in general use, such as state owned development land, forests and forest land may be subject to limited ownership rights defined by law.

Foreign natural persons and legal entities are also allowed to acquire title over real estate, however there are certain limitations provided by the law.

Foreign natural persons and legal entities cannot acquire (i) natural resources, (ii) goods in general use, (iii) agricultural land, (iv) forest and forest land, (v) cultural monuments of special importance, (vi) immovable property in land-border areas to a depth of one kilometre and islands and (vii) immovable property located in the area that is, for the purpose of protection of interests and safety of the country, proclaimed by the law. In practice, this means that foreign entrepreneurs and foreign legal persons either establish or acquire a Montenegrin legal entity to overcome these limitations. On the other hand, foreign persons are entitled to a long-term lease, concession and BOT on immovable property listed under points (i) to (vi) above.

### Ownership

Ownership is the highest title a person or a legal entity can hold over real estate. The types of ownership are:

- Exclusive ownership – the top quality of ownership as this type of ownership is only limited by the statutory limitations, i.e. by laws;
- Co-ownership over real estate – ownership of two or more persons over an undivided real estate where the share of each owner is determined or a fixed proportion (the owners may have the right to jointly manage the use of the property). Each of the co-owners is entitled to freely dispose of its

- share; however, other co-owners have a statutory pre-emption right;
- Joint ownership – ownership over undivided real estate where the shares of joint owners could be, but are not determined or fixed upfront;
  - Condominium ownership (ownership of a single real estate unit) – according to Montenegrin law a single apartment, office, garage or parking space may be an object of exclusive ownership rights and, therefore, each of these single real estate units is registered in the land registry separately. Contrary to that, each owner of a single real estate unit is at the same time a joint owner of the common parts and areas. The owners may freely dispose of their ownership over single units together with their corresponding shares of the common parts and areas.

## **2. Interests - What types of interest in real estate are sold?**

Montenegrin law recognizes several forms of interests in real estate. These include:

- ownership;
- possession;
- *iura in re aliena* i.e. limited property rights, such as pledges (i.e. mortgage), easements (which can be personal or real), lease, right to build, pre-emption right etc.

However, current practice dictates that commonly only ownership interests are sold. Assignment of rights and transfer of obligations under occupational leases are relatively rare with subletting being favoured.

Possession enjoys judicial protection and it can lead to acquisition of the property if a person who is at the same time a lawful and bona fide possessor possesses the property for a 10-year period, or if a person who is only a bona fide possessor possesses the property for a 20-year period. A “lawful possessor” is a possessor whose possession is based on a legal title that is required for the acquisition of ownership and who did not gain this possession by use of force, fraud or abuse of reliance. A “bona fide possessor” is a possessor who does not know or cannot know that the property which she/he possesses is not in her/his rightful ownership.

The most frequently used security instrument in Montenegro and the most secure one is mortgage. A mortgage is constituted by its registration in the competent land registry based on a contract, court settlement, mortgage statement, law or judicial decision.

Easements can be acquired by agreement, by a decision of a state authority or by virtue of adverse possession (*usucapio*). It may be applicable only for a specific period of time or a specific time of year.

The right to build is a subjective right which entitles its holder to put up a building on the land of another and to acquire title to the land for a specific period of time. During this period the holder of building right also has the right to use the land for construction work, as well as for occupation.

## **3. Employees - What employment issues affect real estate acquisitions?**

Montenegrin employment regulations do not regulate so called “asset deal”. Therefore, from an employment law perspective the sale of real estate is not a deemed change of employer. If any employees need to be transferred it would be by termination of employment with current employer and new employment contracts with the new employer i.e. new owner of the property. It is also possible that the sale of property may result in redundancies.

In the event of a share deal the new shareholder takes over the internal regulations from the previous shareholder (meaning the employment rulebook or a collective agreement concluded between the

employer and the representative trade union organised within the employer) and all valid employment contracts. In addition, there are some notification obligations of the old and/or new shareholder towards employees and/or representative trade union with respect to the share deal.

## **4. Procedure - What are the steps in a sale and purchase transaction?**

The usual steps in a sale and purchase transaction of real estate, in general, are:

- legal due diligence;
- negotiations – settlement of the purchase price and other purchase conditions;
- drafting and agreeing the contract;
- obtaining permits for the purchase (e.g. in case of pre-emption rights);
- notarization of the signatures of the parties to the contract;
- registration of the buyer in the competent land registry.

Buyers usually conduct extensive legal due diligence of all obtainable documentation and evidence concerning the property, as well as surveys of the building and, in appropriate cases, soil and geological investigations, plant and machinery tests, and environmental investigations. It is important to identify potential problems early, so that there can be negotiation on the terms and/or price.

In Montenegrin law negotiations are not binding and, therefore, each party may terminate negotiations whenever they want. However, the party causing damage to other party by negotiating without the intention to conclude a contract or by terminating the negotiations without any sound reason is responsible for damage caused to the other. For these reasons parties occasionally enter a preliminary contract, which is a contract containing essential elements of the main contract and by its conclusion the parties accept the obligation to later conclude the main contract. The formal requests envisaged for the main contract (a written form and notarization) also apply to the preliminary contract. Unless agreed otherwise each party bears its own costs.

A contract for the sale and purchase of real estate must be in writing. It is important to check for the authorisation for registration of the new owner in the land registry (*clausula intabulandi*), which may be either included in the contract or attached to it as a separate statement. The legal requirement regarding the form of the contract also applies to all future changes or amendments of the contract; however, future amendments regarding subsidiary matters or amendments which reduce obligations of the parties do not have to be concluded in writing if that is not contrary to the original purpose.

If the contract is conditional on obtaining permits for the purchase, e.g. pre-emption rights, the seller has to obtain these permits prior to concluding a sale and purchase agreement with a third party, e.g. the seller has to make an offer to the holder of the pre-emption right.

Notarization of signatures of the parties to the contract is a legal requirement. However, if a contract (made in writing) without notarization has been partially or fully performed and if no pre-emption right or compulsory regulation has been violated, the court may acknowledge the legal effect of that contract.

Title to real estate is acquired through its registration in the land registry, i.e. title to real estate is not acquired by the real estate conveyance instrument, but rather by the registration of ownership in the competent land registry.

## **5. Contract terms - What provisions does a real estate contract contain and what is implied by law?**

## Provisions of the contract

Besides the essential terms of the real estate purchase agreement, such as details of the property and price, the provisions of the contract normally include:

- details of the title document under which the seller acquired ownership;
- all liabilities burdening the property (mortgages, easements, pre-emptive rights, leases);
- conditions of payment of the purchase price;
- handover/takeover date;
- provisions indicating which of the parties will pay property transfer tax;
- provisions indicating which of the parties will file the application for the change of ownership;
- any termination provisions;
- authorisation by the transferor for the registration of the transferee as the owner in the land registry, once the all conditions prescribed by the agreement are met (*clausula intabulandi*)
- seller's warranty that it is the sole unrestricted owner of the property and that the property is and will remain in the (legal and actual) condition described in the agreements until registration of the transferee's title in the competent land registry.

## Terms implied by law

The law implies that a real estate purchase agreement is to be concluded in writing and the signatures of the parties to the agreement have to be certified by the notary.

## 6. Due Diligence - What investigations does the buyer normally make?

### Pre-exchange of agreements

Buyers usually conduct extensive legal due diligence of all obtainable documentation and evidence concerning the property, as well as surveys of the building and, in appropriate cases, soil and geological investigations, plant and machinery tests, and environmental investigations.

The buyer's lawyers shall conduct a pre-exchange due diligence verifying the following facts:

- Title to the property. This will include an extensive investigation of the land registry and the entries that can be found in it, as well as, if necessary, historical documents and deeds, that will provide more information regarding the real estate. Where title to the real estate is not entered in the land registry, the buyer's lawyers will consider the unregistered deeds to check whether the seller holds good and sufficient title to the property.
- In order to obtain this information, the buyer's lawyers shall examine an extract from the land registry which contains information concerning ownership of the real estate, the property's size, location and encumbrances and limitations (easements, mortgages, pre-emption rights), etc. This document will act as a confirmation of the seller's registered ownership right, as well as provide important information which can have a significant impact on the Buyer's intention to purchase the real estate. Before the conclusion of the transfer agreement the buyer's lawyers will acquire an additional land registry extract or make an enquiry with the land registry in order to determine whether additional interests over the property in question have been added or whether procedures have been started for recognition of pending interests, which may prejudice the buyer's intentions for the property.
- The position regarding municipal and zoning permits, environmental matters, utilities serving the property, financial encumbrances, etc. The documentation regarding these issues needs to be carefully considered by buyer's lawyers to ensure that they are not contrary to the buyer's intentions for the property.

- The legal status of the seller (if the seller is a company). The buyer's lawyers will conduct corporate searches of the seller at the Companies Register in order to verify the name, registered office and who is entitled to act on behalf of the company, as well as to ascertain whether or not the company is registered and solvent and therefore able to dispose of its assets freely.
- Additional enquiries. It is also advisable to obtain information regarding practical matters which may affect the property.

### **Pre-completion**

Shortly before completion, the buyer's lawyers shall also conduct searches for confirmation that there are no pending proceedings regarding the property and that the seller has not been declared insolvent and/or bankrupt. These searches should confirm that the information gained in the due diligence process remains unchanged just before the execution of the transfer agreement.

### **Reporting to the client**

Before exchange of agreements, the buyer's lawyers usually report their due diligence findings to their client, raising any matter of particular importance or concern.

## **7. Registration and Notarisation of real estate - What are the basic requirements?**

In Montenegro, the title over real estate is acquired through its registration in the land registry. Hence, the title over real estate is not acquired by the real estate conveyance instrument, but rather by the registration of property ownership in the competent land registry which has a constitutive effect. Proper registration is generally taken as prima facie evidence of ownership over real estates.

In order to acquire title to property, it is necessary that the property which is the subject-matter of acquisition is itself registered in the relevant land registry. For buildings where occupancy permits have been issued, it may be assumed that the most important prerequisite for the registration of such property in the land registry is met. The holder of an occupancy permit is deemed to be the initial owner of the property. It is customary to rely on the existence of occupancy permits for the purpose of acquiring property. However, none of the permits may replace the excerpt from the land registry, which remains the only exhaustive proof of title to real estate.

Once the requirements for the registration of property (and its initial owner) in the land registry are met, subsequent buyers are registered on the basis of the real estate conveyance instrument and supplemental documents, i.e. a proof of full payment of the purchase price (as applicable) and an authorization by the transferor for the registration of the transferee as the property's owner in the land registry (*clausula intabulandi*).

## **8. Permits - What permits are required for the use and occupation of real estate and are they personal?**

In order to erect or use new buildings or to reconstruct or refurbish real estate, a permit is required, which includes obtaining the following:

- Urban-technical conditions – this document is based on the “Planning documents” (spatial and urban plans) and it serves only as information on development possibilities and limitations of a specific land parcel, i.e. it contains general zoning parameters for development on the basis of applicable zoning ordinances. The urban-technical conditions are issued within 30 days of request by municipal authorities.
- Construction (building) permit – issued on the basis of an approved design project for the building

and other documents (i.e. evidence of ownership or other right over the real estate, documents regarding the regulation of communal fees etc.). This permit (along with the notification to competent authorities on commencement of works) allows construction works to commence and represents official confirmation that the designed project is in accordance with the zoning documents and the applicable building code. The authority that issued the permit and the relevant municipal building inspector must be notified seven days prior to the commencement of works. The permit ceases to be effective if the works do not commence within two years from the issue of the final decision granting the construction permit.

- Occupancy (use) permit – issued upon completion of works allowing the use of a building if the competent authority determines that the building is suitable for use, i.e. if the building was built in accordance with the construction permit and technical documentation; if the evidence of quality of works performed, material used, installations and equipment was submitted, etc. The issue of an occupancy permit is also subject to a technical inspection performed by a commission for technical inspection. The permit is issued by the authority which issued the construction permit within 30 days request. In practice, real estate is often in use without any construction/occupancy permit. This risks a demolition order and is a commercial offence and could lead to penalties.

## **9. Insurance and Risk - What insurance will the parties effect and when does the insurance risk pass at the time of sale?**

Real estate in Montenegro is often underinsured and only basic coverage (specified in following two points) is common:

- insurance against fire and other hazards – covering damage to property caused by fire, explosion, storm or other natural disasters, nuclear power, landslides and subsidence; and
- other property insurance – covering damage to property caused by machine breakdown, burglary, glass breakage, hail, frost or other perils.

Before the sale is complete, insurance is the responsibility of the property owner. Although the transfer of ownership is effective only on registration of ownership at the competent land registry, risk transfer depends on the sale and purchase agreement. The sale and purchase agreement will stipulate the time of property handover/takeover. The buyer will take the risk from the agreed date, including where it is in default or delays the sale.

The rights and obligations of the seller (policyholder) pass to the buyer by operation of law, unless otherwise agreed in the contract, but if only a part of the property is sold, which in terms of insurance does not represent a separate whole, the insurance contract ceases.

The insurer and the buyer can cancel the insurance contract within 30 days of the day on which they become aware of the sale, unless the insurance policy was issued to the bearer or by order.

## **10. Environmental - What are the common environmental issues?**

The responsibility for environment pollution in Montenegro is imposed on the polluter based on two main principles:

- Principle of responsibility of the polluter and his legal successor This principle provides that the polluter, be it a natural person or a legal entity causing environmental pollution is responsible under the law, as well as that the polluter or his legal successor is obliged to address the cause of pollution and the effects of direct and indirect pollution. Changes in ownership of a company or any other legal person must include an assessment of the state of the environment and a determination of liability for environmental damage, as well as an agreement on the liability of the

previous owner for the pollution and/or environmental damage.

- “polluter pays” principle According to this principle the polluter is liable to pay compensation for pollution if its activities cause or may cause environmental pollution. The polluter is obliged to cover the total costs of measures implemented to prevent and reduce pollution, which includes the costs of environmental risk and the cost of remedying the environmental damage once it has occurred.

Besides these basic principles regulating the responsibility of legal entities for environmental protection and courses of action in the case of environmental pollution, the Montenegrin legislator has focussed on the rules regulating development of real estate (i.e. plants, factories) which are intended for activities that have or could have an impact on the environment. Special conditions and procedures are set for obtaining an “integrated permit”, which is necessary for commencement of construction works, as well as for the use for which these structures are intended. The permit process consists of following steps:

- submission of an application to the competent authority for the issue of the permit along with all necessary documentation;
- notifying the authorities and organisations in the fields of agriculture, water, forestry, planning, construction, transport, energy, mining, protection of cultural heritage, environmental protection and others, local government bodies in the territory of the planned activity and concerned public of the application;
- establishment of a technical committee (competent for the analysis of environmental impact assessment, application of the best available techniques, expected local and wider impacts of intended development on the environment, etc.) by the competent authority;
- deciding on the application.

On any acquisition it is advisable to engage environment consultants to examine documentary information and to carry out a site visit. If considered necessary, further, intrusive investigations may then be undertaken. It is important to identify potential problems early, so that there can be negotiation on the terms and/or price.

## **11. Pricing/Valuation - What sets the price/valuation of real estate?**

The law does not provide a fixed methodology for assessing the market value of real estate and, therefore, valuers and market participants tend to use different methodologies, the methodologies commonly used in EU countries being the starting point.

In practice, the factors and their influences on the market value of real estate are assessed based on an analysis of the real estate market. In the system of market price evaluation these three approaches are most commonly used:

- Sales comparison approach – this approach is based on the “supply and demand” principle, i.e. on the comparison of the price of the property to be sold and retail selling prices of other properties of the same or similar characteristics, such as location, size, quality, type and condition.
- Costs approach – in this approach the appraiser calculates all costs necessary for the construction of the same or a similar building, including cost of acquiring the land parcel, utility connection charges, etc.
- Income approach – the value of the real estate is based on expected income and expenses. This approach is normally used in the appraisal of large business structures that are intended to be let as investments.

Besides this market system of real estate valuation, the “administrative” system is also used for the assessment of real estate values. This system is used by administrative authorities (e.g. tax administration) for purposes such as collection of taxes, compensation in return for expropriated property, etc. The results obtained by implementing this system often do not correspond to the market values of real estate.

## 12. Taxes and Costs - What are they and who pays them?

The main tax on acquisitions is absolute rights transfer tax at a rate of 3 % of the purchase price. If the tax authority deems the purchase price to be lower than the market price, the tax will be based on the market price determined by the tax authority.

The tax liability lies on the buyer of the property, and is incurred when the contract is concluded. It may be negotiated that the seller pays the tax.

Value added tax (VAT) may be payable for the transfer of buildings instead of absolute rights transfer tax on the first transfer of buildings i.e. the transfer of newly built buildings; a general rate of 19% is applied. If VAT is applied it is payable by the buyer.

It is not uncommon on commercial acquisitions for the seller and the buyer to each appointed its own broker, to whom they will pay commission. Generally each party pays its own expenses.

During due diligence on an acquisition, the buyer will usually pay the costs of conducting searches. The buyer shall also pay for any valuations and surveys of the physical state of the property and any environmental audits or desktop studies. The seller will pay for any valuation by the court appointed expert.

The buyer will usually be responsible for the payment of the land registry fees associated with registration of the conveyance to the buyer.

## Key Contacts



**Milica Popović**  
Belgrade, Podgorica  
Partner



**Jovana Bingulac**  
Belgrade, Podgorica  
Senior Lawyer