



ICLG

The International Comparative Legal Guide to:

Real Estate 2018

13th Edition

A practical cross-border insight into real estate law

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Turkey

Göktuğ Can Burul



Onur Atakan



BKA Attorneys at Law

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.**

In Turkey, the main laws that govern real estate are the Turkish Civil Code (“TCC”) and the Turkish Code of Obligation (“TCO”).

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

As Turkey is a civil law country, precedential court decisions do not have a binding effect. However, in litigation practice in Turkey, it is important to present precedential court decisions to support your case.

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

No, local laws are applicable.

2 Ownership

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

There are certain restrictions for the ownership of real estate by foreign individuals, foreign legal entities, and Turkish companies with foreign capital.

The principle of reciprocity was abandoned in 2012. Currently, the Council of Ministers decides which countries’ citizens can acquire real estate in Turkey. In any case, currently a foreign individual may acquire real estate with an area of up to 30 hectares at most in Turkey.

On the other hand, foreign legal entities can acquire real estate only within the scope of special laws such as the Tourism Incentive Law.

Turkish companies with foreign capital (i.e. under foreign control) may acquire real estate to carry out the activities set out in their articles of incorporation. This is also subject to a permission process.

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?**

In rem rights are the rights of ownership and mortgage, and easement rights such as the right of way.

There are also certain rights which are purely contractual. These arise from contracts such as preliminary sale agreements, repurchase agreements, right of first refusal, right of purchase or repurchase agreements. Nevertheless, these agreements may be recorded in the land registries, which makes the rights arising out of such enforceable to third parties. Similarly, the rights to use arising from a lease agreement may also be asserted by the new owner as he automatically becomes a party to the lease agreement.

- 3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?**

In a condominium real estate, the ownership of one independent section is a separate right from the ownership of the land. A purchaser, when purchasing a condominium, also acquires a share of ownership of the land on which the condominium is erected jointly with the other right holders.

- 3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split?**

No, there is no such split.

4 System of Registration

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

Except for public lands (unless there is a right established thereover), all land in Turkey is required to be registered.

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

The State maintains the land registries and guarantees the accuracy of the information contained therein. Therefore, the State is liable for any damages incurred due to errors in the records of the land registers.

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

In rem rights such as ownership, easements and mortgage are required to be registered. Such rights cannot be established and are deemed void without registration.

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

Registration of rights other than *in rem* rights is not compulsory.

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.

There is no probationary period in Turkey. Nevertheless, for unregistered lands, provisional registration is possible.

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

On land sales, the title is only transferred upon registration in the land registry.

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

Rights *in rem* (“*RiR*”), except the right of ownership, have priority over those established later. Therefore, the principle of “earlier rights defeat later rights” is applicable regarding *RiR*.

With regards to the mortgage, the priority is determined based on their assigned rank. For example, a mortgage established later but assigned to a higher rank would defeat a mortgage which was established earlier but assigned to a lower rank.

As for priority between the mortgage and *RiR*, if the rank of mortgage is reserved earlier (even though the mortgage itself is not yet established), the mortgage will have priority over *RiR*.

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.

In Turkey, there are 970 land registry directorates and 81 cadastre directorates. These operate under 22 regional units which also operate under the General Directorate of Land Registry and

Cadastre. The regulations governing the directorates are the same and there are no substantial differences regarding the rules and requirements.

5.2 Does the land registry issue a physical title document to the owners of registered real estate?

Yes, the land registry issues a title deed to the owner.

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?

It is not possible to complete a transaction related to real estate electronically.

For registration of a ownership right, the land registries require a document showing identity (i.e. an identity card or a passport), a special power of attorney in case a party is represented by a proxy, photos for real persons, mandatory earthquake insurance for buildings and a document stating the real estate tax basis which is obtained from the relevant municipalities.

Electronic access to information on ownership of a real estate is available for some public institutions and State-owned companies, whereas it is generally not available for other persons or companies.

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

Yes. The State is liable to compensate damages incurred due to mistakes in the land registries.

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?

Even though in principle the information on the land registries is open to every person who proves a legitimate interest, in practice the land registries do not generally allow third parties to access the information. In practice, buyers usually obtain the information on encumbrances by requesting the seller to obtain a document showing the encumbrances on the title from the land registry.

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.

Real estate agents and appraisers are usually involved in real estate transactions.

6.2 How and on what basis are these persons remunerated?

Real estate agents are usually remunerated by the buyer based on a percentage of the sale price, which is generally around 6%. Appraisers are paid a fixed fee by the party who hires them.

6.3 Do you feel there is a noticeable increase in 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?

For real estate transactions, it is safe to say that the main source of capital is banks, thus leading to debt. However, there were successful campaigns for the sale of real estate in large residential projects in 2017. Therefore, the records show that sales increased in 2017, which were mostly paid by equity, not debt, in contrast to other years.

6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.

The secondary market is very significant in Turkey. As real estate prices constantly increase, transactions in secondary or tertiary markets are still very profitable.

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.

Even though there has been a slowdown in previous years, through successful campaigns in 2017, the attractiveness of housing and construction is a rapidly increasing market, specifically in the Marmara Region. We observe that most of the interest in the real estate market in Turkey is from Middle Eastern States.

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 sale and purchase of real estate shall be made with an official agreement to be signed at the land registry. An appointment is required from the relevant land registry.

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

There is no direct duty of disclosure for the Seller. However, under TCO, the seller is liable for defects decreasing the value, the use or the expected utility of the real estate (unless such defects would have been known upon adequate examination).

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

Yes, under TCO the seller is liable for misrepresentation.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

The common warranties are the rightful ownership, absence of encumbrances or expropriation. These are not a substitute for due diligence but generally function to appropriate the risk to the seller.

7.5 Does the seller warrant its ownership in any way? Please give details.

TCO provides a warranty for quiet enjoyment and unless the buyer is aware of the risk at the time of the sale, the seller would be liable for the seizure of the title of the real estate due to a claim existing at the time of the sale.

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

The buyer is also usually liable to pay the costs of the sale.

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?

Lending of money is mainly regulated by the Banking Law and the Regulation on Banking Loans. Moreover, real estate financing for consumers is also regulated under the Law on the Protection of Consumers ("LPC"). Foreigners (resident or non-resident) may also use loans from Turkish banks.

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

The main method for security used by the lenders is a mortgage on the real estate. Seeking security through a guarantor is also common. Moreover, almost all loan agreements include acceleration clauses.

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?

A mortgagee must resort to a court or enforcement office for the foreclosure. The most common method is to initiate enforcement proceedings directly, in which the mortgaged property is sold through public auction. The courts may also be involved in these proceedings if the mortgagor objects to the proceedings.

8.4 What minimum formalities are required for real estate lending?

The borrower should first apply for a loan and sign a loan agreement following the approval. This agreement does not need to be in an official form.

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

The receivable of a mortgagee has priority over other receivables. Therefore, the receivable of the lender with a mortgage right will have priority in the foreclosure proceedings. In addition to that, when a mortgage is registered on real estate, the transfer of the title does not terminate the mortgage right.

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

Unless established with an official agreement at the relevant land registry, a mortgage will be deemed void and unenforceable. Moreover, in case the mortgage is established over a “matrimonial home”, the lender must obtain the approval of the borrower’s spouse. Otherwise, the mortgage may be rendered unenforceable by the courts.

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

The type of the enforcement proceedings differs according to the type of the mortgage obtained. Depending on the type of the enforcement proceedings, the borrower may object to the proceedings or apply to the enforcement courts only to prove the debt is paid.

9 Tax

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

Yes, each party must pay a land registry fee of 2% of the purchase price. Real estate sale transactions are exempt from stamp duty tax.

9.2 When is the transfer tax paid?

Transfer tax must be paid before the transaction is made at the relevant land registry.

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

Yes, transfers of real estate are subject to income tax in case (i) the real estate is obtained against remuneration, (ii) the real estate is sold within five years from the acquisition date, and (iii) the gain generated from the sale is above TL 11,000.00 (as of 2017).

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

Yes, real estate transactions are subject to VAT and the rate is 18%. However, for certain residential real estates with a net surface area of less than 150 square metres, the VAT rate is 1%. The buyer must pay the VAT to the seller, who in return must pay it to the tax authority.

Unless a company is active in real estate business, it would be exempt from VAT depending on certain conditions (i.e. if the real estate is held for two years).

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

There are none.

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

Yes, share transfers are not subject to income tax in case the shares of a joint stock company are held for two years. Moreover, share transfers are not subject to VAT.

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

In practice, the seller and buyer usually agree to show the purchase price to be lower than the actual transaction amount to evade higher taxes. In such cases, both parties may face a fine for loss of tax.

10 Leases of Business Premises

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

The main law that regulates the leases of business premises is TCO. Please note that the effectiveness of some provisions under TCO is delayed. The Regulation on Shopping Centres also stipulates special provisions pertaining to leases in shopping centres.

10.2 What types of business lease exist?

Under TCO, there may be three types of business lease agreements (i) land lease (ordinary), (ii) roofed business lease, and (iii) usufructuary lease), each of which is subject to different rules.

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 is subject to the agreement between the parties. It may be for a specific or unspecific time. For roofed business leases, the agreement is renewed for one year unless terminated by the tenant 15 days prior to the end of the term.
- (b) TCO limits the rent increase to the producer price index of the previous year (“PPI”) for roofed business and residential leases. Nevertheless, the effectiveness of this provision is delayed until July 2020 for roofed business leases. Currently, parties may freely agree on the rate of the increase.
- (c) For roofed business and usufructuary leases, the tenant may only sublease with the written consent of the landlord. For ordinary leases, the tenant may sublease unless otherwise agreed.
- (d) For roofed business leases, the owner must have mandatory earthquake insurance. Unless otherwise agreed, the tenant is not obliged to have insurance.
- (e) (i) The change of control of the tenant does not affect the lease agreement.

- (ii) In cases such as a merger, as the company's actives and passives are automatically transferred pursuant to the law, the written consent of the landlord is not required.
- (f) The tenant is liable for small repairs, whereas the landlord is liable for large repairs. The tenant may make changes and renewals if the landlord consents in writing.

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

For business leases, a stamp duty tax (0.189% of the annual rent) must be paid. Unless otherwise agreed, parties are jointly liable to pay the stamp duty tax. In case the landlord is a corporate entity, VAT (18%) must be paid by the tenant. If the landlord is an individual, the tenant must pay a withholding tax (20%).

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?

For roofed business leases, the landlord may only terminate the contract in very limited cases. The tenant may terminate the contract 15 days prior to the end of the term. Unless duly terminated, the contract is renewed for one year.

Under TCO, it is prohibited to stipulate provisions to the detriment of the tenant. However, the effectiveness of this provision is delayed until July 2020. Currently, it is possible to agree on penalty or compensation clauses for early termination. In the absence of such agreement, the landlord is entitled to claim a reasonable amount (three months' rent) for the loss of rent.

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?

If sold, the new owner of the real estate automatically becomes a party to the lease agreement. However, the tenant would still be liable to the old landlord for the rents of the months before the sale.

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).

Such obligations are uncommon.

11 Leases of Residential Premises

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

The main law that regulates residential leases is TCO. Please note that the effectiveness of some provisions under TCO is delayed.

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

There are no separate regulations for premises intended for multiple tenants.

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?

- Length of term is subject to the agreement between the parties. A lease may be for a specific or unspecific time.
- TCO limits the rate of rent increases to CPI for residential premises leases.
- The contract is renewed for one year unless terminated by the tenant 15 days prior to the end of the term. Except for in certain situations, the landlord cannot force the tenant to leave the premises.
- Unless otherwise agreed, the tenant does not bear the cost of insurance. He is responsible for small repairs and other costs related to the use of the premises.

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?

Landlords' right to terminate the contract and evacuate the premises is very limited. Some of these are as follows:

- If the contract is renewed for 10 years, the landlord may terminate the contract by notifying the tenant three months prior to the renewal of contract.
- In case a month's rent is not paid within 30 days from the landlord's written notice, the landlord may terminate the contract and evacuate the premises with a court order.
- In case the rent is not paid two times within a lease year, the landlord may request termination of the lease and evacuation of the tenant one month prior to the end of the term.
- In case the tenant promises in writing to evacuate the premises at a specific date, the landlord may request the evacuation one month prior to the end of the term from the court within one month of the promised date.
- In case the new owner needs to use the property for his own or his next of kin, s/he should notify the tenant within one month of the acquisition and s/he may request the evacuation of the tenant six months from the beginning of the lease or within one month from the term's end.

12 Public Law Permits and Obligations

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

The main law governing zoning and use of lands is the Zoning Code. The law, in general terms, specifies the conditions of constructing a building or use of land. Moreover, the Bosphorus Code regulates Istanbul's specified Bosphorus area and its surroundings, which provides restrictions regarding construction in the area.

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

Yes, under the Expropriation Code the State and certain governmental bodies may expropriate land owned by private persons.

For regular expropriation, the Code stipulates that the price for expropriation must first be negotiated with the land owner. In case an agreement cannot be reached, governmental bodies will resort to the courts for the determination of the price and registration of the target real estate.

Through an immediate expropriation procedure, governmental bodies may expropriate the land before price negotiations and completion of the procedure. In this case, the courts will determine the expropriation price.

During court proceedings, the expropriation price is always determined by experts in related fields.

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

The Ministry of Environment and Urbanisation is the main body that controls zoning and use of land. Municipalities, governorships, and other public authorities are also involved in zoning and planning. Buyers may obtain information from zoning plans and land registries.

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

For building works, a construction licence is required before construction. When the building's foundation is constructed, a surface structure permit must be obtained. Following the completion of construction, a building use permit is required for the lawful use of the 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)?

Construction permits are commonly obtained. However, application for building use permits are rejected most of the time due to incompatibility with construction permits. There is no implied permission.

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

The costs for a building use permit depends on the size of the building and the municipality from which the permit needs to be obtained. Usually, around a 30-day period is required after a complete application is made.

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?

Historic monuments are protected under the Law on Protection of Cultural and Natural Properties Code. Historic monuments are mostly owned by the State and these may only be transferred upon

the approval of the Ministry of Culture and Tourism. Privately owned historical monuments are also subject to certain restrictions regarding their use.

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?

There is no fully operational and reliable public registry system for contaminated lands. However, information on contaminated areas may be obtained through the information system of the Ministry of Environment and Urbanisation.

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

The Environment Code ("EC") prohibits contaminating the environment and, pursuant to the Code, whoever contaminates the environment is liable for clean-up and may face administrative fines and imprisonment. The clean-up liability may also arise due to activities such as construction pursuant to the Regulation on Control of the Excavation of Soil, Construction, and Demolition Wastes.

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

The energy performance of buildings is mainly regulated under the Energy Efficiency Code and Regulation on Energy Performance of Buildings. These pieces of legislation require the obtainment of an energy identity card for certain buildings and set forth the rules and requirements for the energy efficiency of buildings.

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).

There is no regulation providing direct measures for reducing carbon dioxide emissions under Turkish legislation.

Several regulations have been enacted with regards to greenhouse gas emission levels without setting specific emission targets or limits. These require reporting from specific industrial enterprises or factories regarding their emission levels. Although the regulations do not specify any limits, they have developed a monitoring system which is a breakthrough for Turkey.

13.2 Are there any national greenhouse gas emissions reduction targets?

Turkey is a party to the Convention on Climate Change and Kyoto Protocol. In accordance with these agreements, the Regulation on Monitoring Greenhouse Gas Emission Levels was enacted in 2014. However, this regulation does not specify any emission reduction targets. As part of the Paris Convention, Turkey submitted its first Intended Nationally Determined Contribution ("INDC"), which sets out a plan for the reduction of greenhouse gas emissions by up to 21% by 2030.

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

There are certain regulations which aim to improve the sustainability of buildings and impose energy efficiency requirements such as the Regulation on Building Energy Performance and Regulation on Certification of Sustainability of Green Zones and Premises.



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Göktuğ has extensive experience in dispute resolution, mainly in complex legal matters related to commercial and real estate law and has been involved in many projects including construction, excavation, transportation, and agriculture.

He also provides legal advice and consultancy services in his area of expertise to his clients, which include leading companies in real estate, plastic building materials, organic farming, salt production, industrial products, chemical products, and construction.



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Onur Atakan is experienced and specialised in Corporate and Business Law, Intellectual Property Law, Labour and Social Security Law, Administrative and Tax Law and Contracts Law, particularly franchise, exclusive distributorship and international sale of goods agreements. He has drafted and reviewed various types of franchising and distributorship agreements for multinational corporations that operate mostly in the textile and automotive sectors.

With his proficiency and experience in intellectual property law, he has represented his clients in trademark, patent and copyright conflicts and has provided consultation for international trademark holders with regards to the Madrid Protocol and Paris Agreements.



BKA Attorneys at Law is a boutique law firm located in Istanbul, Turkey. The firm's practice mainly focuses on commercial, corporate, real estate, labour law matters and dispute resolution among others. BKA's clientele includes leading Turkish and international corporations and the firm renders services to its clients with its dynamic and experienced team. The firm aims to be a trusted advisor of its clients as every member of the firm is dedicated to providing outstanding service and desired results. Our main objective is to implement rapid, accurate, up to date, reliable and protective solutions tailored for the needs of our clients in their respective transactions or existing or possible disputes. Keeping the client's interest paramount, our team's top priority is to create innovative and effective legal means to fulfil the expectations of our clients.

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