

Real Estate in Switzerland



Why Real Estate in Switzerland?

Switzerland is a prime location for owning real estate.

- **Business Purposes:** Enterprises looking for a business establishment might prefer or even need to acquire ownership of real estate instead of renting as a solution.
- **Investment:** Due to the stability of real estate prices in Switzerland, real estate has become a more and more important asset class for a variety of investors. Real estate is seen as an alternative investment in the market with the potential to render regular, as well as occasional income. Another form of investment is to finance acquisitions of Swiss real estate (e.g. using the different types of security arrangements).
- **Residence in Switzerland:** Switzerland is a renowned location for individuals due to its political and economic stability as well as a favourable tax regime. Real estate can be acquired as a primary or as a secondary residence.

This brochure can only describe the most essential legal and tax issues involved in acquiring real estate in Switzerland. It is not intended to be comprehensive or to provide any specific legal or tax advice. The partners of NEXIA in Switzerland are able to advise prospective buyers on all issues involved.



Legal Issues

I. Statutory forms of property

- The Swiss Civil Code defines and regulates ownership of real estate. Forms of real estate are land and houses, independent and permanent rights entered in the Land Register, mines and co-ownership shares in immovables.
- Land and houses are what is commonly understood to be real estate. It comprises not only the soil but also buildings on it, meaning that separate ownership of soil and buildings is an exception.
- An interesting option is to register specific rights in the Land Register. These can be easements (like rights of way or specific obligations) or - very important in practice - independent and permanent rights of building. When a right of building is established, ownership of the soil and the building can be split. The owner of the soil establishes servitude on the soil so that every subsequent owner of the soil is bound by agreement establishing the right of building. After the end of the agreement, the ownership of the building falls back to the owner of the soil, but he has to reimburse the remaining value of the buildings.
- Co-ownership shares in immovables can be regular co-ownership in real estate or the condominium principled ownership (also called “storey ownership”), which combines individual ownership in the condominium with co-

ownership in the soil and in the other parts of the building. In this sense, flats and condos can be real estate.

- Not all aspects of property in real estate are regulated by the (federal) Civil Code. The cantons have filled the gaps in the federal legislation with specific legislation in fields such as relations among neighbours, interest limits on mortgage-secured loans and certain pre-emption rights to agricultural land.

II. Acquisition of property

- Acquisitions of property rights in real estate need both public notarisation of the acquisition agreement and recording in the Land Register. The situation is thus unlike that in France, for example, where a sales contract can be sufficient to cause the passing of the title.
- As each piece of real estate has its own file in the Land Register showing all relevant legal features (e.g. size of the land, ownership and other rights in rem) there is no need for extensive research about these features. They are shown in an excerpt from the Land Register. Also there is no need for title insurance as it known in the US, since the person who relies bona fide on the entries in the Land Register has his rights protected.
- Due diligence in acquiring real estate focuses primarily on the state of the buildings, on zoning and building requirements and on tax issues. Transfer of ownership and prof

its gained are taxed and the respective tax laws often provide for joint and several liability of both the buyer and the seller for the taxes due. If the land acquired has been used for business purposes, due diligence should comprise clarifications for dangerous waste from the past. The cantons have specific registers to consult in this regard.

The acquisition of real estate by foreigners is regulated by the Federal Law on the Acquisition of Real Estate by Persons Abroad (also known as “Lex Koller”). In general every acquisition of real estate by a foreigner requires a permit unless a specific acquisition is subject to an exception. Many exceptions exist in terms of real estate for permanent business establishments, main and secondary residence, holiday homes, and legal heirs or for persons domiciled in Switzerland but nationals of the EU/EFTA.

- A special Act is applicable for the acquisition of agriculturally used land. This Act restricts the acquisition of agriculturally used land by non-farmers.

III. Protection of property

- Property protection is expressly stated in the Federal Constitution (Art. 26). The owner has a right to full remuneration where an expropriation has occurred or where governmental dispositions have caused substantial loss to the value of private property. Expropriation is allowable only in the case of overriding public interests and against full compensation. Many public acts, however, are classified not as expropriation but only as reasonable restrictions (an example is building and zoning laws). The owner of real estate affected by such public acts does not have a right to compensation.
- The Civil Code states that the registered owner of land has the right to dispose of his property at will, subject only to the restrictions imposed by law and by the rights of third parties. The owner has the right to demand his property back from anyone who detains it and to take measures to prevent any unlawful interference with it. The Civil Code also protects the owner against unlawful attacks by providing for a right of defence, an action for restitution and an action for trespass.
- As the cantons are competent to implement the Civil Code, they all have introductory laws which are another important source of rules concerning the protection of property, especially in terms of neighbours' interferences.

IV. Financing

- Security arrangements for financing real estate transactions are common in Switzerland and the capital market is very efficient in this respect. Interest rates are low and amortization requirements are mild.
- According to the Swiss Civil Code, three types of mortgages are allowed: the mortgage assignment, the mortgage note and the certificate of a land charge (which has little practical importance). It should be noted that the mortgage assignment and the mortgage note do not limit the debtor's liability to the mortgaged real estate. Should a loss occur in the sale of the real estate the debtor is subsidiarily liable with his entire assets. This is not a hypothetical scenario: The real estate may be charged over the estimated or effective value, since the law does not provide for a limit to the encumbrance.
- A mortgage assignment can be created as a security for any kind of claim, i.e. for existing, future or contingent claims or for claims with an unliquidated or variable amount. As the mortgage assignment depends on the existence of the secured claim, the owner of the mortgaged real estate can demand erasure of the mortgage assignment in the Land Register after payment of the debt. Because of these features, the mortgage assignment cannot be bonded.

- A mortgage note can be established to secure a personal claim, which must not be subjected to conditions or obligations on the part of the creditor. With the creation of the mortgage note, the claim is given an abstract character, meaning that the claim does not depend on the objections the debtor might oppose to the first creditor. Through its features, the mortgage note can be established as a negotiable security. If the repayment claim and the mortgage are bonded in a security, the creditor has the possibility of easily selling the claim. On the other hand, the advantage of not bonding the credit is that the credit secured may then vary in sum. Therefore unbounded mortgages are used by banks for fluctuating credit facilities like overdraft arrangements.
- The hierarchy between several mortgages on the same piece of land is defined by a system of fixed ranks of the mortgage rights (another possible solution would have been to use priority in time as the decisive criterion).

V. Building Law

- In Switzerland, zoning and building laws exist on all three levels of government: federal, cantonal and municipal. They all aim to ensure the economical use of the land and to minimise the environmental impact of land development projects.
- The Federal Zoning Act provides for the cantons and municipalities to implement zoning plans and building laws

according to the guidelines set out in the Act. It respects the traditional autonomy of the cantons and the municipi-

palities to regulate zoning and building matters. As a consequence, zoning and building regulation is highly diverse and local expertise is needed in land development or building projects.

- Official construction permits from the municipal building authorities are needed for any construction project. These permits are given only if all zoning, building and environmental requirements are met, with the consequence that the permit process may last several months. Major land development or construction projects therefore need meticulous planning and it is highly advisable to obtain legal advice right from the beginning of the project.

Tax Issues

I. Acquisition of real estate

- Real estate transfer tax

Many municipalities and cantons levy a transfer tax on the transfer of legal title over Swiss real estate up to 3.3% (Neuchatel, Vaud) on the consideration payable (depending on the location of the canton or municipality). Some cantons do not levy any such tax (e.g. Uri, Schwyz, and Zurich).

In general the tax is to be paid only by one party (the buyer) or split between the buyer and the seller depending on the canton where the property is situated. Usually, the tax is also levied when the majority of shares of a real estate company are transferred.

- Charge of registration

In addition to the real estate transfer tax almost all cantons or municipalities levy a charge for registration on the transfer of legal title over Swiss real estate (between 0% and 0.85%).

- Value added tax (VAT)

Rental income and capital gains on the disposal of real estate are generally exempt from VAT. A lessor can opt to pay VAT on rental income, if the lessor is running a business activity which is subject to Swiss VAT from the relevant

real estate. As a result any input VAT is in general partly or fully recoverable as long as the company is Swiss VAT registered. The standard VAT rate is 7.6%.

II. Ongoing taxation after purchase

- **Real estate property tax**

Many cantons and/or municipalities levy a separate annual real estate property tax, depending on the tax value of the property (normally lower than the current market value) of 0.0 - 0.4% of the tax value. The canton of Zurich does not levy such a tax.

- **Income tax**

The net income (difference between the earnings from the real estate minus deductions such as costs, interest, etc.) is subject to income tax. Only for business real estate is a deduction for depreciation allowed. Individuals with private real estate have to declare an estimated rental income for personal occupancy. This estimated rental income can be lower than the market value, depending on the canton where the property is situated.

- **Net wealth tax**

All cantons and municipalities levy net wealth tax on worldwide assets, with the exception of real estate, a fixed place of business or a permanent establishment located abroad. No wealth tax is imposed at the federal level. Tax rates vary depending on the canton or municipality. The

taxable value of the real estate is normally lower than the current market value (e.g. canton of Zurich approx. 70%).

III. Sale

- Real estate gains tax

Private assets:

The real estate gains tax occurs on the transfer of ownership of real estate (land or land and building) with some exemptions. The basis is the gain on the transaction (= selling price minus acquisition/building costs and minus selling costs). The gains deriving from the sale of real estate are not subject to direct federal tax, but are taxed separately by all cantons.

Nearly all cantons have a similar tax system. The rates vary from canton to canton. The cantons usually apply a system of variable tax rates depending on the duration of the ownership in order to discourage short term speculation with real estate. E.g. the rate of the real estate gains tax in the canton of Zurich is up to 40%. This rate can rise up to 60% if real estate has been owned for less than two years, and it is reduced to 20%, if real estate has been owned for more than 20 years from the last taxable transfer.

Business assets:

If real estate is a business asset rather than a private property, the federal government and some cantons apply the income tax on gains of business assets. Some cantons levy a real estate gains tax (BE, BL, BS, JU, NW SZ, TI, UR and ZH).

- Real estate transfer tax
See “Acquisition of real estate”
- VAT
See “Acquisition of real estate”

IV. Conveyances free of charge

- Inheritance tax/gift tax

The tax is applied on net asset transfers either by inheritance or by lifetime gift. Tax rates vary, according to (a) the value of the inheritance or gift and (b) the degree of relationship between the deceased and the heir or between donor and donee. There is no tax on federal level. On cantonal level the rates vary from canton to canton. Usually the cantons provide for progressive rates between 0% and 54%. Tax free personal allowances also vary considerably from canton to canton and according to the degree of relationship. Most cantons do not levy such tax on net asset transfers to spouses or children.

- Real estate gains tax

There is normally no such tax on a conveyance free of charge.

- Real estate transfer tax

Most cantons do not charge real estate transfer tax on a conveyance free of charge. Cantons which do charge levy a reduced tax.

Members in Switzerland and Liechtenstein

National Office
Nexia Switzerland Ltd.
Rue du Mont-Blanc 14
P.O. Box 1468
CH-1211 Geneva 1

Tel.: + 41 22 908 01 50
Fax.: + 41 22 908 01 51

Email: nexiasuisse@firexaudit.ch
Kontakt: René Kurth/Roland Schaer

AUDIT AND CONSULTING OFFICES

ABT Group (Adliswil, Cham, Budapest)

ABT Treuhandgesellschaft
Andreas Baumann & Co.
Zürichstrasse 27 B
CH-8134 Adliswil

Tel.: + 41 44 711 90 90
Fax: + 41 44 711 90 99
Email: andreas.baumann@abt.ch
Website: www.abt.ch

ABT Treuhandgesellschaft
Andreas Baumann & Co.
Alte Steinhäuserstrasse 1
CH-6330 Cham

Tel.: + 41 41 748 62 00
Fax: + 41 41 748 62 01
Email: guido.schmid@abt.ch
Website: www.abt.ch

ABT Revisionsgesellschaft AG
Alte Steinhäuserstrasse 1
CH-6330 Cham

Tel.: + 41 41 748 62 30
Fax: + 41 41 748 62 31
Email: arthur.exer@abt.ch
Website: www.abt.ch

Controlgest SA (Fribourg)

Controlgest SA
Boulevard de Pérolles 7
P.O. Box 839
CH-1701 Fribourg

Tel.: +41 26 347 14 99
Fax: +41 26 322 29 35
Email: controlgest@bluewin.ch
Website: www.controlgest.ch

FIDI BC SA (Lugano)

FIDI BC SA
Via Pioda 12
P.O. Box 5635
CH-6901 Lugano

Tel.: +41 91 910 63 63
Fax: +41 91 910 63 93
Email: info@fidibc.com
Website: www.fidibc.com

Fiduciaire Patrick TRITTEN (Geneva)

Fiduciaire Patrick TRITTEN
Rue de la Fontenette 23
CH-1227 Carouge/Geneva

Tel.: +41 22 342 27 01
Fax: +41 22 342 27 21
Email: trittenfid@bluewin.ch

**Firex Audit & Consulting SA
(Geneva)**

Firex Audit & Consulting SA
Rue du Mont-Blanc 14
P.O. Box 1468
CH-1211 Geneva 1

Tel.: +41 22 908 01 50
Fax: +41 22 908 01 51
Email: info@firexaudit.ch
Website: www.firexaudit.ch

LOPAG (Ruggell)

LOPAG Louis Oehri & Partner Trust
reg.
Poststrasse 2
P.O. Box 365
FL-9491 Ruggell

Tel.: +423 377 36 17
Fax: +423 373 21 31
Email: lopag@lopag.li
Website: www.lopag.li

**ReviTrust Group
(Buchs, Zurich, Schaan)**

ReviTrust Revision + Treuhand
AG
Bahnhofstrasse 7
P.O. Box 947
CH-9471 Buchs (SG)

Tel.: +41 81 750 68 68
Fax: +41 81 750 68 78
Email: info@revitrust.ch
Website: www.revitrust.com

ReviTrust Revision + Treuhand
AG
Zweigniederlassung Zürich
Stadthausquai 1
CH-8001 Zürich

Tel.: +41 44 202 68 68
Fax: +41 44 202 68 69
Email: info@revitrust.ch
Website: www.revitrust.com

ReviTrust Revision AG
Bahnhofstrasse 15
FL-9494 Schaan

Tel.: +423 237 42 42
Fax: +423 237 42 92
Email: info@revitrust.ch
Website: www.revitrust.com

LAW OFFICES

**Mo Costabella Pirkel Avocats
(Geneva)**

Mo Costabella Pirkel Avocats
Rue de Rive 6
CH-1204 Geneva

Tel.: +41 22 317 79 90
Fax: +41 22 317 79 91
Email: ppxmc@iurlex.ch
Website: www.iurlex.ch

**Wilhelm & Büchel Rechtsanwälte
(Vaduz)**

Wilhelm & Büchel Rechtsanwälte
Lova Center
P.O. Box 1150
FL-9490 Vaduz

Tel.: +423 399 48 50
Fax. +423 399 48 51
E-Mail: office@awp.li
Website: www.awp.li

**Peyrot & Schlegel Law Office
(Zurich, Buchs, Zug)**

Peyrot & Schlegel Law Office
Beethovenstrasse 47
CH-8002 Zürich

Tel. +41 43 500 55 70
Fax +41 43 500 55 71
Email: paul.peyrot@peyrot-
schlegel.ch
Email: urs.schlegel@peyrot-
schlegel.ch
Website: www.peyrot-schlegel.ch

Peyrot & Schlegel Law Office
Bahnhofstrasse 7
CH-9470 Buchs

Tel. +41 81 756 55 45
Fax +41 81 756 55 58
Email: urs.schlegel@peyrot-
schlegel.ch
Website: www.peyrot-schlegel.ch

Peyrot & Schlegel Law Office
Eschenring 12
CH-6300 Zug

Tel. +41 41 500 55 70
Fax +41 41 500 55 71
Email: paul.peyrot@peyrot-
schlegel.ch
Website: www.peyrot-schlegel.ch

Second Edition 2009

Printed in Liechtenstein
Gutenberg AG
Feldkircher Strasse 13
FL-9494 Schaan

