

Real Estate Law

What is included in the term “real estate”?

The term “real estate” is not defined in any UAE legislation. However, Article 101 of Federal Civil Transactions Law No. 5 of 1985 (“**Civil Code**”) states that “anything of a permanently fixed nature and which cannot be removed without damaging or altering its surroundings shall be regarded as real property.”

Law No. 7 of 2006 Concerning Land Registration in the Emirate of Dubai defines property as “any immoveable object with a fixed space that cannot be moved without destroying or changing its feature” and Law No. 13 of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai defines real property as “land and any fixed structures constructed on it which cannot be moved without damage or alteration to its structure.”

What laws govern real estate transactions?

The UAE is a civil law legal system based on a constitution, Sharia principles, federal law and local emirate laws and regulations. In addition to this, some free zones within Dubai, such as the Dubai International Financial Centre (DIFC) have their own real estate laws and regulations.

The Civil Code governs the day-to-day matters in the UAE and the emirates will have jurisdiction in all the matters not conferred upon by the federal authorities as per Articles 121 and 122 of the UAE Constitution of 1971 (as revised in 2009).

Dubai

In Dubai, the following specific legislation exists for matters, such as:

- The registration of all dispositions, pursuant to Dubai Law No. 7 of 2006 (as amended by Dubai Law No. 7 of 2019)
- Law No. 6 of 2019 Concerning Ownership of Jointly Owned Real Property in the Emirate of Dubai
- The registration of all off-plan property sales pursuant to Dubai Law No. 13 of 2008, as amended by Dubai Law No. 9 of 2009, clarified by Dubai Decree No. 6 of 2010 and further amended by Dubai Law No. 19 of 2020
- Registration of short-term leases on the Ejari system pursuant to Dubai Law No. 4 of 2019
- Registration of mortgages pursuant to Law No. 14 of 2008
- Ownership law pursuant to Law No. 7 of 2006
- Landlord and tenant law pursuant to Law No. 26 of 2007

Abu Dhabi

In Abu Dhabi, the following specific legislation exists for matters, such as:

- Law No. 3 of 2015, Concerning the Regulation of the Real Estate Sector in Abu Dhabi
- Law No. (19) of 2005, re-organising Real Property in Abu Dhabi (as amended by Law No. (2) of 2007, amending certain provisions concerning Real Estate ownership)
- Law No. (3) of 2005, concerning the regulation of Property Registration in the Emirate of Abu Dhabi, together with Department of Municipal Affairs Chairman's Decision No. (52/1) of 2008 on the issue of an Executive Regulation regarding the Organization of Real Estate Registration in the Emirate of Abu Dhabi
- Law No. 3 of 2015 Concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi

What is the land registration system?

Real property rights are defined as in rem rights over real property, as opposed to being purely contractual rights, and include musataha and usufruct rights. All real property rights are required to be registered, regardless of the term length.

Dubai recognizes freehold title to land, leasehold, usufruct and musataha interests in land, off-plan property and short-term leases. In Abu Dhabi, all real property rights, including rights of usufruct and musataha, are required to be registered, regardless of the term length.

Law No. (7) of 2006 Concerning Land Registration in the Emirate of Dubai requires that all dispositions relating to real property rights must be registered at the Dubai Land Department otherwise they will not be deemed effective.

Dubai Law No. 13 of 2008, as amended by Dubai Law No. 9 of 2009, requires real estate developers to register off-plan property in the Interim Register (Oqood) also maintained by the Dubai Land Department.

Short-term leases must be registered on the Ejari system, maintained by the Dubai Land Department.

Which authority manages the registration of titles?

Dubai

In Dubai all instruments affecting land are registered at the Dubai Land Department.

Abu Dhabi

In the Abu Dhabi Global Market (ADGM), all real estate transfers that are recognized by the ADGM must be registered with the ADGM Land Register.

What rights over real property are required to be registered?

Dubai

In Dubai, short-term leases (i.e., with a term of less than 10 years) must be registered with the Real Estate Regulatory Agency (RERA) on the Ejari system.

Long-term leases of not less than 10 years and not more than 99 years must be registered on the Real Estate Register of the Dubai Land Department.

All mortgages must be registered at the Dubai Land Department pursuant to Law No. 14 of 2008.

A developer must register all off-plan property in the Interim Register at the Dubai Land Department.

Abu Dhabi

In Abu Dhabi, there is a differentiation between a long-term lease and short-term lease by the term. A short-term lease (i.e., with a term of less than four years) must be registered on the Tawtheeq system and typically, a tenant will be responsible for the registration process and fees. Leases for a term over four years but less than 25 years will be registered with the Tamleeq system and the responsibility for registration may be provided for in the lease. Any leasehold interests located within the ADGM must be registered with the ADGM Land Registrar.

What documents can landowners use to prove ownership over real property?

Normally, landowners will have to produce the following, in addition to the Oqood certificate for off-plan property:

Dubai

- A title deed that is issued by the Dubai Land Department, or the Abu Dhabi municipality, respectively for freehold, usufruct, musataha and long leases
- An Ejari certificate issued by the Dubai Land Department for leases under 10 years

Abu Dhabi

- For leases under four years in Abu Dhabi, a registration certificate issued by Tawtheeq

- For leases over four years but less than 25 years a registration certificate issued by Tamleeq

Can a title search be conducted online?

No. The title deed must be physically inspected.

Prospective buyers can conduct an ownership certification validation search on the Dubai Land Department website, which will identify the owner and if there is a mortgage over the property, but it does not replace a review of the physical title deed.

Can foreigners own real property? Are there nationality restrictions on land ownership?

The right to own real property in Dubai is restricted to UAE nationals, nationals of the Gulf Cooperation Council (GCC) member states and to companies fully owned by these, and to public joint-stock companies. Non-UAE nationals may, in certain areas and subject to the approval of the Ruler, be granted the following rights:

- Freehold ownership of real property without time restrictions
- Usufruct or leasehold over real property for a period not exceeding 99 years

Dubai

The designated areas where foreigners are permitted to acquire leasehold or usufruct interests in property are determined by the Ruler of the Emirate of Dubai by way of decrees and regulations issued from time to time.

A foreign company can only own freehold, leasehold or usufruct in the designated areas of Dubai by establishing one of the following company vehicles:

- Jebel Ali Free Zone Authority offshore company
- Dubai Multi Commodities Centre company
- Company incorporated in the ADGM free zone
- RAK International Corporate Centre offshore company
- DIFC company, partnership, foundation, real estate investment trust or real estate fund, subject to the approval of the DIFC Registrar of Companies (approval is given on a case-by-case basis)
- LLC whose ultimate beneficial owners are 51% UAE nationals and 49% non-GCC nationals

A fund or a trust cannot own property anywhere in Dubai.

Within the DIFC, all foreign nationals, foreign companies and GCC nationals have a right to acquire real estate without restriction on the type of vehicle used.

Abu Dhabi

In Abu Dhabi, unless the real estate asset is located within an investment zone, only individuals or companies ultimately wholly owned by UAE nationals are able to hold real rights (rights in rem) in real estate. Essentially, the four categories of rights in property that the foreign ownership restrictions apply to are as follows:

- Ownership (freehold or outright ownership of land)
- Musataha
- Usufruct
- Long-term lease

The investment zones are as follows:

- Al Raha Beach and Reem Island
- Al Reef Area
- Lulu Island
- Saadiyat Island
- Yas Island
- Al Sidayra
- Masdar City
- Al Maryah Island
- Allocation of land to Abu Dhabi Airports Company
- Allocation of land to Abu Dhabi Ports Company
- Allocation of land from Al Falah Fahed Island
- Had Al Saadiyat Project
- Al Jaraf Area
- Nurai Island
- Land allocated to the higher corporation for specialized economic zones
- Al Jubail Island
- Al Shamkha
- Kaser Al Amouaj

Can the government expropriate real property?

Yes. Pursuant to Article 1135 of the Civil Code, local and federal authorities can acquire real estate compulsorily if it is necessary for the public's benefit, such as the construction of highways, and just compensation is paid. In addition, each emirate can pass its own laws to regulate compensation. The quantum of compensation payable depends on the value of what is expropriated along with loss of profit and any other damage that may arise as a result of the expropriation.

Each emirate can pass its own laws to regulate compensation. Dubai Law No. 2 of 2022 provides that the Acquisition Committee rules on applications for compensation by persons affected by expropriation.

How can real estate be held?

The Civil Code provides for the following types of tenure:

- Freehold, which is the most superior of real property right and provides for the right to use, enjoy and occupy land or property permanently
- Musataha, which is the right to build on land for a specified duration not exceeding 50 years
- Usufruct, the right to use, enjoy and occupy land or property belonging to another person for a fixed term not exceeding 99 years

What are the usual structures used in investing in real estate?

Property is usually held in the name of individuals as tenants in common or in the name of corporate entities.

Generally, a special purpose vehicle is used to purchase or develop land due to the ability to ringfence liability.

Structures used to invest in real estate include joint-stock companies, limited liability companies, a Jebel Ali Free Zone company, a Dubai Multi Commodities Centre company, a company incorporated in the ADGM or a company incorporated in the DIFC.

How are real estate transactions usually funded?

The acquisition of real estate is usually financed by the buyer's own funds and by bank loans (if the buyer does not have enough funds or if the buyer wishes to have financing).

Who usually produces the documentation in real estate transactions?

A transaction will usually begin when heads of terms or a memorandum of understanding is produced by the broker on behalf of the seller and the buyer. This document sets out the fundamental commercial terms that have been agreed between the parties. Once the seller's lawyer has received the heads of terms or memorandum of understanding, they will prepare the initial draft of the sale and purchase agreement. In the meantime, the buyer's lawyer will carry out due diligence, the results of which will steer the negotiations on the sale and purchase agreement received from the seller.

Dubai

To effect registration in Dubai, a standard Form F agreement produced by the Dubai Land Department will be entered into by the seller, buyer and broker and lodged with the Dubai Land Department. The agreed sale and purchase agreement will be appended to Form F.

Abu Dhabi

To effect registration in Abu Dhabi, a standard form lease agreement produced by Tamleeq (for a term over four years but less than 25 years) or Tawtheeq (for a term under four years) will need to be submitted to the Abu Dhabi Municipality.

Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

Generally, a buyer would require that a seller provides an indemnity for any liability that the seller may have following completion.

Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

If a seller has provided any indemnities, then it may retain liability following a sale.

On expiry of a lease, a tenant is obligated to hand back the property to the landlord in the same condition that it was at the beginning of the tenancy, subject to fair wear and tear. Similarly, a landlord must hand over a property to a tenant in good condition.

In respect of damage to the environment, liability remains with the person responsible.

Acquisition of Real Property

What are the usual documents involved in such transactions?

Usually, the parties will sign a memorandum of understanding once the fundamental terms of the deal have been agreed. Alternatively, the parties can proceed to the signing of a sale and purchase agreement. A standard Form F is submitted to the Dubai Land Department to facilitate the registration of the transaction.

What are the warranties given by a seller to a buyer?

A formal sale and purchase agreement may typically contain the following warranties by the seller to the buyer:

- The property is not adversely affected by any easement, right, privilege or liability of which the seller is aware other than those disclosed in the agreement of which the buyer is aware or could have ascertained on reasonable inspection of the property.
- It has authority to sell.
- There is no outstanding debt or mortgage, and any service charge is fully paid.
- Property and development obligations have been complied with.

A developer selling property off-plan will also be required to give the following warranties:

- To repair and remedy any structural defect for 10 years from the date of completion
- To repair or replace defective installations, including mechanical and electrical works and sanitary and plumbing installations, for one year from the date of handing over the unit to the owner

The exact scope of any particular warranty, and whether any particular warranty is to be given, depends on the negotiation between the seller and the buyer.

When is the sale legally binding?

Under the Civil Code, an agreement becomes legally binding when the following conditions have been met:

- The parties have agreed on the essential terms.
- The subject matter of the agreement exists, is defined or capable of being defined, and is legal.
- The obligations under the contract exist for a legal purpose.

When is title transferred?

Legal title is transferred upon the execution of the sale and purchase agreement and the payment of consideration; however, title is not perfected until it is registered at the Dubai Land Department/Abu Dhabi Municipality.

What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

- Buyer's agent's fees
- Legal costs
- Due diligence costs for consultants who have prepared building condition reports, valuation appraisals and real estate surveys

The seller usually pays for the following:

- Legal fees
- Agents' fees

Dubai

The fee for registration of a freehold right at the Dubai Land Department is 4% of the total value of the sale contract or the property value, whichever is higher. The seller and the buyer will split the cost.

The fee for registration of a musataha at the Dubai Land Department is 1% of the total musataha contract payable by the recipient of the musataha.

The fee for registration of a usufruct right at the Dubai Land Department is 2% of the lease value.

The fee for registration of a long lease at the Dubai Land Department is 4% of the total rent value payable throughout the term of the lease, including any premium paid.

Abu Dhabi

In Abu Dhabi, the fee for registration is 1% of the first year's rent in leases over four years and under 25.

The fee for registration of a lease for over 25 years at the Abu Dhabi Municipality is 4% of the value of consideration.

The fee for registration of a lease for less than four years is AED 100 per registration of each new lease/renewal of a lease.

The fee for a lease with a term of 25 years or more (including any renewals) at the ADGM is 2% of the total value of the contract (or 5% if government-owned land).

The fee for registration for a lease with a term of less than 10 years (including any renewals) at the ADGM is AED 100 per year.

Leases

What are the usual forms of leases?

Dubai

In Dubai, to register a short-term lease on the Ejari system, the lease must be in the form of the mandatory Unified Ejari Tenancy Contracts, which is a template lease that must be used and can be supplemented by additional terms and conditions.

Long-term leases that are required to be registered with the Dubai Land Department do not need to be in a particular format.

Abu Dhabi

In Abu Dhabi, short-term leases are to be registered with the Tawtheeq and long-term leases (over four years and under 25 years) are to be registered with Tamleeq.

Are lease provisions regulated or freely negotiable?

Dubai

In Dubai, there are several free zone areas such as Jebel Ali Free Zone Authority, National Industries Park and Dubai Investment Park where the leases are standard and nonnegotiable.

Abu Dhabi

In Abu Dhabi, the ADGM provides a standard form of lease that may be negotiable.

In both Abu Dhabi and Dubai, leases between private landlords and tenants are freely negotiable.

Is there a maximum term for leases? Can these be extended?

A usufruct right ends after 50 years, unless another period is specified in the deed establishing the right. The maximum term for a musataha right is 50 years with a right to extend for a further 50 years. The maximum term for a lease is 99 years. Short-term leases must not exceed 10 years (or four years in Abu Dhabi) and can be renewed on expiry, if the new lease does not exceed 10 years (or four years).

What are the usual lease terms?

The duration of the term is a matter for commercial negotiation. Tenants will usually ask for a longer term where the tenant has to incur substantial expenses in the fitting out and decoration of the premises concerned.

Are there instances where tenants may demand an extension of the lease?

In Dubai, the tenant has an automatic right to renew the lease. However, the landlord can object to the renewal of a lease and request the eviction of the tenant on expiry of the lease in the following circumstances:

- Urban development in the emirate mandated the demolition of the property
- Renovation or carrying out overall maintenance
- Demolition of the property and rebuilding thereof
- Recovery of the property for their own private use

On what grounds may a lease be terminated?

A lease will usually terminate under any of the following circumstances:

- Either the landlord or the tenant fundamentally breaches the lease.
- The tenant sublets without the landlord's permission.
- The tenant fails to pay rent within the stipulated period.

Must rents be paid in local currency?

Rent is often specified in Emirati dirhams or US dollars. Unless specified otherwise in the lease, the tenant has to pay rent in Emirati dirhams.

Is rent paid on a monthly basis? Is it required to be paid in advance?

The manner of payment of rent is a matter that the parties are free to agree. Rent is usually paid quarterly by way of postdated cheques or via electronic transfer.

How is rent reviewed? Are there limits to the increase in rent?

Leases often contain a rent review clause. Rent review will generally be carried out at contractually specified intervals during the term or toward the end of the term for determining the rent for the renewed term in cases where the tenant exercises its option to renew.

The general purpose of a rent review clause is to ascertain the level of market rent. A rent review clause will usually provide for the new rent to be agreed between the

parties, and if the parties fail to reach an agreement, the rent will be determined by an independent valuer (a valuation surveyor, usually) as expert.

Dubai

In Dubai, Decree No. (43) of 2013 Determining Rent Increase for Real Property in the Emirate of Dubai provides that when reviewing real property lease contracts, the maximum percentage of rent increase will be as follows:

- No rent increase where the rent of the property unit is up to 10% less than the average rental value of similar units
- 5% of the rent of the property unit, where the rent is 11% to 20% less than the average rental value of similar units
- 10% of the rent of the property unit, where the rent is 21% to 30% less than the average rental of similar units
- 15% of the rent of the property unit, where the rent is 31% to 40% less than the average rental value of similar units
- 20% of the rent of the property unit, where the rent is more than 40% less than the average rental value of similar units

Abu Dhabi

Abu Dhabi Law No. (20) of 2006 as amended, entitles the landlord to increase the rent by a maximum rate of 5% of the existing rate of the rental amount.

What are the basic obligations of landlords and tenants?

Some basic obligations of a landlord include the following:

- Permitting the tenant to have quiet possession and enjoyment of the premises during the lease term
- Delivering the premises to the tenant in a condition consistent with the agreed handover condition
- Paying property tax in respect of the premises

Some basic obligations of a tenant include the following:

- Paying rent in accordance with the lease
- Paying all rates and outgoings in respect of the premises, except those for which the landlord is liable
- Using the premises for permitted use under the lease
- Keeping and maintaining the premises in good, clean, tenantable and proper repair and condition
- Allowing the landlord to enter the premises at reasonable times to view the state of repair or to see if repairs need to be carried out
- Not doing anything to prejudice the title of the landlord

- Returning vacant possession of the premises at the end of the lease term in the conditions as when leased to them or in such other conditions as the parties may agree in the lease
- Indemnifying the landlord for the loss or damage caused by defective or damaged condition of the premises or owing to spread of fire or smoke or leakage of liquid
- Effecting and maintaining comprehensive insurance cover in respect of the premises against damage by perils and also public liability insurance cover

What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

A leasehold is an interest in land that is freely alienable. The most typical types of transactions relating to a leasehold interest are assignment of the interest and subletting.

Practically speaking, a lease will almost invariably restrict the tenant's freedom to deal with the leasehold interest, although the extent of such restriction varies between agreements.

What happens in the event of destruction of the leased premises?

Usually, a lease will contain an abatement of rent clause, which provides that the rent or a fair proportion thereof will be suspended from the occurrence of damage or destruction or order until the premises or the building will again be rendered fit for occupation or accessible, or until the demolition order or closing order is lifted (as the case may be). If the premises or the building have not been reinstated within a predetermined period, either party has the right to terminate the lease.

Who is usually responsible for insuring the leased premises?

There is usually an express provision in a lease that specifies the landlord's obligation to insure the structure of the exterior of the premises and the common areas and the tenant's obligations to insure the nonstructural interiors of the leased premises and third-party liabilities.

Will the lease survive if the owner sells the leased premises?

A lease will generally survive a subsequent sale of the leased premises and the terms and conditions of the lease will typically be transferred to the new owner.

Will the lease survive if the leased premises are foreclosed?

An existing lease is generally binding on the mortgagee and any sale by the mortgagee will be subject to that lease.

Where a lease is created after a sale, the mortgage deed will require the mortgagor to obtain the mortgagee's consent before creating the lease. If consent is obtained, then the lease will not be challenged.

Planning and Environmental Issues

Who has authority over land development and environmental regulation?

Dubai

Dubai Municipality has authority over land development and the environment.

Abu Dhabi

The Department of Municipal Affairs organizes and develops the real estate sector in Abu Dhabi and supervises and controls all matters related to the sector.

What environmental laws affect the use and occupation of real estate?

Federal Law No. 24 of 1999 provides that any person who intentionally or by way of negligence damages the environment or others is responsible for the costs of treatment or removal of the damage.

What main permits or licenses are required for building or occupying real estate?

Dubai

In Dubai, the principal authority for planning control is the Dubai Municipality.

Additional controls are implemented by RERA, such as the requirement for new projects to be developed by licensed developers and master community declarations that seek to regulate and govern common areas in jointly owned properties.

Construction approval and building regulations are provided by the Dubai Civil Defense.

Abu Dhabi

In Abu Dhabi, the principal authority in relation to the real estate sector is the Abu Dhabi Municipality and the Department of Municipal Affairs.

Can an environmental cleanup be required?

Federal Law No. 24/1999 on the Protection and Development of the Environment governs environment cleanups. Any person who intentionally or negligently causes damage to the environment or others is responsible for the cost of treatment or removal of the damage and may be imprisoned or fined.

Are there minimum energy performance requirements for buildings?

Dubai

In Dubai, the building code became mandatory for all new buildings in the emirate from 2014.

Abu Dhabi

In 2010, the emirate of Abu Dhabi implemented mandatory minimum efficiency standards for all new residential and commercial buildings through the Estidama Pearl Rating System.

Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

The UAE cabinet approved the Green Building and Sustainable Buildings Standards to be applied across the country and application of these standards started in 2011 and is expected to reduce carbon emissions by 30%.

Pacific Controls and Etisalat joined forces to create Emirates Energy Star to reduce UAE greenhouse gas emissions and the fuel bills of its companies by retrofitting existing buildings with energy saving controls systems.

There are a number of ongoing strategies aimed at improving the energy efficiency of the UAE, such as Dubai Integrated Strategy 2030 and Dubai Clean Energy Strategy 2050, and Abu Dhabi is set to have its first net-zero energy office building in 2024 in Masdar City.