

Legal 500

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Malta

Real Estate

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Malta.

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Malta: Real Estate

1. Overview

Malta is a hybrid legal jurisdiction, combining elements of both civil law and common law traditions. In the area of real estate law, Malta functions predominantly as a civil law jurisdiction, and property rights and transactions are codified under the Civil Code (Chapter 16 of the Laws of Malta). The Civil Code sets out in detail the legal principles governing ownership, possession, and other real rights over immovable property, such as usufruct, emphyteusis, and servitudes / easements. It also regulates leases, thereby forming the central statutory basis of real estate law in Malta. Security interest over immovable property is also regulated under the Civil Code.

The country has a unitary legal system, with uniform application of laws throughout its territory and there are no regional or federal distinctions.

Economically, the Maltese real estate market is one of the country's most significant and resilient sectors. Malta's strategic location, climate, stable legal environment and English-speaking workforce have made it a highly attractive destination for residential, commercial, and tourism-related property investment.

2. What is the main legislation relating to real estate ownership?

The principal legislation governing real estate ownership in Malta is the Civil Code, which lays down the main rules on modes of acquisition, co-ownership, leases, emphyteutical grants, servitudes, and other real or personal rights and obligations pertaining to immovable property. In addition, the Land Registration Act regulates the registration of titles over immovable property and the Acquisition by Non-Residents Act sets out the requirements applicable to the acquisition of immovables by non-residents.

3. Have any significant new laws which materially impact real estate investors and lenders come into force in the past year or are there any major anticipated new laws which are expected to materially impact them in the near

future?

We are not aware of any significant new laws which came into force since December 2024 which materially impact real estate investors and lenders or any major anticipated new laws which are expected to have such effects.

4. How is ownership of real estate proved and are ownership records available for public inspection?

Proof of ownership of real estate in Malta is generally established through registered public deeds executed before a Notary public and recorded in the Public Registry. Searches at the Public Registry are made on the individuals who are parties to the deed. In addition, and depending on the property's location and classification, proof of ownership can be further evidenced by its registration at the Land Registry (registration on the property itself). If an immovable property is acquired through inheritance, then ownership is generally proven through a public deed executed before a Notary public, known as a declaration causa mortis, whereon the heir settles any succession tax due for the devolution of the immovable property.

To verify ownership, a Notary Public is generally engaged to carry out official searches at the Public Registry and the Land Registry. Based on such searches the Notary may prepare a root of title report confirming whether a seller has a good title over the property being sold, and whether the property has any encumbrances.

Yes, under the Public Registry Act (Chapter 56 of the Laws of Malta), ownership and related registration records are publicly accessible however searches can only be conducted by reference to natural or legal persons, rather than to a specific property, unlike the Land Registry which allows property-based searches for land registration areas.

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

EU citizens who have lived continuously in Malta for at least 5 years at any time before purchasing a property

may freely acquire immovable property in Malta without the need for a permit under the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246 of the Laws of Malta) (the "AIP Permit").

EU citizens who have not resided in Malta for a continuous period of 5 years prior to the intended acquisition can still purchase property in Malta without an AIP Permit if the property is to be used as their primary residence or is required for their business activities or provision of services. However, such individuals must obtain an AIP Permit if they wish to acquire a property for secondary residence or holiday use purposes.

In contrast, non-EU citizens may not purchase any immovable property in Malta unless they are granted an AIP Permit. These permits are normally issued within approximately 7 weeks and are issued with certain conditions, including a minimum purchase price, which is currently around €174,000 for apartments and maisonettes and €300,619 for villas any other immovable property (subject to annual revisions based on the national property price index). The property must be used solely as a residence for the applicant and their family.

There are, however, Special Designated Areas across Malta and Gozo where there are no restrictions and both EU and non-EU citizens may freely purchase and own any number of properties within these zones without the need for an AIP permit. Particular exemptions also apply to certain transactions such as inheritance transfers, donations, or redemption of ground rent.

Restrictions also apply to companies (whether incorporated in Malta or abroad). However, the law provides that if, for instance, the company is incorporated in Malta, has its registered address and principal place of business in Malta, is not directly or indirectly controlled by one or more non-resident persons and less than 25% of its shareholding is owned by a non-resident person, such company should not be considered as a non-resident. Another example of an exemption relating to companies applies in instances where a company which is not a resident person acquires immovable property from one or more of its members holding over fifty per cent interest in, or of its share capital.

6. What types of proprietary interests in real estate can be created?

Under Maltese law, several forms of real rights and obligations in real estate may be created, each conferring distinct rights and obligations upon the holder. The primary and most complete form of proprietary interest is

ownership, which represents the fullest right that a person can hold over immovable property. Under Maltese law, ownership of an immovable property may be acquired by public deed (such as by title of sale and purchase, donation or exchange), by succession (whether testate or intestate), by acquisitive prescription (through uninterrupted possession *animo domini* – as owner – over a statutory period), by judicial sale or adjudication or by operation of the law (such as by expropriation). Ownership encompasses the rights to use, enjoy, and dispose of property, limited only by law or by rights lawfully vested in others, such as easements, also referred to as servitudes, or public utility restrictions.

Another form of proprietary interest recognised under Maltese law is usufruct, which is the real right to enjoy things belonging to another, provided that the usufructuary preserves the substance of the property. When relating to immovable property, a usufruct must be created by public deed and registered in the Public Registry to be enforceable against third parties. The usufructuary has the right to possess, use, and draw profits from the property but must maintain it and return it upon termination of the usufruct.

Closely related to usufruct are the rights of use and habitation, which are more limited forms of proprietary interests. The right of use allows a person to make use of another's property and take its fruits only to the extent required for their personal and family needs, while habitation grants the right to reside, with one's family, in another's house.

A further proprietary interest that may arise is an easement, that is a burden imposed on one tenement (the servient tenement) for the benefit of another (the dominant tenement). Easements may arise either by law or by the act of man. For instance, continuous and apparent easements may be created by virtue of title, through acquisitive prescription, or by the disposition of the owner of two tenements. If an easement is created by virtue of title it is null unless constituted by public deed and the deed must be registered in the Public Registry to be operative as regards third parties. Examples of easements include rights of way, rights of water passage and rights of view through a balcony or an opening overlooking a neighbour's property.

The contract of emphyteusis is another significant proprietary interest in real estate. Emphyteusis involves the grant of a tenement in perpetuity or for a period of time in return for an annual ground rent. The emphyteuta holds the property with extensive rights akin to those of ownership, including the ability to alter or dispose of it, as long as the annual rent is paid, the property is maintained

in good condition and the emphyteutical conditions are respected. Such contracts must be made by public deed and can be perpetual or temporary.

Lastly, Maltese law provides for the creation of privileges and hypothecs, which are real rights granted to secure the performance of an obligation and which allow creditors to rank over other creditors. Certain general or special privileges or hypothecs may be registered by certain creditors and are constituted by public deed or by operation of the law. For instance, a conventional special hypothec may be constituted by public deed and allows a creditor to secure a debt over an immovable property without transferring ownership. Should the debtor default, the creditor may seek judicial sale of the hypothecated property to satisfy the debt.

7. Is ownership of real estate and the buildings on it separate?

The Civil Code enshrines the principle of vertical ownership such that ownership of land includes everything above and below it, unless otherwise lawfully transferred or restricted. Thus the owner of a parcel of land has the right to construct the airspace overlying it and to excavate its subsoil unless this right (whether in whole or in part) is restricted by easements or servitudes (such as height limitations), transferred to third parties, or restricted by public law. Ownership of land and the buildings erected upon it are therefore generally not considered separate unless the relevant property rights are lawfully transferred or restricted. In terms of the Civil Code it is also presumed that any construction or work on the land is made by the owner at their own expense and therefore belongs to that owner unless proven otherwise. Therefore, as a general rule, the owner of the land also owns the building standing on it.

8. What are common ownership structures for ownership of commercial real estate?

Commercial real estate may be held through different ownership structures, depending on the investor's objectives. The most straightforward form of ownership is direct ownership, either by an individual or by a limited liability company. While direct ownership by individuals is relatively simple and may be appropriate for small-scale local investments, it offers limited protection and may not be ideal for larger or more complex ventures.

A more commonly adopted structure, particularly for both local and international investors, is ownership through a Maltese limited liability company. This structure provides

for a separate legal personality and facilitates joint ownership. The use of a company also allows for the ease of transfer through share sales rather than direct property transfers.

Trust structures are also occasionally used in Malta. In such cases, the property is held by a licensed Maltese trustee for the benefit of one or more beneficiaries in accordance with the Trusts and Trustees Act (Chapter 331 of the Laws of Malta). Trusts may offer flexibility and discretion, although they are subject to licensing and oversight by the Malta Financial Services Authority. Another possible structure is foundations, governed by the Second Schedule of the Civil Code (Chapter 16 of the Laws of Malta).

Co-ownership arrangements or joint ventures are also common for commercial real estate development. These may take the form of undivided co-ownership governed by a co-ownership agreement or a corporate joint venture structure through a special purpose vehicle.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

In the context of a transfer by title of sale and purchase, the due diligence process typically begins once the promise of sale and purchase agreement is signed. At this stage, the buyer, usually through a Notary Public, initiates a series of verifications to confirm the legitimacy and security of the property title. The Notary Public conducts Public Registry and Land Registry searches. This process involves checking the validity of the property's title, confirming that the seller has a valid legal title and the right to transfer the property. It also ensures that the property is free from encumbrances, such as ground-rents, easements or servitudes, hypothecs, privileges, charges, cautions, warrants of prohibitory injunction or third-party rights. At an additional fee, the prospective buyer also has the option to request the Notary Public to prepare a root of title report.

10. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

Examples of additional steps which are not automatically included in the usual legal due diligence process are:

- Development planning, zoning and land-use verifications: These ensure that the property can legally be used for the intended purpose,

that it has all the necessary permits and any required licenses, and that it complies with all building, planning, sanitary and cultural heritage laws and regulations. A technical expert, such as a warranted architect and/or structural engineer, may be engaged by the prospective buyer to carry out such verifications and, if deemed necessary, to assess the structural integrity and state of the immovable property. A surveyor may also be engaged to confirm that the dimensions of the property, as described by the prospective seller or in the deed in virtue of which the prospective seller acquired the immovable property, are correct.

- Court registry searches: These searches are conducted to verify if any proceedings or acts have been filed against the prospective seller.

Beyond the due diligence process, a number of guarantees and warranties may be inserted in the deed of sale and purchase. Two forms of warranties which emanate from the law itself are the seller's warranty of peaceful possession, which is typically secured by a general hypothec over all the seller's present and future property, and the warranty for latent defects.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

The transfer of immovable property typically takes place through a two-stage process consisting of the promise of sale agreement and the final deed of sale.

The promise of sale agreement is a binding private writing in which the seller undertakes to sell, and the buyer undertakes to purchase on agreed terms. It is normally executed before a Notary Public who is, in turn, delegated to register the executed version with the Commissioner for Revenue. For the promise of sale and purchase agreement to remain valid it must be registered with the Commissioner for Revenue within 21 days of signing. While it creates a legally enforceable obligation to conclude the sale, it does not in itself transfer ownership of the property. At this stage, the buyer is generally required to pay a deposit, usually amounting to 10% of the purchase price, together with a provisional stamp duty of 1% of the total 5% (on the higher of the market value of the immovable property or contract price) due on the final deed (Stamp duty rates may vary as reduced or exempt rates may apply in certain instances). The term of validity of a promise of sale agreement is agreed to by the parties (typically in the region of six months). In the rare occurrence that the parties do not

specifically agree on the term of validity of the promise of sale it will be considered valid for a period of 3 months according to law.

Following the signing of the promise of sale agreement, the Notary Public conducts the public registry and land registry searches and due diligence to ensure that the seller holds a valid and unencumbered title to the property. This involves examining the records held at the Public Registry and Land Registry to verify ownership, and to ascertain whether any privileges, hypothecs, or other encumbrances are registered against the property.

For possible additional steps which are not automatically included in the usual legal due diligence process please refer to our reply to the previous question (10.).

Depending on the particular circumstances of the sale and purchase, the parties may opt to subject the validity of the promise of sale agreement to certain express resolute conditions. For instance, if the prospective buyer intends to finance the acquisition through a bank loan, the validity of the promise of sale agreement may be subjected to the obtaining of a bank loan covering the purchase price within a period stipulated for such purpose. Thus, the promise of sale agreement may provide that if the buyer notifies the seller through the agreed method of service and within the stipulated timeframe that the bank has not accepted to finance the purchase price, the purchaser will no longer be bound to purchase the property under the promise of sale agreement.

Provided that all conditions stipulated in the promise of sale agreement are fulfilled, the parties proceed to sign the final deed of sale before the Notary Public within the term of validity of the same promise of sale agreement. If the necessity so arises, the parties may agree to extend the term of validity of the promise of sale agreement by a mutually agreed period by executing an extension agreement, which extension agreement would also need to be registered with the Commissioner for Revenue within 21 days from its date of execution to be considered valid.

If either party fails to appear for the execution of the final deed of sale and purchase without a valid reason at law or pursuant to the promise of sale agreement, the other party may, within the term of validity of the promise of sale agreement, take the necessary legal steps – such as to sue for specific performance and/or damages.

Upon execution of the final deed, ownership of the property formally transfers from the seller to the buyer. At this stage, the buyer pays the balance of the purchase

price, the remaining stamp duty, and the notarial and registry fees. The seller pays the tax described in our reply to the subsequent question (12.). The Notary Public then registers the deed in the Public Registry, and, where applicable, in the Land Registry, for the transfer to be publicly recorded vis-à-vis third parties.

Save for any latent defects, liability for the property passes to the buyer upon execution of the final deed of sale, that is, from the moment ownership is transferred. Unless stipulated otherwise in the promise of sale agreement and save, for example, particular instances where possession of the property is granted to the buyer before the date of execution of the final deed, during the period between the date of execution of the promise of sale agreement and the date of execution of the final deed of sale and purchase the seller remains responsible for any loss, damage, or defect affecting the property.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

While the most common method of transferring real estate is through a direct asset transfer by means of a public deed, it is also fairly common for a real estate transfer to be effected through share transfers. A company which owns immovable property situated in Malta or which holds, directly or indirectly, shares or other interests in any entity or person which owns immovable property situated in Malta, should generally be characterised as a 'property company' for Malta income tax (including tax on capital gains) and duty purposes. Prescribed exemptions applicable in respect of certain share transfers may not apply or may apply subject to additional and more stringent qualifying criteria when the shares transferred are held in a 'property company'.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

The general principle is that when a freehold interest in land is sold, any existing occupational leases attaching to the property continue to bind the purchaser. The purchaser may only terminate the lease on the basis of the sale or other alienation if the relevant lease agreement includes an express termination clause or resolutive condition to this effect. The mandatory provisions of the law provide that the purchaser may only exercise this right of termination after giving notice to the

tenant, one year in the case of rural tenements, and either one month or fifteen days in the case of urban tenements, depending on the circumstances. In the context of private residential leases, the purchaser is bound to give notice of such termination to the lessee at least three months prior by means of a registered letter. If the lessee fails to vacate the immovable property after the lease has been validly terminated by the purchaser, the purchaser must institute proceedings before the Rent Regulation Board to obtain an eviction order and take possession.

With respect to the receivables under the lease, unless the lease agreement expressly prohibits such assignment, an assignment clause should be included in the final deed of sale and purchase to ensure that future payments are legally due to the purchaser. For the purchaser to exercise the assigned rights the lessee must be notified of the assignment by means of a judicial act unless the lessee has already acknowledged the assignment.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Various rights, interests, and burdens may be created or attach to immovable property. These are recognised both as real rights and as obligations or charges that may affect ownership.

Firstly, ownership itself, may be subject to limited real rights, including usufruct, and easements or servitudes. A usufruct grants a person the right to enjoy and use another person's property while preserving its substance, whereas use and habitation confer narrower rights of personal use and residence. Another category is that of easements or servitudes, which constitute burdens imposed on one tenement for the benefit of another, such as rights of way, drainage, water passage or light, building height limitations or minimum distance limitations when opening windows or excavating near boundaries. Easements may arise by law or by the act of man and are protected through possession and registration, ensuring that successors in title remain bound by such burdens. These rights are typically protected through registration, where applicable, and by possessory actions for the reinstatement of possession or enjoyment, such as the *actio spoli* and the *actio manutentionis* or petitory actions based on ownership such as the *actio rei vindicatoria* (action based on title for the recovery of possession from an unlawful detainer), the *actio negatoria* (action to deny the alleged existence of an easement or servitude by another party's property over one's property), the *actio confessoria* (action to

assert the existence of an easement or servitude of one's property over another party's property), the action *finium regundorum* (action to demarcate boundaries between adjoining properties) and the *actio de communi dividundo* (action to divide co-owned property).

Other forms of real rights attaching to immovable property include privileges and hypothecs. A hypothec is a charge on immovable property granted to secure the performance of an obligation, giving the creditor a preferential right over other creditors. Hypothecs may be legal, judicial, or conventional, and (except for certain hypothecs which automatically arise by operation of the law, such as those in favour of State for taxes) their validity and enforceability depend upon registration in the Public Registry. Likewise, privileges confer priority to certain creditors by operation of law and are similarly protected through registration and ranking rules. Privileges generally rank before hypothecs.

Additionally, Maltese law recognises emphyteusis, which constitutes a long-term real right granting possession and use of land in return for the payment of a ground-rent. The emphyteuta enjoys rights of use and enjoyment which are similar to those of an owner of a property but remains bound by the burden to improve and preserve the property, to observe the emphyteutical conditions and to pay the imposed ground-rent. For the duration of the emphyteutical concession the grantor (or dominus) retains the bare ownership over the property. An immovable property can only be granted by title of emphyteusis, whether perpetual or temporary, in virtue of a public deed received by a Notary Public and registered in the Public Registry.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

Yes, Maltese law recognises the division between legal and beneficial ownership of real estate through the use of trust structures. Under the Trusts and Trustees Act, a trust exists where a person (called a trustee) holds as owner, or has vested in him, property (including immovable property) under an obligation to deal with it for the benefit of persons (called the beneficiaries). The trustee is the legal owner of the property while the beneficiary holds the beneficial interest. Trustees may register property, including immovable property, in their capacity as trustee and trust property is a separate fund, distinct from the trustee's own assets. Maltese law deems a beneficiary's interests under a trust to be movable property, even if the trust property includes immovable property, to ensure that the trust structure works smoothly, without being subject to more complex

rules governing immovable property.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Ultimate beneficial ownership of real estate is not subject to unrestricted public access. While UBO information must be reported to the relevant authorities (Companies: Malta Business Registry; Trusts: Malta Financial Services Authority; Foundations/Associations: Registrar of Legal Persons) access by the general public is restricted and only granted under specific conditions. For instance, access to company UBOs must be granted if any natural or legal person demonstrates a legitimate interest in the prevention and combating of money laundering, its predicate offences, or the financing of terrorism.

17. What are the main taxes associated with real estate ownership and transfer of real estate?

No tax is levied in Malta upon mere ownership of real estate.

Malta tax on property transfers and, separately, Malta duty on documents and transfers should generally be chargeable upon a transfer of real estate situated in Malta whilst Malta tax on capital gains should generally be chargeable upon a transfer of real estate situated outside Malta. Such Malta tax on property transfers is borne by the transferor and would be withheld and settled by the notary publishing the deed of sale at the applicable prescribed rate generally on the consideration receivable or the market value of the property transferred, whichever is the higher. In practice, Malta duty is typically borne by the purchaser and is generally chargeable at the rate of 5% on the consideration payable or the market value of the property transferred, whichever is the higher.

Rental income derived on a lease of real estate would represent chargeable income for domestic income tax purposes. A lessor may be entitled to elect to suffer tax on gross rental income receivable at the flat rate of 15%. Tax on rental income (net of allowable deductions) should otherwise be subject to tax at the lessor's marginal rate. The letting of immovable property represents an exempt without credit supply for domestic VAT purposes – subject to prescribed exceptions.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Mandatory provisions in the Civil Code require, on pain of nullity, that any lease of urban property, including commercial tenements, be made in writing and must clearly set out:

1. A description of the property being leased;
2. The agreed use of the premises;
3. The duration of the lease;
4. Whether and how it may be renewed or extended;
5. The rent payable and the method of payment.

Subject to the above mandatory provisions and others, such as limits on interest for late payment, Maltese law upholds the principle of *pacta sunt servanda*. Accordingly, the parties are free to agree on the terms that best suit their commercial arrangement, and the rights and obligations set out in the commercial lease agreement are considered binding as law between them.

Other typical terms normally included in commercial lease agreements include:

1. Prohibition on the assignment or subletting of the lease by the lessee without the prior written consent of the lessor;
2. Determination of the respective responsibilities of the parties in respect of licensing and permit requirements;
3. Prohibition on the execution of structural alterations by the lessee to or within the leased premises, unless the commercial arrangement dictates otherwise;
4. Allocation of responsibilities for ordinary and structural repairs, with the lessee typically responsible for the former and the lessor for the latter;
5. Inclusion of clauses regulating the title to and any compensation for improvements made within the leased premises during the term of the lease;
6. Provision for the lessor's right of access to the leased premises during the term of the lease;
7. Inclusion of insurance clauses which require the lessee to cover various risks, including damage to the leased premises, to third-party property and personal injury;
8. Provision for a deposit to cover late payment and damages, without prejudice to the lessor's right to claim amounts exceeding the deposit;
9. Force majeure clauses, termination clauses, and daily penalty clauses for mere delay if the lessee fails to vacate the property on the date of termination of the lease;
10. Governing law and jurisdiction clauses.

Duration and Termination: Commercial leases are typically divided into two phases:

- **The di fermo period** (normally for a period of up to five years but the actual term is largely dependent on the commercial arrangement): this is a fixed term during which the lessee must continue paying rent and cannot terminate the lease early save for very exceptional instances such as in the case of an occurrence of a force majeure event;
- **The di rispetto period** (the remaining years): for the purposes of this period the lessee is normally allowed to decide, by giving written notice to the lessor in the stipulated form and time, whether to extend the lease for a further specified number of years or not.

A commercial lease agreement can and is typically signed in the form of a private writing. However if the lease is for a period which exceeds 16 years or if the lease agreement permits the lessee to make the lease last for more than 16 years, it is generally advised that the commercial lease agreement should be carried out in the form of a public deed before a Notary Public to ensure that in the unlikely event that it is deemed to be an emphyteutical grant, it will still be considered valid (in view that emphyteutical grants must be carried out by public deed).

19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

Landlords may have several remedies when a tenant breaches a commercial lease. If the tenant fails to meet obligations, such as paying rent, maintaining the premises, or using it for the agreed purpose, the landlord may compel performance or seek dissolution of the lease with damages.

The contracting parties are free to include termination clauses which trigger termination, beyond the termination clauses which emanate from the law. When the breach involves non-payment of rent however, the law requires that the landlord must first issue a judicial letter demanding payment and if the tenant does not settle arrears within 15 days of service, the landlord may proceed with termination and recovery of possession.

Typically commercial lease agreements also include daily penalty clauses for mere delay if the lessee fails to vacate the property on the date of termination of the lease.

20. How are use, planning and zoning restrictions on real estate regulated?

Use, planning, and zoning restrictions in Malta are governed by a comprehensive framework promoting sustainable development, orderly land use, and environmental protection. Local plans and zoning regulations define how land may be used, distinguishing residential, commercial, industrial, and agricultural areas, to prevent incompatible uses and protect natural and cultural resources.

Development regulations refine this framework by setting standards for building design, height, density, and landscaping, ensuring preservation of Malta's heritage. Land use classifications specify permitted activities in each area: residential zones support housing and community facilities, while commercial and industrial zones accommodate appropriate business activities without disrupting nearby residences.

All construction and development require approval from the Planning Authority ("PA"). Apart from a development permit, major projects, such as large housing or commercial developments, must be supported by detailed plans, environmental assessments, and public consultation. Smaller works, including renovations or minor alterations, require a planning permission under a simplified process. Additional permits are needed for protected or heritage buildings, ensuring cultural preservation.

Permit applications to the PA must include architectural drawings, site and ownership plans, and relevant environmental documentation. Proposals are reviewed for compliance with national and local development plans and are often subject to public review. The PA may approve, approve with conditions, or reject applications based on planning policy, infrastructure capacity, and community impact.

Local councils, the Environmental Resources Authority and other interested entities collaborate with the PA by providing input on local zoning matters and ensuring that new developments align with community needs and Malta's broader goals of sustainable growth and environmental stewardship.

21. Who can be liable for environmental contamination on real estate?

The Environment Protection Act provides the legal basis for environment protection and liability and subsidiary legislation under this Act governs specific areas such as

waste, water, air quality, and biodiversity.

The Prevention and Remedying of Environmental Damage Regulations implement the polluter-pays principle, and apply to environmental damage or an imminent threat of such damage caused by certain high-risk occupational activities or damage to protected species and natural habitats.

The party responsible for causing environmental harm must prevent, control, and remedy the damage at their own expense. Primary liability rests with the operator, meaning any person or entity (public or private) that operates or controls an occupational activity. This includes landowners, occupiers, developers, and industrial tenants engaged in or overseeing activities that cause contamination.

Where there is an imminent threat of damage, operators must take preventive measures and immediately notify the Environment and Resources Authority (ERA). If contamination has occurred, they must act to contain, remove, or remedy the damage as required. Should an operator fail to act or be unidentifiable, the ERA may intervene directly and later recover all costs.

Liability is strict for high-risk activities listed in Schedule III of the Prevention and Remedying of Environmental Damage Regulations, such as waste management, industrial operations, or water discharges, and fault-based for other activities. Operators remain liable for cleanup costs unless they can prove the damage was caused by an unrelated third party or by compliance with a mandatory order from a public authority.

Activities such as industrial operations, waste storage and others which could impact the soil or groundwater are assessed by risk and require permits in accordance with the Environmental Permitting Regulations.

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

The Energy Performance of Buildings Regulations set Malta's framework for assessing and improving building energy efficiency in line with EU goals. All buildings must undergo an energy performance assessment, resulting in an Energy Performance Certificate (EPC) that rates efficiency against national benchmarks.

An EPC is mandatory when:

1. constructing a new building;
2. selling or leasing an existing one; or
3. for public buildings over 250 m² that are frequently visited by the public.

The EPC must be shown to buyers or tenants before signing and provided upon completion of the transaction. The Building and Construction Authority (BCA) oversees certification and compliance.

Failure to provide or display an EPC, or to comply with the Energy Performance of Buildings Regulations amounts to an offence. In the case of more serious breaches, such as if the production of an EPC is refused when requested by the authority, the punishment of imprisonment for a term of up to 3 months may apply, apart from the imposition of a fine.

Exemptions exist for heritage buildings (Grade 1 and 2) where compliance would alter their character, places of worship, temporary buildings used for less than 2 years, industrial sites, workshops, non-residential agricultural buildings with low energy demand, and standalone buildings with a total useful floor area of under 50 m².

Since 31 December 2020, all new buildings must meet nearly zero-energy building (NZEB) standards; public buildings have been subject to this rule since 2018. The BCA promotes NZEB adoption and the integration of renewable energy systems, ensuring Malta's built environment moves toward cost-optimal, sustainable energy performance.

23. Is expropriation of real estate possible?

Yes, expropriation of real estate is possible in Malta, but it is subject to strict safeguards ensuring that property is taken only for a public purpose and against fair compensation. The right to property is constitutionally protected, and no person may be deprived of their land except in the public interest and with adequate compensation.

Expropriation is regulated by the Government Lands Act (Chapter 573 of the Laws of Malta), which modernised Malta's system for government land management and clarified procedures for acquisition, expropriation, and compensation through the Lands Authority. Property owners whose land has been expropriated may apply for compensation reflecting the market value at the time of expropriation. If there is disagreement, owners can challenge the compensation before the Lands Arbitration Board. A prescriptive period (statute of limitations) applies for an owner to contest the compensation offered

or the public purpose of the expropriation.

When the government decides to proceed with an acquisition, a Declaration is issued, and the land's value is reappraised as of that date, ensuring that compensation reflects current market conditions. The owner is also entitled to interest on the compensation amount.

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

In Malta, instead of the common law "mortgage" over real estate, the main security rights are created through hypothecs or privileges, both recognised under the Civil Code. These grant creditors a preferential claim over a debtor's immovable property, ensuring repayment before unsecured creditors in cases of default or insolvency.

A hypothec is typically established by agreement between lender and borrower through a public deed before a Notary Public, while privileges arise directly by law and may take precedence over hypothecs. Hypothecs can be general, attaching to all current and future property, or special, linked to specific immovables. A special hypothec carries a *droit de suite*, meaning it remains attached to the property even after ownership changes.

There are three types of hypothecs:

1. Legal, arising automatically by law;
2. Judicial, created through a court judgment; and
3. Conventional, established by contract.

To be enforceable against third parties, all hypothecs must be registered in the Public Registry, with priority determined by registration date.

If a debtor defaults, the creditor may seek judicial enforcement. Upon obtaining an executive title, the property is sold through a court-supervised auction, and proceeds are distributed according to the creditors' ranking, giving priority to those with properly registered security rights.

25. Are there material registration costs associated with the creation of mortgages over real estate?

The costs for registration or renewal of a hypothec or privilege with the Public Registry will depend on the value

of the amount being secured and are typically around 0.1% of the amount of debt secured. In addition, other fees and costs may apply depending on the nature of the transaction. In terms of notary fees in connection with the publication of a deed of sale of immovable property, generally around 1% of the consideration.

26. Is it possible to create a trust structure for mortgage security over real estate?

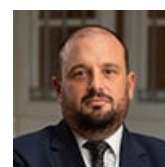
Yes, trust structures may be used to create security interest over real estate in Malta.

A security trust may operate in two ways: either by creating a security interest in favour of the trustee using one of the forms of security interest under Maltese law, or by transferring property (including immovable property) to the trustee under written trust terms that are intended to serve as security.

Contributors

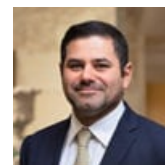
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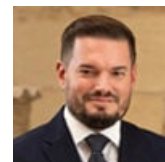
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