
Real-estate-buying /-selling

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1. Introduction

The Swiss real estate sector is undergoing radical change. Many companies structure their real estate as independent, self-accountable partial units (profit centres) or as external companies. In spite of the organisation of real estate management within the Group or the Company, individual tasks such as the construction, administration and infrastructure management are farmed out to external providers (Facility Management). Management of the overall portfolio, the efficient financing and a custom-tailored security strategy are reserved for the owner and cannot be assigned for reasons of the right of disposal.

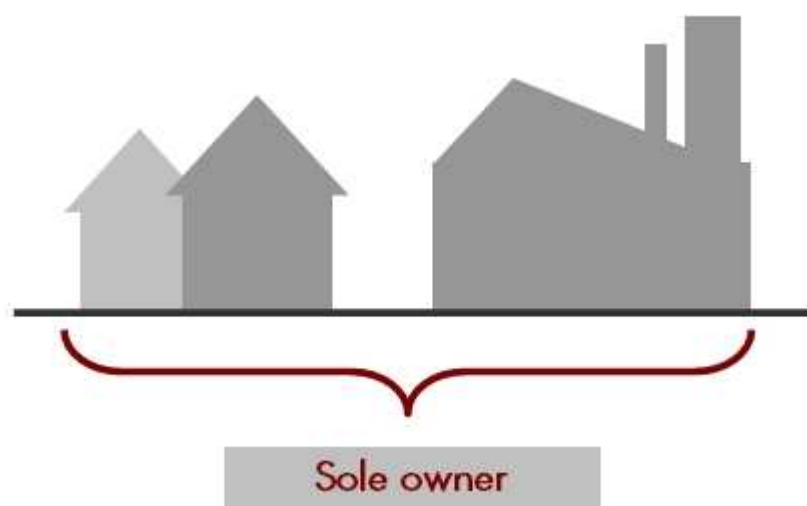
Swiss real property law grants maximum legal security to the owner, allows him/her to relinquish partial rights and also meets the requirements of the refinancing creditors in an optimal way.

Real estate can be acquired quickly and easily.

2. Direct real estate ownership

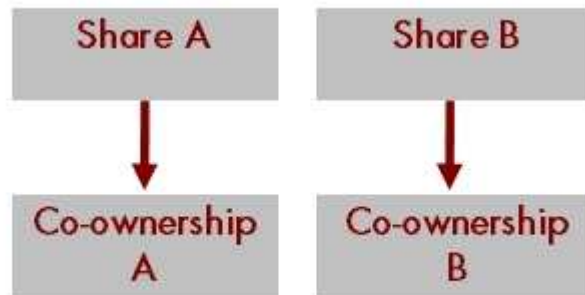
2.1. Sole ownership

On principle, sole ownership provides unlimited, exclusive powers over a property [see ZGB (Civil Code) 641].



2.2. Co-ownership

Joint ownership is the type of co-ownership that does not presuppose any special, common relationship of the parties for its origin; in this setup, each title holder has disposal rights on a particular part of the property (BE-comment, N1 to CC 646).



2.3. Condominiums

Condominium property is the co-ownership share in a plot of land that awards special rights to the co-owner for making exclusive use of some parts of the building and finishing the interior at the owner's discretion (CC 712 a section 1).



2.4. Collective property

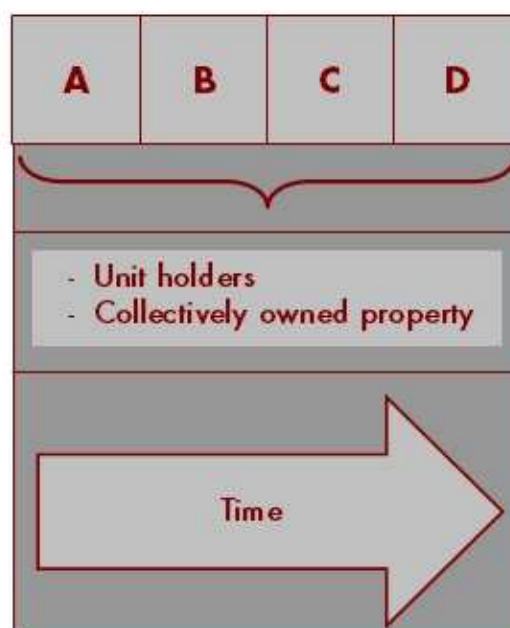
Collective property is that form of joint property relationship which presupposes a personal common among the parties and in which the partners are basically only able to exercise their rights as a community and through the collective (BE-comment, N1 to CC 652).

Communities giving rise to collective ownership:

- Community of property
- Gemeinderschaft
- Community of heirs
- Simple company
- General partnership
- Limited partnership
- Continued community of heirs
- Community of several trustees
- Joint ownership of cantonal law

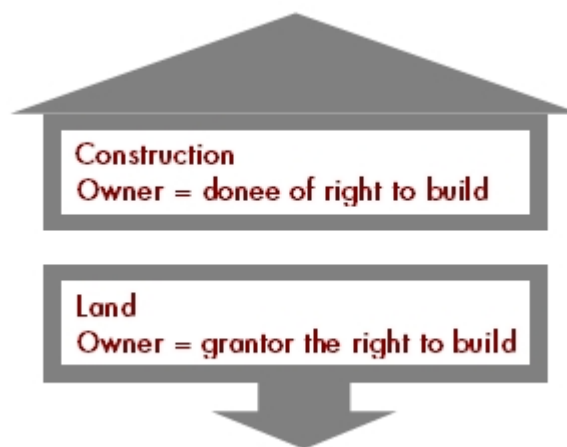
2.5. Temporary ownership

Timesharing, primarily used for holiday real estate, based on collective ownership; for lack of a legal foundation, the rights and obligations of individual owners are usually regulated by means of user and administrative regulations.



2.6. Independent and permanent land lease

By a land lease agreement with the party authorised to build, the land owner covenants with the party authorised to build to levy his/her land with an easement for a certain period of time which gives authority to the building party to erect, or maintain, a building under or above the land surface, and to acquire ownership thereof (Peter Isler, Der Baurechtsvertrag und seine Ausgestaltung, doctoral thesis, Bern 1973, p. 17). Provided that and insofar as the land lease is designed as an independent (freely assignable) and durable right (minimum 30 and maximum 100 years) and has been entered into the land register, it is considered landed property (see CC 779 III).



3. Indirect real estate ownership

3.1 Overview

Investment company

- CH: Real estate joint-stock company (listed on the stock exchange / not listed)
- D: open (KG) or closed real estate investment trusts (KB, GbR)
- USA: REIT's

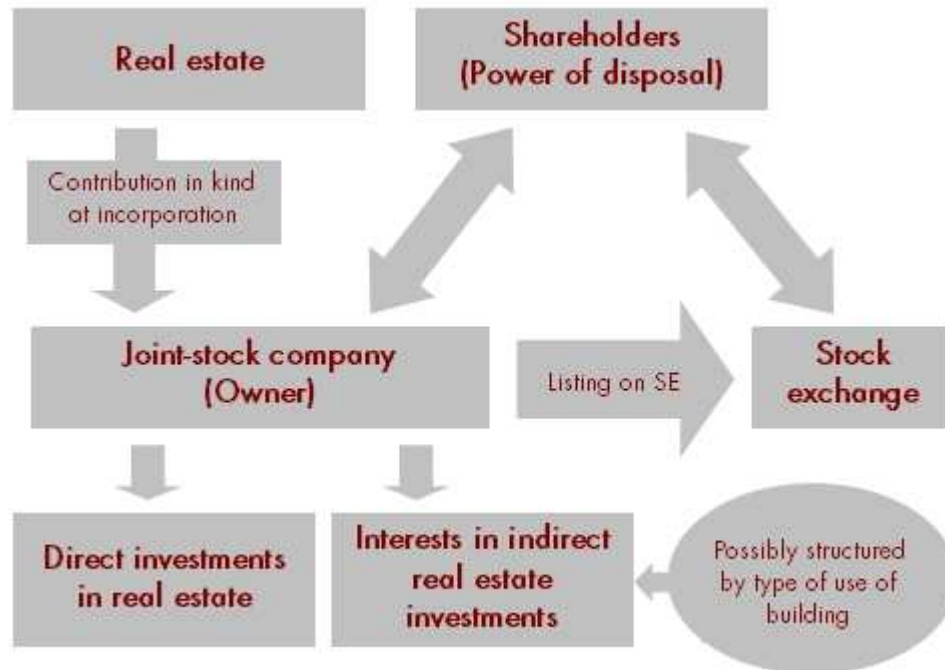
Real estate investment funds

- Real estate investment funds subject to taxes
- Tax-exempt real estate investment funds: Pension funds (e.g. CS 1a Immo PK)

Anlagestiftung

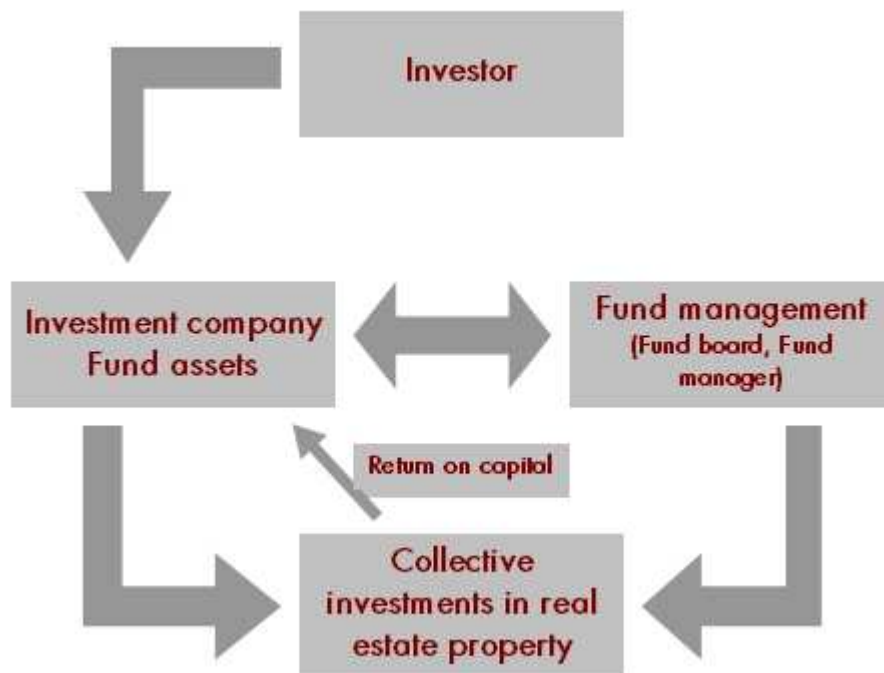
- Pensionskassen

3.2 Real estate joint-stock company (listed on the stock exchange)



Similar to investment funds, public real estate companies lead to a more professional management and a transformation of lot sizes and information. But beyond that, they are neither obliged to diversify nor to take back any securities. They can borrow larger amounts of third party funding since they are not subject to the investment fund act. Unlike with a fund, the shareholders do have the possibility to influence corporate strategy. On the other hand, transparency regarding the real estate portfolio in funds is better due to the law. (Pascal Gantenbein, Die Institution des schweizerischen Immobilienmarktes: Eine Analyse unter dem Transaktionskostenaspekt mit Vorschlägen zur Steigerung der Markteffizienz, Thesis, St. Gallen 1999, p. 125).

2.7. Real estate investment fund



Real estate investment funds are assets provided by investors for the joint investment of capital in real estate property, exclusively. The investment fund act, art. 24 section 1 stipulates the obligation to take back the fund units at a buy-back rate previously set by the fund management (lower limit of stock exchange prices)

4. Comparison of direct and indirect investments

	Direct investment	Real estat company (quoted on the stock exchange)	Real estate investment fund
Target group	Private, institutional investors	Institutional, private investors, foreigners (G permit)	Private, institutional investors
Investment policy	Individual strategy	Predetermined strategy	Predetermined strategy
Immaterial advantage	Self-determination	Spreading of risks	Spreading of risks
Investment threshold	high	low (1 share)	low (1 share)
Right of co-determination	yes	limited, as a shareholder (General Meeting)	no
Transparency	proprietary possession	varying	high
Use as collaterals for loans (mortgageability)	Maximum 80%	Maximum 80%, actually 30-70%	Max. 50% (AFG), actually 20% plus
Liquidity	limited (sale of property)	traded daily	traded daily
Buy-back price	–	none, sale at stock exchange	guaranteed
Transaction costs	high	low	low
Operating costs	high	low (economy of scale)	low (economy of scale)
Tax on yield	simple taxation	„double taxation“	„double taxation“
Supervision	–	GM, auditors, SEC	Fed. Banking Commission (as per AFG)

5. Acquisition of real estate by foreigners

		Unbuilt land (construction to start within 1 year)			Housing	
		Residential zone up to 3000m ²		Business, industrial and service zone	Main residence (up to 3000m ²)	Multiple family building
		Main residence	no main residence			
with domicile in Switzerland	Permanent residence permit	yes	yes	yes	yes	yes
	One year residence permit	yes	no	yes	yes	no
Short stay residence permit		no	no	yes	no	no
without domicile in Switzerland		no	no	yes	no	no

		Business real estate		Holiday apartment (contingents)
		Own use	Investment	
with domicile in Switzerland	Permanent residence permit	yes	yes	yes
	One year residence permit	yes	yes	with permit
Short stay residence permit		yes	yes	with permit
without domicile in Switzerland		yes	yes	with permit

		Share in a legal entity	
		Business real estate area	Housing real estate area
with domicile in Switzerland	Permanent residence permit	yes	yes
	One year residence permit	yes	Up to max. 30% of the company capital
Short stay residence permit		yes	
without domicile in Switzerland		yes	

New rules for EU citizens as of the effective date of the Bilateral Agreements

- With domicile in Switzerland: Acquisition of any real estate without the need of a permit
- Frontier commuter (employed in Switzerland): Possibility of acquiring a second residence (also in addition to holiday apartment)

6. Sequence of a purchase to its completion



7. Real estate taxes

The term "Real estate taxes" stands as the generic term for several taxes related to real estate, namely the real estate gains tax, the change of ownership tax and the landed property tax.

The owner of Swiss real estate is confronted with various types of tax and sovereign authorities (depending on the canton and the municipality).

The taxes are differentiated by the occasion when they are levied into property-related taxes and taxes payable upon a change in ownership.

For legal entities, the financial net proceeds are usually subject to the income tax (see the explanation re "real estate taxes as special tax") and the real estate property is subject to the capital tax.

The landed property tax has to do with the holding or usufruct of the landed property. It is a special tax related to the property tax leading to double taxation of the real estate assets. In most cases, the market value is taxed, and in the case of agricultural and forest real estate the rateable value is taxed. The landed property tax is levied in most cantons, but not in all of them. The Confederation does not know this tax.

When real estate is bought or sold, the real estate gains tax and the change of ownership tax are to be paid:

The real estate gains tax is a tax levied on the property. The basis of calculation is the gains realised on the property, exclusively; it is calculated on the basis of the sales proceeds and the value of the property which, in turn, is determined by the purchase price plus chargeable expenses.

The real estate gains tax is usually due by the seller. Depending on the canton, the real estate gains tax is levied, either as a special tax, or as part of the regular income and earnings tax. In the cantons with special taxes, a progressive tariff is usually applied (higher charges for short-term and lower charges for long-term ownership/tax burden between 10 and 60%).

For legal entities, the special tax is unfavourable insofar as the amortisation and losses of general operations cannot be offset against the real estate gains.

The federal tax harmonisation law (in force since 1.1.1993) obliges all cantons to levy a real estate gains tax.

The change of ownership tax is a legal relationship tax. Depending on the canton, the assessment is based on the purchase price, the officially recognised value or the market value of the real estate (between 1 - 3%). The change of ownership tax is

usually due by the buyer, or the buyer and the seller jointly. However, depending on the canton, both are jointly and severally liable to the tax authorities.

As a rule, the tax authorities have a direct or indirect right of seizure for unpaid real estate taxes imposable on the real estate. If the buyer does not want to redeem such a right of seizure at his/her own expense, the seller should be made to offer security for the presumed tax prior to the purchase. The buyer will be well advised to deal with the potential tax risk before buying.

8. Polluted sites and locations requiring rehabilitation

At present, estimates set the number of polluted dumping, industrial, commercial, and accident sites in Switzerland at about 50,000. Approx. 3,000 - 4,000 of these locations are to be classified as requiring rehabilitation, resulting in costs of approx. CHF 5 billion. To this, we have to add the substantially higher costs resulting from the elimination of polluted soil in the context of building activities.

Since 1997, Switzerland has had a uniform regulation at the federal level to “clean up dumping sites and other locations polluted by waste” in the form of its Environmental Protection Law (together with the inherited liabilities ordinance), the implementation of which is left to the cantons. The regulations in this context are characterised by the principle that the originator of the measures also has to defray their cost. This is based on the economic “Theory of external effects” whereby politico-economic losses caused by the production and distribution of goods for the general public that are created from using environmental goods, should be internalised by the originators, i.e. the costs caused are passed on to the party that caused them.

At present, a cadaster of polluted sites is being drawn up in every canton. This indicates, whether the site is polluted, whether damaging or detrimental effects emanate or are to be expected to emanate from it (location in need of rehabilitation = inherited liability), or whether the site is in need of supervision. But take care! - Not every site is listed in the cadaster.

As a matter of principle, the polluter of a contaminated site is held liable; he/she bears the cost of the cleanup. The primary polluter is the person or entity that has caused the pollution by his/her behaviour (dumping, industrial, commercial, accident sites). After a long period of time, the polluter is frequently no longer evident or within reach. In that case, the current holder of the dumping ground or of the polluted site has to defray the costs, unless he/she can prove that he/she was unaware of the pollution, in spite of due diligence, that the pollution did not provide him/her any benefits, or that the cleanup will not result in a benefit for him/her. If the holder manages to prove this, the community will pay for the cleanup of the polluted site.

As a rule, the first contact is the holder of the polluted site. It is the holder's duty to have the polluted site analysed, to determine the polluter based on the results of the analysis, and to claim the costs from the latter. Under time-pressure, this usually means that the holder of the polluted site prefinances all costs of the cleanup.

Even in instances when guarantees are waived in real estate sales agreements, recourse may be taken to the polluter of the polluted site on the basis of the legal standard of the Environmental Protection Act. Furthermore, the liability for the polluted sites pursuant to the Environmental Protection Act does not fall under the statute of limitations. This is why it is absolutely essential when concluding agreements

regarding the purchase of real estate or any other acquisition of rights (e.g. the right to build), or with contracts taking on building mandates, to have clear stipulations regarding the bearing of costs of the cleanup of polluted sites and to secure the corresponding funds - independent of whether said plot is listed in the cadastral register of polluted sites or not. Such a provision can prevent later, undesirable discussions between the contractual parties and discrepancies between regulations under private law and public law which seeks redress primarily from the polluter and secondarily from the holder of the polluted site.

As an absolute must, the agreements also ought to stipulate who bears the cost of waste elimination since the holder of the real estate also has to pay for waste disposal; excavated material (e.g. excavated pavement) is very often considered to be waste and has to be disposed of in special ways, with the corresponding costs. Inherited liability law and waste disposal regulations overlap.

In agreements under private law, however, not only the allocation of costs has to be defined, but also the rehabilitation objective - taking into account public law - that has to be reached: Degree of cleanup (total or partial rehabilitation); partial rehabilitation with possible future restrictions of use for the plot; securing of the polluted site (reducing its potential of release) with supervision if need be; only supervision etc. The purchase price, for instance in case of a sale of the plot, will have to be correspondingly adjusted. There may even be a stipulation for payment of a penalty if the rehabilitation is not achieved.

Very often, polluted sites are taken insufficiently into account in larger size planning projects, and it is then found, when the definite plan is available, that the very place where it would have been financially interesting and possible, for instance to carry out a partial rehabilitation with use restriction, this is unfortunately no longer possible due to the planning project.

When real estate or parts thereof are purchased, there is no need to report polluted sites, or even sites in need of rehabilitation. It is then necessary to work with them on the narrow space foreseen for the buildings, but always with the necessary respect and circumspection.

9. Taking up a professional or business activity

9.1. Professional activity taken up by a physical person

Foreigners wishing to start a professional activity as an employee in Switzerland require a residence permit and a work permit. These are linked to an employment relationship with an employer. The employer hiring foreigners has to prove that he/she cannot do without this foreign employee. Foreigners incorporating an enterprise in Switzerland, e.g. in form of a joint stock company or a company with limited liability (GmbH), also need a permit if they intend to be personally active on behalf of that company in Switzerland.

9.2. Taking up a business activity as a legal entity

The business activity may be taken up in various forms:

1. Contractual relationships with Swiss corporations (joint venture)
2. Organisation of a branch office
3. Incorporation of a company in Switzerland
4. Acquisition of or holdings in an existing company

The difference in form consists in the possibility of influencing business activities, of capital requirements, personal commitment, tax consequences etc. Depending on the planned activity, one or the other form will offer advantages. According to Swiss law, a majority of the governing officers (members of the board of directors of a joint stock company, managing directors of the GmbH) of companies must be domiciled in Switzerland, or even be Swiss citizens. Due to this legal requirement, foreigners incorporating a company in Switzerland will, as a rule, need the fiduciary co-operation of Swiss corporate officers.

9.3. Future outlook

The current rules governing permits for taking up a business activity in Switzerland will be substantially loosened for citizens from EU member states within the foreseeable future. Due to the conclusion of the corresponding international treaties between Switzerland and the EU, the rules will be adapted to the applicable European law concerning free passenger traffic across the borders.

10. Contact

Do you have any questions or need more information? Feel free to contact us.

Bürgi Nägeli Lawyers

Phone +41 (0)44 268 40 00

Fax +41 (0)44 268 40 05

info@bnlawyers.ch

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Responsible for this website:

Publisher

LawMedia AG
Lindenstr. 20
CH-8302 Kloten

Editors and authors

Bürgi Nägeli Lawyers
Grossmünsterplatz 9
CH-8001 Zürich

Phone +41 (0)44 268 40 00

Fax +41 (0)44 268 40 05

www.bnlawyers.ch

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