


Laws Related to Real Estate Transactions in Japan

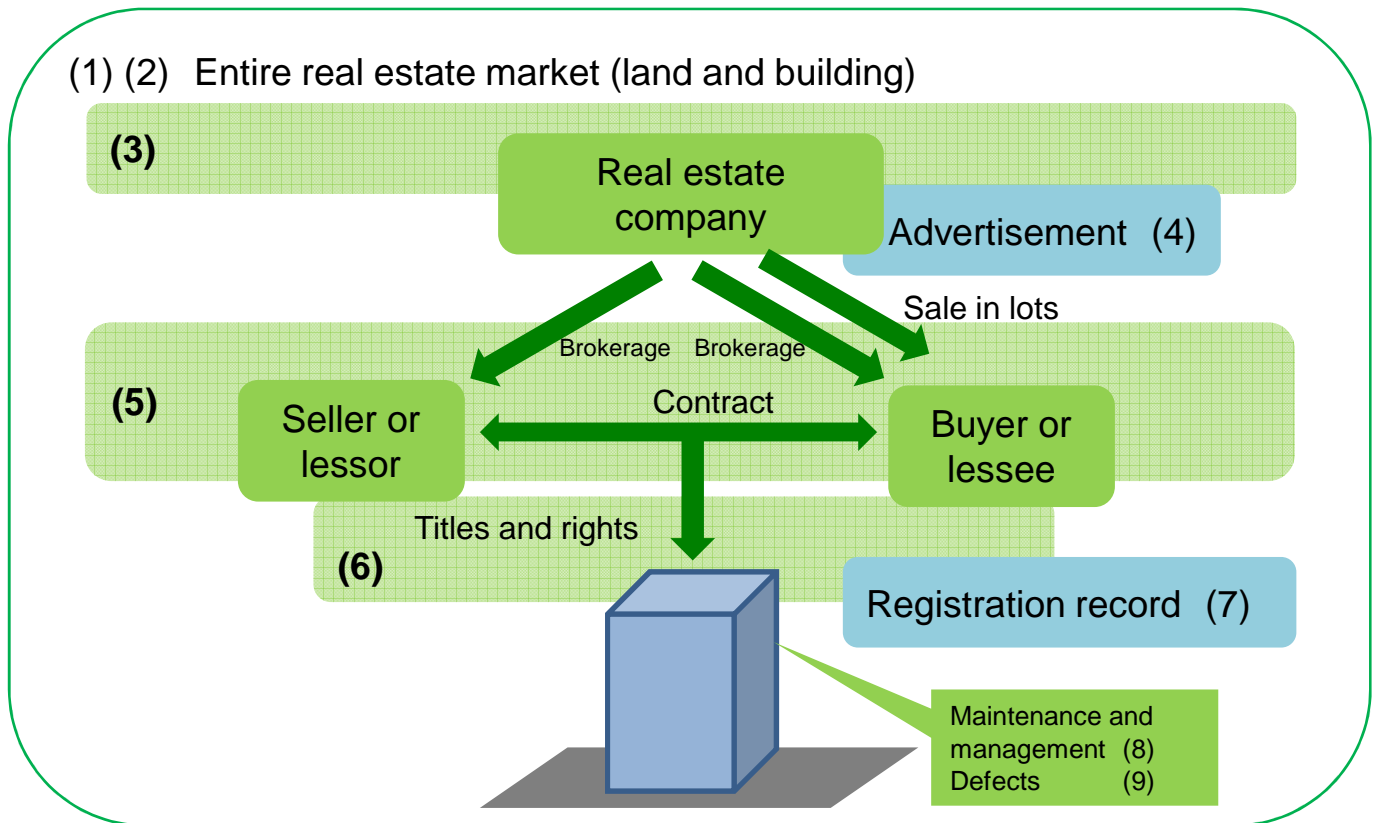
- Japan's Civil Code makes it a principle to treat parties in a contractual relationship in an equal and fair manner.
- On the other hand, when buying, selling or leasing land, buildings and other real properties, there arise differences in negotiation ability and information volume, etc. between operators and consumers.
- In order to prevent such differences from causing trouble, there exist many laws and regulations governing a variety of scenes in real estate transactions.



Japan's representative laws and regulations concerning real estate transactions are classified and summarized into the following 8 items in terms of acquisition and leasing of residential properties.

- (1) Laws concerning land use
- (2) Laws concerning construction of buildings
- (3) Laws regulating real estate companies
- (4) Laws and regulations concerning advertisement
- (5) Laws concerning contracts including sales contracts and lease contracts
- (6) Laws concerning titles and rights
- (7) Laws concerning real property registration
- (8) Laws concerning condominium management
- (9) Laws concerning defects (faults, etc.) of housing properties

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(1) Laws concerning land use	<ul style="list-style-type: none"> ● City Planning Act ● National Land Use Planning Act
(2) Laws concerning construction of buildings	<ul style="list-style-type: none"> ● Building Standards Act (for newly-built or renovated buildings) ● Act on the Promotion of Popularization of Long-life Quality Housing (for condominiums) ● Act on the Promotion of the Low-Carbonization of Cities
(3) Laws regulating real estate companies	<ul style="list-style-type: none"> ● Building Lots and Buildings Transaction Business Act ● Act on Advancement of Proper Condominium Management
(4) Laws and regulations concerning advertisement	<ul style="list-style-type: none"> ● Building Lots and Buildings Transaction Business Act ● Fair Competition Codes Concerning Indication of Real Estate
(5) Laws concerning contracts including sales contracts and lease contracts	<ul style="list-style-type: none"> ● Civil Code ● Building Lots and Buildings Transaction Business Act ● Act on Land and Building Leases ● Consumer Contract Act
(6) Laws concerning title and rights	<ul style="list-style-type: none"> ● Civil Code ● Condominium Unit Ownership Act (for condominiums) ● Act on Land and Building Leases (for renting) ● Act on Facilitation of Reconstruction of Condominiums (for condominiums)
(7) Laws concerning real property registration	<ul style="list-style-type: none"> ● Real Property Registration Act
(8) Laws concerning condominium management	<ul style="list-style-type: none"> ● Condominium Unit Ownership Act ● Act on Advancement of Proper Condominium Management
(9) Laws concerning defects (faults, etc.) of housing properties	<ul style="list-style-type: none"> ● Civil Code ● Housing Quality Assurance Act ● Building Lots and Buildings Transaction Business Act ● Act on Assurance of Performance of Specified Housing Defect Warranty

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●Laws Concerning Land Use●

There are a variety of laws concerning land use.

The following shows the major laws regulating land use (purpose of use), development projects and their transactions.

City Planning Act (Ministry of Land, Infrastructure, Transport and Tourism)

The City Planning Act has designated such city planning areas as urbanization promotion areas and urbanization control areas, as well as the purposes of land use in the urbanization promotion areas and other matters, in order to prevent towns from being developed in a disorderly manner and becoming harder to live in.

For the urbanization promotion areas, there are regulations that affect construction of buildings, such as the building coverage ratio and the floor-area ratio of buildings as well as the purposes of land use.

National Land Use Planning Act (Ministry of Land, Infrastructure, Transport and Tourism)

The National Land Use Planning Act is a law aimed at realizing comprehensive and systematic use of the national land in order to prevent speculative land transactions, disorganized development or other inappropriate actions in advance.

With regard to real estate transactions, the law prescribes that any sale, purchase or exchange of lands having more than a certain degree of size must be filed, among other regulations.

●Laws Concerning Construction of Buildings●

A variety of restrictions are imposed on construction of buildings by laws and other regulations for such purposes as ensuring that buildings are constructed appropriately in accordance with city planning and securing safety and other performances of buildings.

Building Standards Act (Ministry of Land, Infrastructure, Transport and Tourism)

The Building Standards Act is a law aimed at securing safety, livability and other performances of buildings by establishing minimum standards for construction of buildings.

For example, the law provides specific purposes of use (residences, retail facilities, plants, etc.), building height, floor areas and other details for each "zoning" set forth in the City Planning Act.

It also prescribes standards on securing safety of buildings, standards on fire prevention and evacuation, among other things.

Act on the Promotion of Popularization of Long-life Quality Housing (Ministry of Land, Infrastructure, Transport and Tourism)

The law is aimed at suppressing the discharge of wastes from housing demolitions, etc. and reducing environmental burdens by facilitating a long-term use of housing, and at mitigating financial burdens of residents through a reduction of costs associated with building reconstruction, so that they can live a fuller and gentler life.

As accreditation criteria for long-life quality housing, the law designates such performance items as countermeasures against deterioration, earthquake resistance, easiness of maintenance, management and replacement, versatility, barrier freeness, energy saving, living environment, residential unit area and maintenance and management plans.

Act on the Promotion of the Low-Carbonization of Cities (Ministry of Land, Infrastructure, Transport and Tourism, Ministry of the Environment and Ministry of Economy, Trade and Industry)

This law aims to promote realization of lower-carbon cities and contribute to sound development of cities, as cities are the source of a major portion of carbon dioxide that generates in association with social-economic and other activities.

The law calls for establishment of basic policies regarding promotion of lower-carbon cities, preparation of plans by local municipalities to create low-carbon towns and special measures based on the plans, and implementation of measures to promote popularization of low-carbon buildings.

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●Laws Regulating Real Estate Companies●

There are a variety of business types employed by real estate companies. Of these types, real estate companies engaged in the real estate transaction business (sales, purchase and brokerage) and management business for for-sale condominiums are regulated by certain laws. However, it must be noted that all business types are not regulated by laws. For example, there is no law that regulates the real estate leasing business or rental property management business.

Building Lots and Buildings Transaction Business Act (Ministry of Land, Infrastructure, Transport and Tourism)

The Building Lots and Buildings Transaction Business Act is a law that, with the aim of protecting consumers in real estate transactions and facilitating trade, regulates the following:

- (1) Sale, purchase or exchange of residential lands and buildings conducted by the real estate companies, and
 - (2) Real estate companies that provide agency or intermediary (brokerage) services for sale, purchase, exchange or leasing.
- Specifically, the law stipulates a variety of regulations on the services of real estate companies, including regulations on advertisement, obligation to explain important matters (about properties and terms and conditions, etc.) to the buyers or lessees, obligation to issue documents describing the contract details, and regulations on the contract details for the cases in which the real estate companies themselves serve as the seller.

Act on Advancement of Proper Condominium Management (Ministry of Land, Infrastructure, Transport and Tourism)

The Act on Advancement of Proper Condominium Management provides regulations and other requirements on the condominium management contractors in order to secure a good living environment of condominiums. Specifically, the law obliges the condominium management contractors to explain important matters regarding their management operations and conduct segregated management of properties, and the building lots and buildings transaction business operators to issue design specification documents to management associations upon selling the units. As such, the law provides regulations to ensure that appropriate management is conducted. Moreover, the law stipulates establishment of the system for legally licensed condominium managers who provide management associations with professional advices, and of the condominium management adjustment promotion center, which is a support group for management associations.

●Laws and Regulations Concerning Advertisement●

When individuals look for real properties, they typically refer to advertisement as the information source. Accordingly, real estate advertisement is subject to the following laws and regulations so that consumers can obtain appropriate information regarding the property status, legal regulations, terms and conditions for purchase and other matters and can properly make decisions on conducting the transaction or not.

Building Lots and Buildings Transaction Business Act (Ministry of Land, Infrastructure, Transport and Tourism)

The Building Lots and Buildings Transaction Business Act provides basic regulations on real estate advertisement, including ban on extravagant advertisement and restrictions on the start date of advertisement for uncompleted properties.

Fair Competition Codes Concerning Indication of Real Estate (Real Estate Fair Trade Council of Federation)

The Fair Competition Codes Concerning Indication of Real Estate are rules on real estate advertisement voluntarily established by the real estate industry for the purpose of consumer protection, and have been approved by the Japan Fair Trade Commission based on the provisions of the Act against Unjustifiable Premiums and Misleading Representations. Specifically, the Codes provides restrictions on the start date of posting advertisement and detailed criteria for posting advertisement, so that consumers can accurately understand the descriptions of the advertisement.

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●Laws Concerning Contracts Including Sales Contracts and Lease Contracts●

The Civil Code is a basic law for contracts, and provides fundamental thinking for sale and purchase contracts and lease contracts as well.

While the Civil Code makes it a principle to treat parties in contractual relationship in an equal and fair manner, there arises differences in negotiation ability and information volume, etc. between operators and consumers when buying, selling or leasing land, building and other real properties. Accordingly, aside from the Civil Code, laws have been enacted to protect consumers, preventing transactions from being disadvantageous for consumers.

Civil Code (Ministry of Justice)

The Civil Code provides fundamental thinking on contracts, including requirements for conclusion of contracts, earnest money and warranty against defects.

Where disputes arise between the parties or if there is no arrangement between them, the settlement shall, in principle, be sought based on the Civil Code.

Building Lots and Buildings Transaction Business Act (Ministry of Land, Infrastructure, Transport and Tourism)

For sale and purchase contracts in which building lots and buildings transaction business operators themselves serve as the seller, the Building Lots and Buildings Transaction Business Act provides regulations including restrictions on part of the contract content from the viewpoint of consumer protection, in spite of the provisions of the Civil Code.

Specifically, the law provides limits to the amount of earnest money and cancellation penalty, etc. and restrictions on the warranty against defects. Contract provisions that contravene these restrictions shall become invalid.

On the other hand, the Building Lots and Buildings Transaction Business Act has no special regulations on the content of lease contracts.

In principle, the contracts are handled pursuant to the Act on Land and Building Leases, the Civil Code and the Consumer Contract Act, among other rules.

Act on Land and Building Leases (Ministry of Justice)

From the viewpoint of lessee protection, the law is applicable prior to the provisions of the Civil Code to lease contracts for lands (for the purpose of owning buildings) and buildings.

For example, the law provides the duration and renewal of land leasehold, the term, renewal and termination of building lease contracts, etc.

The law also has provisions on fixed term lease and fixed term building lease.

In addition, the law includes an article stipulating that, even if the contracting parties reach agreement that is different from legal provisions, the provisions on the Act on Land and Building Leases shall apply (such provisions are called "mandatory provisions.")

Consumer Contract Act (Cabinet Office)

From the viewpoint of consumer protection, the Consumer Contract Act has provisions that are applicable prior to the Civil Code to the contracts concluded between business operators and consumers (called "consumer contracts"), as there are differences in negotiation ability and information volume, etc. between such business operators and consumers.

Specifically, the provisions allow cancellation of contracts if they were concluded while the consumers misunderstood them or remained puzzled as a result of inappropriate acts of the business operators.

Moreover, the law has such provisions that nullify the articles, if any, of contracts that unduly harm the rights of consumers.

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●Laws concerning Titles and Rights●

Titles and rights regarding real estate include rights on land (mainly ownership and land lease right) and rights on buildings (mainly ownership and house leasehold).

To avoid troubles with interested parties, these titles and rights must be correctly understood. The following shows the major laws enacted with regard to real estate titles and rights.

Civil Code (Ministry of Justice)

The Civil Code largely divides the real estate titles and rights into realty (including ownership, superficies and mortgages) and claims (including leasehold), and stipulates basic titles and rights for them, including the content of the rights and their effectiveness. For example, requirements to assert one's rights to third parties (generally called "requirements for perfection") are provided.

Act on Building Unit Ownership, etc. (Ministry of Justice)

The Act on Building Unit Ownership, etc. is a law that stipulates the rights and obligations with regard to for-sale condominiums and other buildings with unit ownership, as well as items regarding their management.

For example, the law stipulates titles and rights regarding exclusive sections, common areas and sites, and items regarding voting rights at meetings of unit owners.

Act on Land and Building Leases (Ministry of Justice)

From the viewpoint of lessee protection, the law is applicable prior to the provisions of the Civil Code to the land lease right and building leasehold.

For example, the law provides requirements to assert one's land lease right or building leasehold to third parties (generally called "requirements for perfection") and other rights granted to the lessees of lands and buildings.

In addition, the law includes an article stipulating that, even if the contracting parties reach agreement that is different from legal provisions, the provisions on the Act on Land and Building Leases shall apply (such provisions are called "mandatory provisions.")

Act on Facilitation of Reconstruction of Condominiums (Ministry of Land, Infrastructure, Transport and Tourism)

As a countermeasure to the aging of many condominiums in the future, the law is intended to facilitate reconstruction of condominiums in order to secure a good living environment for condominiums, more stable and improved lifestyle and sound development of the economy.

In order to facilitate reconstruction of condominiums and other arrangements, the law provides such measures as establishment of condominium reconstruction associations and smooth transfer of titles and rights through procedures for the exchange of rights.

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●Laws Concerning Real Property Registration●

In order to assert (perfect) one's ownership and other rights on lands and residences to third parties, real properties must be registered.

Through registration, the current status of the real properties and their titles and rights are publicly announced, and the holders of rights (including ownership) for the real properties and the details of the rights are clearly indicated to third parties.

Procedures of real property registration and other arrangements have been established legally.

Real Property Registration Act (Ministry of Justice)

The Real Property Registration Act is a law for securing the rights regarding real estate and facilitating transactions by setting procedures of real property registration.

For example, the law provides the rights to be registered and the content of the registration, required documents and their procedures, and other obligations regarding registration. Furthermore, major revisions were made to the Real Property Registration Act in 2004 (put into force on March 7, 2005), and the registration procedures were also changed significantly, including on-line registration becoming applicable.

●Laws Concerning Condominium Management●

Laws concerning condominium management have been established in order to facilitate community life at condominiums and protect the common properties of the owners.

Act on Building Unit Ownership, etc. (Ministry of Justice)

The Act on Building Unit Ownership, etc. is a law that stipulates items regarding management of for-sale condominiums and other buildings with unit ownership, as well as the rights and obligations of unit owners.

For example, the law stipulates bylaws and operations of management associations, and the repair and reconstruction of buildings.

Act on Advancement of Proper Condominium Management (Ministry of Land, Infrastructure, Transport and Tourism)

The Act on Advancement of Proper Condominium Management provides regulations and other requirements on the condominium management contractors in order to secure a good living environment of condominiums.

Specifically, the law obliges the condominium management contractors to explain important matters regarding their management operations and conduct segregated management of properties, and the building lots and buildings transaction business operators to issue design specification documents to management associations upon selling the units. As such, the law provides regulations to ensure that appropriate management is conducted.

Moreover, the law stipulates establishment of the system for legally licensed condominium managers who provide management associations with professional advice, and of the condominium management adjustment promotion center, which is a support group for management associations.

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●Laws Concerning Defects (Faults, etc.) of Housing Properties●

When a buyer buys a housing property and find defects that he or she could not know in advance, the seller of the house is liable for the defects. This is called “warranty against defects,” which is provided in the following and other laws.

Civil Code (Ministry of Justice)

With regard to the warranty against defects of the seller in a transaction, the Civil Code stipulates that the buyer can cancel the contract or claim for damages (provided, however, that the contract is cancelled only when the purpose of the transaction is not fulfilled because of the defects). Furthermore, the Civil Code depicts that the seller shall assume warranty against defects for the period of one year from the date when the buyer finds the existence of latent defects.

Building Lots and Buildings Transaction Business Act (Ministry of Land, Infrastructure, Transport and Tourism)

Due to the regulations under the Building Lots and Buildings Transaction Business Act, building lots and buildings transaction business operators shall assume warranty against defects for at least two years for the contracts in which they themselves serve as the seller.

These provisions are applicable prior to the provisions of the Civil Code. Accordingly, contract articles that contravene these restrictions shall become invalid.

Housing Quality Assurance Act (Ministry of Land, Infrastructure, Transport and Tourism)

The Housing Quality Assurance Act is a law enacted for the purpose of promoting quality assurance of housing, protecting interests of homebuyers, and resolving disputes over housing in a prompt and proper manner, etc.

Specifically, the law obliges the sellers, etc. of newly-built housing properties to assume warranty against defects for 10 years, and provides standards for representation of housing performances and the framework to facilitate dispute resolution over housing properties that have undergone housing performance evaluation.

This law may be abbreviated as the Quality Assurance Act.

Act on Assurance of Performance of Specified Housing Defect Warranty (Ministry of Land, Infrastructure, Transport and Tourism)

The Act on Assurance of Performance of Specified Housing Defect Warranty provides regulations for the sellers, etc. of newly-built housing properties to securely implement the 10-year warranty against defects designated in the Housing Quality Assurance Act.

Specifically, the law obliges the sellers, etc. of newly-built housing properties to be delivered on October 1, 2009 and afterward to buy insurance or deposit (reserve) guarantees.

This makes it possible to make claims to insurance companies to pay the expenses for repairing the defects, etc. or to refund the deposited monies even if the seller of newly-built housing properties can no longer assume the warranty against defects due to bankruptcy or other reasons.