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Introduction to the new Interim Registration & Mortgage Laws

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Introduction

The following laws were issued by the Dubai Government on 31 August 2008

- Law No. 13 of 2008 regulating the Interim Real Estate Register in the Emirate of Dubai effective from 31 August 2008 onwards
- Law No. 14 of 2008 regulates property mortgages and relations between mortgage lender and the borrower in the Emirate of Dubai effective 60 days from 31 August 2008
- Law No. 28 of 2008 cancelling Law No. 30 of 2007 appointing a Special Judicial Committee on Property Dispute Resolution for the Emirate of Dubai effective from 31 August 2008 onwards

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**Law No. 13 of 2008 regulating the
Interim Real Estate Register in the
Emirate of Dubai effective 31
August 2008 onwards**

Interim Real Estate Register

- Introduction of Interim Real Estate Register to record all off- plan sales of real estate units.
- Any sale or other disposition that transfers or restricts title or any ancillary rights will be void if not recorded in the Interim Real Estate Register.
- Sales made prior to the law coming into force to be registered in the Interim Real Estate Register within 60 days of the Law coming into force.

No commencement of project or sale prior to taking possession of land

No developer shall commence a project or sell units off-plan before taking possession of the land on which the project is to be built and obtaining necessary approvals from competent authorities.

Registration procedure

- Applications to register unit in Interim Real Estate Register via standard form.
- Units marked off-plan and registered in the Interim Real Estate Register may be sold, mortgaged or otherwise legally disposed of.

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Transfer Fees

Developers not allowed to charge any fees for sale/re-sale or other dispositions of units (except for administrative expenses which the developer may charge to third parties with the approval of the Land Department).

Completion of development

- Developers to register completed projects in Real Estate Register once completion certificate is obtained from relevant authorities.
- Registration should identify those units that were sold to purchasers who have fulfilled their contractual obligations.
- On request of the purchaser or on its own initiative, the Department may request registration of the unit to be transferred from Interim Real Estate Register to the Real Estate Register.

Brokers

- Developer wishing to market his project through a real estate broker must first conclude a contract with the broker.
- The contract to be registered by the developer at the Land Department.
- The broker must be accredited under the terms and provisions of Regulation No. 85 of 2006 concerning the Register of Real Estate Brokers in the Emirate of Dubai.
- Informal contracts cannot be concluded between developers and brokers for sale of units in projects that have not been approved by the relevant authorities. Contracts made without such approval will be void.

Default by Purchaser

- If purchaser defaults on any term of the contract made with the developer for the sale of a unit, developer should notify the Land Department and the Land Department will then give the purchaser 30 days notice to fulfil his contractual obligations.
- If at the end of the 30 day period, the purchaser has not fulfilled his contractual obligations, the developer may cancel the contract and will be obliged to repay the purchaser its money less a deduction that does not exceed 30 per cent of the monies paid by the purchaser.

Variations in units

- If Unit is bigger on completion than was agreed in the contract, developers cannot claim additional monies.
- If Unit is smaller on completion, developer liable to compensate the purchaser for the difference, unless it is marginal.

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Law No. 14 of 2008 regulates property mortgages and relations between mortgage issuer and the borrower in the Emirate of Dubai effective 60 days from 31 August 2008

Introduction

- The Law applies to mortgages of property and property units as security for debt.
- The Law applies whether debt is secured by a mortgage over the whole of a property, an undivided interest therein, right “in rem”, or personal right over a property sold “off-plan”.

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Restrictions on Lenders

Mortgagee (“lender”) must be a bank, company or financial institution duly licensed and registered with the UAE Central Bank to provide finance for property in the UAE.

Restrictions on the Borrower

Mortgagor (“borrower”) must be the “owner” of mortgaged property and in a position to dispose of the same.

The Property

A mortgage may only be created over property that is capable of being disposed of.

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Mortgage registration

A mortgage is not valid unless it is registered with the Land Department either in the Real Estate Register or the Interim Real Estate Register and any agreement to the contrary is void.

The lender will bear the costs of registration unless otherwise agreed by the parties.

Restriction on clause granting automatic transfer of title to lender

Any clause in the mortgage contract stipulating that when the borrower fails to pay the mortgage debt within the specified period, the lender shall have title to the mortgaged property or can sell the mortgaged property without taking the statutory steps, shall be considered as void.

Borrower's right to collect revenue on property until public auction

Borrower has right to administer mortgaged property, collect its yield and revenue until it is foreclosed and sold at public auction upon default of payment of debt to lender.

Substitution of security

Where loss or damage occurs to the mortgaged property, the mortgage shall automatically attach to substitute assets and the lender may recover his claim from those assets in the order of its priority.

Presumably, the phrase “substitute assets” includes insurance proceeds and this Article appears to give lenders a security interest in such proceeds.

Assignment

The lender may assign its rights subject to the consent of the borrower and the registration of such deed of assignment with the Land Department.

The lender can, up to the value of his debt, assign the rank of his mortgage to another creditor having a security interest in the same Property.

Rank of Mortgage

The ranking of the mortgage is determined by the date on which it is registered with the Department.

If several applications submitted at same time against the same borrower, over the same property, mortgages shall be registered under the same number and those creditors shall rank equally in the distribution of auction proceeds.

Lender may follow the mortgaged property into the hands of any person in possession of it in order to obtain payment of his claim when due according to rank. A person shall be deemed in possession of the property if he acquires title to the property after it has been mortgaged or acquires any other right “in rem” or personal right over the property.

Special Mortgages - Musataha / Usufruct / Long lease

- The holder of a musataha may mortgage buildings or plant over the term of the musataha without having the right to mortgage the land that is to be developed unless otherwise agreed in the musataha agreement.
- The holder of a usufruct or long term lease for a term between 10 and 99 years can mortgage its interest in the property for the term of the usufruct or long term lease.
- Mortgage over rights of musataha, usufruct or long term lease shall terminate and be deleted from the Land Department register upon expiry of the term of the musataha, usufruct or long term lease. It is often the case that musataha, usufruct and long-term lease arrangements are renewable. Lenders will need to ensure that they are adequately protected in such circumstances.

Execution proceedings on mortgaged property

Upon default in payment of the debt when due or the fulfilment of a condition requiring early repayment, the lender must provide the borrower 30 days notice through the Notary Public before commencing execution proceedings.

If borrower fails to pay the sums due within the 30 day period, the execution judge shall, upon request of the lender order an attachment against the mortgaged property so that it can be sold by public auction in accordance with the applicable procedures of the Land Department.

Execution proceedings on mortgaged property (cont'd)

The execution judge may upon the request of the borrower, postpone sale for up to 60 days if he finds that:

- The borrower will be able to repay his debt if given this period; or
- The sale of the mortgaged property will cause the borrower “substantial damage”.

Public Auction

Conclusive remedy to the lender is sale of mortgaged property at public auction within 30 days after the end of the relevant period, referred to above.

Now clarified that property in 'designated areas' may be sold at auction to non-UAE nationals.

Claims paid in order of priority

The claims of lenders shall be paid out of the sale proceeds in order of priority. If sale proceeds are not sufficient to cover the claim of a lender, that lender may claim the difference from the borrower and will rank with all unsecured creditors in respect of such amount.

Property granted to UAE citizens

Property granted by the government to UAE citizens and such like persons for commercial and residential purposes is excluded under this law and subject to the applicable orders and directives of the Ruler and the decisions in implementation thereof.

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**Law No. 28 of 2008 regarding
Property Dispute Resolution in the
Emirate of Dubai effective 31 August
2008 onwards**

Law No. 28 of 2008 - property dispute resolution to be referred to Dubai Courts

- Law No. 30 of 2007 concerning formation of Special Judicial Committee on Property Dispute Resolution in Emirate of Dubai came into effect on 31 January 2008.
- The new Law No. 28 of 2008 deletes and replaces the above law from 31 August 2008 onwards and provides that property disputes relating to ownership interests are now required to be referred to Dubai Courts.

The Jurisdiction of Rent Committee and Dubai Courts

Rent Committee

All disputes arising between tenants and landlords in Dubai, to be referred to the Rent Committee

Dubai Courts

All disputes relating to ownership interests in real estate in Dubai, including disputes concerning usufruct rights over real property to be referred to the Dubai Courts

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