

# A new era for jointly owned property in Dubai



In September 2019, Law No. (6) of 2019 Regulating Jointly Owned Property in the Emirate of Dubai (the 'New JOP Law') was introduced. The New JOP Law, which came into force on 18 November 2019, replaced Law No. (27) of 2007 (the 'Old JOP Law') and represents the first significant overhaul (in over 10 years) of the laws regulating jointly owned property.

What follows is an high level overview of some of the key elements of the New JOP Law, including key differences with the Old JOP Law.

## Type of Projects

The New JOP Law recognises three different categories of jointly owned property, being a property that is subdivided into privately owned units (or components) and jointly owned common areas (a 'Project'), with different rules pertaining to the management of each category.

The three categories of Projects are:

1. large scale projects, which we understand will capture master communities;
2. hotel projects, which, while unclear at this point in time, we presume will relate to:
  - mixed use developments that include a hotel component; and
  - a hotel building or component that is subdivided to create units and common areas; and
3. simple/other real estate projects, being all other projects that do not fall within the first or second categories, such as simple standalone residential or office developments.

The directions to be issued by the Real Estate Regulatory Agency ('RERA') will provide further clarity regarding the criteria for determining how a Project will be categorised.

# The role of owners - Owners Association vs. Owners Committee

A key difference between the New JOP Law and the Old JOP Law is the role that the owners of units in a Project will play in the administration, operation and management of the Project.

An 'Owners Association' will no longer be formed and a developer must appoint a RERA approved management company as managing agent for the Project (the 'Managing Agent'). The Managing Agent will carry out the functions of the now defunct Owners Association.

An Owners Committee will still play an advisory role in the day-to-day running of the Project (the 'Owners Committee'). The Owners Committee will consist of up to nine owners who will be selected by RERA and represent the collective body of all owners in the Project.

## Service charges

Timely payment of service charges by unit owners is crucial to the Project being operated and maintained to the highest possible standard. This requires a balance of the rights between the Managing Agent/developer and the unit owners.

From a Managing Agent's/developer's perspective there needs to be clear mechanisms in place for dealing with defaulting unit owners. Unit owners will desire transparency in the calculation and expenditure of service charges.

### The New JOP Law:

- clearly sets out the procedures for budgeting and subsequent levying and collection of service charges by the Managing Agent;
- expressly provides the execution judge of the Rent Disputes Settlement Centre (the 'RDSC') with the right to sell an owner's unit to recover unpaid service charges (subject to the process in the New JOP Law being strictly followed);
- reinforces RERA's supervisory role in the budgeting and approval of service charges; and
- requires levied service charges to be deposited by the Managing Agent into a dedicated Project account opened with a bank approved by RERA.

These processes complement the introduction of RERA's 'Mollak' system, which re-emphasises RERA's drive for a more transparent service charge system.

It is important to note that the Managing Agent cannot restrict an owner's right to use and benefit from the common areas of the Project due to non-payment of service charges (nor can a developer contractually restrict such access on this basis in the sale and purchase agreement), which we are aware has been a practice sometimes adopted by developers to incentivise payment. Notwithstanding this, the rights of the RDSC to force the sale of an owner's unit should assist in the collection of unpaid service charges.

# Dispute resolution

Prior to the introduction of the New JOP Law, disputes regarding jointly owned property were handled by the Dubai Courts.

Moving forward, any disputes that are unable to be amicably resolved will now be referred to the RDSC, which has the exclusive jurisdiction to hear and settle all disputes in relation to matters arising from the New JOP Law.

Directions to be issued by RERA

The New JOP Law contemplates directions being issued to supplement the New JOP Law and provide further guidance on various matters, including:

- the criteria for Project classification;
- the role and functions of the Owners Committee;
- the role of the 'Hotel Management Company', which shall be appointed in lieu of a Managing Agent for hotel projects;
- the levying and collection of service charges and master community service charges; and
- to the extent that the master community facilities are used for commercial purposes, the percentage of net profits earned from the operation of these community facilities to be deposited in the account established by the master developer for the master community;
- (the 'Directions').

As at the time of writing, RERA was yet to issue the Directions but we understand that the Directions are in the process of being finalised. Until such time that the Directions are issued, the New JOP Law confirms that the directions, rules and regulations issued under the Old JOP Law will continue to apply, except to the extent that they are inconsistent with the New JOP Law.

## Compliance with new JOP Law

All developers and other stakeholders must ensure that their Project(s) comply with the New JOP Law by no later than 18 May 2020 (the 'Compliance Date'), although the Director General has the authority to extend the Compliance Date.

Developers and other stakeholders will be in breach of their obligations under the New JOP Law should they fail to:

- regularise their Project by the Compliance Date; or
- fail to comply with the New JOP Law in general.

In the event of a breach of the New JOP Law, RERA is provided with a discretionary power to impose a fine of up to AED 1,000,000, (US\$ 272,000) with the potential for this fine to be increased to AED 2,000,000 (US\$ 550,000) in the event of a repeat offence within a twelve month period.

## Moving forward

We strongly recommend that all developers and stakeholders undertake those steps currently available to ensure that their existing Project(s) and any future Project(s) comply with the New JOP Law - for example,

appointing a Managing Agent that is licensed and approved by RERA, finalising registration of the Project on the 'Mollak' system and opening a designated account for the Project(s).

Al Tamimi & Company is in regular contact with RERA regarding the issuance of the Directions and matters generally pertaining to the New JOP Law and can assist developers and other stakeholders by:

- advising how the New JOP Law affects a Project's existing management documentation and the overall operation of the Project in general;
- supporting and representing stakeholders before RERA to discuss the implications of the New JOP Law on their Project; and
- once the Directions are issued, assisting in updating the Project's existing management documents (or prepare new management documents) to comply with the New JOP Law and the Directions.

*Al Tamimi & Company's [Real Estate team](#) provides a comprehensive range of legal services across the Middle East including Dubai, covering all areas relevant to the property industry. For further information, please contact [Tara Marlow \(t.marlow@tamimi.com\)](mailto:t.marlow@tamimi.com), [Mohammad Kawasmi \(m.kawasmi@tamimi.com\)](mailto:m.kawasmi@tamimi.com), [Andrew Balfe \(a.balfe@tamimi.com\)](mailto:a.balfe@tamimi.com) and [Sebastian Roberts \(s.roberts@tamimi.com\)](mailto:s.roberts@tamimi.com).*