

An Overview Of The Jointly Owned Property Regulations And Their Implementation To Date

INTRODUCTION

Law No. 27 of 2007 on Ownership of Jointly-Owned Properties in the Emirate of Dubai (the “JOP Law”) came into force on 1 April 2008. The Law laid the foundation for a regulated and transparent regime concerning the management of strata developments and ownership of Units in Dubai.

In terms of Article 32 of the JOP Law, the Chairman of the Land Department was entitled to implement regulations as required to ensure a comprehensive strata title regime.

In April 2010 these regulations (“JOP Regulations”) were released as “Guidelines” by the Land Department.

In this article we briefly outline the purpose of each of the JOP Regulations. We then list in simple terms the steps developers need to take to ensure they comply with the JOP Regulations. We then review how these laws are being applied and implemented to date in practical terms.

I. IMPLEMENTING REGULATIONS

The JOP Regulations comprise the following:

1. The General Regulation – Concerning Jointly Owned Properties under the Law on Jointly Owned Properties in the Emirate of Dubai (“General Regulation”);
2. The Regulation Concerning Jointly Owned Property Declaration under the Law on Jointly Owned Properties in the Emirate of Dubai (“JOPD Regulation”);
3. The Regulation Concerning Preparation of Survey Plans in the Emirate of Dubai (“Survey Regulation”) and Directions;
4. The Association Constitution (“Constitution Regulation”).

Below we provide an Overview of the JOP Regulations by considering briefly the purpose of each regulation. A more detailed analysis of the JOP Regulations is completed under the section On-Going compliance below.

II. OVERVIEW

1. General Regulation

This regulation is the principal JOP Regulation. The General Regulation covers such matters as:

- a) Consumer protection;
- b) Developer disclosure;
- c) Financial disclosures;
- d) Apportionment of costs as between developers and the Owners Association;
- e) Collection of service charges;
- f) The requirements for lodging of Jointly Owned Property Declarations and setting up of Owners Associations;
- g) The form and content of Building Management Statements;
- h) The form and content of Supply Agreements;
- i) Community Rules Enforcement Notices;

- j) Appointments of Administrators;
- k) Interim measures.

2. JOPD Regulation

This Regulation sets out in more detail what is required to set up on a jointly owned property scheme and register an Owners Association. A default procedure is specified allowing Unit Owners to establish a Jointly Owned Property scheme where the developer fails to do this. A new procedure is also introduced allowing developers to stage their developments as well as provisions allowing up to three layers of Jointly Owned Property within any one Jointly Owned Property development.

3. Survey Regulation

This Regulation provides for the following:

- a) The accreditation and registration of surveyors;
- b) The duties of registered surveyors;
- c) Suspensions and cancellations of surveyors;
- d) Standards to be used and the ability for the Land Department to issue binding Directions;
- e) Transitional provisions relating to the preparation of plans are also specified.

Directions have also been put in place which describe how areas must be calculated and survey requirements.

4. Constitution Regulation

This Regulation specifies the form of constitution for each Owners Association formed. If developers have specified their own form of constitution in their sale contract they will need to be aware that such documents will now not apply.

III. ON-GOING COMPLIANCE WITH THE JOP REGULATIONS

In this section we briefly summarise the effect of the JOP Regulations on an on-going basis. Each topic is discussed under the heading of the JOP Regulation setting out the obligations.

General Regulation

Article 4 – of the General Regulation – Disclosure Statements

1. The most immediate concern of developers with new proposed or incomplete developments or developments that are complete but for which no titles have issued will be completing their Disclosure Statements.
2. A Disclosure Statement must be signed by a representative of the developer and set out the following information:
 - (a) The description of the building or project of which the proposed Unit will be part;
 - (b) The intended land use within building project (for eg. residential, serviced apartments or retail);
 - (c) Any features pertaining to ecological sustainability;
 - (d) Any special use that applies to the proposed Unit (e.g. serviced apartment);
 - (e) Facilities on the Common Areas that will be available for use by owners and occupiers as of right;
 - (f) Facilities within the building or project that will be available for the use of owners or occupiers on a commercial basis;
 - (g) Items of furniture and furnishings (if any) for the proposed Units that the developer commits to make available without additional charge;
 - (h) A draft plan for the proposed Units showing the areas of the units required by the survey Directions to be shown on the plan for registration purposes but showing no other areas;

- (i) A schedule of materials and finishes for both the proposed Common Areas and the proposed Unit;
 - (j) Whether any Supply Agreements are to be entered into by the proposed Owners' Association and, if so which agreements;
 - (k) If available, an estimate of the Service Charges payable in respect of the proposed Unit and, if not available, a statement to that effect;
 - (l) Proposed arrangements for the supply of utility services to the Jointly Owned Property and the Unit;
 - (m) Where any utility service will be provided by non-Dubai government entity, other than the Owners' Association, a statement identifying the utility service and indicating how charges will be paid for that utility service;
 - (n) Whether the Owners' Association will on-sell any utility service to Unit Owners and, if so, details on the supply arrangements;
 - (o) Whether construction has commenced and if not a reasonably estimated date for commencement of construction;
 - (p) A reasonably estimated date on which the property will be handed over to the purchaser;
 - (q) A statement directing the purchasers' attention to the development and purchasing obligation to register the contract in the Interim Real Estate Register in accordance with Law No. 13 of 2008 and related laws including the statement explaining the consequences of non-registration.
 - (r) Any ecologically sustainable development ratings applying to the building project including details of the rating authority will be included;
 - (s) A copy of the proposed Jointly Owned Property Declaration will be included;
 - (t) Copy of the proposed Building Management Statement will be included;
 - (u) A budget prepared on a reasonable basis and including provision for general fund and reserve fund and catering for the first two years of operation will be included;
 - (v) An estimate (based on the budget) of the Service Charges for the Unit will be provided;
 - (w) Details of utility service providers will be disclosed including whether the entity is related to the developer and a reasonable estimate of the annual cost except where the utility service provider is a government entity.
1. Failure by the developer to provide the Disclosure Statement will mean that the contract is voidable by the purchaser.
 2. The developer will also warrant that the information in the Disclosure Statement is complete and accurate in all material respects. Where the information is incomplete or inaccurate in a material way, the developer shall be liable to the purchaser or any subsequent purchaser for a period of two years from the date which the Unit is transferred from the developer.

Al Tamimi's Comments and Observations

1. Arguably Disclosure Statements are not required for developments that are complete and where the Unit to be sold has its own title. We state that it is "arguable" because the logic behind no disclosure being required where a Unit has a title is that the Unit will be complete and the title documentation (including the Jointly Owned Property Declaration and Building Management Statement (if applicable) should be available for inspection. Arguably therefore if no JOP Declaration is available disclosure should be made. If the development is incomplete or complete but with no title then a Disclosure Statement will be required.
2. The plan to be attached to the contract must be completed in accordance with the Directions. The Directions are given pursuant to the Survey Regulation.
3. Disclosure is a large task on the part of developers as the modelling will need to be virtually complete for the entire building noting in particular that a Jointly Owned Property Declaration including the service charge modelling, Building Management Statement and necessary modelling and more comprehensive budgets and estimates in relation to service charges will all be necessary. We would suggest that developers will need to take great care pre-estimating. Leaving a reasonably large margin of error may also be necessary.
4. Much of the content required for the Disclosure Statement is also regulated within the JOP Regulations including the content of Jointly Owned Property Declaration and Building Management Statements.

Developers therefore need to ensure all documentation is compliant. In terms of minimising risk developers may also wish to seek the approval of the Land Department to any proposals that may be the subject of any discretion on the part of the Land Department or RERA.

Article 7 - of the General Regulation - Financial Matters

1. Article 7 clarifies what is mostly standard practice by making it clear that developers are responsible for all costs and expenses associated with plot until the Owners Association comes into existence. Developers must also pay the cost of all connection charges for the project. Connection charges for Units will depend upon the contractual terms signed between the developer and purchaser.
2. Fees and expenses paid in advance by the developer may be recovered from the Owners Association where it is proper to do so.
3. Developers may not collect service charges from purchasers of the Units unless these have been authorised by RERA. Any funds collected which are unexpended must be handed over to the Owners Association within 21 days of it being registered and licensed.
4. Where a developer has collected charges from purchasers, the developer must within three months of the date upon which the Owners Association was registered and licensed have a registered auditor undertake an audit of the monies received and expended and within 21 days pay to the Owners Association the reconciled balance of unexpended funds as certified by the auditors. The department may also direct the developer to pay funds to the Owners Association.
5. Developers must transfer title to any goods or equipment purchased with funds collected from purchasers to the Owners Association.

Articles 8, 9 and 10 - of the General Regulation - Building Management Statements

1. It has become clear to legal and association management practitioners that RERA will play a very significant role in ensuring the content of Jointly Owned Property documentation is appropriate. The role of RERA in this regard is particularly apparent when considering whether a Building Management Statement can be used.
2. A Building Management Statement is a system that when used appropriately may lead to simplification of complex mixed use schemes. Essentially a Building Management Statement creates a parallel concept to that of Jointly Owned Property but rather than having "Common Areas" the shared areas fall into the ownership of one "Component" or another with easements created in favour of the other users. Components can then be sub-divided into Units and a Jointly Owned Property Declaration filed in relation to this Component only.
3. Practically speaking RERA will in most cases require an "Owners Association" to be the legal entity in charge of Common Areas or any other shared parts of the development. This has caused some people to state that there is no such thing as Building Management Statements in Dubai Jointly Owned Property. This is however only partially the case.
4. Building Management Statement can be created within a simple or layered scheme and registered as a separate restriction over the title to each Unit. Most areas that are shared will become "Common Areas" however the Building Management Statement can be used to deal with management and cost issues thereby effectively ensuring equitable outcomes are entrenched and cannot be over-ridden for example by a majority interest.

Articles 14, 15, 16 and 17 of the General Regulation - Supply Agreements

1. Supply Agreements are defined as agreements for a term of one year or more for the supply of goods or services including utility services to an Owners Association either directly or through a Building Management Statement.
2. Examples of Supply Agreements will be facilities management agreements, agreements for the bulk supply of utilities such as district cooling agreements, association manager agreements and insurance agreements.
3. Supply Agreements may not have a term exceeding three years.

4. The content of Supply Agreements is regulated as follows:
 - (a) In the case of goods supplied a description of these and the price paid for them must be included. The price must be competitive with prices obtainable on the open market.
 - (b) In the case of services detailed descriptions of these services must be provided and the fee for these set out. The fee must be competitive with fees obtainable on the open market for similar services. The provisions must also have a means of monitoring and assessing the performance of the service provider and the ability to terminate the agreement for non-performance or other default. Provisions must also be included allowing the Owners Association to vary the services or service levels whereupon adjustments of the fee will also take place. Secret commissions are prohibited.
 - (c) In any case where the Supply Agreements are noncompliant, an Owner may apply to the Court for relief and the Court may either invalidate the Supply Agreement or make an order varying the terms of the agreement.
5. In addition all companies supplying services in the nature of management of Common Areas must be licensed with RERA and any agreements for such services registered with RERA.

AI Tamimi's CoMments and Observations

1. The restrictions pertaining to Supply Agreements and agreements for management services in relation to Common Areas are targeted at developers who may seek to tie Owners Associations into lucrative long term contracts for goods and services.
2. There are also restrictions in the Constitution Regulation on Board members allowing the Owners Association to enter into contracts with any entity related to a Board member. Developers can expect therefore that RERA will be vigilant in protecting purchaser's rights with regard to these requirements.

Articles 23, 24, and 25 - of the General Regulation - Registration of Owners Associations

1. The JOPD Regulation makes it clear that the developer is responsible for registering the Owners Association.
2. The General Regulation contemplates that some developers may not apply for the registration of the Owners Association whereupon the application may be made by Unit owners (see Article 23 (1) (g) of the General Regulation and Article 11 (3) of the Jointly Owned Property Declaration Regulation).
3. The following documents must be lodged with the Land Department and found to be in order on or before the Owners Association is constituted:
 - (a) An application for registration;
 - (b) The Common Areas Site Plan;
 - (c) The Jointly Owned Property Declaration;
 - (d) The Title document for the plot, the subject of the Site Plan or a statement from the Land Department stating that the title document is under process;
 - (e) The audit report obtained under sub-article 10 of Article 7 of the General Regulation or an undertaking to provide this within three months;
 - (f) The transfer of the first Unit;
 - (g) The Land Department's fees;
 - (h) Such other documents as the Land Department may require.
4. In addition to the above the developer may be required to use an electronic management accounting system approved by RERA and:
 - (a) Establish the books and records that the Owners Association is required to keep under its Constitution;
 - (b) Effect in the name of the Owners Association the insurances that it is required to effect;
 - (c) Prepare all the documents required to be dealt with at the first annual general assembly of the Owners Association;
 - (d) Convene and hold the first Annual General Assembly;
 - (e) Administer the Owners Association and the Common Areas (including their repair and maintenance) until the first Annual General Assembly;
 - (f) The Owners Association will be responsible for the reasonable costs of those matters set out above.

Survey Regulation

Article 11 – Preparation of Plans

1. The Land Department may allow architectural or engineering drawings to be lodged instead of survey plans prepared in accordance with the Survey Directions in relation to projects that have been constructed and occupied and other projects under construction at the Land Department's discretion. These projects have been defined as 'Existing Projects' in the Survey Regulation.
2. In the case of communities that are Existing Projects the Owners Association will be responsible for preparing the Common Areas Site Plan in accordance with the Survey Directions and having these lodged within one year from the date the Owners Association comes into existence.
3. In the case of buildings that are Existing Projects there is no obligation to have a Common Areas Site Plan prepared in accordance with the Survey Directions.
4. Owners in Existing Projects will be responsible for preparing their own unit plans and may be prevented from transferring their unit at the Land Department until this is done.
5. For projects that are not Existing Projects developers shall be responsible for completing unit plans and Common Areas Site Plans in accordance with the Directions.

JOPD Regulation

1. The JOPD Regulation specifies when a Jointly Owned Property Declaration is required in relation to a building, project or component within the building. The JOPD Regulation also specifies what is required to complete the application. The principle requirements are as follows:
 - (a) A Common Areas Site Plan;
 - (b) A schedule setting out the Entitlement for each Unit;
 - (c) The criteria used for allocating the Entitlements amongst units (i.e. based on 'area' or the 'fair and equitable' approach);
 - (d) Details about the staging of the project;
 - (e) Arrangements for the delivery and use of utility services;
 - (f) Any easements or covenants that burden or benefit the Common Areas;
 - (g) The Community Rules;
 - (h) A statement indicating if the Jointly Owned Property Declaration is over the freehold or leasehold interest in the land.
2. Jointly Owned Property Declarations may contain following matters:
 - (a) Restrictions on how particular Units can be used;
 - (b) Architectural and landscaping codes;
 - (c) Restrictions on use of specified parts of the Common Areas;
 - (d) Allocations to specific Units of rights of exclusive use over specified parts of Common Areas including conditions attaching those rights;
 - (e) Special management arrangements to which the Owners Association will be party for example multiple layers of Jointly Owned Property and projects the subject of Building Management Statements;
 - (f) Such other things as the Land Department may allow;
3. Jointly Owned Property Declarations will be subject to the approval of RERA and cannot conflict with the Jointly Owned Property Laws and JOP Regulations.
4. Article 11 of the JOPD Regulation required any Jointly Owned Property Declaration to be lodged by the developer in respect of a project, whether complete or not, by 13th April 2010. Master Developers must also complete in due course documentation appropriate for Master Communities.
5. The JOPD Regulation will also enable developers to complete projects in stages. In such cases developers will be able to submit amended or new Jointly Owned Property Declarations provided the updates relate solely to the staging for the project. In all other cases amendments must be by Special Resolution of the Owners Association.
6. The principal benefit to the developer in staging a project will be that they may limit their exposure by completing part of the project only and then establishing this as its own Jointly Owned Property whilst reserving the ability to incorporate this initial stage into a larger development at a later date.
7. The JOPD regulation also allows layers of Jointly Owned Property that is to say a Unit within a Jointly Owned Property may be able to be itself subject of a separate Jointly Owned Property Declaration. No

more than three layers of Jointly Owned Property will be allowed.

Al Tamimi's Comments and Observations

1. The Jointly Owned Property Declaration will be the principal 'title' and 'disclosure' document relating to any project. It will enable all purchasers and other stakeholders to understand the structure of the development and each party's rights and obligations. It should be noted that the Jointly Owned Property Declaration is required for 'Disclosure' purposes as well as required to be filed in order for the Owners Association to come into existence.
2. Due to the importance of the Jointly Owned Property Declaration appropriate legal and other consulting advice should be taken when preparing the same and structuring a development.

IV. PROGRESS WITH THE IMPLEMENTATION OF THE JOP REGULATIONS

1. Having been involved in assisting with the documentation and legal issues pertaining to the JOP Regulations, Al Tamimi and Company are well placed to comment on their implementation.
2. To the well informed it was clear that implementation was going to present some challenges. Firstly much of the development that has occurred in Dubai took place prior to the JOP Regulations being issued. This meant that not all purchasers received the benefit of clear disclosure. RERA and the Land Department have therefore had to mediate in relation to disputes in relation to areas that developers may have retained and the owners dispute as Common Areas.
3. A further challenge has been the volume of schemes that had to be brought within the new regulatory regime within a relatively short period. RERA has understood this challenge and have been flexible with developers whilst also keeping pressure on them to ensure compliance. This flexible approach has also enabled the supporting industries such as the surveying industry and association management industry to bulk up to meet the demand. RERA and the Dubai Real Estate Institute (DREI) have also spearheaded important educational initiatives which have assisted greatly developers, owners and association managers understand their new obligations.
4. The documentation for many schemes has now been submitted to RERA and the final form of plans approved by the Survey section of the Land Department. There is now a good understanding in the support industries as to what is required in terms of plans and documentation.
5. Recently RERA have also required developers to call a General Assembly for the purpose of the election of a Board and association manager. This process has also required a lawyer to assist the Interim Board and ensure that a transparent tender process was used to elect the association manager. This process in particular has inspired some confidence in RERA ensuring that owners interests are protected and developers comply with their obligations. In addition RERA have actively regulated service charges and made it clear to the public that developers cannot collect service charges without RERA approval. Developers who have not handed over control of their developments to the Owners Association may now find themselves in a position where they cannot levy service charges unless the Owners Association Board has approved the same.
6. To the best of the writers knowledge however Owners Associations are not being issued with licenses. This aspect creates legal challenges for Owners Associations in terms of enforcing their rights. In particular it means an Owners Association has questionable legal capacity in terms of pursuing defaulting owners for non payment of service charges, arranging contracts for goods or services, opening a bank account or pursuing developers or others for breaches of their obligations.
7. The fact that Owners Associations are not being issued with licenses also creates problems for some developers. Many developers would prefer to hand over their obligations to an Owners Association but are prevented from doing so due to the reluctance of the Owners Association board members to sign the necessary contracts on behalf of the Owners Association without clear legal recognition of the legal status of the Owners Association. In some instances owners also blame developers for problem missing and refuse to pay service charges which leads to the developer having to subsidise the owners or expend resources in trying to cause owners to comply.

CONCLUSIONS

The JOP Regulations round out a comprehensive ownership system that goes beyond the mere management of buildings through the inclusion within the scheme of provisions relating to the subdivision of land, including Master Communities.

The comprehensive disclosure regime will place additional obligations on developers but should not prejudice significantly quality developers who complete extensive planning or their projects and will therefore hold the relevant data at the time they are ready to go to market.

The establishment of Owners Associations and the consumer protection provisions in the JOP Regulations should see a knock on effect with regard to service charges and the accompanying transparency should improve confidence in the sector.

The implementation process has as predicted lead to some challenges however there is now a strong and committed Jointly Owned Property community and a good understanding of the respective rights and obligations of the stakeholders.

It is anticipated that licenses for Owners Association will issue in due course and the transition will be complete. The fully implemented JOP Regulations should once again emphasise why the Dubai real estate market is the logical choice for investment in the region.