

Abu Dhabi Real Estate Law: One Year Later

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It also establishes Abu Dhabi's Department of Municipal Affairs & Transport (the "DMAT") as the regulator for real estate in Abu Dhabi. The relevant municipalities in the Emirate, namely the Abu Dhabi Municipality, Al Ain Municipality and the Western Region Municipality ("Relevant Municipalities") are charged with implementing the Property Law and supervision and control of all aspects related to real estate in Abu Dhabi, including issuing licences, controlling escrow accounts and cancelling real estate development projects.

This article will provide an update on the implementation of the Property Law.

Registration

As a means to safeguard the interests of the various parties to a property transaction, such as the developers, property financiers and buyers, the Property Law introduced certain registration requirements. The Property Law creates three new registers: the Real Estate Development Register, the Real Estate Register (for units in completed developments) and the Initial Real Estate Register (for units sold off plan). These registers are administered by the Relevant Municipalities.

The Property Law requires that all developers, real estate development projects and escrow agents are registered in the Real Estate Development Register.

The procedures for licensing and registering developers on the Real Estate Development Register have been fully established and implemented by the Relevant Municipalities. To our knowledge, during the first quarter of 2016, most developers operating in the Emirate of Abu Dhabi have been licensed and registered with the Abu Dhabi Municipality ("ADM").

The registration of real estate development projects commenced in the second half of 2016. Discussions between the ADM and certain developers in relation to the application of the Appendix to Resolution Number 233 of 2015 on the Unified Method of Measuring and Calculating the Area of Buildings, Villas and Residential Units in the Emirate of Abu Dhabi have delayed the registration of some projects. This has now been resolved and the registration of real estate development projects is underway with many major projects of leading developers already being registered. Developers will receive a project registration certificate for each project that is successfully registered.

Due to the ongoing discussions between the ADM and certain developers, the registration of properties in the Real Estate Register and Initial Real Estate Register has been delayed. Accordingly, most disposals relating to off plan sales have not been entered into the Initial Real Estate Register and consequently, off

plan sales are still being registered with the developer. For this reason, financiers should still include registration with the developer as a condition precedent to the funding of an off plan sale, with an obligation on the borrower and undertaking from the developer to register the off plan sale as soon as it is practicable to do so in the Initial Real Estate Register.

A large number of banks licensed by the Central Bank of the United Arab Emirates (the "Central Bank") have also signed agreements with the DMAT formally authorising such banks to open escrow accounts and provide escrow services. In accordance with the Property Law, the DMAT has also been registering escrow account agreements, broker agreements and other agreements relating to a real estate development project.

Title deeds & Initial Sales Certificates

The registration of real estate units in the Real Estate Register and Initial Real Estate Register is currently underway. It is expected that the issuance of title deeds and initial sale certificates will further progress as more real estate development projects are registered with ADM. Until disposals relating to off plan sales are entered on the Initial Real Estate Register, it is expected that developers will maintain records of sales and other transactions in respect of off plan and completed units in their internal registers. The deadline set by the Property Law for the registration of off-plan units on the Initial Real Estate Register and the registration of completed units on the Real Estate Register was on 31 December 2016. While the Relevant Municipalities are still working to establish the relevant registration procedures, the obligation on developers to meet their registration requirements on the specified deadline pursuant to the Property Law remains. Accordingly, developers are expected to closely follow-up with the Relevant Municipalities and promptly comply with the registration procedures as soon as they are issued. Article 27 of the Property Law provides that any disposition shall not be binding on any of the parties involved or towards third parties unless they are registered in the Initial Real Estate Register in accordance with this Law.

Mortgages

The Property Law requires that banks or financial institutions acting as mortgagee must be duly licensed by the Central Bank to engage in real estate financing in Abu Dhabi, but does not stipulate that a mortgagee must strictly be a bank or a financial institution.

The Property Law allows for the creation of mortgages over musataha, usufruct as well as mortgages over long term leases which extend to a period of 25 years or more. This aspect has been implemented and the Relevant Municipalities are registering such mortgages in accordance with the Property Law.

It is also important to note that pursuant to Article 37 of the Property Law, mortgages created over real estate units which have not been registered in the Initial Real Estate Register or the Real Estate Register, as applicable, shall be considered invalid. The risk to mortgagees is that such mortgages could become void if the registration from the Real Estate Development Register to the Initial Real Estate Register or the Real Estate Register does not occur. Accordingly, it is still important to have an undertaking from the developer to ensure this is completed and for the fees to be available so there is no barrier to registration.

The Relevant Municipalities also allow for searches of the Real Estate Register and Initial Real Estate Register. For owners initiating a search, this is a straight forward process which can be completed by the Relevant Municipalities for a nominal fee. The Relevant Municipalities issue a search certificate which provides the details of the owner, the type of interest in the property, the permitted use of the property (i.e. residential or commercial) and how the interest was acquired. The owner's consent for obtaining search certificates is a prerequisite for the Relevant Municipalities. It is important to note, however, that where there is government ownership of a property to which a musataha, usufruct or long term lease relates, the Relevant Municipalities do not currently issue search certificates in relation to such properties. Interested parties may, however, apply for an issuance of a statement of the property records.

Conclusion

The Relevant Municipalities are progressing with the implementation of the Property Law. While certain procedures require fine tuning, which we expect will come in time as the Relevant Municipalities become more confident in their new function, the Property Law is a boon for investors and financiers alike.