

Regulation of Gated Communities for the First Time in Jordan: Proposed Real Estate Communities Law

Dana Abduljaleel - Partner - Banking and Finance / Projects

d.abduljaleel@tamimi.com - Amman

Rama Za'tara

r.zatara@tamimi.com - Amman, Jordan

Over the past few years, there has been a noted surge in the development and construction of gated communities in Jordan, including in particular, the development of new urban areas on the peripheries of the cities of Jordan, and the further expansion of the Aqaba Special Economic Zone (Jordan's main port).

In light of said developments, there has been a noted demand to modernise the existing real estate laws of Jordan, to better accommodate for large-scale development projects. One such initiative has been the proposal of a new draft bill, the Jordanian Buildings and Real Estate Communities and their Development Law (the "Proposed Real Estate Communities Law") in 2015, and which is currently under review by the Jordanian Government. The Proposed Real Estate Communities Law aims to provide a governing framework that will regulate the rights and obligations of project developers and owners of real estate units respectively, in order to ensure the sustainability of an integrated real estate development project, the proper management and maintenance of its common parts and the provision of services to the projects.

This article will discuss certain aspects of the Proposed Real Estate Communities Law and its expected impact on the governance of gated communities and other large developments in Jordan. It is to be noted that, whilst the current legal framework serves a beneficial purpose of regulating general matters regarding ownership and control of flats and similar fixtures, attempting to deal with the regulation of gated communities under the umbrella of flats and apartments, as provided for under the current legal regime, is likely to continue to yield undesirable results. Therefore, a law specific to gated communities should be enacted to better accommodate for matters such as shared facilities and the provision of services.

Current Legal Framework

The Jordanian Ownership of Floors and Units Law No. 25 of 1968 (the "Apartments Law") regulates the ownership and rental of units and floors within apartment buildings.

Importantly, the Apartments Law provides the following:

1. It makes it obligatory for any building having more than four floors or units to form an Owners' Association for the management of the common parts of the building, and provides for the possibility of forming an Owners' Association if the building has less than four floors or units (should the owners so wish);
2. It requires the Owners' Association to adopt by-laws for the management of the building, to be certified by a Notary Public and to deposit the same at the relevant Land Registration Department (along with the building plans);
3. It defines the approval process in relation to making alterations to the internal and external fixtures of the building, and the erection of additional floors that may affect the overall appearance of said fixtures, as well as providing for the management and maintenance of common parts of the building, It is worth noting that the definition of "common parts" under the Apartments Law covers such matters

as the foundations, walls, pipes, ventilation, cooling and heating systems of a “building”; so that it is questionable whether said requirements would also cover the maintenance of internal sidewalks (including street lamps and lighting), parks, swimming pools, gyms, and other facilities more commonly found in a gated community.

An interesting feature of the current Apartments Law is that it grants homeowners, through the Owners’ Association, complete autonomy to make decisions affecting their property. Whilst such autonomy is preferable in the context of a small, residential building, the current Apartments Law does not seem to take into account the interests of other stakeholders in gated communities, including developers and investors.

In addition, from a commercial standpoint, the services available (and the fees associated with such services) at a real estate community are an important asset that home buyers and owners look to when considering investing in real estate complex projects. Whilst the management of such services and the due allocation of service fees may be regulated fully at the Owners’ Association level in the context of a smaller building, the provision of such services in gated communities requires greater transparency, and which is only attainable through high regulation. Service fees should cover only actual expenses incurred in the maintenance of public and shared spaces and facilities, and be subject to periodic review.

In such a context, we will look at the main changes suggested to be introduced by the Proposed Real Estate Communities Law.

Establishment of Higher Board for Buildings and Real Estate Communities

The Proposed Real Estate Communities Law provides for the establishment of a Higher Board for Buildings and Real Estate Communities. The composition of the Higher Board shall be formed from representatives of the Ministry of Finance, the Land and Survey Department, the relevant municipality, the Ministry of Environment, the Ministry of Public Works and Housing, and private stakeholders to be nominated by the Council of Ministers, amongst others.

Once established, the Higher Board is granted authority to govern the real estate communities sector, with the purpose of protecting buyers and the national economy, as well as developing the real estate sector and promoting investments. As part of its activities, the Higher Board shall enter into development agreements with developers in connection with gated communities, as well as adopt templates for Promises to Sell, By-Laws for the Management of Real Estate Communities and other related documentation,

Regulation of Different Forms of Establishment

Under the Proposed Real Estate Communities Law, the legislature has recognised for the first time different types of establishments, including, buildings, towers, units, independent units and real estate complexes (gated communities); each deserving its own regulation in accordance with its unique characteristics.

In the context of gated communities, upon the recommendation of the Higher Board for Buildings and Real Estate Communities, the Council of Ministers shall designate certain establishments or projects as “real estate complexes (communities).”

If so designated, the Proposed Real Estate Communities Law provides for the establishment of two managerial bodies, the Owners’ Association and the Owners’ Union, who are responsible for the workings of the gated community of which they form a part, under the overarching supervision of the Higher Board.

The Owners’ Association consists of all unit holders of a single building or tower (located within a real

estate community), and are responsible for the common spaces of the said building or tower. The Owners' Union, however, consists of all representatives of each respective Owners' Association, as well as the owners of the independent units located within the same community.

The Owners' Association is the sole legal owner of, and shall be granted full responsibility for, the entire infrastructure and superstructure of the real estate community. This includes streets, sidewalks, gates, public spaces, and gardens, as well as water, electricity and other facilities. The management and usage of the infrastructure and superstructures shall be fully tasked to the Owners' Association, provided such infrastructure and superstructure is common to all unit holders having been established fully at the expense of the developer or the Owners (taken as a whole).

Article 15 of the Proposed Real Estate Communities Law will facilitate these tasks by providing that each of the Owners' Association and the Owners' Union shall have its own moral personality and an independent financial edifice to manage the real estate community.

- In terms of representation on the Owners' Association and the Owners' Union respectively, the Proposed Real Estate Communities Law provides for two welcome developments: '

- It recognizes that an "owner" may be a real estate developer or real estate investor of units or independent units which have not been sold; and

It provides that each owner shall have a right to vote at a general assembly meeting of the Owners' Association, pursuant to the area of their respective unit as against the total area of the building or tower. Similarly, a representative of each Owners' Association and the owner of an independent unit shall be entitled to vote at a general assembly meeting of the Owners' Union, in accordance with the area of their respective tower, building, or independent unit to the total area of the gated community (other than the common parts).

Such a development is welcome, as it recognises that owners, who have invested a larger stake in the gated community, should in turn be granted greater voting rights in the Owners' Association and Owners' Union. This is in contrast to the previous regime under the Apartments Law, and where generally, each unit holder was entitled to one vote, irrespective of the area of the unit.

- In order to ensure that all parties have a say in the management of the gated community, the Proposed Real Estate Communities Law dictates that in the event that a single member owns more than 50% of the aggregate area of the gated community (other than the common parts), his vote shall be limited so as to equal the total number of votes held by the other members.

Insurance Requirements, and Allocation of Risk

The Proposed Real Estate Communities Law requires the Owners' Association and the Owners' Union to insure their respective properties against all risks, including the risk of total or partial loss and fire hazards, and wherein, beneficiaries of the insurance policy shall be the Owners' Association and the Owners' Union (as applicable).

The mandatory insurance requirements aside, the Proposed Real Estate Communities Law places responsibility on the real estate developer or the real estate investor, jointly and severally with the contractor, for any partial destruction, structural defect or damage to any of the units they sell and all related areas, for a period of 10 years from the date of development. Such liability supplements any liability arising under contract, as well as the decennial liability already imposed on contractors and/or engineers by virtue of the Jordanian Civil Code.

Other Developments

The Proposed Real Estate Communities Law also introduces further changes to the current regime, including without limitation:

1. Defining guidelines to be adopted by developers with respect to maintaining project accounts and financing their projects;

2. Introducing time limits during which units must be delivered, and
3. Enacting specific provisions regulating parking lots, and the possibility of selling a parking unit independent of the gated community.

Conclusion

The current Apartments Law has been in force since the 1960s. And whilst it has adequately regulated the management of more traditional buildings; however, as times have changed, the scope and nature of real estate projects has expanded, requiring a new set of regulatory rules that will accommodate the evolving track of real estate projects in the 21st century.

The Proposed Real Estate Communities Law, if implemented, would introduce more structured regulation that would better appeal to foreign buyers, investors and developers alike. This is especially critical on account of the fact that the Jordanian market has faced economic difficulties in recent years. From the developers' perspective, the Proposed Real Estate Communities Law recognises, for the first time, the developer or the investor as an independent stakeholder in its own right, whilst, granting home owners an established say, not only in the common parts of the building but also in the management of the wider gated community.

Al Tamimi & Company's Real Estate team regularly advises on gated communities. For further information please contact Dana Abduljaleel at D.Abduljaleel@tamimi.com or Rama Za'tara at R.Zatara@tamimi.com.