History of Legal Developments in Real Estate

The real estate market in UAE is one of great appeal both domestically and internationally for the great financial rewards it promises. While the UAE has witnessed a slowdown in other markets, the real estate industry has reported increased investment opportunities and interest indicating the growth of the market. In such a climate, as real estate grows increasingly attractive, an overview of the regulatory framework governing purchase and sale of real estate in the UAE should be kept in mind for all parties involved.

Real estate is one of the unique areas where each Emirate legislates independently in the UAE constitution. As such, each Emirate has gone through an independent journey in real state legislative development within its borders. Likewise, Dubai’s own real estate law began in May 2002, when HH Sheikh Mohammed Bin Rashid Al Maktoum announced that real estate in certain specific areas of the Dubai would become available for foreigner ownership on a freehold basis during a time when such an idea was unprecedented in the country. Since then, many of the emirates within the UAE have allowed for foreign property ownership.

Dubai’s own real estate legal framework underwent considerable development in the 2000’s. The Dubai RERA (Real Estate Regulatory Authority) was created in 2007 and has over the years become a vital element of the legislative development of the real estate sector in the Emirate.

One of the most significant legislative piece is Law No. 7 of 2006 which regulates real estate registration and ownership rights in Dubai. According to it, Emirati nationals and GCC nationals are allowed to hold freehold titles in Dubai. For everyone else, buying a property would essentially equate to taking out a long-term lease with specific conditions. As of now, there are four types of land ownership in the UAE: GCC land with freehold available only to UAE nationals, GCC land for lease for all nationalities for a period of up to 99 years, freehold land open to all nationalities and free-zone land for lease, open to all nationalities for a period of up to 99 years, with further renewable options available.

Freehold in the UAE, specifically refers to ownership of land in perpetuity and can differ

between emirates, hence potential investors should inquire before any deal is made. Further, buyers should be aware that a lease in Dubai is a contractual right than a property right.
The right to utilise the property as a tenant is a personal right enforceable via lease contract rather than a right
connected to the land itself. A usufruct, alternatively, is a real property right, and grants the right to use and exploit property belonging to another person.

The Escrow Law was introduced in 2007 to protect purchaser money when invested into off-plan sales in developments under construction and was later supported by the creation of the Interim real estate register, furthering the protection of purchaser rights through a requirement to register off-plan sale contracts on the Interim Register maintained by the Dubai Land Department.

Regarding securities, Law No. 14 of 2008, the Mortgage Law, regulates the mortgaging of properties in the Emirate and invalidates mortgages not registered in the Interim Real Estate Register or Rest Estate Register. This move was meant to lend confidence to financial institutions in response to the growing trend of mortgage defaults of the time.

A major piece of legislation is the Strata Law of 2010, that seeks to ensure rights of all parties in relation to the management and operations of communities and multiowned buildings in Dubai. A key element of the strata regulations is that they restrict the ability of developers to impose their own rules and conditions.

Another major step came in 2010 wherein holders of industrial or granted lands in Dubai were permitted to convert their granted title to freehold title upon payment of an individually assessed fee. This proved highly beneficial as the holders had the ability to mortgage the property to raise capital and to sell the property on the open market with a few restrictions placed on them. Further, as of 2011, the Dubai Land Department announced that it was prohibited for offshore companies to own property in Dubai unless registered with JAFZA.

Quite recently, His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and

Prime Minister of UAE and Ruler of Dubai, issued Decree No. 01 of 2018 regulating the sale of lands and houses granted in Dubai. The decree looks to provide housing solutions for the beneficiaries of grants and their families, to protect households, and in turn preserve the demography of
citizens' residential areas with specific conditions included for the process.

VAT Implications on Real Estate

Regarding the application of VAT on real estate transactions, real-estate properties are deemed as taxable supply and have been distinguished further between the lease of residential and commercial properties. Specifically, the supply of bare land will be exempted from vat. Supply of residential properties by developers deemed as 'firsttime' supply (within three years of completion) for both rental or purchase will be zero-rated.

Similarly, residential leases or any purchase of residential property from a first-time purchaser will be exempt from VAT as well. VAT will be payable at the standard rate of 5 per cent on all commercial properties, both for rental and purchase. Further, associated property costs such as service charges, cleaning services and utility charges which will all attract VAT at the standard rate of 5 per cent.

What to Keep In Mind When Purchasing Property in the UAE

There are some key elements to the purchase of a property in the UAE:
1. Ensuring adequate financing options are in place to successfully complete the purchase: In case the buyer is planning on lending from a bank, it is advised to obtain a pre-approval letter from the bank or finance company to clarify the maximum and to ensure that the financing options available are sufficient for the purchase.

2. The identity of the seller is known and properly clarified: Verify identity of seller as sometimes the buyer will agree to the purchase only to discover later on that another

company or shareholder is the actual owner of the property.

3. Verify that the property and its developer is rightfully registered at the respective land department

4. The mutually consented agreement is the one being signed between respective parties and agreement has been reached on all terms.

5. Understand the type of property it is and the procedures in place for the specific property type for accurate transfer of property title.

6. An NOC is obtained from the developer of the property in question: An NOC validates the sellers position to sell the property as it confirms that they have paid all applicable fees and that the developer does not object to the proposed sale.

In the UAE, a sales and purchase agreement is essential for property transactions and is the final step in the purchase process. Hence, it is advised that the buyers perform due diligence with the terms to ensure that each party is on equal footing and is in complete understanding of all requirements and obligations presented within.

For further information or assistance, please contact our colleagues at Germela-Lootah at +971-4-288-8345 or at info@germela-lootah.com