

**Abu Dhabi Administrative Decision No. 250/2015**  
**On the Issuance of the Implementing Regulation of the Escrow Account of**  
**the Project Pursuant to Abu Dhabi Law No 3/2015 Concerning the**  
**Regulation of the Real Estate Sector in the Emirate of Abu Dhabi**

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**The Chairman of the Department of Municipal Affairs,**

Pursuant to the perusal of Abu Dhabi Law No. 1/1974 on the Reorganisation of the Government Apparatus in the Emirate of Abu Dhabi and its amendments;

Abu Dhabi Law No. 3/2005 on the regulation of the real estate registration in the Emirate of Abu Dhabi,

Abu Dhabi Law No. 19/2005 on real estate ownership and its amendments;

Abu Dhabi Law No. 9/2007 on the establishment of the Department of Municipal Affairs;

Abu Dhabi Law No. 3/2015 concerning the regulation of the Real Estate Sector in the Emirate of Abu Dhabi; and

Based on the proposal made to the Executive Council and its approval by said Council,

Issued the following Decision:

**Article 1 - Definitions**

In application of the provisions of the present Regulation, the following terms and expressions shall have the meanings assigned thereto unless the context requires otherwise:

Emirate: Emirate of Abu Dhabi.

Department: Department of Municipal Affairs.

Municipality: Municipality of Abu Dhabi City, Al Ain City Municipality, Western Area Municipality and any Municipality that would be established in the Emirate in the future.

Law: Abu Dhabi Law No. 3/2015 concerning the regulation of the Real Estate Sector in the Emirate of Abu Dhabi.

Competent Authority: Government authority having competence, according to the provisions of the Law, to approve the establishment and development of real estate development projects.

Real Estate Development Project: Project of construction of multi-story buildings or compounds for residential or commercial purposes or for both purposes and their outbuildings or the construction of infrastructures and service facilities in case of sale of vacant lands.

Licensees: Persons who work in the real estate sector and who are licensed by the Department. Those persons are: the developer, the broker, the broker's employee, the auctioneer, the owners' association manager, the appraiser and the surveyor.

Developer: Main Developer or sub-developer.

Main Developer: Person licensed to practice the activities of development, sale, management and lease of real estates as main developer of the real estate development project<sup>[1 p.10]</sup>.

Sub-Developer: Person licensed to practice the activities of development, sale, management and lease of real estates in a part of a main compound by virtue of an agreement between him and the main developer or another sub-developer.

Escrow Account of the Project: Bank account of the real estate development project, wherein shall be deposited the amounts paid by the purchasers for the real estate units sold off plan or the payments of loan instalments paid by the financiers for the purpose of financing the real estate development project.

Custodian: Bank or financial institution accredited by the Department to manage the escrow account of the project according to the provisions of the Law.

Real Estate Register: Real estate register established according to the provisions of the aforementioned Abu Dhabi Law No. 3 /2005.

Initial Real Estate Register: Paper or electronic register designated for the registration of all the acts and provisions related to the real estate units sold off plan.

Broker: Person who, by virtue of a brokerage contract, seeks finding a second party to conclude a certain contract though brokerage in contracting negotiations in return for a commission.

## **Chapter 1 - Escrow Account of the Project**

### **Article 2 - Accreditation of the Custodian at the Department**

1- The Custodian should be a bank or a financial institution that is duly licensed by the Central Bank of the United Arab Emirates.

2- The custodian who wishes to be accredited by the Department shall submit an application according to the form adopted by the Department, along with the following documents:

a- Certificate proving that he is licensed and registered at the Central Bank of the United Arab Emirates to perform real estate financing activities in the State.

b- An undertaking by the person empowered to sign for the custodian to abide by the provisions of the agreements of the project's escrow accounts that are signed thereby pursuant to Article (18) of the Law.

c- A certificate proving the payment of the prescribed fees.

d- Any other documents or information requested by the Department.

After verifying the validity and adequacy of the information and documents submitted with the application, the Department shall issue a certificate of accreditation of the custodian.

### Article 3 - Opening an Escrow Account for the Project

Without prejudice to the provisions and procedures prescribed by virtue of Article (18) of the Law, the following shall be taken into account:

1- The developer who wishes to open an escrow account for the project shall submit an application to the Department according to the adopted form, along with the following documents:

- a- Certificate of registration of the real estate development project at the Department.
- b- Certificate of registration and licensing of the developer, issued by the Department.
- c- Certificate of ownership, by the developer, of the real estate subject of the real estate development project.
- d- Certificate proving the submission of the specifications of the units and the real estate in the real estate development project at the Department and registration thereof in the Initial Real Estate Register.
- e- Certificate of accreditation of the custodian at the Department.
- f- Copies of all the approvals required to be obtained from the competent authority for the real estate development project.
- g- Three copies of the project's escrow account agreement concluded between the developer and the custodian according to the form adopted by the Department.
- h- Certificate proving the payment of the prescribed fees.
- i- Any other documents or information requested by the Department.

2- After verifying the validity and adequacy of the information and documents submitted with the application, the Department shall issue a certificate of approval of opening of the project's escrow account, proving that the developer is authorised, after the opening of the account, to sell units or real estates in the real estate development project.

3- The custodian may not open the project's escrow account before receiving the approval certificate issued by the Department according to Clause (2) of the present Article.

4- No real estate unit may be sold off plan unless the project's escrow account is opened.

5- Without prejudice to the above provisions and according to the mechanisms and terms specified by the Department, the conditions of the present Article shall not cover the real estate development projects preceding the date of enforcement of the Law and the present Regulation, provided that all the approvals required for the commencement of the project are obtained according to the following:

a- In case the real estate units were sold off plan before the issuance of the Law and the present Regulation, the Developer shall submit statements to the Department showing all the amounts received from the purchasers and the financiers as well as all the amounts spent on the project and the ratio of actual achievement of the project.

b- The Department shall examine the documents submitted and inspect the project for the purpose of specifying the ratio of actual achievement of the preceding real estate development projects preceding according to Article (4) of the present Regulation.

c- Every existing real estate development project shall be exempt from the requirement of opening an escrow account in case the ratio of achievement of the real estate project exceeds (70%) of the actual achievement according to the mechanisms and provisions determined by the Department in the decision of exemption from opening an escrow account for the project.

### Article 4 - Estimation of the achievement ratio

Before commencing the real estate development project, the Developer shall undertake to present the data specified in the below Table "minimum", after being approved by the project consultant and the Department may adopt the Table for the purpose of estimating the achievement ratios of the real estate development project or have recourse to any person it deems appropriate to verify the accuracy of the ratios compared with the nature of the project, and it may modify them for that purpose.

Clause	Standard Ratio	Given Ratio	Completed Ratio
Construction Site Preparation	%	100%	%
Preliminary Works	%	100%	%
Foundations	%	100%	%
Understructure	%	100%	%
Superstructure	%	100%	%

Internal works	%	100%	%
External layer	%	100%	%
Building's service	%	100%	%
Internal finishing works	%	100%	%
External works	%	100%	%

2- The achieved ratio of the construction works of the real estate development project shall be estimated by a consultant appointed by the Department at the expenses of the Developer taking into account the ratio consisting of the expenses borne compared with the total construction expenses appropriated in the budget of the concerned project. The Department may require the Developer to present a statement of said expenses after being audited by a certified accountant to verify the validity of the expenses borne.

3- For the purposes of Clause (2) above, the expenses borne for the construction works of the real estate development project do not include the value of the land to be developed in addition to the project's marketing expenses.

### **Article 5 - Management of the Project's Escrow Account**

1- The developer shall deposit all the amounts related to the purchase of the real estate units sold off plan in the project's escrow account.

2- The custodian shall give a reference number for each payment in the project's escrow account, and the real estate unit number as well as the project number shall be mentioned according to the details mentioned in the sale and purchase agreement concluded between the developer and the purchaser.

3- The custodian may receive the payments in cash or through cheque, electronic transfer or credit cards or any method accepted by the banks and according to the applicable instructions of the Central Bank.

4- The custodian shall abide by the terms of the project's escrow account agreement and no amounts may be paid from the account before verifying that the developer has achieved 20% at least of the construction works of the concerned real estate development project, provided that the remaining payments are made by virtue of the project's escrow account agreement.

5- The developer may withdraw the profits related to the project from the project's escrow account in three stages including the following:

a- Upon the completion of achievement of 60% of the real estate development project.

b- Upon completion of achievement of 100% of the real estate development project.

c- In case of obtainment of approval of the Department.

6- The developer shall have the right to withdraw all the profits related to the project from the project's escrow account based on the Department's approval.

7- The Developer may not pay the value of the land that is subject to development and the project's marketing expenses from the project's escrow account.

8- The Developer shall provide the custodian with all the details related to the real estate units that are sold off plan, the prices of the units and the amounts received.

### **Article 6 - Project's Escrow Account Agreement**

1- The Developer and the custodian shall conclude an agreement to create the project's escrow account in the name of the concerned real estate development project according to the form adopted by the Department.

2- The project's escrow account agreement shall at least include the below conditions and standards:

a- Condition requiring the developer to directly deposit the amounts paid by the purchaser of the real estate units off plan and the payments offered by the financiers of the real estate development project at the project's escrow account.

b- Standards to be met before the payment of any amounts to the developer from the project's escrow account, including the amounts due according to the provisions of the law.

c- The method of distribution of the account's balance in case of cancellation of the real estate in accordance with the provisions of the Law.

d- The conditions of management of the project's escrow account by the custodian as well as his authorities and powers to pay to the Developer from the account.

e- Setting a condition requiring the association of the purchasers' payments to the ratios of actual achievement of the construction works that are counted according to the provisions of Articles (4 and 5) of the present Regulation.

f- The conditions, procedures and implementing mechanisms regarding the project's escrow account agreement that would be set by the Department as it deems appropriate.

### **Article 7 - Obligations of the Custodian**

- 1- Every three months, the custodian shall provide the Department with periodic statements of the revenues and payments of the project's escrow account. Moreover, he should provide the Department with an annual report audited by a certified accountant on the account, the paid amounts and the extent of their consistency with the provisions of the Law and the present Regulation and the project's escrow account agreement.
- 2- The Department may require the custodian to provide it with the statements of revenues and payments or any information or data it deems necessary to be checked.
- 3- The Department may order the custodian to stop the payment of any amounts from the project's escrow account in case the Department finds that the Developer has violated the law and its implementing regulation or the Department's instructions. Moreover, the custodian shall abide by the Department's instructions.
- 4- If the custodian committed any violation of the provisions of the Law, the present Regulation or the terms and conditions of the projects' escrow account agreement, the Department shall notify him of the violation and grant him a delay to rectify it. The custodian shall abide by the notification's conditions and implement them within the period specified therein.
- 5- The custodian shall not close the project's escrow account agreement before obtaining the approval of the Department.
- 6- Subject to the provisions of Article (21) of the Law, the Department shall set, as it deems appropriate, the implementing conditions, procedures and mechanisms to the implementation of the custodian's obligations in the project's escrow account.

### **Article 8 - Checking the Particulars of the Project's Escrow Account**

- 1- Every person having deposited any funds in the project's escrow account according to the provisions of the Law may check the account's particulars that belong to him and that are kept with the custodian and may obtain copies of said particulars.
- 2- The Custodian shall undertake to give the persons who have purchased from the Developer details and statements of account concerning the account's particulars that belong to them and the amounts paid thereby.
- 3- The custodian shall undertake to provide the developer with all the statements, data and information related to the real estate project.

### **Article 9 - Auditors of the Project's Escrow Account**

- 1- The auditor of the project's escrow account shall be a certified accountant accredited and licensed in the Emirate of Abu Dhabi and by the UAE Accountants and Auditors Association (AAA).
- 2- The accredited auditors shall show their reports according to the International Standards on Auditing (ISA) and the International Financial Reporting Standards (IFRS).

### **Article 10 - Marketing of Real Estate Development Projects**

- 1- Subject to Article (14) of the Law, the Developer may submit an application for the obtainment of an authorisation to declare the off plan sale and marketing of real estate units, real estates and real estate development projects after the issuance of a certificate, from the Department, approving the opening of the project's escrow account according to Clause (2) of Article (3) of the present Regulation.
- 2- The application for authorisation to declare the marketing of real estate development projects shall be submitted according to the form adopted by the Department.
- 3- After verifying the validity and adequacy of the information mentioned in the application and the documents submitted along therewith, the Department shall issue the authorisation to declare the marketing of the real estate development projects.
- 4- Subject to the provisions of Clause (3) of Article (14) of the Law, the Department shall set in the authorisation mentioned in Clause (3) of the present Article the implementing conditions, procedures and mechanisms as it may deem appropriate with respect to the regulation of the conditions of declaration of marketing of the real estate development projects in the local and foreign media and in those participating in local and foreign expos.

### **Article 11 - Delay of Commencement or Delivery of the Real Estate Development Project**

Subject to the provisions of Article (25) of the Law, if the Developer fails to commence the construction works of the real estate development project after the lapse of 6 months from the date on which he is granted the approval to sell off plan without any acceptable excuse, the purchasers who own no less than (5%) of the sold real estates may file a complaint to the Department to investigate the matter according to the following:

- 1- The complaint shall be filed according to the form adopted by the Department along with the following documents:
  - a- A copy of the sale and purchase agreement concluded between the developer and the purchaser.
  - b- A written abstract of the most important facts that prove the developer's failure to commence the project.
  - c- Copies of the correspondences sent between the purchaser and the developer regarding the progress of construction and any matters that affect the timing of commencement or achievement of the project.
  - d- Any other document that support the complaint.
- c- Any other information or documents requested by the Department.

2- Upon the receipt of the complaint by the Department, it may carry out the following:

a- Reject the complaint should it appear to it that the complaint is invalid based on the investigation and examination of what is presented by the purchaser.

b- Send a copy of the Complaint to the Developer to reply within 21 days.

3- Should it appear to the Department that the developer has delayed the commencement of the project with no acceptable excuse in violation to the provision of the Law, the present Regulation or his contractual obligations, the Department may cancel the project. In such case, the developer shall refund all the funds received thereby from the purchasers in return for the real estate development project according to the provision of Article (25) of the Law and the Department shall notify the developer of its decision.

4- The developer or the purchaser may file a grievance before the Chairman of the Department against the decision issued according to the above clause within 15 days from the date of notification thereof of the decision.

5- In case of objection against the decision of the Chairman of the Department concerning the grievance filed according to the abovementioned clause, the developer or the purchaser may challenge said decision before the competent court within 60 days from the date notification thereof of the decision.

6- The Department may impose on the developer a delay penalty to be paid in favour of the purchaser of the real estate units in case the developer has delayed the delivery of the real estate development project for a period exceeding 6 months from the expected date of delivery of the project according to the time schedule to which the developer has committed towards the Department. The delay penalty shall be calculated according to the standards and practices applied with respect to the delay of achievement of real estate development projects.

### **Article 12 - Failure to Achieve the Real Estate Development Project**

1- Subject to the provisions and procedures prescribed in Article (26) of the Law and in case the developer fails to complete the real estate development project, the custodian shall propose, after consulting the Department, the conditions, procedures and measures he deems appropriate for protecting the rights of the depositors in a manner to guarantee the completion of the real estate development project.

2- If after conducting the investigation mentioned in Article (11) of the present Regulation, the Department finds that there are circumstances that are preventing the developer from completing the real estate development project, it may take into account any depositions related to the real estate development project made by the purchaser, the financier, the investor, the developer and the custodian and may contact the interested parties when needed.

3- After exhaustion of the measures referred to in Clauses (1, 2) of the present Article and if it was impossible to find a solution to complete the project within a period of 6 months from the date of consultation with the Department, the custodian shall refund the remaining amounts deposited in the project's escrow account according to the order specified in Article (26) of the Law and under the supervision of the Department.

### **Article 13 - Claiming the Funds Deposited in the Project's Escrow Account**

Subject to the provisions of Articles (17 and 26) of the Law and the cancellation of the real estate development project is decided, the purchaser of the real estate unit off plan may request getting back his share of funds he has in the project's escrow account according to the following conditions:

1- The off-plan purchaser of the real estate unit may submit an application to the Department according to the adopted form, along with the following documents:

a- A copy of the off-plan sale agreement.

b- A copy of the correspondences exchanged between the off-plan purchaser and the developer concerning the development agreement.

c- Details of the funds paid by the off-plan purchaser to the developer.

d- A certificate from the custodian confirming the amount paid in the project's escrow account for the off-plan sale agreement.

e- Certificate proving the payment of the prescribed fees.

2- The Department shall, after verifying the validity and adequacy of the information mentioned in the application and the documents submitted along therewith according to Clause (1) of the present Article, the Department shall sent a letter to the custodian wherein it shall specify the amount to be refunded to the off-plan purchaser from the project's escrow account without prejudice to the purchaser's right to recover the difference if the amount to be refunded is lesser than the one deposited by the purchaser at the project's escrow account, taking into consideration the following:

a- The amount released from the project's escrow account to the developer.

b- The other amounts over-deducted from the project's escrow account.

c- The amount deposited in the project's escrow account by the financier of the real estate development project.

d- The guarantee kept by the financier of the real estate development project.

#### **Article 14 - Correction Request**

- 1- If it appears to the Department that any application submitted by virtue of the provisions of the present Regulation, inter alia any documents or information to be submitted along with the application, is incomplete, it may require the applicant to complete it.
- 2- The Department may specify a time limit for the required correction to be done. If the applicant fails to comply with the Department's request within the specified time limit, it may reject the request.
- 3- The Department may collect the fees prescribed for the correction request issued according to the provisions of the Implementing Regulation with respect to the fees.

### **Chapter 2 - Funds received by the Broker**

#### **Article 15 - Deposition of Funds in the Project's Escrow Account**

- 1- The broker who receives funds from the parties with who he contracts shall deposit them in the project's escrow account.
- 2- The broker shall undertake to conclude a written brokerage contract according to the form adopted by the Department before performing any brokerage activity and he shall submit said contract to the Department to register it in the Real Estate Development Register within 15 days at most from the date of signature thereof. By virtue of a decision issued by the Chairman of the Department, the Department shall specify the maximum remuneration or commission that the broker may receive from the contractor.
- 3- The broker shall deposit all the amounts received thereby during the performance of his works according to the provisions of the Law and the Implementing Regulation in the project's escrow account separately from his own funds such as his remunerations and commissions.
- 4- The broker may not get any personal benefit from the amounts deposited in the project's escrow account and he may not withdraw any amounts from said account unless in the cases approved by the Department.

#### **Article 16 - Records of the Project's Escrow Account and Auditing of said Records**

- 1- All the records and regular accounts required to be kept by virtue of the present Regulation or any instructions issued by the Department shall be kept by the broker in his principle headquarters according to the forms, drafted in Arabic or in English, adopted by the Department provided that the Arabic version prevails.
- 2- In case the computer system is used for the purpose of registering, storing or processing any data related to the project's escrow account, the following shall be taken into account:
  - a- The data shall be professionally and securely stored in a place other than the principal headquarters of the broker, provided that they may be checked in said headquarters.
  - b- The broker shall keep the computer records required under the provisions of the present Regulation.
- 3- The Department shall issue instructions and recommendations to the broker concerning the project's escrow account, and the broker shall undertake to implement them mainly the following:
  - a- Sending receipts of the received funds and depositing them in the project's escrow account.
  - b- In case of payment of any funds from the project's escrow account, said payment shall be made through cheques or electronic transfer and the powers related to such payments shall apply.
  - c- Depositing the funds in the project's escrow account as well as the records to be kept for such deposition.
  - d- Registering the transactions of the project's escrow account in a cash book and settling the balances listed in the cash book at the bank's registers.
  - e- Keeping the general ledger and entering records therein.
  - f- Registering the transfers between the accounts of the general ledger in the journal.
  - g- Preparing monthly approximate balances of the general ledger's accounts.

#### **Article 17 - Controlling Computer Systems**

- 1- The provisions of the present Article shall apply to the computer system used by the broker for the storage of the transactions related to the project's escrow account.
- 2- The broker shall take into account to keep all the records and books that are kept according to a chronological order with all changes (whether created, modified or omitted) that are made to any of the following data in addition to a statement of the data before and after the change (name of the client, address of the client, reference number of the client's code if any, number of the project's escrow account).
- 3- The Broker shall verify the following for each journal:
  - a- That the records match before entering them to the general ledger.
  - b- That any reference numbers in the journal are kept in a chronological order subject to the control of the program.
- 4- The broker shall verify the following with respect to any general ledger:

- a- That the program does not allow the omission of an account unless the account's balance is zero and the account shall be kept upon its omission (as it was directly before omission) in a readable form that may be accessed upon request.
- b- The program cannot accept a record of a transaction resulting from a debit account unless a simultaneous record is issued for the transaction in a manner allowing the issuance of a separate report based on a chronological order for all said transaction in a readable form that may be accessed upon request.

5- The broker shall verify the following:

- a- That any record entered in the register that is kept in a readable form to be accessed upon request appears in a chronological order.
- b- That the report or each page or record in the report is numbered based on a chronological order under the control program in a manner that allows the completion of the records to be kept according to the provisions of the present Regulation, which will be verified and examined appropriately.
- c- The impossibility of making any modifications to any previously entered data of any transaction except for the following separate transaction related to the modification.
- d- That every data program requires an entry in each area in the data entry screen that is meant to receive the required data according to the provisions of the present Regulation that will be kept in the regular registers and books of accounts.
- e- Setting a backup version for all the registers and regular books of accounts referred to in the present Article on a diskette or a CD-ROM, or through any electronic means at least once per month.
- f- Keeping the most updated version of the registers and the regular books of accounts in a separate place to avoid any damages that may occur to it (such as fire, power outage, or failure of the disk).

### **Article 18 - Period of Keeping and Examination of the Records**

- 1- The broker shall keep all the registers and the regular books of accounts to be kept by virtue of the provisions of the present Regulation for a period of five years at least ad of the date of the last record entered therein.
- 2- The broker shall deliver all the registers and regular books of accounts based on a written notification issued by the Department, including the computer reports to be kept by him or by virtue of the provisions of the present Regulation to an accredited official of the Department. The accredited official may copy any of said registers, books or reports or search for data related to them that are kept with the broker. Moreover, he shall immediately provide the data requested by the accredited official.

### **Article 19 - Notification of Disadvantage**

The licensee and the custodian shall immediately notify the Department of any disadvantage or mistrust or any act that prejudices the project's escrow account in violation of the Law and its implementing regulations.

### **Article 20 - Unclaimed Funds of the Project's Escrow Account**

- 1- The broker who keeps funds in the project's escrow account shall submit to the Department an annual statement during the month of January of every year on the funds received by the broker for more than 2 years before the aforementioned month. The statement shall contain the following:
  - a- The value of the kept funds.
  - b- A document showing the identity of the persons to who the funds belong.
  - c- The last address, of said persons, that is known by the broker.
- 2- When the Department receives the statement mentioned in Clause (1) of the present Article, it shall send a letter to each concerned person to the last address thereof and ask them to get their funds back from the broker. If the broker fails to return said funds, the Department may claim them from him and they shall be paid to the concerned party.
- 3- Subject to the provisions of Clause (2) of the present Article, the Department shall, as it deems appropriate, keep the unclaimed funds pending any future claim by the person entitled to claim them.

### **Article 21**

The Department shall issue the decisions, instructions and forms required for the implementation of the provisions of the present Decision.

### **Article 22**

The present Decision shall be published in the Official Gazette and shall come into force as of the date of enforcement of the provisions of the Law.

Issued in Abu Dhabi On 26/10/2015

Corresponding to 13/01/ 1437 H

**Saeed Ali Al Ghafali**

**Chairman of the Department of Municipal Affairs**



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