

Abu Dhabi Administrative Decision No. 249/2015
On the Issuance of the Implementing Regulation of Mortgages on Real Estate Pursuant to Abu Dhabi Law No 3/2015 Concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi

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;

Federal Law No. 5/1985 on the promulgation of the Civil Transactions Law and its amendments; 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:

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;

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

Registrar: Director of the Real Estate Registration Department at the Municipality and any employee delegated for the Real Estate Register or the Initial Real Estate Register.

Mortgage on Real Estate: Contract by virtue of which the debtor acquires, on the mortgaged property designated for the settlement of his debt, an in-kind right or contract benefit by virtue of which he may surpass the ordinary debtors and those following him in ranking.

Mortgagor: debtor holding the property right or contractual right, including the in-kind surety, who is a mortgage debtor.

Mortgagee: Debtor having fulfilled the conditions set forth in Article (32) of the Law, who lends the mortgagor, and the loan is secured to him by mortgage on real estate.

Mortgaged property: Real estate, property right or contractual right associated to a property right that is mortgaged in favour of the mortgagee.

Mortgage Bond: Bond issued by the Department by virtue of Article (3) of the present Regulation.

Preference Bond: Bond, among an number of mortgagee creditors who hold the mortgage right for the same real estate, by virtue of which one or more mortgagees accept to give priority to another mortgagee over them.

Article 2 - Registration of mortgage and documents to be offered

1- The mortgage on real estate shall be registered in the Initial Real Estate Register or the Real Estate Register as the case may be, according to the form prepared for that purpose by the Department.

2- The application for registration of a mortgage on real estate shall be submitted to the Registrar after being signed by the mortgagor (creditor or in-kind surety), the mortgagee or the in-kind surety.

3- The applicant for registration of a mortgage on real estate shall attach the following documents:

a- Three copies of the real estate mortgage contract that shall be drafted according to the form adopted by the Department.

b- If the mortgagee creditor is a bank, a company or a finance institution, the application shall be submitted along with an evidence proving that the mortgagee creditor is licensed and duly registered at the Central Bank of the United Arab Emirates according to the provisions of Article (32) of the Law.

c- The original title deed or the initial registration certificate of the mortgaged property in addition to an evidence proving the registration of said property in the Real Estate Register.

d- A no objection notification by the mortgagee creditor should there be any existing mortgage, according to the form adopted for that purpose by the Department.

e- Receipt of payment of the fees prescribed for the submission and registration of the application.

f- Any other document or information requested by the Department.

4- If the mortgagor is a natural person in the State, he/shall submit the following documents in addition to what was specified in Clause (3) above:

a- Copy of the ID or of a valid passport and a resident visa for non-resident foreigners as the case may be.

b- Current address as well as the land and telephone line numbers.

c- E-mail for the purpose of sending other notifications and correspondences by the Department.

5- If the mortgager is a juridical person, the latter shall submit the following documents in addition to what was specified in Clause (3) above:

a- Copy of a commercial licence that is valid at the time submission of the application (if it is a company registered in the State).

b- Copy of the registration certificate that is valid at the time of submission of the application (if it is a non-resident company /registered in the State).

c- Articles of Incorporation and Statute of the Company.

d- Names of the directors and shareholders of the Company and the nationality of each of them.

e- Email for the purpose of sending notices and other correspondences by the Department.

6- All the documents required to be attached to the application for registration of the real estate on mortgage shall be endorsed, approved and translated into Arabic as specified by the Department in case of a foreign company.

7- Each of the contracting parties or their legal representatives shall appear to sign the contract before the Registrar. If any of the owners is a minor, an approval of the mortgage shall be submitted by the competent court.

Article 3 - Real Estate Mortgage Bond

1- After its registration, the real estate mortgage contract drafted according to the form adopted by the Department shall be deemed as a writ of execution of the mortgage, according to the provisions of Article 57 of the Law.

2- A copy of the mortgage bond shall be delivered to each of the mortgager and the mortgagee and it shall be signed and sealed by the Registrar, on the sooner date following the registration of the mortgage.

3- The real estate mortgage bond may be electronic and have the binding force of a legal instrument in matters of proof.

Article 4 - Transfer of Real Estate Mortgage Rights

1- A mortgager who wishes to dispose of the mortgaged property either by sale, donation or other dispositions, or give rise to any in-kind or personal right as a result thereof, shall obtain the approval of the mortgagee unless otherwise agreed according to the provisions of Article 38 of the Law.

2- The mortgager shall conclude a deed of transfer of real estate mortgage rights with the mortgagee and the transferee and shall expeditiously deposit the aforementioned deed at the Department.

3- The application for transfer of real estate mortgage rights shall be submitted according to the form adopted for that purpose by the Department. The application shall be submitted along with four copies of the transfer documents, an original copy of the real estate mortgage bond that shall be signed and sealed, in addition to all the documents mentioned in Article (2) of the present Regulation as the case may be.

Article 5 - Sealing and Signing the Transfer Document and Transferring the Mortgage

1- After its registration, the application for transfer of mortgage on real estate, that is drafted according to the form adopted by the Department, shall be deemed as writ of execution of the mortgage according to the provisions of Article 57 of the Law.

2- A copy of the deed of transfer of the real estate mortgage shall be delivered to each of the mortgager, the mortgagee and the transferee after being signed and sealed by the Registrar, on the sooner date following the registration of the mortgage.

3- The deed of transfer of the real estate mortgage shall may be electronic based on the decision of the Department, and it shall have the binding force of a legal instrument in matters of proof.

Article 6 - Assignment of Real Estate Mortgage Rank

1- Without prejudice to the provisions of Clause (2) of Article (43) of the Law, the mortgagee creditor who wishes to assign the real estate mortgage rank thereof to another mortgagee who holds a security right for the same real estate, may conclude a preference bond with that mortgagee and other mortgagee whose rank would be affected. The first mortgagee shall submit an application to the Registrar, with the following attached thereto:

1- Mortgage deferral document (number of copies equal to the number of parties), according to the form adopted by the Department.

2- Preference Bond (number of copies equal to the number of parties), according to the form adopted by the Department.

3- Original copy of the real estate mortgage documents that are signed and sealed for each of the debts that are affected by the reduction of ranking.

4- A no objection notification according to the form adopted by the Department by the mortgagee creditor having the highest ranking for any mortgages in the preference bond in case there were any existing mortgage, whereby the mortgagee creditor accepts the reduction of rank of his mortgage.

5- An evidence proving the payment of the prescribed fees.

6- Any other document or information requested by the Department.

Article 7 - Payment of a mortgage debt

1- If the debt secured by the real estate mortgage is paid, the mortgager or the mortgagee may jointly or severally submit an application to the Registrar according to the form adopted by the Department for redeeming the mortgage, along with the following documents:

a- A notification of no objection to the redemption of the real estate mortgage by the mortgagee creditor, according to the form adopted by the Department.

b- Proof of payment of the debt secured by the real estate mortgage.

c- Proof of payment of the prescribed fees.

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

2- The application for redemption of the real estate mortgage, that is drafted according to the adopted form and that is mentioned in Clause (1) of the present Article, shall be deemed a legal instrument for the redemption of the mortgage.

3- A copy of the deed of redemption bond shall be delivered to each of the mortgager and the mortgagee after being signed and sealed by the Registrar.

Article 8 - Write off from the Real Estate Register and the Title Deed

Upon registering the redemption of the real estate mortgage, the Department shall remove the mortgage lien from the Initial Real Estate Register or the Real Estate Register as the case may be. The mortgage lien shall be written off from the title deed of the mortgaged property or a part thereof that relates to the mortgage.

Article 9–Mortgages Related to Musataha/Usufruct/Long - term lease

1- Subject to Articles (49,50 and 52) of the Law, the holder of the usufruct right or musataha right for a period exceeding 10 years or the right of long-term lease, or the purchaser of the property right, may deposit his right as real estate mortgage according to the conditions and terms prescribed by law.

2- Subject to Article (51) of the Law and upon the extinguishment of the secured debt or the termination of the agreement on the right of musataha, usufruct, or long-term lease on which a real estate mortgage is registered, the Registrar shall remove the records of the mortgage lien from the Initial Real Estate Register or the Real Estate Register, as the case may be. The mortgage lien shall be written off from the title deed of the mortgaged property.

3- The terms and conditions prescribed in Article (7) of the Regulation shall be applicable during the examination of the application for write off of the real estate mortgage lien in case of extinguishment of the mortgage or of the rights related thereto.

Article 10

Before the commencement of the procedures of execution on the mortgaged property and before the submission of an application to the magistrate of summary justice for the seizure of the mortgaged property and its sale at auction, the mortgagee shall send a written warning to the mortgager and the surety (if any) according to the form adopted by the Department by registered mail with acknowledgement of receipt whereby he notifies him of the default and requires him to pay the debt and other dues within a period of no less than 30 days from the warning's date.

Article 11 - Right of the Real Estate Registration Department to Request Documents and Information

1- Should the Real Estate Registration Department at the Municipality find that any attachments to the application for registration of any document under the provisions of the present Regulation, including any documents or information to be attached to the application, are incomplete, it may ask the applicant to complete them.

2- The Real Estate Registration Department at the Municipality may set a time limit for the correction and completion of the attachments to the application mentioned in Clause (1) of the present Article. Should the applicant fail to comply with the Department's request within the time limit set, it may reject the application for the registration of the Document.

3- Should the Real Estate Registration Department at the Municipality issue a correction order with respect to the application for registration of any document under the provisions of the present Regulation, it shall collect the prescribed fees.

Article 12

The Department shall issue the required decisions, instructions, directives and forms required for the application of provisions of the present Regulation.

Article 13

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

Saeed Eid Al Ghafali

Chairman of the Department of Municipal Affairs

The present Decision was published in the Official Gazette, issue no. 10 dated 31/10/2015, p. 127.