

Dubai Escrow Account Law

A step in the right direction

As part of the continuing efforts to attract more investors into its booming real-estate sector, the government of Dubai has taken a much needed step by introducing the Escrow Account Law, which aims to boost confidence in Dubai's property market. Before the enactment of the law, numerous cases were witnessed across the emirate where the developer had stalled the construction process resulting in delayed projects with little security or comfort to the people who had bought off-plan. Also, until recently no restrictions or obligations were imposed on the developers to regulate their expenditures. Furthermore, one of the major problems that plagued the Dubai property market was the fact that those looking to invest in or buy property faced the risk of buying off-plan only to be faced later with a developer who had abandoned the project and fled the country, taking with him their investment. However, the new law intends to change all that by introducing new steps that address these key concerns. It aims to provide certain guarantees and reassurances to homebuyers as well as property investors to make Dubai's real estate a feasible and safe investment opportunity. Law 8 2007, also known as Trust Account Law or Escrow Account Law, was passed on 3 June 2007. Although the law came into immediate effect, real-estate developers in Dubai have a grace period of 6 months from the date of publication of the law in the official gazette to adjust their status in accordance with the provisions of this law.

Basics of the law

Under the new law, a new escrow scheme will be automatically applied to the sale of any off-plan property developments in Dubai. For the purpose of the law, 'off-plan units' refer to partitioned parts of a property development under construction. The scheme requires the depositing of all payments made by buyers for the purchase of any off-plan units into a specific bank account; and operating this bank account in accordance with the predetermined terms and conditions approved by the Dubai Land Department (DLD). Under the scheme, the DLD is the supervising body responsible for monitoring and locating any infringement of the provisions regulating the establishment and operation of the escrow account.

Responsibilities of the developer

Law 8 2007, article 3 sets out the provision that this law is applicable to any and all developers selling off-plan units in Dubai, and receiving payments from the purchases before the completion of the project.

Meanwhile Law 8 2007, article 5 prohibits developers from advertising in local or foreign media, or taking part in local or foreign trade exhibitions to promote the sale of units or properties still under construction in Dubai without prior written approval from the DLD. Those wishing to sell off-plan units need to be registered with the Registrar of Developers under the new law. Additionally, registered developers need to obtain approval from the DLD for each real-estate

project they intend to develop and/or sell. For the purpose of obtaining special approval, the developer is required to provide the DLD with the following documents pertaining to each project:

- Trade license of the company
- Dubai Chamber of Commerce & Industry Certificate
- Title deed of the plot intended for the development
- Copy of the agreement entered into between the master developer and the secondary developer
- Architectural designs and layouts approved by concerned authorities and the master developer
- A balance sheet approved by an accredited legal auditor including a list of the expenses and the profits of the project
- Undertaking signed by the master developer/secondary developer in which he covenants to start the construction work upon obtaining all the related approvals
- Copy of the sale and purchase agreement to be executed by the developer and the purchasers of the off-plan units.

Escrow account

Under the law, for each real-estate project, the developer must open a specific bank account at one of the accredited banks in the UAE. This bank account must be used solely for the purpose of this particular project. Before the opening of the account, a written agreement must be drawn up between the escrow agent (the bank) and the developer, a copy of which must be deposited with the DLD. This agreement forms the basis of the escrow account and will be used to regulate the operation of the account, and outlines the rights and obligations of the parties. It is worth noting that under Law 8 2007, article 9, creditors of the developers are not entitled to seize any sums contained in the escrow account.

Once the escrow account is operational, Law 8 2007, article 11 requires the escrow agent to regularly update the DLD with the status and health of the account by providing statements that show all moneys credited and debited from the account during its lifecycle. Additionally, the DLD has the right

to request from the escrow agent other documents it considers necessary for the proper assessment of the account. The DLD also reserves the right to appoint third parties to verify and audit such documents.

Two other articles worth noting for those interested in buying off-plan in Dubai are: Law 8 2007, article 12 which gives people who have bought off-plan unit(s) in this development, access to and the right to review the bank statement pertaining to the escrow account; Law 8 2007, article 14 which instructs the escrow agent to withhold five percent of the total value of the trust account on completion of the project, for a period of one year to meet any defects arising in the property during this period.

Penalties

The law is clear on those who do not comply with all of its conditions.

If a real-estate developer fails to register with the DLD and carries on with its activities, or provides false documentation for the purpose of obtaining a license, a fine of AED 100,000 (US\$27,300) and/or an imprisonment sanction will be inflicted on the breaching party. Furthermore, in the event of a developer delaying the commencement of the construction work for over 6 months after obtaining the DLD approval, without any legitimate reason, they will be struck off the register.

Legal overview

Though the law is a welcome relief for many, it fails to address a few important aspects affecting both developers and buyers which hinder the progress of this sector. For example, although Law 8 2007, article 17 outlines a time frame during which the developer must start the construction work in order to avoid de-registration, there are still no restrictions provided in this law to prevent extensive delays in the completion and this can inflict severe damage on the homebuyers and/or investors. *Text: Jimmy Haoula with additional inputs by Fouad Barbar. Edited: Architecture+*