

Leasing a strata unit in Dubai: Additional Considerations for Landlords

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Over the last few years, a significant number of commercial and office towers have been constructed in Dubai. The majority of those buildings have been strata-titled to allow for separate ownership of units within the buildings pursuant to Law No. 27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai (the “JOP Law”). This has enabled many investors to own high-quality commercial property that is attractive to tenants.

However, ownership of a strata unit places additional obligations on an owner, which may create additional risks for the owner when leasing its unit. The owner should therefore be familiar with the requirements of the JOP Law and the Directions published pursuant to the JOP Law on 13 April 2010 (the “Directions”), and it should take these requirements into consideration when preparing its leasing documentation and when dealing with its tenant and the relevant Owners’ Association. This article sets out some of the matters which an owner should consider when leasing its unit.

Notification of Tenant’s Details

Upon leasing, sub-leasing or granting usufruct rights in relation to a strata unit, an owner is required to give written notice, which has been countersigned by the tenant or its agent, to the Owners’ Association. The notice must provide details of:

- the unit number and address;
- the owner’s name and any new registered address for the owner (if the owner’s address has changed);
- the nature of the dealing (e.g. lease);
- the tenant’s name and registered address, mobile telephone contact number and facsimile number or email address; and
- if a broker will be managing the unit on behalf of the owner, the name and contact details (including facsimile number and email address) of the broker.

It is important for the Owners’ Association to have a record of the tenant’s details so that it can contact the tenant directly in relation to any matters pertaining to the unit (for example, to gain access to the unit) or the tenant’s use of the common areas. We therefore recommend that the lease includes a clause which requires the tenant to notify the Owners’ Association of any change in its contact details.

Compliance Requirements

The JOP Law and Directions require all owners and occupiers of strata units to comply with the Association Constitution, Jointly Owned Property Declaration, Community Rules and Master Community Declaration for the strata scheme(s) which the unit forms part of, including any higher scheme, (the “JOP Documents”). Owners and occupiers of units must also ensure that their guests and visitors observe the Community Rules.

A unit owner should provide copies of the JOP Documents to its tenant. Ideally, the documents

should be provided before the tenant signs a lease of the unit so that the tenant is aware of all of its obligations before it enters into the lease.

We recommend that the lease includes a clause which requires the tenant to comply with the JOP Law, Directions and JOP Documents (insofar as they are applicable to an occupier of a unit). Although the tenant's obligations to comply are contained in the JOP Law and Directions, including this in a clause in the lease may give the landlord additional enforcement rights for breach of lease if the tenant does not comply.

Breach

If the tenant breaches the JOP Law, Directions or JOP Documents or causes the owner to breach any of these, the owner should be able to take action against the tenant to recover any penalties, costs or damages which the owner has incurred as a result of the tenant's breach.

This is particularly important if the lease requires the tenant to pay service charges or any other charges levied against the owner by the Owners' Association. The JOP Law grants the Owners' Association a lien, which is a form of security interest, over each unit for unpaid service charges and any other obligations levied against the unit owner in accordance with the JOP Law or the Association Constitution. This allows the Owners' Association to obtain an execution order from the Court to sell the unit by public auction to recover the outstanding amounts.

Further, the Owners' Association is entitled to impose a penalty at the rate of 12% per annum on any owner who fails to pay a service charge or utility charge by the due date. The Owners' Association may also claim its costs incurred in recovering outstanding service charges or utility charges from the owner.

Therefore, if the lease requires the tenant to pay the service charges, utility charges or any other charges levied by the Owners' Association, we recommend that the lease requires the tenant to pay the relevant amount by the due date set by the Owners' Association. The lease should also include a clause which requires the tenant to immediately reimburse the owner for any penalties, costs or damages which it incurs as a result of the tenant's failure to pay the relevant charges by the due date or the tenant's breach of the JOP Law, Directions or JOP Documents.

The owner must also ensure that it does not permit the tenant to perform, or omit to perform, an act that would cause a breach of the JOP Law, Directions or JOP Documents. For example, Article 22(1) of the JOP Law states that a unit owner may not make any alterations or modifications to the structure or external appearance of its unit or any part of the jointly owned property that would materially affect the unit or the jointly owned property or its external appearance. If the owner allows the tenant to make any such alterations or modifications, this will place the owner in breach of the JOP Law. The owner will then be liable to repair the resulting damage at its own cost or, if the Owners' Association repairs the damage, to pay the Owners' Association's costs in accordance with Article 22(2) of the JOP Law.

Enforcement Notices

The Owners' Association Board has the power to issue a Community Rules Enforcement Notice to an owner or occupier whom it considers to be in breach of the Community Rules. If the owner or occupier fails to comply with the Community Rules Enforcement Notice, the Owners' Association Board may impose a penalty in an amount up to AED 2,000.00 on the owner or occupier.

We recommend that the lease requires the tenant to comply with any Community Rules Enforcement Notice issued by the Owners' Association Board in relation to the tenant's breach of the Community Rules. The tenant should be obliged to comply within the timeframe set out in the notice. If the tenant fails to comply with the notice, the owner will have the right to take action against the tenant for breach of the lease.

Voting Rights

The owner must keep in mind its obligations under the lease when exercising its voting rights in relation to the jointly owned property. In this respect, the owner should refrain from voting in favour of a proposal which would adversely affect the tenant's occupation and use of the unit or which would place the owner in breach of the lease. For example, if the lease grants the tenant the right to use a parking bay in the building 24 hours a day, the owner may be in breach of the lease if it votes in favour of a motion to restrict access to the building car park during particular hours.

Use of Common Areas

Most unit owners do not have sufficient voting entitlements to effectively control the management or maintenance of the common areas of the building, and therefore cannot guarantee to their tenants that the common areas will be managed or maintained in a particular way or to a certain standard. If the lease contains an obligation in relation to particular maintenance matters which the owner cannot control (e.g. the frequency of external window cleaning) and that obligation is not performed by the responsible party, the owner may be in breach of the lease. For this reason, the lease should be carefully drafted to ensure that the owner does not agree to an obligation in relation to the common areas which it cannot fulfil or which it cannot compel another party to fulfil.

We also recommend that an owner makes it clear in the lease that the owner is not responsible for the management and maintenance of the common areas and that the owner makes no representations or warranties about the same. Further, the lease should state that the tenant's use of the common areas is subject to the tenant's compliance with the JOP Law, Directions and JOP Documents and any limitations imposed by the Owners' Association.

Special Charges

The Owners' Association Board is entitled to impose a special service charge on owners from time to time in relation to any expenditure which was not included in the annual budget for the building and not reasonably anticipated when the budget was prepared. If the owner wishes to pass the obligation to pay a special service charge on to its tenant, we recommend that the lease contains a clause which requires the tenant to pay any special service charges as and when levied by the Owners' Association Board.

Insurance

The Directions require the Owners' Association to insure the building (including the units and common areas) for its full replacement value under a comprehensive insurance policy against damage or destruction by explosion, fire, lightening, storm, tempest and water. However, this does not extend to insuring within a unit:

- temporary walls, floors and ceilings;
- fixtures which are removable by a tenant at the end of a lease;
- mobile or fixed air conditioning units which service a particular unit;
- curtains, blinds or other external window coverings; and
- mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

The Directions state that an owner or occupier of a unit is responsible for insuring their own property or interest to the extent that they are not covered by the Owners' Association's insurance policies. Therefore, the owner should insure any items which are not covered by the building insurance policy or include a clause in the lease which requires the tenant to take out the appropriate insurance.

If the way in which an owner or occupier uses a unit causes the insurance premium payable by the Owners' Association to be increased, the Owners' Association is entitled to recover the amount of the increased premium from the owner. If the increase is caused by the tenant's use of the unit, the owner should be able to recover the amount from the tenant. We therefore recommend that the

lease contains a clause which gives the owner the right to recover from the tenant any increase in insurance premiums which the Owners' Association or the owner incurs as a result of the tenant's use of the unit or require the tenant to pay the amount directly to the Owners' Association.

Damage or Destruction of Building

If the building or any part of the building is destroyed or damaged, it is unlikely that the owner will have any control over the reinstatement of the building or repair of any damage (apart from exercising any voting rights), as this will be the responsibility of the Owners' Association. Therefore, the owner should ensure that the lease does not contain any warranties in relation to reinstatement or repair of damage to the building. It would also be prudent to include a provision in the lease which excludes the owner from liability for any damage, loss or inconvenience suffered by the tenant due to the destruction or damage or due to any delay in rebuilding, reconstructing, or restoring the building or the Owners' Association's refusal to do so.

Conclusion

When leasing a strata unit, an owner must take into consideration its rights and obligations under the JOP Law and Directions. The lease should be carefully drafted to ensure that any additional risks arising from the fact that the unit forms part of jointly owned property are minimised.