

The Mortgage Regimes in Dubai and Abu Dhabi

Fayez Khouri

f.khouri@tamimi.com

In practice, property mortgages are treated quite differently in Dubai and Abu Dhabi. The differences arise from the registration procedures in each Emirate, together with the specific mortgage law introduced in Dubai. One also needs to look at the nature of the property laws that are in place in each Emirate.

Property Ownership and Registration in Dubai

UAE and other GCC nationals, and companies wholly owned by them, can own real property in all areas of Dubai. This includes freehold ownership, long lease rights up to 99 years and the rights of usufruct and musataha. Such real property ownership is permitted for other nationals in 'designated areas' of Dubai, as determined by the Ruler. Examples of such areas are the new projects of Downtown Burj Khalifa, the Palm Jumeirah and Dubai Marina.

Assuming that the owner is permitted to own property rights in an area, title to such rights are to be registered at the Dubai Land Department, the only authority recognized as being able to register real property rights for properties in Dubai. A title certificate will be provided by the Land Department to the owner to prove its ownership of a property. An interim property register is also available at the Land Department and any contract for the sale of property off-plan will be considered void if it has not been registered on this interim register. Essentially, all property in Dubai should now be registered and have a title.

Property Ownership and Registration in Abu Dhabi

Only UAE nationals, and companies wholly owned by them, may own property in Abu Dhabi. GCC nationals can own property in designated "investment areas". Other foreign nationals may own apartments or floors in buildings (without the right of ownership of the land) in certain allocated "investment areas", together with the right to own a 99 year right of usufruct or right of musataha.

There is a framework relating to property registration in Abu Dhabi, whereby all dispositions giving rise to real property rights, including lease contracts having a term of more than 4 years and rights of usufruct and musataha, must be registered. In addition, a recent resolution reconfirmed this registration framework by stipulating that the director of the applicable property registration department must register all dealings and issue title certificates relating to ownership (whether of land, apartments or floors in buildings, as permitted), long lease, musataha and usufruct rights both within and outside the investment areas.

In practice, however, very little registration has occurred to date in the investment areas. Although ownership rights to property are generally registered for UAE nationals outside the investment areas, registration of long lease, musataha and usufruct rights is not common. Also, unlike Dubai, there is currently no interim property register available to register off-plan property sales.

Mortgages in Dubai

The Mortgage Law of Dubai (Law No. 14 of 2008) applies to mortgages of property and property units as security for debt registered with the Dubai Land Department. The law provides that a valid lender must be a bank, company or financial institution duly licensed and registered with the UAE Central Bank to provide property financing in the UAE. The mortgagor must be the owner of the mortgaged property and in a

position to dispose of the same.

Only mortgages registered with the Land Department (which of course means that the property right to be mortgaged must be registered with the Land Department) on the real estate register or the interim register will be considered valid. If on the interim register, at the time of transfer of title to the real estate register, all mortgages and other interests noted on the interim register will automatically be transferred to and registered on the real estate register. The ranking of the mortgage is determined by the time of registration, with a serial number allocated on registration with the Land Department.

Accordingly, in Dubai, only registered mortgages are recognized.

In terms of enforcement, the Mortgage Law states that any clause in a mortgage contract stipulating that when the borrower fails to pay the mortgage debt within the specified period, the lender shall have title to the mortgaged property or can sell the mortgaged property without taking the enforcement steps required under law (ie self help), shall be considered as void. This provision, read together with the execution proceedings on mortgaged property foreclosure, provide for a streamlined Court driven procedure on default by the borrower. The enforcement steps are as follows:

- In the event of default in payment of the debt when due, the lender must provide the borrower 30 days written notice through the Notary Public before commencing execution proceedings.
- If within the 30 day period, the borrower fails to pay the sums due, the execution judge shall, upon request of the lender order an attachment against the mortgaged property so that it can be sold by a public auction in accordance with the applicable procedures of the Land Department.

Mortgages in Abu Dhabi

Abu Dhabi does not currently have a specific mortgage law that applies to mortgages of property and property units in Abu Dhabi as security for debt. The recent resolution reconfirming the Abu Dhabi registration framework (mentioned above) directs the director of the applicable property registration department to register mortgages over all property and property rights within and outside the investment areas. However, because there has been little registration of properties and property rights in the investment areas and very little registration of long lease, musataha and usufruct rights outside these investment areas, generally mortgages in Abu Dhabi have only been registered against registered freehold titles owned by UAE and GCC nationals outside the investment areas. Implementing regulations are awaited concerning the registration of other mortgages.

According to the existing Abu Dhabi laws and applicable Federal laws, because a mortgage must be registered against the property in order to enforce such mortgage, if a mortgage is not registered, it will not be valid and cannot be enforced. This is not to say the mortgage is void, however it will not create an enforceable security with a priority right over other creditors.

Therefore, lenders who are financing against the security of an unregistered property in Abu Dhabi generally rely on a conditional assignment of the borrower's sale and purchase agreement or lease agreement (as applicable) with step-in rights in the event of default under the loan. This is sometimes combined with an unregistered mortgage. Such interest(s) are noted on the internal register maintained by the relevant developer.

On enforcement, assuming a lender does not have a registered mortgage, the likely avenues will be perfection of the conditional assignment with the cooperation of the developer, or a claim against the property (which would simply be a civil claim as an unsecured creditor). In either case, the provisions of the UAE Civil Code will apply.

Conclusion

Given the differences in how property laws are being implemented in Dubai and Abu Dhabi, not to mention

the fact that Dubai has its own specific mortgage law, it is no surprise that property mortgages are treated differently between the two Emirates. It is hoped that the introduction of implementing regulations and the much anticipated new property laws in Abu Dhabi will lead to greater similarities in the way each Emirate registers and enforces mortgages.