

Dubai land department: New law and registration fees schedule issued

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The Land Department Law is groundbreaking in terms of its scope for two main reasons:

1. It is the first law since the formation of Dubai Land Department in 1960 which sets out, amongst other matters, the objectives and competencies of the Land Department; and
2. It paves the way for the introduction of a new fee structure for real estate transactions, as it specifically states that any legislation which contradicts the Land Department Law is repealed (Article 15), which includes Law No. 7 of 1997 (concerning Land Registration Fees).

The new fee structure itself is set out in Executive Council Resolution No. 30 of 2013, which was also published in Issue No. 371 of the Official Gazette and came into force on September 18 2013 ('the Fees Resolution').

Part One of this article will highlight the main provisions of the Land Department Law, and Part Two will discuss the main provisions of the Fees Resolution.

PART ONE: The Land Department Law

Objectives

Article 5 sets out the nine objectives of the Dubai Land Department:

1. To create an environment of an international standard to attract real estate investment;
2. To achieve the Government's strategic goals in relation to the registration of real estate;
3. To keep up to date on all the latest global systems for the registration of real estate;
4. To enhance the efficiency of real estate monitoring and regulation in Dubai;
5. To develop and manage the leasing sector in Dubai;
6. To update and develop the real estate registration systems to keep up to date with the latest global systems in this regard;
7. To encourage real estate investment by establishing a suitable environment for real estate investors;
8. To promote the real estate sector as a contributor to the overall development of Dubai; and
9. To plan and develop an integrated strategic plan for real estate development in Dubai with the aim of setting an international standard.

Competencies

Article 6 of the Land Department Law gives 22 specific 'tasks' which the Land Department is to handle. It also provides for a general (or catch-all) competency of 'any other tasks necessary to achieve the Objectives', thus emphasising that all of the Competencies are a tool to be used by the Land Department to meet the Objectives enshrined in Article 5.

Some of the specific Competencies set out in the Land Department Law are as follows:

1. Formulate policies and strategic plans and follow up on the implementation of Dubai's strategic plan for the development and regulation of Dubai's real estate sector (Competency 1);
2. Regulate real estate by setting up regulation in relation to trust accounts of real property project executions, mortgage brokerage and joint ownership (Competency 3);
3. Propose legislation regulating the real estate sector in Dubai, measure the effectiveness of legislation after it has been applied, as well as regulate the relationship between landlords and tenants, and register lease contracts of real estate units (Competency 6);
4. License the real estate activities in Dubai, supervise and monitor its operation and those responsible for it (Competency 7);
5. Through cooperation and contribution from the competent authorities, to develop precautionary measures to ensure the protection and stability of the real estate market in Dubai (Competency 8);
6. Review real estate investment applications in relation to obtaining the benefits prescribed by legislation and policies adopted by the Land Department (Competency 10);
7. Provide real estate valuation services (Competency 13);
8. Conduct survey and re-surveys of lands, and issue the maps to these lands (Competency 14)
9. Provide specialized real estate consultations for developers, brokers, real estate investors and others (Competency 16); and
10. Prepare, develop and update a unified central database for real estate activities in Dubai and regularly provide data services, to planning and decision makers (Competency 20).

Interestingly, the Land Department Law also provides for the Land Department to prepare, develop and up-date a unified central database for 'Real Estate Activities'. The term 'Real Estate Activities' is defined in the law and is far reaching. It includes 'all the financial activities and legal proceedings in relation to the development, sale, purchase, registration as well as regulation and leasing of properties in Dubai, in addition to other real estate activities and services of which the Land Department and the organizations affiliated with it, are specialized in providing, regulating and supervising'.

Appointment of Key Personnel

Articles 7 - 9 provide that the Land Department is to have a Chairman appointed by Decree. The Chairman is to generally take decisions necessary for accomplishing the Objectives and in addition certain specific powers are detailed in the Land Department Law.

The department is also to have a Director General appointed by Decree. The Chairman may delegate any of his powers to the Director General. The role of the Director General is to supervise the department's affairs in relation to administrative, financial and technical matters. Certain specific powers in this regard are listed in the Land Department Law.

The Land Department Law also provides for an Executive Body of the Land Department to be established composed of a number of administrative and technical employees. The Land Department Law also envisages that the department will have specialised institutions operating in the fields of organisation, provision and development of Real Estate Activities.

Financial

Articles 11 - 14 of the Land Department Law provide that the financial resources of the department are composed of:

1. Funding allocated to it by the Government's general budget.
2. Fees and allowances for services provided by it (including fees collected in exchange for registration).
3. Any other resources approved by the Executive Body.

The fiscal year of the department runs from 1st January to 31st December each year.

PART TWO: The Fees Resolution

Adoption of Fees

Article 2 provides that fees are to be paid for the registration of Real Estate Transactions including those where properties are already built, under construction or off plan. Fees are also to be paid in exchange for certain services being provided by the Land Department.

'Real Estate Transactions' are defined in the Fees Resolution as:

'Any legal act which transfers the ownership or possession of a property, including but not limited to, contracts which deal with the transfer of the right of usufruct and long-term leasing rights [...] and rent to own contracts.'

The fees to be paid are set out in Schedule 1 to the Fees Resolution and some fees are discussed more fully below.

Collection

Article 3 deals with the collection of fees, which is different depending on the type of agreement

Sale & Purchase:

The Fees Resolution provides that the applicable fee in relation to the sale of a property shall be collected from both the seller and the buyer equally, unless otherwise agreed by them. The fee prescribed for registration of a sale and purchase contract is 4% of the total value of the agreement. This is double the previous fee.

The impetus for the 100% increase from the previous fee is thought to be to reduce 'flipping' – the process whereby a property is bought and held only for a short while before being sold on. To date 'flipping' has been particularly prevalent with regard to off-plan purchases where for example a broker may buy speculatively in the hope that an end purchaser willing to pay a higher price can be found. While the increase in the fee may go some way to making 'flipping' less attractive the higher fee would equally be levied on a homeowner who had lived in their property as a family home for several years. In a particularly buoyant market would-be purchasers would probably be willing to pay the total 4% fee (as opposed to the seller also paying 2%) in an attempt to secure their chosen property.

For those who are familiar with UK property transactions the 4% fee is similar to the 4% rate levied by the UK Government's tax department on properties with a purchase price of £500,000 to £1,000,000 (AED 3,000,000 to AED 6,000,000). In the UK, top end properties can attract a rate of 7% or in some cases 15% (if purchased by certain persons, including corporate bodies).

Warehouses are treated differently and registration of a sale and purchase contract for a warehouse is AED 10 per sq. m. of land on which the warehouse sits subject to a minimum fee of AED 10,000.

Long Term and Usufruct Leases:

Article 3(2) of the Fees Resolution provides that for usufruct and long-term leases, registration fees shall be collected from the owner, beneficiary or lessor at 2% of the property value and 2% of the property value is to be collected from the beneficiary or the lessee, unless otherwise agreed i.e. a total 4% is to be paid.

On the other hand, Items 14 & 16 of the Schedule to the Fees Resolution stipulates registration fees of 4% of the total value of the rent contract for long-term leases and 2% of the property value for usufruct leases respectively.

We understand that the Land Department will shortly issue clarification as to this discrepancy.

Musataha:

The fees applied to Musataha contracts are 1% of annual rental and are to be collected from the tenant (unless agreed otherwise). The reasoning behind the Land Department's reduced fee treatment towards Musataha contracts stems from the fact that they are comparatively shorter contracts (i.e. 50 years) than Long Term Leases and Usufruct contracts.

The divergence in the registration fees applied to long-terms leases, usufruct and Musataha contracts is interesting and certainly unexpected given all such lease contracts are long term contracts which give a real right to the lessee upon registration. We believe there will be an increase in use of Musataha contracts due to their reduced registration fees.

Rent-to-Own Contracts:

Fees applicable to the registration of rent-to-own contracts are 4.25% in total, to be collected at 2% of the property value from the lessor, 2% of the property value from the lessee and 0.25% of the rent value from the lessee (if applicable) unless agreed otherwise.

Ijarah finance is subject to similar fees - 0.25% of the value of the debt is to be collected from the lessee unless otherwise agreed.

Common Property:

The owners of common and non-removable property are to pay 1% on a division of property transaction, based on the value of the share owned by each co-owner prior to the division.

Other Fees:

It is the person in whose favour the right is registered (unless otherwise agreed) who is required to pay the applicable fee on the registration of each of the below:

Takharoj contracts	1% of the value of the property
Donation in kind contracts	0.125% of the value of the gifted/donated property subject to a minimum of AED 2,000
Wills	0.125% of the value of the bequeathed property
Mortgages	0.25% of the value of the debt
Transfers of debt	0.25% of the value of the debt
Family endowments	AED 2,000 per property
Registration of the rights of the lessee's heirs	AED 1,000 per property

Evaluation

Article 5 states that for the purposes of calculating the fees payable the Land Department may:

1. Verify the value of the property which is the subject of the transaction; and
2. Estimate the value of Real Estate Transactions which have an undefined value, have been undervalued in comparison to their market value, or those transactions which have had incorrect information submitted in relation to them.

Evasion & Fines

Articles 6 - 8 provide that the following are specifically considered to be acts of fee evasion:

1. Providing false information in relation to the value of the Real Estate Transaction.
2. Using fraud or methods of whatever nature to evade the payment of Fees.

In addition the Fees Resolution also states that 'committing any other act to evade the payment of Fees' will be deemed to be fee evasion, thus giving the DLD an almost unfettered discretion. Article 8 specifically states that Land Department employees (as delegated by a decision of the Director General) will have capacity as judicial officers to identify acts of fee evasion.

The Fees Resolution provides that the penalty for fee evasion will be payment of double the prescribed fees for the transaction but harsher penalties may also be imposed. In addition a developer or real estate agent who assists will also be liable to pay double the prescribed fee for the transaction as a penalty. While the Fees Resolution does not specifically provide for such an act to be treated as a crime, it would be open to the Land Department to refer any fraud to the Police and for the party committing the fraud to be liable to criminal proceedings.

The test for the effectiveness of this penalty provision and the Fees Resolution in general is how the framework will be implemented in practice, and this remains to be seen.