

Dubai Land Department organises awareness session on Mandatory Property Contracts

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On 4 August 2014, the Dubai Real Estate Institute (“DREI”) organised an awareness session on the recently introduced Mandatory Property Contracts i.e. Form A (Agreement between Seller and his Agent); Form B (Agreement between Buyer and his Agent); and Form F (Agreement between Buyer and Seller) which was conducted by Dr George Maurice, lecturer at DREI. The purpose of the session was to educate its audience regarding the use of the standard forms which is required for all sale and purchase transactions irrespective of the type of property or its state of completion.

As mentioned in our previous article, the present standard form contracts appear to be a work in progress and there is need for further enhancement in their content. Following DREI’s seminar earlier this month, this article will attempt to shed light on some of the frequently asked questions to provide clarity on the matter.

Q1. What is the current status of the mandatory property forms? Will the forms be amended in the future?

DREI has stated that the Forms A, B and F were launched as part of Phase 1 roll out by DLD. DREI is working closely with the DLD to improve the forms based on the feedback received from the public and revised forms are expected to be uploaded in the next couple of weeks. Thereafter, Phase 2 will introduce two more forms, namely an agreement between the buyer’s agent and seller’s agent and a termination agreement.

The present Form F does not provide for termination provisions should the property transaction fall through. The new termination form is expected to bridge such gap.

The proposed agreement between the two parties’ agents would provide comfort to the agents as DLD proposes that such agreement be registered prior to completion of the transfer thereby ensuring that the Buyer and Seller do not circumvent the agents and thus avoid payment of the broker fees by completing the transaction between themselves.

Q2. Who bears the responsibility of filling out Form F in a property purchase transaction?

DREI has stated that it is the Seller’s broker who is responsible for completing Form F and circulating it to the Buyer through his broker for signature.

Q3. Who can access the forms on the E-mart website?

The forms are currently available for general access on the E-mart website (<http://www.emart.gov.ae/Home.aspx?en>). However DREI has indicated that in the future the forms will have restricted access available only to brokers. DLD is expected to provide the brokers with a dedicated access to the mandatory forms by aid of a username and password.

Q4. Does Form F replace a SPA between the Buyer and Seller in a property transaction? Can the standard terms and conditions stated in the Form F be amended?

Form F contains the standard terms and conditions and it is possible for the Buyer and Seller to complete a property transfer by use of the form only. However should the parties wish to add more terms and conditions or amend any of the standard conditions in Form F, an addendum can be prepared and attached to Form F.

Q5. Can any of the terms and conditions in Form F be deleted entirely?

As mentioned in Q4 above, the standard terms are capable of being amended but cannot be deleted. Amendments to a standard term can be made by a reference in an addendum attached to Form F.

Q6. In a scenario where there is no broker in the property transaction, which form will need to be submitted to DLD to effect such transaction?

The parties would need to present a complete Form F to effect the property transfer. However it is not clear at this stage how the parties would gain access to the Form F in the absence of the broker, should DLD implement limited access as mentioned in Q3 above.

Q7. Can these forms be filled in by hand or online?

The forms can be generated by filling in the requisite information on the E-mart website and the forms can then be printed off for the purposes of billing in the information gaps in the standard terms and conditions and for signing.

Q8. It is common for the Buyer to enter into an escrow agreement with the broker for the purposes of holding the down payment amount in escrow pending completion of the property transfer. How should the parties submit such escrow agreement details?

DREI has stated that the escrow agreement would need to be attached as an addendum to either Form A or Form B as applicable.

Q9. The present Form F caters only to an individual buyer or seller and not to corporate entities. Will DLD rectify the form in this regard?

DLD is aware of this issue and is expected to sort it out soon. The updated form would cater to both individuals as well as corporate entities.

Q10. Are there any new initiatives in the pipeline on this matter?

In addition to the launch of two new forms as mentioned above, DLD is expected to authorise brokers to offer escrow account services to their clients to add transparency as well as comfort to the parties in a property transaction.

Article 21 of By-Law No. 85 of 2006 regarding the regulation of the real estate brokers' register in Dubai has always provided that the broker would hold any monetary amounts, securities or debentures handed over by the party, in compliance with trust rules. DLD's new proposed initiative would not only implement the existing Article 21 but also enable the Buyer or Seller to enter into an escrow arrangement with the broker who would provide such services.