

ADGM Real Property Regulations

David Bowman - Senior Counsel - Real Estate
d.bowman@tamimi.com - Abu Dhabi

August 2015

With effect from their publication on 14 June 2015, the Property Regulations and the Strata Regulations govern property matters within ADGM. This month we will report on the Property Regulations and next month we will provide an update on the Strata Regulations.

ADGM occupies the whole of Al Maryah Island and has been designated the financial centre of Abu Dhabi. ADGM is a financial free zone and an investment area for property ownership by foreigners. Within ADGM, foreign investors have a wider choice of legal structures to choose from if they wish to invest in property than in most other areas of Abu Dhabi.

The Property Regulations introduce many concepts that are new to the UAE but which will be familiar to those used to dealing with property matters in common law jurisdictions. ADGM will establish its own courts that will hear any matters arising from the Property Regulations and the Strata Regulations (“ADGM Court”).

The following property interests are recognised by ADGM:

Freehold title

UAE or GCC nationals or entities wholly-owned by UAE or GCC nationals can own freehold title to land and floors or units within buildings located in ADGM. Foreign, non-GCC, nationals and entities with any degree of non-UAE or non-GCC ownership may not own freehold title to land in ADGM (as is also the case in the remainder of Abu Dhabi) but may own floors or units within buildings. ADGM recognises the concepts of life interests and future or reversionary interests. Joint ownership is allowed by way of either joint tenancies or tenancies in common. Joint tenancy means that each co-owner has equal rights to the whole property and that on the death of one co-owner his share automatically passes to the other co-owners. Tenancy in common means the co-owners can own different shares in the property and can pass on their shares in the property as they wish in their Wills.

Leasehold title

Leasehold interests and sub-lease interests of up to 99 years are allowed and leases may include a right to renew. Occupational interests created by licences are treated as personal contractual arrangements that do not create real estate rights. It is not clear from the Property Regulations what the maximum term will be for an occupational interest before it will be regarded as a real estate right.

Strata title

ADGM introduces the concept of strata title for multi-occupied developments, which provides for developers to establish owners associations to run common parts of developments. We will provide further detail on the Strata Regulations next month.

Mortgages

The Property Regulations contain provisions dealing specifically with the creation, registration and

enforcement of mortgages of property within ADGM.

Easements

The Property Regulations provide for non-possessory rights of use, entry and benefit.

Covenants

The Property Regulations allow the creation of both positive and negative covenants.

Statutory Charges

Statutory charges that impose restrictions on the use of, or dealings with, property in ADGM are permitted under the Property Regulations. The Property Regulations do not define what is meant by a statutory charge, however it is likely to mean a form of security relating to an obligation to a government authority.

General Principles

ADGM will apply the following general principles regarding property:

- Any covenants affecting property that are considered by the ADGM Court to violate the public policy of ADGM, the Emirate of Abu Dhabi or the UAE will be void and will have no force or effect.
- In the case of any life estate, joint tenancy or tenancy in common, any tenant in occupation of a property is prohibited from destroying the property. Reasonable wear and tear is permitted.
- There will be no merger by operation of law of any estate in property, meaning that the beneficial interest in a property will not be deemed to have merged with the legal interest or be extinguished in equity. A beneficial interest in a property is a common law principle, also known as an equitable interest, which states that the beneficial owner, rather than the legal owner, of a property will have the right to income from the property or a share in the proceeds of sale of the property. On registration of a lease where the interest of landlord and tenant vest in the same person, no merger will occur unless parties expressly state in the lease that this should occur.
- No interest in property, including a beneficial or equitable interest, can be created or disposed of except in writing and signed by the person creating or transferring the interest.
- The concept of acquiring property rights by adverse possession is expressly disallowed. Any length of adverse possession will not result in acquisition of any right or title, beneficial or legal.

Property Registration

- ADGM will appoint a Registrar and any person dealing with the Registrar may assume that the Registrar has all necessary authorities to act.
- The Registrar will maintain the Real Property Register and may maintain it in any form including by way of electronic files. The Registrar will record all documents relating to the creation or transfer of property rights in ADGM.
- Musataha and usufruct interests are not specifically recognised by the Property Regulations as being distinct from leasehold rights. The Property Regulations do, however, acknowledge that there were existing rights granted under musataha and usufruct agreements at the time the Property Regulations were published on 14 June 2015 and these interests must be registered in the Real Property Register by 13 June 2016.
- All documents lodged for registration in the Real Property Register must be in the English language and if the original documents are in another language they must first be translated. If there are any inconsistencies between the original document and the document translated into English, then the version translated into English will prevail. The Property Regulations do not state whether translations will need to be carried out and stamped by official Abu Dhabi government or ADGM-approved translators.
- Registered documents will have priority in accordance with the date on which they are registered, not according to when they were signed or dated. Earlier registered documents will take priority over later

registered documents. It is, however, possible to agree to subordinate the priority of a document where all the parties agree in writing.

- Information contained in the Real Property Register is conclusive evidence of the registration of any document, the date on which the document was registered and the contents of the document.
- A document does not transfer a property right unless it is registered in the Real Property Register. The benefits of registration apply whether or not valuable consideration was paid.
- Registration is conclusive proof that a person is the owner of a property interest in a property and that the person's title to that property is indefeasible.

The Registrar will create folios for each registerable area of real estate in ADGM. These folios may relate to whole plots or may be created for subdivided, approved strata title interests within plots. Transfers of part only of registered folios are not allowed.

Leases

- Property in ADGM may be leased for terms of up to 99 years. The term may be renewed on one or more occasion as the parties agree provided that the aggregate term of the lease (inclusive of any renewal terms) may not exceed 198 years.
- Leases must be registered in the Real Property Register within 28 days of signing and must contain sufficient information for the Registrar to identify the property leased, the term and any rights of renewal. The registration fees are not yet known. It is possible to register a memorandum of lease in lieu of the full lease provided the memorandum contains all the information required by the Registrar. This may be useful where the parties wish to keep certain provisions in a lease confidential.
- Any variations to leases must be registered in the Real Property Register.
- When a lease expires or is terminated, either the landlord or the tenant may apply to the Registrar to note that the lease has expired or has been terminated. It is not clear what will happen if neither party makes this application.
- A surrender of a lease will be completed when the Real Property Register has been updated.

Mortgages

- Property or an interest in property, for example a lease, may be mortgaged by way of a registered mortgage. It is only possible to register the whole, and not part only, of a registered property title or a property interest.
- Mortgages can be varied by the registration of a variation document, however this variation will have no effect on subsequent registered mortgagees unless those mortgagees agree.
- Registered mortgages can be discharged by registering a discharge of mortgage.
- A registered mortgagee has powers of sale, rights of repossession and rights to foreclose on default by a mortgagor but must first serve 30 days' notice on the mortgagor to give the mortgagor the opportunity to remedy the default.

Easements

- Easements in gross, meaning easements that do not benefit or burden a specific property or specific properties are permitted. Easements in gross are likely to be created for the benefit of ADGM or other authorities to benefit ADGM as a whole.
- Easements cannot be acquired over property by prescription or by implication. This means that a person will not acquire legal rights over another person's property by exercising that right for a number of years or through necessity. It is, however, possible to imply ancillary rights into an expressly granted easement where such ancillary rights are necessary for the effective enjoyment of the easement.
- Easements are implied where there are developments with multiple plots or units so that services will benefit and bind each lot. These implied easements include passage of water, electricity, telephone, drainage, gas and sewerage. The party with the benefit of the easement will have rights to enter onto the burdened property at all reasonable times, on reasonable notice, to repair and renew installations.

Parties with the benefit of easements will contribute a reasonable proportion of the costs of maintaining installations. It is likely that this provision will relate to utilities easements because master developers will want to deal with these easements and the right to levy a service charge as part of the strata documentation and record this in a master community declaration. Common ownership of two or more lots does not destroy these implied easements. These implied easements are enforceable without the need for registration, however the Registrar may decide to register them.

- Easements created by grant or reservation must be registered. The Registrar will note the easement in the title to the lot burdened and (unless it is an easement in gross) in the title of the lot benefitted. An easement may be registered even if the lot benefitted and the lot burdened have the same freehold owner.
- A person may not excavate or develop a property in a way that adversely affects the stability of an adjoining property or structures on it, and is liable for any damage or loss if he does;

Covenants

- Covenants in gross, meaning covenants which do not benefit a specific property or specific properties, are permitted.
- Positive covenants are permitted as well as negative (restrictive) covenants.
- A covenant may be created by registration of the document creating the covenant and the Registrar will note the covenants against the titles to the property burdened by the covenant and the property benefitting from the covenant. It is unclear from the Property Regulations whether covenants must be registered to be enforceable however that appears to be the intention of ADGM. A covenant may be registered even if the property benefitted and the property burdened have the same owner.
- There is no express limitation on the duration of covenants.
- A person with an interest in a property burdened by a covenant may apply to the ADGM Courts to vary or extinguish the covenant.

Statutory Charges

A person or an authority can apply to register the benefit of a statutory charge over any property. The Registrar will then give notice of the statutory charge to all those with a registered interest in the property. A potential purchaser or mortgagee of a property will also be made aware of the existence of a registered statutory charge if it carries out an official search of the Real Property Register. Registration does not give any greater effect to the statutory charge than it would have without registration.

Caveats

- A caveat may be lodged in relation to any property interest by the registered freehold owner of the property, a person who has the benefit of an injunction restraining the registered owner from dealing with the property or the Registrar. The Property Regulations do not allow a person with the benefit of a caveat to apply to register that caveat.
- Caveats must be in an approved format. Once registered, caveats will prevent the registration of any document affecting the property or any interest in the property to the extent restricted by the caveat.

Official Searches

- The Registrar will allow access to the Real Property Register for the carrying out of official searches of the register. The person requesting the search is not required to give reasons for the search but must pay a prescribed fee.
- The Registrar will issue an official search certificate where the request for a search is made in writing. The Registrar will also issue official copies of registered documents.

Conclusion

The Property Regulations are significantly different to the property laws that apply elsewhere in Abu Dhabi. ADGM is positioning itself as a major financial centre in the UAE, and implementing comprehensive real property regulations is likely to bolster investor confidence and encourage activity in the real estate sector in ADGM.