

A Quick Guide to the New Abu Dhabi Strata Law

Ronette Druskovich
r.druskovich@tamimi.com

April 2016

For those in the real estate industry, the easiest way to understand the new Abu Dhabi strata law is to compare it with the already familiar Dubai strata law. The two Emirates' laws, in most cases, reach the same place by similar means. For property developers and owners' association managers working across both jurisdictions, the transition should be relatively easy provided they are alert to and comply with the differences. The Abu Dhabi law is new and untested so it remains to be seen how it will be implemented and the level of further guidance and direction that will be provided.

Which Laws Apply?

The jointly owned property law for Abu Dhabi is now found in Law No. 3 of 2015 'Regulating the Real Estate Sector in the Emirate of Abu Dhabi'. This law contains what are commonly referred to as strata laws in Part 7, which is titled 'Jointly Owned Floors, Flats and Parts'. Subsequent implementing regulations add detail to the law through the Department of Municipal Affairs Chairman Resolution No. 245 of 2015 'Issuing the Executive Regulations Concerning the Ownership of Jointly-Owned Properties and Owners' Association'. The strata regulations also refer to standard strata documents to be issued by the Department of Municipal Affairs ('DMA'). These are not yet available.

Whilst we cannot predict exactly how the Abu Dhabi law will be implemented, we are able to provide an initial view on how the law compares with laws already operating in the United Arab Emirates. The closest comparison comes from neighbouring Dubai through Dubai Law 27 of 2007 'Concerning the Ownership of Jointly Owned Real Property in the Emirate of Dubai' together with the Direction for Association Constitution, Direction for General Regulation Concerning Jointly Owned Properties and Direction for Jointly Owned Property Declarations, all effective from 13 April 2010.

The governing authority for jointly owned property in Dubai is the Real Estate Regulatory Authority ('RERA'); in Abu Dhabi it is the DMA.

Those already operating in Dubai will be aware that there is some uncertainty as to whether the Dubai directions are actually regulations, as they were not published in the Dubai Gazette. This has resulted in an element of discretion being exercised in some areas by RERA. As the Abu Dhabi strata regulations were published in the Abu Dhabi Gazette, it initially appears there may be less discretion available to the DMA, however the legislation itself provides some discretion to the DMA.

A Quick Guide to Different Terms

Below we set out some of the common phrases that are used differently as between the laws in Dubai and Abu Dhabi. There remains some work to be completed on the English translations of the Abu Dhabi laws so final phrasing may not be settled.

Dubai Phrases / Concepts	Abu Dhabi Phrases / Concepts
--------------------------	------------------------------

Jointly Owned Property Declaration	Strata Management Statement; or Community Management Statement, as the case may be. Note: The Abu Dhabi law sets out distinct statements depending on the type of subdivision.
Master Community Declaration	Master Development Statement or Sub-Development Statement Note: At this stage the Abu Dhabi strata laws lack definition and clarity in this area.
Building Management Declaration	Building Management Statement
Common Property	Common Facilities
Association Manager	Manager of the Owners' Association
Articles of Association of the Owners' Association Note: sometimes Constitution is also used	Constitution of the Owners' Association
Real Estate Regulatory Authority	Department of Municipal Affairs
Annual Service Charge	Service Charges
Utility Services	Public Services
Entitlement	Participation Quota

Points of Similarity

Consumer protections

Of importance to consumers and developers alike, there is a high level of consistency across the disclosure statements and consumer protections in place in Abu Dhabi and Dubai. Any difference in the matters to be disclosed is negligible. In both cases, the developer is liable in damages for the contents of the disclosure statement for two years from the date the unit is transferred to a purchaser, including any subsequent purchaser.

Also closely aligned in both laws is the developer's liability for defects. The developer remains liable for structural defects in the building for 10 years from receiving a completion certificate. For defective building installations, the defect liability period is one year and these items must be repaired or replaced.

Supply agreements

Whilst laws relating to supply agreements in both jurisdictions will, from a practical point of view, function in a similar manner, in Abu Dhabi a supply agreement must not exceed three years without approval of the Municipality of Abu Dhabi and, even if approval is given, a supply agreement must never exceed 25 years. The Dubai strata law limits the length of supply agreements to three years and there is no provision to allow RERA to approve a longer term.

The Abu Dhabi strata law provides extensive requirements on terms that must be included in supply agreements for both supply of goods and supply of services including the requirement for market rates or a competitive process (particularly where a sub-contractor is involved), the ability to terminate or vary the services and a prohibition of commissions and secret incentives. The Dubai strata law matches the requirements for supply agreements but expressly prohibits the use of sub-contractors.

Developers with large portfolios who have negotiated favourable terms with suppliers may need to be mindful of the differences here. Likewise, association managers will need to ensure they have agreements that reflect the requirements in each location.

Owners' association manager

There are some differences with the rules relating to owners' association managers, and care will need to be taken in relation to those differences, but largely, owners' association managers will be able to manage their operations across both jurisdictions in a very similar manner.

One area where we may see further direction is that the Abu Dhabi strata law requires that the maximum term for an association manager contract is three years. In contrast, the Dubai strata law provides that after the end of three years, an association manager may be appointed for a further term. It seems unlikely that Abu Dhabi would prevent an effective strata manager with a satisfied owners' association from continuing their relationship, and we consider these are the types of issues that will be clarified over time.

In Abu Dhabi, the strata law also states that the relationship between an association manager and the owners' association is one of agent and client to be based on trust and honesty. This appears to contrast with the Dubai strata law, which provides for a contractual relationship and a code of conduct that the association manager must follow. From a practical point of view, we see very few differences between these laws although there may be more scope for third parties to sue an association manager directly in Abu Dhabi.

Similarities like those explained above are numerous throughout the each part of both jurisdictions' strata laws.

Points of difference

The administrator

Whilst the requirements to constitute an owners' association between the two jurisdictions is very similar, Abu Dhabi goes a step further with the creation of a concept not previously used in Dubai strata law. The position of administrator of the owners' association is the developer or another person who is appointed by the Chairman of the DMA to carry out the owners' association's operations. The administrator bears responsibility for the affairs of the owners' association including the responsibility for its management and operation of the common areas, public services and service facilities.

The position of administrator of the owners' association is distinct in the appointment of a temporary administrator for certain failures of the owners' association. In some translations, this new position is referred to as the chief operations officer.

At this stage, there is limited clarity as to when and why an administrator may be appointed. Article 40 of the Abu Dhabi strata regulations sets out that the administrator may be appointed by the DMA in special circumstances to be determined by them, taking into account such factors as the project area, whether there are multiple buildings, the uses and the project location. The drafting of Article 66 of the law states that notwithstanding other articles that set out how an owners' association is to be constituted, the Chairman of the DMA (with the approval of the Executive Council) may resolve to substitute the owners' association for the developer or some other person. We consider that the exercise of these discretions may be key to the treatment of owners' associations in Abu Dhabi.

Whilst the information currently available is limited, it appears that the appointment of an administrator will ordinarily be to administer the common areas of master developments (rather than sub-developments). When there is an administrator the owners' association will have limited influence, being only allowed to express opinions and provide advice with regard to the management, operation,

maintenance and repair of the common areas in accordance with the master development statement. Whilst the owners' association may not interfere in any way with the duties devolved to the administrator, it may seek assistance from the DMA if the administrator fails in its duties.

In accordance with the strict wording of the regulation, the owners' association may not ballot, vote or hold meetings to discuss the management, maintenance, operation and repair of the common areas. In that case we wonder how a decision will be made to contact the DMA in the case of failure by the administrator.

The appointment of an Administrator is another area where we expect further direction to be released over time. The use and implementation of this provision will be one of the key areas to watch with the Abu Dhabi strata law.

Room for creativity?

In the Abu Dhabi strata law, there is another provision that has no direct comparison in the Dubai strata law. Although we don't yet have any clear guidance as to its intention or implementation, we do think there are potential opportunities for creative developers.

In Abu Dhabi the owners' association has the right to own stocks and shares in service companies related to their own strata plan and to grant exclusive rights over common areas. This law explicitly allows the not-for-profit owners' association to own shares in a for-profit company.

We can imagine situations where developers could use this provision to create a point of difference for sales by offering an opportunity to eliminate or reduce service charges for unit owners by deriving profits elsewhere. Time will tell how developers use this opportunity and how this law is administered.

Whilst we are aware that in Dubai RERA is permitting some developers to make money from their common areas, we consider the Abu Dhabi law takes this option a step further.

Conclusions

Having looked closely at both jurisdictions' strata laws, we consider that strata property developers and owners' association managers will easily transition between the two Emirates. There will be some compliance issues where lawyers and property professionals will need to be careful to comply with the differing detail. Abu Dhabi has a couple of new concepts in its strata law and further guidance on implementation, regulation and direction is to issue.

In time, the two jurisdictions may start to distinguish themselves but the initial legal foundations are very similar. Abu Dhabi strata law provides scope for the exercise of discretions in some areas that will be important to follow.