

Buyers Beware: Importance of Due Diligence Exercise in the Emirate of Dubai

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Title Search

The first and most obvious is that a title search should be undertaken. The potential buyer must request a copy of the property title deed and site plan from the seller. A title search at Dubai Land Department will confirm the seller's ownership of the property and any existing mortgage over it which could prevent sale. It will also help identify whether the property is attached to a court order, if there is any freezing order on the property, for example if there is a real estate project registered over the land at Dubai Land Department, and provide confirmation on the property's specifications such as the unit's area, common area entitlement, unit restrictions which could result from a master community declaration and jointly owned property declaration. However, it is important to remember that the buyer will not be able to conduct such title search without presenting a valid power of attorney from the seller authorising the buyer to carry out the investigation on the property or in the presence of the seller in Dubai.

Investigation with the Developer

Potential buyers may investigate with the master developer (applicable for properties which are located within a master community) about the property that they wish to purchase and attend at their offices to ensure that all service charges or community fees have been paid to date. This will also include checking if any penalties have been levied by the developer and successful clearance by the seller. Once again, the buyer will not be able to conduct such investigation without presenting a valid power of attorney from the seller authorizing the buyer to carry out the investigation on the property or in the presence of the seller in Dubai. Without clearance on the master developer charges, a no objection certificate approving the resale by the master developer cannot be obtained.

Investigation with Dubai Municipality

It is also advisable to undertake an investigation at the Dubai Municipality to ensure there are no pending violations or penalties relating to property's construction and zoning and to confirm the permitted use of the property. Again, a power of attorney is needed from the seller authorising the buyer or the seller needs to be present in order to carry out these investigations.

Special Authorities

In certain cases, a special Government authority may be involved in relation to the property and investigations with this authority is also recommended. For example, in the case of the purchase of school premises in Dubai, investigations need to be carried out with the Knowledge and Human Development Authority to ensure the requisite permissions were obtained for construction of the school over the plot and Road and Transport Authority to enquire about the traffic impact study affecting the property.

Financial Due Diligence

As well as carrying out legal due diligence with the relevant authorities, a potential buyer may also want to obtain an independent valuation of the property from a valuer to ensure the correctness of the asking purchase price. Such valuations can be done by the Dubai Land Department for a specified fee or through third party licensed companies.

Technical Inspection

Buyers can also use a licensed technical inspection company who can verify the area measurement and dimensions of the property and check for presence of any defect in the property.

Sale and Purchase Contract

Once a buyer has completed these checks, they can proceed to execute a sale and purchase agreement which is commonly known as the memorandum of understanding to record the key terms of the property sale and purchase. In Dubai, the parties are required to sign a mandatory Dubai Land Department 'Form F' and any additional terms are attached as an addendum to the Form F. In the case of resale of off-plan property purchases, having an additional tri-partite assignment agreement between the original purchaser, new buyer and developer is a common market practice as the original purchaser is released from its obligations and the new buyer assumes the original purchaser's obligations and agrees to comply with the developer's terms and conditions including completion of payment of the purchase price.

Completion

The parties would need to attend before the Dubai Land Department or at the Registration Trustee offices with the requisite documents recommended by the Dubai Land Department to carry out the actual transfer. In the case of corporate purchasers, all the key corporate documents (i.e. trade license, certificate of incorporation, memorandum and articles of association, certificate of incumbency, good standing certificate, power of attorney of the authorised signatory etc) would need to be duly notarised and attested and translated into Arabic and must reveal the ultimate beneficiary of the buyer entity. In case that the purchaser entity has corporate shareholder (s), all the corporate documents of each shareholder would need to be attested, translated and presented to Dubai Land Department for assessment of the ultimate beneficiary. The seller would surrender its original title deed and the buyer would receive a new title deed in its name upon completion. This process usually takes no more than one to two hours provided all the requisite documents are ready and available.

Although prior due diligence by the buyer gives some assurance that the property has a good and clear title, it is possible for the seller to cause any changes to the property after the completion of the due diligence exercise and the buyer could choose to confirm the findings of the investigation closer to the transfer date, to the extent possible, to ensure that the property status remains unchanged.

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