

Brokers 101: What Every Property Purchaser must know about Real Estate Agents in Dubai

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The recent annual report published by Dubai Land Department reported that the total value of property transactions that took place in 2016 exceeded AED 259 billion. The report also recorded that the number of brokers have increased to a total of 5,933 in 2016, and out of which around 2,285 brokers' offices were active in 2016.

The above statistics demonstrate the prominent space occupied by the real estate sector in the Dubai economy. There is a huge demand for investments in completed properties as well as off-plan units and real estate agents are usually responsible for bringing the buyer and seller together. This article aims to provide a brief summary of the current brokerage laws and DLD policies about brokers' responsibility.

Bylaw 85 of 2006

Real estate brokers in Dubai are governed by RERA pursuant to 'Bylaw 85 of 2006 regulating the real estate brokers register in the Emirate of Dubai' ("Bylaw 85"). Bylaw 85 prohibits brokers from engaging in real estate brokerage activities unless they are duly licensed and registered in the broker register maintained by RERA. It also set out the types of license categories and list of requirements which must be met by every individual or company in order to operate as a broker in Dubai.

Every registered brokerage company is required to maintain a RERA registration certificate containing the brokerage license number, validity period of the registration, and approved brokerage activities. Similarly, each individual broker must be registered with RERA and must possess a broker identity card containing its registration number, validity period, and name of the employer brokerage company.

The primary list of obligations to be met by the brokers are the following:

- To verify the validity of the property title deed of the client (as stated in RERA circular number 8/2016 dated 3 August 2016);
- To maintain a private record of all transactions conducted by the broker together with supporting documentation (Article 15);
- To disclose all negotiation details, details of the brokerage process and all transaction details to his client (Article 17);
- To not facilitate any property transaction which is deemed in violation of the applicable laws and regulations in Dubai (Article 18);
- To disclose details of the transaction and conditions to the best of broker's knowledge and in good faith (Article 19);
- To not hold himself out to the other party without express authorisation (failing which the broker will not be entitled to any remuneration) (Article 20);
- To act as trustee of any amounts, securities, bonds or other items received from a party for either safekeeping or delivery to the other party subject to applicable trusteeship rules (Article 21);
- To forfeit right to claim fees or refund of expenses incurred in case of breach of contract committed by the broker towards its client or failure to act in good faith (Article 23);

- To remain jointly liable if more than one broker is engaged in a transaction unless expressly authorised to act severally (Article 24).

Brokerage Agreement and Remuneration

The brokerage agreement must be recorded in writing between the broker and the client and must record details of the contracting parties, property details and terms of the agreement. The brokerage commission amount must be agreed and stated in the agreement failing which the commission amount shall be determined pursuant to market practice.

The broker is required to register the signed brokerage agreement along with execution of the DLD standard form contract i.e. a Form A (i.e. contract between broker and seller) or a Form B (i.e. a contract between broker and buyer) and register the same with Dubai Land Department. For further information about the DLD standard forms, we refer to our Law Update article in July-August 2014 (which can be found on the Al Tamimi website).

Article 28 of the Bylaw 85 clearly stipulates that any payment of commission to a broker becomes payable subject to the terms and conditions set out in the duly registered and signed brokerage agreement. If the sale and purchase agreement between buyer and seller provides that payment of the broker commission is subject to fulfilment of certain conditions, then the broker is entitled to his commission once such pre-conditions have been successfully met. It is also imperative that Article 28 is read with Article 30 of Bylaw 85 which provides that if the negotiations of the broker does not result in conclusion of a contract between buyer and seller, then the broker is not entitled to claim any compensation or expenses unless agreed otherwise in the brokerage agreement. Considering the above, we recommend to always record the brokerage amount payable to the broker and the timing of such payment within the brokerage agreement or in the sale and purchase agreement to avoid any potential payment disputes.

Furthermore, if several brokers are appointed for a potential property transaction by the client, it is only the broker who can successfully conclude the transaction that becomes exclusively entitled to receive the full brokerage fees as per Article 32 of the Bylaw 85. However, if the same broker is appointed by both the potential buyer and seller for the same transaction, in that case both buyer and seller become severally liable to pay his share of the brokerage fees even if one party agrees that the other party shall bear the entire fees by virtue of Article 33 of Bylaw 85.

Cancellation of Brokerage License

Every registered broker must observe the RERA code of conduct failing which the broker shall become liable for any loss caused by either buyer or seller because of its fraudulent act or a result of failure to follow the rules of the Bylaw 85 or the code of professional ethics.

Article 39 of Bylaw 85 relates to the Permanent Real Estate Brokerage Committee (“Committee”) which has the authority to settle disputes and cancel or suspend the brokerage license in the event of failure to comply with the Bylaw 85 or any related resolutions or instructions by the broker. The Committee has the authority to issue caution to the broker by way of notice or warning or suspend its activities for a period up to six months or blacklist. Cancellation of the broker license is effected by a resolution of the Director General of the DLD in discussion with the Committee.

In addition, Article 41 of the Bylaw 85 also sets out grounds for loss of broker status and registration upon the happening of either of the followings events, (a) closure of the brokerage business and notification of the closure to DLD; (b) suspension of the brokerage business for more than 12 successive months without a valid reason; (c) failure to comply with the requirements of Bylaw 85 and its related regulations and instructions; (d) the registration of the broker is proven to

be granted on the basis of false information supplied to DLD; (e) cancellation of the brokerage license resolution issued by the Committee due to violation of the code of professional ethics or any applicable laws and regulations in Dubai.

Conclusion

Prior to engaging services of a broker, every property investor must verify if the broker is duly registered with RERA by inspecting their broker ID and registration certificate of the brokerage firm. The investor must also verify the authorised signatory of the brokerage firm who has the authority to sign the brokerage agreement. In conclusion, the property investor should conduct proper due diligence on the broker and agree on key terms in the brokerage agreement, to safeguard his interest.

Additionally, the broker must protect its own interests by always ensuring to agree on its commission amount in writing within the terms of the brokerage agreement. The broker should keep themselves up to date with the prevailing DLD policies and practices. Lastly, we always recommend the broker to avoid incorporating its duties and payments within the sale and purchase agreement (between buyer and seller) and contract separately in the brokerage agreement. By following the separate agreements approach, the broker can avoid becoming a party to any dispute that may arise between the potential buyer and seller.