

How to Solve Property Disputes in Dubai?

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During the 2008 financial crisis, we experienced major real estate disputes that helped to test Dubai real estate laws and identify its weaknesses. After almost a decade of implementation, Dubai's real estate laws and practice are much more robust.

Dubai now has a more mature real estate market after enacting several real estate laws regarding registration (including initial registration), strata, mortgages, escrow accounts and other laws and decrees. These laws clarify the rights and obligations of the real estate market stakeholders (i.e. investors, developers, banks and the land department) and helps them to understand their rights and best practices.

In this article we highlight the main real estate dispute resolution options in Dubai.

Amicable Settlement Centre (ASC) at Dubai Land Department (DLD)

We generally recommend that filing a claim with the Courts is a last resort for solving a real estate dispute given the cost and time involved.

We consider referring real estate disputes to the ASC is an efficient option because the ASC mediators are very experienced and have access to DLD databases, which help them to find facts and information about the properties, projects, developers and other information more efficiently. ASC does not charge fees to the parties and does not impose a judgment on the parties but seeks to mediate and to facilitate an amicable settlement. If successfully resolved, upon signing a settlement agreement, it becomes binding and enforceable against the signing parties. The ASC is located at DLD and managed by an expert legal team.

DLD Legal Affairs Department (DLD Legal)

Law No 19 of 2017 granted developers the right to terminate a defaulting purchaser's sale and purchase agreement without a court order provided specific procedures are followed. The termination process is actioned via a DLD online system. In our experience in assisting developers with this process, it takes around 3 to 4 months to terminate a sale and purchase agreement (including the notification period) in this manner. DLD Legal charges fee of AED 3,000 for this service (i.e. termination and deregistration of

purchasers' contracts). DLD Legal may also mediate a settlement between the developer and the defaulting purchaser. Investors have the right to lodge claims before court if any developer terminates an investor's purchase agreement wrongfully or in bad faith.

Judicial Committee for Liquidation of stalled projects (JCL)

The JCL was formed pursuant to Decree No 21 of 2013 in order to liquidate stalled projects. RERA has the authority to cancel stalled real estate projects (i.e. where construction has ceased or did not commence as set out in the Executive Council Resolution No 6 of 2010). JCL has exclusive jurisdiction over any dispute related to stalled projects and no other court or arbitration proceedings are permitted to decide on any stalled projects. The investors have the right to lodge their claims directly to the JCL through a designated website (<https://www.dc.gov.ae/PublicServices/CancelledRealEstateProjects.jsf>).

The JCL review the stalled projects (referred to it by RERA) as per its own timetable and we have noted that the liquidation process is a slow one due to complexity involved in such projects. Investors in stalled projects who were not referred to JCL may follow up with RERA and check the status of the project's liquidation.

The JCL has not published specific rules or procedures about the liquidation process but it has wide authority and its decisions are final.

Judicial Committee for bounced cheques

This Committee was formed pursuant to Decree No. 56 of 2009 as a result of the increased number of bounced cheques issued by investors to developers during the international financial crisis. The Committee has the jurisdiction to (i) cancel the cheques, (ii) reschedule the payments of the purchase price and instruct purchasers to issue new cheques to developers or (iii) refer the bounced cheques to the competent judicial authority if the developer is entitled to receive the amount of the bounced cheques. The Committee issues its decisions based on the progress of the construction and the developer's performance (or otherwise) of its obligations.

Arbitration via Dubai International Arbitration Centre (DIAC) and other institutions

Arbitration as an alternative dispute resolution mechanism is highly recommended for complex commercial cases. However, some property cases cannot be arbitrated for public policy reasons; therefore parties need to be very careful before referring any property case to arbitration.

DIAC (<http://www.diac.ae/ideas/>) is the region's most frequently used arbitral institution. There are many other frequently used arbitration centres in the UAE such as DIFC - LCIA, ADGM and the Sharjah International Arbitration Centre.

In our experience, cases are generally determined between an average period of 6-18 months. However, if enforcement is necessary, recourse to the Court will be required and a further delay, sometimes taking years, can result depending upon whether all appeal avenues are exhausted by an opponent.

A dispute may be heard by a panel of arbitrators, or a sole arbitrator, depending on the agreement of the parties. When a panel is formed, each party is generally entitled to nominate one arbitrator each.

A successful party is likely to have his costs (legal, expert, arbitrator) paid either in full or part by the other side. If the unsuccessful party does not pay the award sum voluntarily, enforcement in the Courts is again required. There are only limited grounds upon which enforcement can be denied.

Rent Disputes Settlement Centre (RDSC)

The RDSC was established pursuant to decree No 26 of 2013. The RDSC has exclusive jurisdiction over Dubai tenancy disputes in relation to the leasing of immovable assets. The RDSC has no jurisdiction over (i) long term leases (i.e. for a period exceeding 10 years), (ii) tenancy disputes in free zone areas which already have a court or judicial committee such as within the DIFC and (iii) lease to own contracts. RDSC judgments are issued by judges and can be appealed before an RDSC appeal committee subject to certain conditions. In general, the RDSC litigation process is very quick and the average time to obtain a judgment is between 2 to 3 months and it can be executed through the RDSC execution division. The RDSC has a mediation department that aims to resolve settlements between landlords and tenants prior to referring the case to judges. The fee to file a case with the RDSC is between AED 15,000 and AED 35,000 depending upon the nature of the claim.

Dubai Property Court

Dubai Property Court has jurisdiction over all property disputes except those excluded pursuant to other laws or decrees. There are three levels of Courts being First Instance, Court of Appeal and the Court of Cassation. If it is necessary to appeal to all levels, it could take up to two years or more before an enforceable judgment is issued. A judge who decides on a property case may appoint an real estate expert to assist him on some technical issues. All documents submitted to court must be in Arabic or translated to Arabic. Once an enforceable judgment is issued, it is referred to the execution judge. The maximum court fee for filling a case before the Court of First Instance is AED 40,000 but it may be more if the case is related to more than one contract. The successful party may recover only a minimal amount of its legal fees in addition to the court and expert's fee (if any) which are recoverable.

In our experience, referring property disputes to Dubai Property Court is a preferred option as compared to arbitration as most of the Dubai property laws have been tested in court and there is a good prospect of certainty in the decision making.

There are lots of excellent forums to resolve a property dispute without recourse to the courts. Depending upon the nature of the dispute, the sums involved and the pressures of time, care should be taken by any litigant to choose the correct forum for their requirements.

Al Tamimi & Company's real estate team and litigation team regularly advises on real estate disputes. For further information please contact [Mohammad Kawasmi](mailto:m.kawasmi@tamimi.com) (m.kawasmi@tamimi.com).