

New Regulations to Govern Ownership of Joint Properties in Bahrain

Unkar Chanian - Senior Associate - Real Estate
- Manama

Resolution 7 of 2018 Regulating the Owners' Associations and Joint Properties came into force on 26 September 2018 (**'Resolution'**).

The Resolution, which has been eagerly awaited follows previous resolutions that underpin Law 27 of 2017 Concerning the Promulgation of Real Estate Sector Regulation Law (**'Law 27 of 2017'**). The Resolution governs the management of buildings that are sub-divided into units such as apartments for separate ownership and common areas being the areas used in common by the unit owners.

Such buildings are also referred to as **'Joint Properties'** or **'Common Properties'** or **'Strata Properties'**. The Resolution provides a new legal framework for such buildings and replaces the previous governing procedures under the Civil Code and Directions issued by the Ministry of Justice in 2004. Additional resolutions may apply to more complex arrangements such as master communities or large complex mixed use buildings however, the Resolution will form the basis for the management of most Joint Properties in Bahrain.

Creation of an Owners Association

Under Article 62A of Law 27 of 2017, an owners' association ('OA') is established upon the sale and registration of the first unit at the Survey Land and Registration Bureau ('SLRB'), replacing the need for a notarised deed of incorporation and registration at the municipality.

An OA is constituted by all the unit owners and will have its own legal personality. Articles 19 to 24 of the Resolution prescribe a wide range of powers to the OA which include amongst others the ability to:

1. enter into contracts;
2. undertake litigation against both third parties and/or owners who are not paying their service charge;
3. obtain insurance;
4. lease common areas with any rent being paid into the OA's operational account; and
5. appoint a Real Estate Regulatory Authority ('RERA') licenced OA manager.

Registration Requirements

The Resolution imposes various registration obligations on developers which include:

1. providing the SLRB with a plan identifying the common areas, property boundaries, the units, accessory units and easements affecting the common areas (known as the Property Location Plan);
2. a schedule listing the units, accessory units, their numbers, both the interior and exterior sizes, the entitlement of each unit (i.e. the owner's proportion of the service charge and voting rights);
3. the Joint Property By-Law in a form acceptable to RERA;
4. the articles of association of the OA in compliance with Article 7 of the Resolution; and

5. the base plot title deed and the consent of any mortgagor.

Handover/Developer's Requirements

The developer is required to call a general assembly of the OA within three months of its establishment. In cases where the Joint Property is a villa development, the general assembly may be called after the completion of 10 percent of the villas. The developer must also create the common seal/stamp of the OA and prepare the annual budgets of the OA's operational and reserve accounts. The Resolution prescribes the general assembly requirements such as form of notice and quorum (which is 50 percent of the owners).

The OA may tender for service contracts for a maximum period of two years. The contract may be longer if the Joint Property is regulated by a RERA resolution for special management schemes. The developer is also disqualified from voting on any tenders for goods/services if the developer holds a stake in the service providers.

The developer must present all relevant documents at the OA's first general assembly including (but not limited to) built drawings, list of assets and copies of all construction contracts. The developer is also liable for the annual payment to the OA for units owned by the developer.

An OA is required to establish an operations account and a reserve account. The developer may also collect up to two years of service charges upon the sale of a unit; proceeds of which must be deposited within the OA's operations and reserve accounts.

Other Transitional Requirements

Existing OAs created prior to the Resolution must rectify their status prior to 25 March 2019. Also, where the sale of the first unit has been registered with the SLRB prior to the date of the Resolution and whether or not an OA has been established, the owners shall call for a general assembly prior to 26 March 2019 and comply with the respective obligations within the Resolution. Where a developer is managing a Joint Property at the date of the Resolution, it must comply with its requirements within six months of the Resolution. In cases where it is unclear who is managing the Joint Property RERA may authorise a third party to call the general assembly.

Owners Association Requirements

An OA's articles of association must be in the form provided by RERA and any deviation from the precedent form will require RERA's consent. RERA has provided guidance with respect to the drafting of standard Joint Property by-laws, which include (amongst others) the operational rules of the common areas and any internal dispute resolution process.

After 25 March 2019, the SLRB will not register transfer agreements in Joint Properties where the initial sale and purchase contracts have been entered into after the Resolution coming into force, until it has a certificate from the OA confirming that there are no outstanding service charge amounts. This clearance certificate requirement shall be waived if the OA is inactive or the buyer and seller agree to pay any outstanding amount.

An OA must elect a governing board that must have at least three and a maximum of nine members.

Where a Joint Property has less than nine units all the owners shall automatically constitute the OA's board. The Resolution specifies the board's obligations, length of tenure and the requirements of the OA's secretary and treasurer.

RERA Powers

RERA will provide certificates recognising that the OA is active, functioning, and further certificates that list the names of the board members and the OA manager or a transitional certificate for pre-Resolution OAs.

RERA has the ability to appoint an administrator to take control of an OA or where the OA refuses or fails to comply with the Law 27 of 2017 or its affairs are in disarray.

Conclusion

We await further resolutions from RERA in particular for special management schemes; however, Law 27 of 2017 and the Resolution now provide a clear framework for the creation and operation of an OA for Joint Properties, which align with international best practice.



Al Tamimi & Company's [Real Estate team](#) regularly assists developers and firms that market properties in Bahrain. For further information, please contact [Unkar Chanian](#) (u.chanian@tamimi.com).