



# REAL PROPERTY REGISTRAR'S DIRECTIVE FOR OFF PLAN SALES

Dated 11 February 2022

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The Registrar of Real Property of the DIFC Authority, in exercise of the powers under Article 172 of the Real Property Law, being Real Property Law, DIFC Law No. 10 of 2018 issued by the Ruler, and of all other enabling powers, makes the following Directive:

## **1. Introduction**

- 1.1. This instrument is the Real Property Registrar's Directive.
- 1.2. Application and interpretation
  - 1.2.1. A reference in this Directive to a law is a reference to that law as amended from time to time.
  - 1.2.2. A reference in this Directive to a Schedule is a reference to a Schedule in this Directive, unless the contrary intention appears.
  - 1.2.3. In this Directive, unless the contrary intention appears:
    - (a) "approved" means approved for the time being by the Registrar;
    - (b) "Law" means the Real Property Law, DIFC Law No. 10 of 2018;
    - (c) terms defined in the Law have the same meaning in this Directive as they have in the Law.
  - 1.2.4. The Rules of Interpretation contained in Schedule 1 to the Law apply to the interpretation of this Directive.

## **2. Commencement**

This Directive commences on the date of its issuance.

## **3. Off Plan Development Registration**

- 3.1. Further to the information and Documents specified in Article 159 (2) of the Law, the Developer shall submit to the Registrar the following information and Documents for the purposes of obtaining the Registrar's consent to the Registration of the Off Plan Development:
  - 3.1.1. a copy of the Sales and Purchase Agreement between the Master Developer and the Developer;
  - 3.1.2. the proposed payment plan payable by the Prospective Owner to the Developer which shall approved by the Registrar. For the avoidance of doubt, if the first instalment of the proposed payment plan is more than ten percent (10%) of the consideration payable by the Prospective Owner for the proposed Unit, then the Developer must provide to the Registrar a reason for requesting such amount from the Prospective Owner;
  - 3.1.3. the initial architectural designs and engineering plans for the Off Plan Development approved by the Relevant Authority and the Master Developer;
  - 3.1.4. a financial statement of the estimated cost and revenues of the Off Plan Development project certified by an accredited chartered auditor licensed in the DIFC; and
  - 3.1.5. an undertaking signed by the Developer undertaking to commence construction of the Off Plan Development upon obtaining the approval of the Master Developer for the Off Plan Development.

## **4. Off Plan Sales Agreements**

- 4.1. A Developer shall not enter into any Off Plan Sales Agreement until the Developer:
  - 4.1.1. completes twenty percent (20%) construction of the Off Plan Development as verified by the progress report issued by the Approved Project Assessor; or

- 4.1.2. deposits the cash equivalent of twenty percent (20%) of the actual cost of construction of the Off Plan Development into the Escrow Account, as specified in the contract between the Developer and the nominated Contractor or if such amount is not ascertainable from the contract, then such amount to be determined by the project consultant appointed by the Developer to manage the Off Plan Development; or
  - 4.1.3. submits to the Registrar a bank guarantee issued from a duly licensed UAE bank and in a form approved by the Registrar, equivalent to twenty percent (20%) of the actual cost of construction of the Off Plan Development, as determined in accordance with paragraph 4.1.2 above.
- 4.2. Further to the information and Documents specified in Article 160 (2) of the Law, the Developer must specify in the Off Plan Sales Agreement the consideration payable by the Prospective Owner for the proposed Unit.

**5. Disclosure Statement**

- 5.1. In addition to the information and Documents specified in Article 161 (3) of the Law and in accordance with Article 161 (3)(l) of the Law, the Developer must include in the Disclosure Statement the following information and Documents:
- 5.1.1. description of the Off Plan Development of which the proposed Unit will form a part;
  - 5.1.2. any sustainability features and ratings applying to the Off Plan Development, including details of the applicable rating authority;
  - 5.1.3. any items of furniture and furnishings being provided by the Developer for the proposed Units within the consideration payable by the Prospective Owner for the proposed Unit to the Prospective Owner;
  - 5.1.4. a schedule of materials and finishes to be installed in the proposed Unit;
  - 5.1.5. where the Body Corporate intends to supply and/or sell any utility services to the Prospective Owners, the details of such supply arrangements between the Body Corporate and the Prospective Owners; and
  - 5.1.6. details of the utility service providers supplying utilities to the Off Plan Development, including whether such utility service provider is affiliated to the Developer and an estimate of the annual cost of such supplies where such utility service provider is not a government entity.

**6. The Approved Escrow Agreement**

- 6.1. The Approved Escrow Agreement must contain the construction milestones that are required to be completed by the nominated Contractor for the Off Plan Development for the purposes of releasing funds from the Escrow Account pursuant to paragraph 7.4.
- 6.2. Further to the information and Documents required to be submitted to the Registrar in accordance with Article 162 of the Law, the Developer shall submit a copy of the Approved Escrow Agreement to the Registrar within five (5) days of the Developer and the Approved Escrow Agent entering into the Approved Escrow Agreement.

**7. Operation of Escrow Account**

- 7.1. The Developer must establish a separate Escrow Account for each Off Plan Development of the Developer in accordance with Article 162 (1) of the Law.
- 7.2. In the event a Developer obtains a Mortgage for the Off Plan Development, the Developer must deposit the amount borrowed under the Mortgage into the Escrow Account.

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- 7.3. Notwithstanding Article 162 (3) of the Law and provided the Developer has obtained the Registrar's prior approval to advertise, market or promote the Off Plan Development, the Developer may use a maximum of five percent (5%) of the Sales Revenue deposited into the Escrow Account at any time for advertising, marketing and promoting the Off Plan Development, provided such expenditure is accounted for in the Escrow Account statements referred to below. In such a case the Approved Escrow Agent shall release such funds directly to the nominated service provider of the Developer or to the Developer or a related party of the Developer (in the event such marketing activities are to be provided by the Developer or a related party of the Developer).
- 7.4. Pursuant to Article 162 (5), the Approved Escrow Agent shall be authorised to release funds from the Escrow Account to the nominated Contractor, subject to:
- 7.4.1. the Developer's project manager notifying the Approved Escrow Agent when a construction milestone has been completed by the nominated Contractor and submitting a request for payment to the nominated Contractor;
  - 7.4.2. the Approved Project Assessor visiting the Off Plan Development to verify completion of the relevant construction milestone; and
  - 7.4.3. the written confirmation of the Approved Project Assessor that the relevant construction milestone is completed.
- 7.5. Further to Article 162 (6) of the Law, the Approved Escrow Agent shall provide the Registrar:
- 7.5.1. with statements as to the Sales Revenue and released funds from the Escrow Account every three (3) months; and
  - 7.5.2. with any further information or data the Registrar requires.

The Registrar may request assistance from any person the Registrar deems appropriate to audit such statements, information, and data.

- 7.6. Further to Article 162 (8), no attachment for the benefit of any creditors of the Developer may be imposed on the Sales Revenue deposited into the Escrow Account.
- 7.7. If the Registrar has sufficient evidence that the Approved Escrow Agent has contravened the Law and/or this Directive, then the Registrar shall notify the Approved Escrow Agent in writing of the said contravention and specify a remedy period for the Approved Escrow Agent to remedy such contravention. An Approved Escrow Agent who commits a contravention of the Law and/or this Directive related to the release of funds from the Escrow Account is liable to a penalty of one percent (1%) of the amount that is the subject of the contravention. This penalty is irrespective and additional to any other penalties applicable for a contravention of the Law.

### **8. Default by the Prospective Owner**

- 8.1. In the event that a Prospective Owner defaults in its payment obligations under an Off Plan Sales Agreement, the Developer shall notify the Registrar in writing of the Prospective Owner's default and shall provide the Registrar with documentary evidence of the same including all and any notices served on the Prospective Owner pursuant to the Off Plan Sales Agreement.
- 8.2. Upon receipt of the notice and documentary evidence referred to in paragraph 8.1 above, if the Registrar decides that the Developer has not complied with the notice provisions in the Off Plan Sales Agreement or there are no such notice provisions, the Registrar shall serve on the defaulting Prospective Owner a notice giving the defaulting Prospective Owner thirty (30) days in which to remedy the default. If within that time the default is not remedied by the defaulting Prospective Owner or the Developer and the defaulting Prospective Owner do not reach an amicable settlement concerning the default, the Registrar will issue a document to the Developer stating that the Developer has fulfilled its obligations under the Off Plan Sales Agreement and specifying the percentage of completion of construction of the Off Plan Development verified by the Approved Project Assessor.

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8.3. Upon receipt of the document referred to in paragraph 8.2 from the Registrar, the Developer may take the following actions:

8.3.1. if construction of the Off Plan Development exceeds eighty percent (80%), then the Developer may:

- (i) continue with the Off Plan Sales Agreement with the defaulting Prospective Owner. The Developer shall retain all amounts paid by the Prospective Owner under the Off Plan Sales Agreement and request the Prospective Owner to pay the outstanding amount due from the Prospective Owner under the Off Plan Sales Agreement;
- (ii) obtain the Registrar's approval to sell the Unit by way of public bidding process or on the open market and the proceeds received from such sale shall be set off against the outstanding balance of the consideration payable by the Prospective Owner for the Unit and account to the Prospective Owner the remaining proceeds of such sale, also indicating the reasonable costs of the Developer incurred in selling the Unit, if any; or
- (iii) unilaterally terminate the Off Plan Sales Agreement and retain forty percent (40%) of the total consideration paid by the Prospective Owner to the Developer and refund the remaining amount of the consideration to the Prospective Owner within one (1) year of the date of termination of the Off Plan Sales Agreement or within sixty (60) days of the date of Transfer of the Unit to another party, whichever occurs earlier,

8.3.2. if construction of the Off Plan Development is between sixty percent (60%) to eighty (80%), then the Developer may unilaterally terminate the Off Plan Sales Agreement and retain not more than forty percent (40%) of the total consideration paid by the Prospective Owner to the Developer. The Developer shall refund the remaining amount of the consideration to the Prospective Owner within one (1) year of the date of termination of the Off Plan Sales Agreement or within sixty (60) days of the date of Transfer of the Unit to another party, whichever occurs earlier;

8.3.3. if construction of the Off Plan Development is less than sixty percent (60%), then the Developer may unilaterally terminate the Off Plan Sales Agreement and retain not more than twenty five percent (25%) of the total consideration paid by the Prospective Owner to the Developer. The Developer shall refund the remaining amount of the consideration to the Prospective Owner within one (1) year of the date of termination of the Off Plan Sales Agreement or within sixty (60) days of the date of Transfer of the Unit to another party, whichever occurs earlier.

8.4. In the event of a conflict between paragraph 8 of this Directive and any default provisions in the Off Plan Sales Agreement, the terms of paragraph 8 of this Directive shall prevail.

### **9. Non-commencement of the construction of the Off Plan Development**

In the event that the Developer has not commenced construction of the Off Plan Development due to reasons beyond its control and has obtained prior approval from the Registrar, the Developer has the right to unilaterally terminate any Off Plan Sales Agreements related to the Off Plan Development and retain not more than twenty five percent (25%) of the total consideration paid by the Prospective Owner to the Developer. The Developer shall refund the remaining amount of the consideration to the Prospective Owner within sixty (60) days of the date of termination of the Off Plan Sales Agreement.

### **10. Termination without a Court order**

Termination of the Off Plan Sales Agreement by the Developer in accordance with paragraphs 8.3 and 9 does not require an order of the Court, provided the Developer has complied with paragraphs 8 and 9, as the case may be.