

## MONTHLY NEWSLETTER (March, 2020)

*In this issue, we would like to bring to your attention a brief overview of the recent legal news concerning the following:*

- *Our outstanding legal articles in March 2020;*
- *The remarkable news in March, 2020.*

### 1. Our outstanding legal articles in March, 2020

LL. M. - Associate Mr. Tran Chau Hoai Han had a legal article on intellectual property assets in M&A transactions. The article was published on the Saigon Economic Times on March 5, 2020, titled "IP Due Diligence in a M&A deal". To read and understand the entire article, please visit [here](#).

### 2. The remarkable news in March, 2020

**Application of case law in determining the right to rent, the purchase of dwelling house owned by the State and resolve disputes on the division of joint property on purchase of house discount prices.**

Case law No. 31/2020/AL was adopted by the Council of Judges of the Supreme People's Court on February 5, 2020, on determining the right to rent or purchase of dwelling houses by the State, under Decree No. 61/CP dated July 5, 1994, of the Government on property rights.

Accordingly, for cases in which individuals are eligible to buy State-owned houses under Decree No. 61/CP of July 5th, 1994, of the Government on housing trading and business, which when they are still alive, they do not carry out procedures for purchase of house discount prices according to law provisions, this is also considered as property rights and transferred to their inheritance after death.

The content of the case law is summarized as follows:

Mr. Nguyen Thanh T who have contributed to national liberation struggles, so he was granted the house No. 63 Street B, Ward H, District I, Ho Chi Minh City mentioned above by the Military Region 7 according to the standard of military officers. Until 1995, Mr. T died, he still had not made the procedure to purchase of house discount prices for the house No. 63 on-street B, and also did not leave testament.

Mrs. H, Mr. T1 and Mr. T2 are Mr. T's child. However, before the death, Mr. T made a power of attorney for Mrs. L, her second wife's stepchild, to handle the house-related matters. In 1998, Mrs. L applied to the Military Region 7 Real Estate Council to ask for the purchase of house discount prices No. 63 as mentioned earlier according to Decree 61/CP, then Mrs H and Mr T1 have complained not to agree for Mrs L purchase the house on under the preferential treatment of Mr T. In the Minutes of complaints resolution of the Inspectorate Ministry of Defense, the two parties agreed to the agreement: "agree to Mrs. L purchase a house no. 63 on-street B. The division of value after deducting the cost of obligations for the State, the remaining value is negotiated by the women. If it not resolved, the law will be applied to settle." Besides, in the Minutes of complaint resolution of the People's Committee of Ward H, Mrs. L also confirmed that she agreed to implement the commitments in the resolution minutes of the previous Ministry of Defense Inspectorate.

On October 02nd, 2001, Department A of Military Region 7 signed a contract to lease L the house. After that, the Military Region 7 Real Estate Council carried out procedures to sell the house to Mrs. L under Decree 61 / CP. On October 09th, 2002, Mrs. L and her husband (Mr. H3 died in 2006) were granted a Certificate of house ownership and land use right for house No. 63, street B; and Mrs. L thought that it was her private property. According to Mrs. H, from 1998 until the time of suing, Ms L did not divide the value of the house as agreed in the Resolution Minutes of the previous Ministry of Defense Inspectorate.

After having an application for a protest of the cassation trials, through the considered process, at the cassation Court sessions, the Court has assessment:

- i. According to Article 188 and Article 634 of the Civil Code 1995, Mr. T's right to rent and purchase house discount prices is property rights (value in money) and transferred to Mr. T's inheritance. Therefore, Mrs. H and Mr. T1 inherited the right to rent and purchase house discount prices of Mr. T;
- ii. Mrs. L's purchase of house No. 63 on-street B above due to the agreement between Ms. H, Mr. T1 and Ms. L on the resolution minutes on July 05th, 2001, so the Military Region 7 gave Mrs. L purchase house discount prices. Therefore, there is the basis to determine that house No. 63, Street B, is the common property of Mrs. H, Mr. T1 and Mrs. L;
- iii. Mr. T makes a power of attorney for Mrs. L to handle matters related to the house (regarding procedures) rather than authorizing Mrs. L to own the whole home as determined by the Appellate Court in advance. And Mrs L concludes that house No. 63 owned by her and her husband (Mr. H3 died in 2006) is not right, does not guarantee the rights of Mr. T's child;
- iv. The first-instance and the appellate court has not verified that Mrs L is allowed to purchase a house according to which priority? Is reduced for money to buy homes and land under what regime? Whether is the priority regime of Mr T or martyr's child regime of Mrs L? How are the reduction of the purchase price based on the working year and the percentage ratio considered?;

v. The determination of the percentage of the value of the house to divide to Ms. H, Mr. T1 and Mrs. L is not correct.

Cassation Decision No. 05/2018/DS-GDT dated April 10th, 2018, of the Council of Judges of the Supreme People's Court, decided: Cancel the Appellate Civil Judgments and First-instance Civil Judgments formerly of the case. Deliver the case file to the Ho Chi Minh City People's Court for re-trial at first-instance following regulations.

Case law No. 31/2020/AL was published under Decision No. 50/QD-CA dated February 25th, 2020, of the Chief Justice of the Supreme People's Court, effective from the date of signing.

We hope this short Letter of legal updates would bring you useful information.

Best regards.

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## ABOUT US,

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