

LEGAL UPDATE (August 25th, 2021)

In this issue, we would like to bring to your attention to the following:

- New articles on land-use regulations will take effect from September 01st, 2021.
- Some notable features for the draft amendments and supplements the Decree to specifying several Law on Real Estate Trading articles.

1. **New articles on land-use regulations will take effect from September 1st, 2021**

On June 30th, 2021, the Minister of Natural Resources and Environment issued Circular 09/2021/TT-BTNMT amending and supplementing several articles of the circulars detailing and guiding the implementation of the Law on Land (hereinafter referred to as “**Circular 09/2021**”) with some remarkable contents as follows:

a) Supplementing the case that no permission is required when changing the land use purpose but having to register the land change:

According to current regulations, if converting commercial or service land to non-agricultural production and business land that is not commercial or service land, it is not required to obtain permission from a competent authority but must register the land change. However, Circular 09/2021 amends and supplements for the above case specifically as follows: “Transfer of commercial and service land **to other types of land belonging to non-agricultural production and business land is not a non-agricultural production base**; converting non-agricultural production and business land that is not commercial land, service land, **non-agricultural production establishment land to land for construction of non-business works.**”

b) Not having to submit a copy of the household registration book or ID card or citizen identification card when carrying out the procedures for registration of land, the assets attached to the land, and issuance of a Certificate of land use rights:

The land user shall submit a dossier to carry out the procedures for registration of the land and land-attached assets and issue a Certificate, which requires the composition of a copy of the ID card or the Military ID card or the citizen identification card or the household registration book or other documents proving identity, the receiver of the competent authorities shall apply data from the National

Population Database without requiring the applicant to submit these documents in which case national data on population is shared and linked to land sector data.

c) Additional 02 cases are granted Certificates of land use rights, ownership of houses and other land-attached assets (hereinafter referred to as "Certificate") when register the land change:

Circular 09/2021 supplements 02 cases of being granted Certificate when registering of changes, including:

- The land plot is separated to issue a separate Certificate in case the Certificate has been issued jointly for many plots;
- Change of residential land area in a land parcel with gardens and ponds attached to houses due to re-determination of residential land areas according to regulations.

d) Regulations of the compensation funds must be shown in the compensation, support and resettlement plan:

Besides households and individuals, Circular 09/2021 supplements "Organization" as the subject of compensation and support for the remaining land area after revoked that is not eligible for continued use. Simultaneously, it stipulates the cost of compensation and resettlement support as follows:

- Organizations, households, and individuals using agricultural land or non-agricultural land that is not residential land when the State revoked land, but the remaining land area of the revoked land parcel is not eligible for continued use according to regulations of the People's Committee of the province. Suppose the land user has an application for land recovery that the People's Committee shall consider and decide on land revoke and make compensation and support according to the laws.
- When the State revoked land for the above case, funds for compensation and support must be reflected in the compensation, support, and resettlement plan and be included in the State's compensation, support, and resettlement funds in the investment projects.

The Circular No. 09/2021 shall enter into force as of September 01st, 2021.

2. Some notable features for the draft amendments and supplements the Decree to specifying several Law on Real Estate Trading articles

Currently, to complete the draft Decree before submitting it to the Government for promulgation, the Ministry of Construction has requested businesses and organizations to contribute comments on the draft Decree stipulating some provisions of the Law on Real Estate Trading. If this draft is approved, this new Decree will have some important contents in the field of real estate business as follows:

a) Conditions of organizations and individuals conducting real estate trading:

- Supplementary business conditions for organizations and individuals:
 - + Must disclose information about the enterprise, including name, head office address, legal representative and contact phone number and information in the Portal of the enterprise's website, the Portal of the housing authority's web of the province where the enterprise registers its business and where the real estate is put into business;
 - + Only conducting real estate trading when fully meets the conditions specified in Article 9, Article 55 of the Law on Real Estate Trading.
- Supplementary business conditions for real estate project investors:
 - + Owners' capital is not less than 20% of the total investment capital for projects with a land-use scale of less than 20ha, and not less than 15% of the total investment capital for projects with a land-use scale of 20ha or more.
 - + The determination of owners' capital is based on the results of the most recent audited financial statements or the results of the independent audit reports of the enterprise (made in the year of business investment or the previous year adjacent to the year participating in real estate investment and business).

b) *Supplementing conditions of organizations, households and individuals conducting real estate trading on a small scale, not regularly:*

- Small-scale real estate business is defined as the sale, lease, lease-purchase of houses, construction works, transfer, lease or sublease of land use rights below the land area, area floors for construction of houses and construction works shall be prescribed by the provincial-level People's Committees.
- Irregular real estate trading includes the following cases:
 - + Organize the sale of houses, construction works, transfer of land use rights due to bankruptcy, dissolution or division following the laws;

- + Organize the sale, transfer, lease, lease-purchase of the state-owned real estate when permitted by competent state authorities under the laws;
- + Credit institutions, foreign bank branches, asset management companies of the credit institutions (AMC), asset management companies of Vietnamese credit institutions (VAMC) to sell houses, construction works, transfer of land use rights, transfer of projects under guarantee or mortgage for debt recovery in accordance with the laws;
- + Organizations, households and individuals selling houses, construction works, transferring land-use rights under decisions of the Courts or the competent state authorities when settling disputes, complaints and denunciations;
Tổ chức, hộ gia đình, cá nhân bán nhà, công trình xây dựng, chuyển nhượng quyền sử dụng đất theo quyết định của Tòa án, của cơ quan nhà nước có thẩm quyền khi giải quyết tranh chấp, khiếu nại, tố cáo;
- In (i) small-scale real estate business and (ii) irregular real estate trading, the general conditions are not required for real estate business but must declare and pay tax according to regulations under the laws.

c) Some other regulations

- The contract in real estate trading must be made according to the prescribed form. Based on these forms, the parties may agree to add other contents to suit each case but must not be contrary to the terms, clauses, and contents already agreed upon in the form, contrary to social ethics and the provisions of the laws.
- Suppose the parties carry out the procedures for signing a contract for purchase and sale or lease-purchase of a house or construction work. However, by the effective date of this Decree, the parties have not yet signed the contract that they must sign according to the form as specified. Enterprises and cooperatives engaged in real estate trading are responsible for fully supplementing the conditions within 12 months from the effective date of this Decree.
- In case a Vietnamese citizen has been granted a citizen ID with a chip, a personal identification number according to the provisions of the Law on Citizen Identification and the national population database, investment registration database, business registration database is connected and operated. Therefore, they may use the database instead of documents related to personal identity (household registration, people's identity card, passport, and other personal identification papers) when carrying out real estate trading and housing procedures following the Law on Real Estate Trading and the Law on Housing.

We hope this Legal Updates would bring you useful information.

Best regards.

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