

LEGAL UPDATE (April 14th, 2023)

Official regulations on granting certificates of ownership in Condotel construction

Despite Land Code 2013 producing many decrees, circulars, and joint circulars guiding the implementation of the provisions of the Land Law, nevertheless, there are still shortcomings and gaps in issuing house ownership certificates for customers who buy all kinds of real estate, such as condotel, resort villas, and office apartment,.. when they satisfied conditions on land use rights documents, construction permits... Because none guides the sequence or procedures for issuing the certificate to customers buying these properties from the investor, a certificate is only given to the investor and granted to the whole project, the whole block, or each part of the construction. Therefore, the Government has just issued Decree 10/2023/ND-CP amending and supplementing several articles to guide the implementation of articles of the Land Code, especially the official regulations on certificates ownership of the Condotel project, will take effect from May 20, 2023, including specific changes:

1. Decree No. 10/2023/NĐ-CP amendments and supplements regulations on certification of ownership of construction works used for tourist accommodation purposes in accordance with the law on tourism on commercial and service land

Decree No. 10/2023/NĐ-CP has amendments and supplements to clause 5 article 32, for construction projects developed to serve travel accommodation purposes as prescribed in laws on tourism on commercial or service land, if any of them satisfies the conditions set forth in laws on land, construction and real estate business, the ownership of that construction project attached to land is certified according to the commercial or service purposes of land as prescribed in clause 3 of Article 126, and clause 1 of Article 128 in the Law on Land. Owners of these construction projects shall be held legally responsible for strict compliance with the conditions prescribed in law on construction and law on real estate business.

Under clause 3 article 126 and clause 1 article 128 have provided the term for land allocation or land lease to organizations for the purpose of agriculture, forestry, aquaculture or salt production; to organizations, households or individuals for the purpose of trading and services or for non-agricultural production establishments; to organizations for implementing investment projects; to overseas Vietnamese and foreign-invested enterprises for implementing investment projects in Vietnam, shall be considered and decided on the basis of the investment projects or applications for land allocation or land lease, but must not exceed 50 years. For large investment projects with slow recovery of capital, projects in areas with difficult socio-economic conditions or with especially difficult socio-economic conditions which require a longer term, the term of land allocation or land lease must not exceed 70 years.

For projects on construction of houses for sale or for a combination of sale and rent or for lease-purchase, the land use term shall be determined in accordance with the duration of the project. Those who buy houses associated with land use rights may use land for a long and stable term.

At the expiry of the term, if the land users still have land use needs, the State shall consider an extension which must not exceed the term prescribed in this Clause. The land use term in case of transfer of land use rights for the land with definite land use term is the remaining period of the land use term defined prior to the transfer of land use rights.

Moreover, the government also amends, supplement at article 72 of Decree 43/2014/NĐ-CP about processes and procedures for registration and grant of Certificates to transferees of land use rights and buyers of residential houses or construction facilities of housing development projects and real estate business projects other than housing development projects.

Investors shall be responsible for submitting the following documents to the Departments of Natural Resources and Environment:

- *For housing development projects:*

The Certificate or the decision on land assignment or lease of a competent authority; the documentary evidence of the investor's discharge of financial obligations. If there is any change in financial obligations, the documentary evidence of discharge of financial obligations arising from such change shall be needed (except when the investor is granted exemption from submission or permission for late submission prescribed in laws);

The layout plan of the house and land after construction, which is an as-built drawing or a floor plan containing information about measurements of sides of each sold apartment according to the actual condition of the construction work and the contract already in effect; the construction permit (if any); the notice that a specialized construction authority issues to permit the investor's acceptance testing of the construction work or approve the results of the acceptance testing of the construction work under laws on construction; the list of apartments and construction works (including information about the apartment identity number, land area, construction area and area of common and private space of each apartment). For an apartment building project, the layout plan must describe the coverage (i.e. dimensions and area) of the land commonly used by apartment owners, the construction floor area of the entire building, and the floor plan of the entire building, the plan of each floor and each apartment unit.

- *For real estate business projects other than housing development projects:*

The Certificate; the documentary evidence of the investor's discharge of financial obligations. If there is any change in financial obligations, the documentary evidence of discharge of financial obligations arising from such change shall be needed (except when the investor is granted exemption from submission or permission for late submission prescribed in laws).

The floor plan conformable to the actual construction condition and the contract already in effect; the notification that a specialized construction authority issues to grant the investor permission for acceptance testing of an item of work or a construction work, or approval of results of acceptance testing of an item of work or a construction work under laws on construction; the list of assets (e.g. items of work, construction works, parts of construction works), including information about their names, land area, common or private construction area of each asset.

Within 30 days of receipt of the valid application, the Department of Natural Resources and Environment shall inspect the actual condition of land, residential house and non-residential construction work, and the investor's conformance to regulations on transfer of land use right and sale of the residential house or construction work.

After completing the inspection, that receiving Department of Natural Resources and Environment shall be responsible for notifying the investor of the inspection results; sending the notification, enclosing the layout plan of the inspected house, land and non-residential construction work to the Land Registration Office in order for it to complete the procedures for granting registration of the residential house, land and non-residential construction work in the name of the buyer if the application fully meets all of the legally prescribed conditions; publishing the inspection results on the website of the provincial People's Committee and/or the Department of Natural Resources and Environment having authority over the land in question.

Each housing project investor is required to submit 01 set of application documents for registration and grant of the Certificate on behalf of the transferee of land use right or the buyer of the residential house or non-residential construction work, or provide necessary documents for the buyer so that they can seek registration on their own. A set of application documents shall include the following:

1. The written application form for registration of land and land-attached property and for grant of the Certificate;
2. The contract on transfer of land use right, sale and purchase of the residential house or non-residential construction work as prescribed in laws;
3. The record of handover of the residential house, land or the non-residential construction work.

Land registration offices shall assume the following responsibilities:

- Check legal documents enclosed in the set of application documents; certify that an applicant is eligible or ineligible for the Certificate in the written application for registration;
- Send cadastral data and figures to a tax authority to determine financial obligations;
- Provide latest updates to the cadastral records and land database (if any)
- Grant the Certificate according to Article 37 in this Decree;
- Request each project investor to submit the Certificate that they have been granted for adjustments to the cadastral records and land database;
- Confer the Certificate to the applicant.

Land registration offices shall receive applications, handle registration procedures for registration and grant of Certificates to transferees of land use right, buyers of houses and non-residential construction works in housing development projects and real estate business projects other than housing development projects if all required application documents prescribed in clause 3 of this Article are submitted.

2. Implementation of online land-related administrative procedures

In Decree No. 10/2023/NĐ-CP has an interesting supplement, the government will conduct an online land-related administrative procedures, this is an amended provision in Clause 1 of Article 6, supplementing Clauses 7 and 8 in Article 60 of Decree No. 43/2014/NĐ-CP.

Based on specific conditions relating to land-related information technology infrastructure and land databases put under their management, agencies receiving and handling land-related applications specified in this Article shall be responsible for receiving and notifying decisions on land-related applications online according to the Government's regulations.

Online administrative procedures for registration and grant of Certificates shall be implemented as follows:

An agency receiving and notifying decisions on land-related applications shall be responsible for following land-related administrative processes and procedures prescribed in laws on land; when needing to verify land-related applications, or failing to issue decisions on land-related applications within the prescribed time limits for handling of land-related applications due to other causes, the agency receiving and handling land-related applications shall send applicants notifications issued in writing or via the Public Service Portal or SMS, clearly stating reasons for those actions.

Land users and land-attached property owners shall be responsible for meeting financial obligations pursuant to laws directly or online via the payment solution embedded into the Public Service Portal.

The application receiving agency or the application handling agency shall request the applicant to submit the original Certificate, enclosing other documents as legally required, after the land user has fulfilled financial obligations.

Decisions on applications for registration of land and other land-attached property; for issuance, replacement or reissuance of Certificates shall be issued at offices of land-related application receiving agencies or by public post, or to the given addresses of recipients.

We hope this Legal Newsletter would bring you useful information.

Best regards.

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