

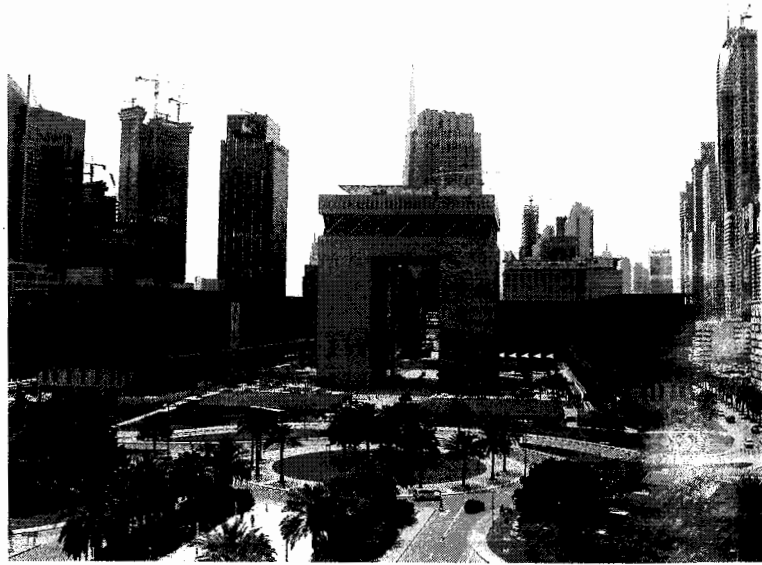


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›Every month, we invite you to have your property questions answered by an expert. This month, Andrew Yule tackles the task.



Q I bought an off-plan unit in the DIFC, but the project has been hit by various delays. Are the real estate laws in the DIFC the same as the ones that apply to the rest of Dubai?

A The real estate laws of Dubai do not apply in the DIFC. However, the DIFC does have its own specific real estate laws. Those laws are not as great in number as those that apply in Dubai. For example, in the DIFC there is no equivalent of Dubai's escrow law and there is no equivalent of Dubai's laws that detail (a) the procedure by which a developer may terminate a property contract where the purchaser falls into arrears; and (b) the moneys that the developer may retain in the event of such termination.

While the DIFC does have a strata law, its provisions do not mirror the provisions of Dubai's strata law and regulations. In short, purchasers should not assume that they will enjoy the same rights and will be bound by the same obligations in the DIFC as in 'Dubai proper'.

Q In the residential tower in which I live, a number of unit owners have failed to pay the service charge to the developer. The developer is now threatening to cut off services. Can the developer do this?

A I note you refer to the threats coming from the developer, but under the strata regulations, the developer ought to have filed for the registration of an owners association by October 13, 2010 — and it should be this owners association that imposes the service charge. The strata regulations prohibit the imposition of any service charge without obtaining the written consent of Rera.

As a first step, it is worth investigating (both with the developer and with Rera) whether an owners association has been registered and whether Rera approval of the service charge has been obtained. If Rera has not approved the service charge, the services should not be disrupted.

On the other hand, if approval has been obtained, then, provided there have been a number of attempts to recover the service charge from the unit owners in question, a disruption of non-essential services to the unit owners in arrears could be argued to be permissible under the strata regulations. Ultimately, if a unit owner persists in non-payment, the owners' association has the power to have the unit sold in order to recover the arrears.

Q I bought a villa off-plan from a developer a few years back. There has not been much progress with construction and now it has been suggested to me that the developer may be willing to cancel the contract and give me a 'credit note'. What would this mean?

A Putting it simply, in Dubai credit notes tend to work as follows: A developer is undertaking a number of projects. A purchaser has contracted to buy a unit in one of those projects. The purchaser has paid moneys towards that unit, let's say Dh500,000. Instead of the developer and the purchaser proceeding with the sale/purchase of that unit, the developer could offer to give the purchaser a document (that is, a credit note) saying "the holder of this document is deemed to have paid [for example] Dh400,000 towards a unit in any of our projects".

The purchaser is then free to use the credit note himself, or to sell the credit note to a third party. The benefit of the credit note to the purchaser is that he is released from a purchase he no longer wishes to make. The developer benefits as the face value of the credit note will be lower than the moneys the developer was paid by the purchaser.

Q My family and I are leaving Dubai soon. I recall reading that the strata regulations introduced a new regime whereby folk, like me, who are selling property will have to make certain disclosures. Is it true?

A There is a new disclosure regime. Where the seller is a consumer, and the sale contract is signed on/following July 13, 2010 up to and including January 12, 2011, the consumer must (a) attach to the sale contract a notice to the purchaser in the form prescribed by Rera; and (b) give to the purchaser a complete copy of any Interim Disclosure Statement that he received when the unit was bought. Where the sale contract is signed on/following January 13, 2011, the consumer must give to the purchaser a complete copy of any Full Disclosure Statement that he received when the unit was bought.

In the event of failure to comply with this obligation, the sale contract is void and of no effect. The Interim Disclosure Statement must contain a description of the building or project of which the unit forms part. It must include, among other things, (a) a schedule of materials and finishes for the common areas and the unit; and (b) a reasonable estimate of the date on which the property will be handed over to the purchaser. The Full Disclosure Statement must contain all the information necessary for the Interim Disclosure Statement. It should also include an estimate of the service charges payable in respect of the unit during the first two financial years. ■

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