

## UAE

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## Forewarning about foreclosure

The establishment of transparency and predictability in the mortgage market were the primary aims of Dubai's Law 14 of 2008 (Law 14). Law 14 specifies that a mortgage must be registered with the Dubai Land Department for it to be valid. The Dubai Land Department must be informed of the size of the mortgage secured against the mortgaged property, the repayment period and the value of the loan.

Law 14 sets forth a procedure to be followed by a lender where the debtor has fallen into default and the lender wishes to

enforce the mortgage. If the debtor defaults, the lender must give the debtor 30 days notice through the Dubai Notary Public before commencing proceedings against the debtor.

Where (within that 30-day period) the debtor fails to pay the lender the monies owed, the lender can apply to the Court for an attachment against the mortgaged property, allowing the mortgaged property to be sold by public auction in accordance with the Land Department's procedures.

The Court has the power to postpone the issue of the attachment

for up to 60 days. Such postponement may only take place if the debtor persuades the Court that (i) the debtor will be able to repay the debt within 60 days or (ii) the sale of the mortgaged property will cause the debtor "substantial damage".

Following an order from the Court of an attachment against the mortgaged property,

the next stage is for the Court to liaise with the Dubai Land Department, such that the Dubai Land Department sells the mortgaged property by public auction.

The debt owed to the lender would be paid from the sale proceeds. If the sale proceeds are insufficient to cover the debt owed to a lender, that lender retains a claim against the debtor for that sum. Where there is more than one mortgage, the holder of the earliest registered mortgage is paid first.

The crucial point of note is that Law 14 does not permit lenders the remedy of "self-help". For this reason it is somewhat inaccurate and misleading that various press reports have suggested that certain lenders have been "foreclosing" and "repossessing" Dubai properties from debtors, with the lenders seizing and selling the property themselves.

Lenders can be reluctant to take recourse to the Law 14 enforcement process for assorted reasons. At a general level, it remains unclear how the Court will react to a request by a lender to enforce its mortgage, especially because of the principles of UAE law that make it difficult for a debtor to have his primary home taken from him. Additionally if lenders rush to have mortgaged property sold at public auction, this flood of properties into the market place might simply drive prices lower, which, whilst not being the primary concern of the lenders, would cause them anxiety by risking increasing negative equity across their lending portfolios.

More specifically, (i) there may be a considerable delay whilst the Court and the Land Department work their way through the Law 14 enforcement procedure, and therefore an equivalent delay before the lender eventually receives payment of its debt and (ii) fees will be payable both to the Court and to the Land Department in respect of the Law 14 proceedings.

Accordingly, if lenders have not been "repossessing" mortgaged properties, what has been taking place – how have lenders been recovering monies owed to them?

In most of the cases that have been reported in the media, it appears that the debtor and the lender have come to a private agreement whereby the lender (or more likely some third party) buys the mortgaged property directly from the debtor. Where the debtor and the lender agree a price in excess of the mortgage, presumably the lender receives the portion of the price equivalent to the unpaid mortgage and the debtor receives the excess.

In contrast to a public auction sale, under a private arrangement between debtor and lender, the parties could agree to keep the price confidential to try and avoid any knock-on downward pressure on the level of prices in the marketplace.

In the alternative, and as has been seen in Europe and America, lenders will often simply take a flexible attitude when it comes to repayments from the debtor, perhaps allowing informal payment holidays or introducing a more debtor-friendly payment schedule. This can be done either with a view to the debtor eventually repaying the entire monies owed to the lender, or, where the lender is sceptical about the debtor's ability to do that, as a delay prior to enforcement of the mortgage, during which period the lender hopes to see prices in the market improve.

Where no such solution can be agreed between the lender and the debtor, perhaps where the debtor has fled the country and is refusing to return, the lender may be forced to resort to the Law 14 enforcement procedure.

Until now, the concept of and the procedure for the formal Law 14 enforcement of mortgages in Dubai has been unfamiliar to many in the marketplace. This situation looks likely to change but given the urgency and importance that some lenders are placing on receiving cash from debtors in default, it appears that lenders will also innovate alternatives to the formal Law 14 enforcement procedure.



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