



DIFC

CONSULTATION PAPER NO. 6

December 2011

AMENDMENTS TO THE REAL PROPERTY LAW

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on certain proposed amendments to the Real Property Law, DIFC Law No. 4 of 2007 (the "Law").

Who should read this paper?

2. The proposals in this Consultation Paper would be of interest to:
 - (a) property owners;
 - (b) developers; and
 - (c) legal advisors.

How to provide comments

3. All comments should be provided to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. DIFCA reserves the right to publish including on its website any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

4. The deadline for providing comments on this proposal is 14 January 2012. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to issue the changes to the Law. Because this is still a proposal, you should not act on them until the relevant changes to the Law are made. We will issue a notice on our website advising you when this happens.

Comments to be addressed to:

Roberta Calarese
Chief Legal Officer
Legal Affairs
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, UAE

or e-mailed to: roberta.calarese@difc.ae

Amendments to the Real Property Law

Defined Terms

5. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

6. Since the enactment of the Law in 2007, a number of issues relating to the application of the Law have come to surface. The proposed amendments seek to clarify certain areas of the Law, remove ambiguities and have been benchmarked against international standards.
7. The proposed changes to the leasing and lapsing provisions are in line with international best practice and, in particular, Australia from which the Law was fashioned.

Legislative Proposal

8. The legislative proposal is attached at Annex A. Below is an explanation of the substantive proposed changes.

Article 12

As the Law stands, there is no power of delegation by the Registrar. In practice this has caused some problems and there appears to be no legal reason as to why such power should not be there. We propose to insert a new paragraph (7) to allow the Registrar to delegate his functions and powers in the manner prescribed in the Law.

Article 54 Unregistered leases

As the Law now stands, a tenant has a right to terminate a lease where a landlord has not lodged the lease for registration within 7 days of signing. The provision, as set out in the Law, is unusual by international standards. Nevertheless, the Landlord should lodge the lease for registration within a reasonable time (28 days) and if not then he should be subject to a penalty.

The amendment proposed is to eliminate the tenant's right to terminate a lease where the landlord has not lodged it for registration but at the same time to impose penalties for continued failure to do so on the part of landlord.

Article 122 Lapsing of caveats

Article 122(1) restricts its application to persons other than registered freehold owners or situations where the consent of the registered freehold owner is deposited when a caveat is lodged. Generally a party wanting to make an application for the lapsing of a caveat would either be a registered proprietor or a party who will be a registered proprietor once the sales and purchase agreement

Amendments to the Real Property Law

has been finalised (i.e. a developer, or a registered proprietor that disputes a caveator's claimed interest). An application under Article 122 of the Real Property Law is the preferred method of removal of a caveat in circumstances where the application may be disputed. The restriction sought to be removed places the Law in line with international best practice.

Article 157. Compensation from assurance fund

Where a party has acted in reliance of the Register and there is an error because an instrument was registered, fraudulently or under any of the circumstances set out in Article 157, the innocent party, who relied on the Register, can make a claim against the assurance fund in circumstances where no other recourse is available as prescribed in Article 157 (3). As fraud is a criminal offence, it is felt that it is inappropriate that a claim should be made in such circumstances against the assurance fund. Fraud should be dealt in the appropriate manner according to the Federal Penal Code.

Article 158. Time limit on claims against the assurance fund

There is currently no time constraint on when an aggrieved party can make a claim against the assurance fund. The amendment proposes to introduce that claims can only be made within a certain time limit.

Article 159. Court order about deprivation, loss or damage

As the Law is silent on how the value of the compensation is to be calculated, the proposed amendment seeks to provide greater clarity by stating that the value shall be determined by actual loss thereby minimizing the amount that can be ordered for loss or damage.

Issue

We ask for specific feedback in relation to the use of "actual loss" as a measure for compensation under this Article.

Article 160(c). Matters for which there is no compensation

As the Law now stands, a person cannot make a claim against the assurance fund for incorrect description or dimension if there has been no survey. It is proposed to extend this restriction to whether a survey has been carried out or not.