



LAC DUY & ASSOCIATES

NEWSLETTER

01/2022

**NEW POINTS OF DECREE
NO. 02/2022/ND-CP ON
REAL ESTATE BUSINESS
FROM 01 MARCH 2022**

**CASE LAW NO. 44/2021/AL
ON DETERMINATION OF
STATUTE OF LIMITATIONS
FOR INITIATING A LAWSUIT
FOR THE COUNTER-CLAIM**

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Dear Clients,

Lac Duy & Associates would like to send you the newsletter of January 2022 with some outstanding new point and article as:

- Case law No. 44/2021/AL on determination of statute of limitations for initiating a lawsuit for the counter-claim
- New points of Decree No. 02/2022/ND-CP on real estate business from 01 March 2022
- Legal Document 01/2022



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CASE LAW NO. 44/2021/AL ON DETERMINATION OF STATUTE OF LIMITATIONS FOR INITIATING A LAWSUIT FOR THE COUNTER-CLAIM

Source of case law: According to the Cassation decision No. 10/2021/KDTM-GDT dated September 14, 2021 of the High People's Court of Hanoi on the commercial business case “The design consultancy contract disputation” in Hanoi, between the plaintiff, is the Joint Stock Company H and the defendant is the Design and Construction Limited Company P.

Location of case law content: Paragraphs 2 of the section “Judgment of the Court”.

The content’s outline of the case law:

- **Case law:** In a civil case, the defendant has a counter-claim against the plaintiff, the person with related interests and obligations has an independent claim.
- **Legal solution:** In this case, the Court shall determine that the defendant's counter-claim is the lawsuit claim and shall comply with the provisions of the law on statute of limitations for initiating a lawsuit.

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Legal provisions related to case law:

- Clause 4 Article 60, Article 159, Article 176, Article 178 of the Civil Procedure Code 2004 (corresponding to Clause 4 Article 72, Article 184, Article 200, and Article 202 of the Civil Procedure Code 2015);
- Point e Clause 1 Article 217 of the Civil Procedure Code 2015.

Keywords of case law: “Counter-claims; “Determining the statute of limitations for initiating a lawsuit”.

Case analysis:

According to the content of the case, the judgment of the Appeal Court in Judgment No. 82/2020/KDTM-PT on the counter-claim is not limited by the statute of limitations for initiating a lawsuit is incorrect. According to the provisions of the Civil Procedure Code 2004 and the Civil Procedure Code 2015, a counter-claim is a claim that is not included in the claim of the plaintiff, which can be resolved by an independent case; the settlement of counter-claims in the same case is for more accurate and faster settlement results. A counter-claim is also a lawsuit claim, so it shall comply with the statute of limitations for initiating a lawsuit. Therefore, in case there is a counter-claim and a litigant in the case proposes to apply the statute of limitations for initiating a lawsuit, the First Instance Court and the Appeal Court shall determine whether the counter-claim still has the statute of limitations for initiating a lawsuit or not under the law. On the other hand, the First Instance Court and the Appeal Court did not require the defendant to present documents and evidence to prove the actual workload that the defendant had performed and partially accepted the counter-claim of the defendant that is incorrect, affecting the interests of the plaintiff.

The protest of the Chief Procurator of the High-Level People's Procuracy of Hanoi is grounded, so it is necessary to cancel the entire appellate judgment and the first-instance judgment for a re-trial. Accordingly, the case file is handed over to the People's Court of Hoan Kiem district, Hanoi City for re-settlement according to first-instance procedures under the law.

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NEW POINTS OF DECREE NO. 02/2022/ND-CP ON REAL ESTATE BUSINESS FROM 01 MARCH 2022

On 06 January 2022, the Government issued Decree No. 02/2022/ND-CP guiding the implementation of the Law on Real Estate Business 2014, which will take effect from 01 March 2022 ("**Decree 02**"). Although still not able to solve all outstanding problems, Decree 02 also has many new contents, many regulations adjusted compared to Decree No. 76/2015/ND-CP to create greater consistency and synchronization in the system of other relevant legal documents. Below are some of the notable contents in this Decree:

1. New points on conditions of real estate business organizations and individuals

Pursuant to Article 4, Decree No. 02/2022/ND-CP has new regulations on real estate business conditions, according to the new regulations, real estate business organizations and individuals must have the following conditions:

i. Conditions for legal capital and investor equity:

Decree 02 removes the provision that enterprises/cooperatives must have a legal capital of 20 billion in addition to the provisions in Article 4 clarifying the equity level of real estate project investors based on the scale of land use, as well as how to determine the level of equity. Specifically, investors must have equity not less than 20% of the total investment capital for projects with land use scale of less than 20 hectares, not less than 15% of the total investment capital for projects

with land use scale of 20 hectares or more. The determination of equity is based on the results of the most recently audited financial statements or the results of the independent audit report of the operating enterprise (made in the year or year preceding); in case the newly established enterprise is determined equity according to the actual charter capital contributed in accordance with law.

ii. Conditions for disclosure of information:

Concretize the provisions in Article 6 of the Law on Real Estate Business 2014, Point b, Clause 1, Article 4 of Decree 02, which further stipulates that organizations and individuals conducting real estate business must be publicized on the website of the enterprise, at the headquarters of the Project Management Board (for real estate investment and business projects), at the real estate exchange (in case of doing business through the real estate exchange) information about the enterprise (including name, head office address, contact

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phone number, name of legal representative), information about real estate put into business, information on the mortgage of houses, construction works, real estate projects put into business (if any), information on the number, type of real estate products to be traded, quantity, type of real estate products sold, transferred, leased purchased and quantity, type of remaining products are continuing to do business. For publicly available information specified at this point which is subsequently changed, it must be updated promptly as soon as there is a change.

iii. Conditions for real estate are put into business:

Decree 02 adds provisions on organizations and individuals only trading in eligible real estate as prescribed in Article 9, Article 55 of the Law on Real Estate Business 2014. This new regulation is synchronous, systematic, uniform in terms of regulations and guidelines between the Law and the guiding documents,



as well as clearer and stricter for organizations and individuals conducting real estate business.

2. Regulations for organizations, households and individuals that do not do real estate business regularly

According to the provisions of Article 5 of Decree 02, Organizations, households, and individuals selling, transferring, leasing, leasing and purchasing small-scale real estate, infrequently specified in Clause 2, Article 10 of the Law on Real Estate Business 2014 are not required to have the conditions mentioned in item 1 including:

- Agencies and organizations shall sell houses, construction works or transfer land use rights due to bankruptcy, dissolution, and separation in accordance with law.
- Agencies and organizations that sell, transfer, lease or lease real estate are public assets in accordance with law.
- Credit institutions, foreign bank branches, asset management companies of credit institutions (AMC), asset management companies of Vietnamese credit institutions (VAMC) carry out the sale of houses, construction works, transfer of land use rights, transfer of real estate projects under guarantee, mortgage to recover debts in accordance with the law.

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- Organizations, households and individuals selling houses, construction works or transferring land use rights according to decisions of courts and competent state agencies when settling disputes, complaints and denunciations.
- Organizations, households and individuals selling, leasing, leasing and purchasing houses or construction works under their legal ownership, transfer, lease or sublease land use rights under their legal use rights.
- Organizations, households and individuals selling, leasing, leasing and purchasing or transferring real estate built by themselves that are not real estate construction investment projects for business in accordance with law.

3. Regulations on conditions for transfer of contracts of sale, lease purchase of houses formed in the future and transfer of lease contracts for purchase of houses and construction works are available.

Article 7 of Decree 02/2022/ND-CP stipulating the transfer of contracts for purchase, sale and lease-purchase of houses to be formed in the future and the transfer of lease-purchase contracts for existing houses and construction works (except for contracts of sale, lease-purchase of social housing) must ensure the following conditions:

- There are contracts for purchase and lease as prescribed. If the parties sign before March 1, 2022, they must have a signed contract;
- Have not submitted dossiers to request competent state agencies to issue Certificates of land use rights and ownership of houses and other land-attached assets;
- Contracts for sale and lease must be free of disputes or complaints; houses or works in contracts that are not subject to distraint or mortgage unless the mortgagee agrees;
- If buying and selling or renting multiple houses in the same contract that the parties want to transfer each house, the seller must agree with the investor to amend the contract of sale, lease purchase or sign an annex to the contract before transferring the contract.

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LEGAL DOCUMENTS 01/2022

NO.	EFFECTIVE DATE	NAME
BUSINESS - GOVERNMENT FINANCE		
1.	25/01/2022	Decision 03/2022/QD-UBND stipulating the land price adjustment coefficient in 2022 in Lang Son province
2.	25/01/2022	Decision 02/2022/QD-UBND stipulating the forest price range and forest rental price in Quang Nam province
INFORMATION TECHNOLOGY		
3.	22/01/2022	Decision 01/2022/QD-UBND on Regulations on management, operation and exploitation of image monitoring systems in Ho Chi Minh City
TRANSPORT		
4.	24/01/2022	Decision 01/2022/QD-UBND implementing Resolution 16/2021/NQ-HDND stipulating the content of frequent expenditure on economic activities of inland waterway transport in Long An province
TRADE		
5.	10/01/2022	Resolution 02/NQ-CP on the main tasks and solutions to improve the business environment and enhance national competitiveness in 2022 issued by the Government
CRIMINAL LIABILITY, CULTURE - SOCIETY		
6.	13/01/2022	Decision 45/QD-TTg in 2022 approving the Program on domestic violence prevention and control in the new situation until 2025 issued by the Prime Minister
NATURAL RESOURCES - ENVIRONMENT		
7.	10/01/2022	Circular 02/2022/TT-BTNMT guiding the Environmental Protection Law promulgated by the Minister of Natural Resources and Environment

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SPORT - HEALTH

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| 8. | 14/01/2022 | Decision 85/QD-BYT in 2022 on inspection and evaluation of hospital quality and satisfaction survey of patients and medical staff in 2021 issued by the Ministry of Health |
| 9. | 14/01/2022 | Decision 98/QD-BYT in 2022 on the supplementary list of some ICD-10 codes related to COVID-19 according to the guidance of the World Health Organization issued by the Ministry of Health |