



SPECIAL ALERT

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REMARKABLE CHANGES IN THE NEWLY - ISSUED REAL ESTATE BUSINESS LAW No. 29/2023/QH15

On November 28th, 2023, the Real Estate Business Law No. 29/2023/QH15 (the “**REB Law 2023**”) was passed by the National Assembly and shall be of full force and effect from January 1st, 2025. This article introduces remarkable changes in the newly REB Law 2023.

Changing some types of real estate made available for trading (Article 5)

From January 1st, 2025, types of real estate made available for trading are regulated, particularly including (i) existing houses and houses to be formed in the future; (ii) existing buildings and buildings to be formed in the future including buildings with functions serving educational, healthcare, sports, cultural, office, commercial, service, tourism, accommodation, industrial, and mixed-use purposes; (iii) the use right of land with such technical facilities under a real estate project; (iv) the floor area of buildings and (v) real estate project. Compared to the Real Estate Business Law 2014 (“**REB Law 2014**”), the legislator eliminated houses and buildings being public assets from types of real estate made available for trading. Furthermore, the REB Law 2023 has provided additional conditions for the floor area of buildings for sale and lease by the developer.

Supplementing specific conditions to individuals, organizations conducting real estate business (Article 9.2)

In addition to the conditions as specified in the REB Law 2014, the REB Law 2023 sets out four additional conditions for individuals, organizations conducting real estate business as follows: (i) not under the period of being banned from real estate business, postponed or suspended business activities based on a judgement, decision issued by the court or a decision of competent authorities; (ii) not under the process of winding up, dissolution in accordance with laws; (iii) to ensure debt – to – credit ratio and debt – to – bond ratio of the owner’s capital; and (iv) requirement for the owner’ capital which is not lower than 20% of total investment capital for project with land use scale of less than 20 hectares, or not lower than 15% of total investment capital for project with land use scale of 20 hectares or more (that was stipulated in the sub-legal documents previously). At the same time, in case a real estate business simultaneously proceeds with many projects, it must have enough capital to ensure allocated ratio of each project as stated to implement all projects.

Supplementing conditions to individuals conducting real estate business on a small scale (Article 9.3)

Comparing to the REB Law 2014, the REB Law 2023 sets up a new regulation that individuals conducting real estate business on a small scale do not need to establish enterprise but must declare and pay taxes in accordance with law.

Amending regulations regarding the form and scope of real estate business of overseas Vietnamese (Article 10)

Instead of providing one rule on the scope of real estate business of overseas Vietnamese as per the REB Law 2014, the REB Law 2023 distinguishes the form and scope of real estate business of (1) overseas Vietnamese being Vietnamese citizens and (2) overseas Vietnamese no longer being Vietnamese citizens. According to the REB Law 2023, overseas Vietnamese being Vietnamese citizens are allowed to do real estate business in the same forms as domestic individuals in Vietnam as well as to have the right to buy, hire, and hire purchase houses, buildings, and floor areas of buildings. Meanwhile, overseas Vietnamese no longer being Vietnamese citizens will be limited in the forms of real estate business, the right to buy, hire, hire – purchase houses, buildings, and floor areas of buildings.

Residential house to be formed in the future deposit not exceeding 5% of its selling, or hire-purchase price (Article 23.5)

Unlike the Real Estate Business Law 2014 (the “**REB Law 2014**”) which does not have regulation on deposit when sale, hire purchase of residential house to be formed in the future, the REB Law 2023 has provided that the developer of real estate business project has right to request deposit upon agreed between parties but not exceeding 5% of the price of sale, hire purchase of houses or buildings to be formed in the future when it fully meets requirements to be made for trading in accordance with this law.

Supplementing detailed conditions applicable to residential houses, buildings to be formed in the future made available for trading (Article 24)

Some remarkable updates on conditions applicable to residential houses, buildings to be formed in the future made available for trading as stipulated in the REB Law 2023 consist of (i) request for providing one of documents on the land use right as per newly regulated lists instead of compulsory request for providing the land use right certificate as regulated in the REB Law 2014; (ii) request the developer to complete financial obligations on land; (iii) publicity for information on real estate, real estate project made available for trading; and (iv) request for residential houses, buildings under real estate projects to be approved by the competent authorities in accordance with laws and the contents of approved project to mention investment purpose about construction for residential houses, buildings to sell, lease out.

Reducing amount of money in advance in case of hire purchase residential house to be formed in future (Article 25.1)

Under the REB Law 2023, payment of hire purchase for residential houses to be formed in the future can be made in installments. The amount of the first installment does not exceed 30% of the contract value (inclusive of deposit). The next installments shall be paid corresponding to construction process

until handover a house or building to the buyers. The amount of payment in advance does not exceed 50% of value of house or building for hire purchase (instead of 70% of value of house or building as specified in the REB Law 2014).

Updating conditions on guarantees for sale and grant of hire purchase of residential houses to be formed in the future (Article 26)

The REB Law 2023 remains conditions for the developer of a real estate project sale or hire purchase of residential house to be formed in the future to be guaranteed by a capital commercial bank (including domestic commercial bank and branch of foreign bank legally operating in Vietnam) as provided for under the REB Law 2014. However, the REB Law 2023 has some notable changes when the developer and the purchaser or hire purchaser enter a sale or hire purchase contract of residential house to be formed in the future. Particularly, the developer shall send a copy of written letter of commitment issued by commercial banks to the purchaser or hire purchaser, instead of guarantee of contract as stated in the REB Law 2014. In addition, the REB Law 2023 allows the buyers opt to require the developer to or not to have a guarantee for the developer's financial option to them.

Adjusting forms of land use rights business (Article 28.1)

The REB Law 2023 summarizes situations that developers are allowed to conduct business the land use right with such technical facilities under a real estate project including: (1) to transfer the land use right with such technical facilities under a real estate project to individuals themselves who construct houses (as the form of division of plots to sell for individuals to construct houses); (2) to transfer the land use right with such technical facilities under a real estate project to organizations to invest in construction buildings, houses projects; (3) to lease or sub-lease the land use right with such technical facilities under a real estate project for organizations and individuals' usage according to the land use purpose and investment project content approved by the competent authority.

Trading of land use rights having technical facilities in a real estate project being requested to clearly state investment purpose, the contents of investment project approved by the competent authorities (Article 29)

The REB Law 2023 has recently stipulated that transferring, leasing out, sub leasing out the land use rights having technical facilities which is applicable to investment purpose, the contents of investment projects approved by the competent authorities. Thus, the developer need to request the authorities to record purpose of transferring, leasing out, sub leasing out land use rights having technical facilities in decision on approval of the investment policy, Investment Registration Certificate and relevant files of that project.

Stipulating conditions applicable to transferring land use rights having technical facilities in real estate project in case individuals construct residential houses (Article 30 and Article 31)

A new regulation on conditions applicable to transferring land use rights having technical facilities in real estate project in case individuals construct residential houses is summarized in Article 30 of the REB Law 2023. Under the newly amended law, division of land into plots is also controlled by strict conditions. Specifically, limit areas being allowed to transfer the land use rights to individuals

constructing residential houses and request the developer to sending written notice about the land use rights qualified transferring conditions to the provincial competent managing authority on real estate business before transferring land use rights having technical facilities.

Changing conditions for transferring a part or entire real estate project (Article 40)

There are two remarkable changes in conditions for transferring a part or entire real estate project as specified in the REB Law 2023. Firstly, it is not mandatory for the developers to own the land use right certificate in respect of partly or entire project to be transferred. Alternatively, the developers must provide a decision allocating land or leasing land or permitting changing use purpose of land for project and complete relevant financial obligations. Secondly, it must conduct mortgage lien release if projects are being under mortgage to guarantee performance of obligation.

Payment for real estate transaction must be made via bank remittance (Article 48)

The REB Law 2023 has set up an additional condition on payment for real estate transactions. Particularly, developers, enterprises conducting real estate businesses must receive payments under real estate business contracts through its bank account opened in domestic credit institutions or branches of foreign banks legally operating in Vietnam. Accordingly, it can be understood that individuals, organizations not being developers, enterprises conducting real estate businesses are unbound by this condition when conducting payments under real estate business contracts.

Removing requirement for having at least two persons who possess a real estate broker's practising certificate that is applicable to organizations conducting business of real estate brokerage services (Article 61.1)

Compared to the REB Law 2014, conditions applicable to organizations and individuals conducting business of real estate brokerage services include (i) to establish enterprise in accordance with this law; (ii) to have operational rules of real estate brokerage services, name, address and physical and technical facilities qualified in accordance with law; and (iii) to submit enterprise information to the provincial real estate market management agency to publish in information system on the real estate in accordance with this law.

No longer allowing individuals to conduct business of real estate brokerage services independently (Article 61.2)

According to the REB Law 2023, any individuals conducting business of real estate brokerage service must own real estate broker's practising certificate and work in an enterprise conducting real estate business which provide real estate trading floor services, real estate brokerage services, real estate consultancy and/or real estate management services. It means individuals have no longer been permitted to conduct business of real estate brokerage services independently.

CONTACT US

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