

The purchase shall also ensure that the seller can freely assign the subject property together with the related land use right without having to pay any further premium.

2. Procedures

- The parties have to enter into a transfer contract, usually handled by the local PRC Real Property Exchange (房產交易所) and in the form prescribed by the local government.
- The transfer contract will be notarized by the local Notary Office.
- With the notarized contract, the parties can go to the local and Real Estate and Land Administration Bureau (房產土地管理局) for registration of the change and apply for a new Property Rights and Land Use Rights Certificate in the same terms.

The law is as stated at January 2003.

The law relating to conveyancing in China is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should consult a solicitor.

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LAW GUIDE SERIES No. 14

Land Law In China *-Purchase of Real Property*

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INTRODUCTION

In the People's Republic of China (China), land is owned either by the State or by collectives. Most urban land is owned by the State and most rural land is owned by collectives. Enterprises and individuals cannot own land but may only acquire rights to use land but not the ownership of the land.

The transfer of land use rights and/or the right to use buildings on land by the land development company to the end user is called *assignment* (轉讓). The land development company must first obtain land use rights from the State, which is called *granting* (出讓).

Here we will discuss the matters a purchaser (the end user) should pay attention to when purchasing Real property in China.

PURCHASE OF UN-COMPLETED REAL PROPERTY

1. Pre-sale Requirements

A land developer may be allowed to pre-sell the uncompleted buildings if certain pre-sale conditions are satisfied. The pre-sale conditions are prescribed by law, and may be contained in the land grant contract (土地出讓合同) [or sometimes called compensatory land grant contract (有償土地出讓合同)]. In general it includes the following :-

- the grant premium (出讓金) has been fully paid;
- the Construction Work Planning Permit (建設工程規劃許可證) and Commencement of Work Permit (施工許可證) have been obtained;
- the land developer has injected at least 25% of the total investment (excluding the grant premium); and
- the construction schedule and completion date have been fixed.

Other pre-sale conditions may be imposed in different provinces and may include :-

- submission of pre-sale plans;
- submission of the covenants for the use, management and maintenance of the building (房屋使用、管理、維修公約);
- submission of the plan for the depositing pre-sale proceeds;
- signing of the construction contract with sub-contractors; and
- filling of the pre-sale contract.

The land developer also has to obtain certain documents before pre-sale is allowed. The Requirements may again vary from province to province or even from one city to another, and the following documents may be required :-

- Land Grant Contract;
- State Land Use Certificate (國有土地使用証);
- outline plan for the site(紅線圖);
- approved architectural plans;
- Land Use Planning Permit (建設用地規劃許可證) from the local City Planning Bureau;
- Overseas Sale Permit (外銷許可證);
- Pre-sale Permit (預售許可證) by the local Real Estate Bureau;
- Approval of the formation of the land development company by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) if foreign investor is involved;
- Business Licence of the land development company; and
- Construction Qualification Certificate by the Building Department which allows the construction of commodity housing for overseas sales.

A purchaser should therefore check whether the land developer possesses the documents required for pre-sale in the particular province/city/town when purchasing un-completed Real property.

2. Documentation

The purchaser will usually enter into a pre-sale contract with the land developer in prescribed form.

For purchases in Hong Kong, the pre-sale contracts must be attested by a China-appointed attesting officer (中國司法部委托公証人). The pre-sale contracts will be sent to the China Legal Services (HK) Limited (中國法律服務(香港)有限公司) which will verify the signature of the attesting officer, and then forwarded to the PRC Notary Office (公証處) for notarization.

The charges levied by China Legal Services (HK) Limited is one-third of the solicitors' charges of the pre-sale contract while the notarization fees of the PRC Notary Office is 0.3% of the purchase price.

In some localities, there is legislation requiring the registration of pre-sale contracts and the transfer of property and land use rights. This will serve as a guarantee of title.

PURCHASE OF COMPLETED REAL PROPERTY

1. General Requirements

Purchase of completed Real property refers either to purchasing completed but not occupied property from the land developer or purchasing second hand property from individuals. The purchaser shall ensure that the sellers has :-

(in case of a land developer)

- the State Land Use Certificate for the whole development;
- the requisite documents mentioned above except the pre-sale permit; and
- the Completion of Work Certificate (竣工證明書);

(in case of an individual seller) either

- the Property Rights Certificate (房產權証) of the subject property; and
- the Land Use Right Certificate (土地使用權証) of the relevant proportion of land on which the subject property is situated; or
- the Property Rights and Land Use Rights Certificate of the subject property.