



PRACTICING BUYING A UNIT 'OFF THE PLAN'

Ever since the introduction of the Unit Titles Act, 2008, and its regulations, the applicability has made it perhaps easier to trade in real estate and has in a way provided room for making alternatives that were not there before, or were but not in the same manner or practice, so to speak. Units or condominium are sold on an 'off the plan' basis. What does it mean by off plan then?

You see, when you are erecting a building as a developer or an owner etc just before, before construction has finished, and usually or at times before it has even started you sell the Units to potential buyer. This has been done by a number of developers in Dar es Salaam as well as big corporations like NHC who did the same for the Ubungo Project. What this does is it help the developer move forward with the project and it puts the owners to be at ease knowing that they have already made an investment, secured an apartment (be it by part payment etc) and all they have to do is sit and wait for the project to finish. Once the project is finished and they are handed over the apartments or units, they have a room to check whether it confirms with the specifications of the original plan. Once satisfied they can do the final payments, take possession of their Units and others who have no problem can by then even have their titles in the process or at hand depending on the arrangement.

The buying off plan is a great idea to some, to others not however the whole process carries with it a number of potential problems and issues that you need to be aware of.

Whether you are buying the unit as an investment or for your own occupation, your lawyer will need to go over the contract with you very carefully so you are aware of the developer's rights and your responsibilities. Particularly important are the contract's special conditions, which may specify, among other matters:

- Issues relating to the investment of the deposit and the sharing of the interest earned between you and the developer.
- That the developer is able to considerably extend the time that it has to complete the unit complex without you being able to pull out of the contract.
- That the area of your unit could be reduced by up to 4% or more without giving you any compensation.
- That the location of the car parking space(s) and storage facilities for your unit can be varied by the developer.
- That the times at which you can inspect your unit during construction are limited.
- That you cannot require defects to be remedied before you have to complete the purchase and must rely on the developer remedying any such defects under the 90 day maintenance provision.

If you are buying a unit as an investment, you must investigate its financial viability and all



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aspects of tax with your lawyers before contracts are exchanged. Some of the many matters you will need to discuss with your tax advisor include the following:

- The name(s) the property is to be bought in and, if there are to be two or more owners, then whether you should buy as joint tenants or tenants in common (and if the latter then in what shares).
- The deductions that may be claimed for stamp duty and other incidental costs of acquisition, and deductions for depreciation and the costs of repairs and in running the unit.
- The records you need to keep.
- Capital Gains Tax and other issues.

Arranging finance for an off the plan before you exchange contracts is not often possible today, as lenders at times cannot give loans to something that has not been erected because in essence there is no collateral. But some banks have devised ways of making it possible for home owners to borrow money to finance an off plan purchase.

How can your Lawyer help you?

- Ensure that you become the registered owner of the unit you are buying.
- Advise you of your rights and duties as a unit owner and a member of the owners Association which is required by law to form and join.
- Advise you of the owners Association rights and obligations and powers to enforce its constitution and bylaws.
- Ensure your seller has paid his or her owners corporation levies and that rates are up to date.
- Advise the owners Association when you have become a unit owner.

Once you have become the owner of a unit your lawyer can also assist you in the resolution of disputes; and can prepare a contract when you want to sell your unit. Hence, before doing anything it is best you consult your lawyer.

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