

The legislative framework for ‘trapped’ property buyers

Andreas Haviaras and Stalo Papoui of Haviaras & Philippou discuss the new development in Cypriot property law

The main problem the Cyprus property market currently faces is the failure of the developers, due to their financial problems, to issue title deeds to the buyers who paid for the property bought or to transfer the title in cases where it has been issued. In this sense, the buyer who paid for the property but did not receive a title is a trapped buyer as he cannot exploit the property.

About 78,000 trapped buyers who meet the sale agreement conditions for the property cannot get title over it due to mortgages and/or other encumbrances of the seller/developer on the property.

Since 4 September however, the Transfer and Mortgaging of Real Estate (Amendment) Law, N. 139(1)/2015 came into force. The law is designed to protect trapped buyers by releasing the property from the developer’s obligations to their lenders. Specifically, the law restricts the lenders to alienate properties mortgaged by the developers that are currently under the possession of trapped buyers.

The law now gives the discretion to the Director of the Department of Lands and Surveys to exempt, eliminate, transfer and cancel mortgages and/or other encumbrances applicable on the property, depending on the case and under specific conditions.

The law is applicable on contracts (sale agreements) that have been submitted at the Land Registry up until 31 December 2014. The transfer of the property to the trapped buyer may be conducted either *proprio motu* or on application. An application for transfer may be submitted by the trapped buyer, the seller, the mortgagee or the lender and has to be accompanied by the necessary supporting evidence. Any pending procedure under the Companies Act and Bankruptcy Law is suspended until the full examination of the application that is submitted under the law.

For the examination of the application, it does not matter whether a title of deed has been issued or not. The trapped buyer however, up to the date of submission of the application, should pay the whole amount of the sale agreement or a part of the sale amount. In case of paying only a part of the whole amount, the trapped buyer must

agree to pay the balance and payment must go through according to the contract.

If all criteria are fulfilled, the Director of Lands and Surveys notifies all interested parties, ie the buyer, the seller, the mortgagee and the lender, that 45 days after the service of the notification the transfer of the property to the trapped buyer will take place. The interested parties may raise an objection on the following grounds:

- a) The contractual obligations of the trapped buyer to the seller have not been fulfilled.
- b) The contract between the trapped buyer and the seller is invalid or has been terminated according to a court order.

If none of the involved parties raises an objection to the application, the Director will exempt, eliminate and cancel mortgages and/or other encumbrances, and will transfer the property to the trapped buyer. The director may transfer the mortgages and/or other encumbrances to other immovable property owned by the sellers. In the case that the seller does not own any other immovable property, the transfer of the mortgages and/or other encumbrances will go to legal entities or physical persons who guaranteed the obligations of the seller regarding the property.

A property cannot be transferred to the trapped buyer’s name if the latter owes immovable property tax to the government or the municipality, or owes sewerage fees.

The law further gives trapped buyers the opportunity to pay the transfer fees in 12 monthly instalments, by the end of 2016. It also provides for a discount of 10% for one-off settlement within the provided time period. To those who fail to pay the instalments for the transfer fees within the specified deadline, the Director of Lands and Surveys will impose an encumbrance over the property for the remaining instalments, plus a penalty of 50% increase. Similarly, for those who opt for the one-off payment and fail or refuse to do so, the Director will impose an encumbrance for the total amount due, plus a penalty of 50% increase.

While this law seems to be very important, as it can solve the problem of



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trapped buyers, it is anticipated that the law will be hotly contested in the courts, especially by the banks – lenders. The intentions of this legislative framework allow for positive expectations regarding the issue of trapped buyers. However, the implementation will show the impact of this legislative framework. A lot of non-residents who bought houses/flats/property in Cyprus are affected and are urged to file the application in a timely fashion so as to enjoy the benefits explained above.

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