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| **THE GOVERNMENT -------** | **SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness ---------------** |
| No. 76/2015/ND-CP | *Hanoi, September 10, 2015* |

**DECREE**

ON GUIDELINES FOR LAW ON REAL ESTATE TRADING

*Pursuant to the Law on Government organization dated December 25, 2001;*

*Pursuant to the Law on real estate trading dated November 25, 2014;*

*At the request of the Minister of Construction,*

*The Government issues a Decree on guidelines for the Law on real estate trading.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope**

This Decree deals with a number of Articles and Clauses of the Law on real estate trading, including requirements applied to organizations and individuals conducting real estate trading; templates of contracts for real estate trading; transfer of contracts for lease purchase of existing houses and buildings (hereinafter referred to as existing buildings); transfer of contracts for sale or lease purchase of off-the-plan houses; and procedures for transfer of the whole or a part of a real estate project.

**Article 2. Regulated entities**

1. Organizations or individuals conducting real estate trading in Vietnam.

2. Agencies, organizations, households or individuals involved in real estate trading in Vietnam.

**Chapter II**

**SPECIFIC PROVISIONS**

**Section 1: REQUIREMENTS APPLIED TO ORGANIZATIONS OR INDIVIDUALS CONDUCTING REAL ESTATE TRADING**

**Article 3. Requirements applied to organizations or individuals conducting real estate trading**

1. Any organization or individual wishes to conduct real estate trading must set up an enterprise or cooperatives (hereinafter referred to as enterprises) which has an amount of legal capital of not smaller than VND 20 billion, excluding the following entities:

a) Any organization, household or individual who conducts small-scale or irregular transactions of real estate sale, transfer, lease, or lease purchase prescribed in Article 5 of this Decree;

b) Any organization or individual providing real estate services prescribed in Chapter IV of the Law on real estate trading.

2. Every real estate enterprise subject to legal capital prescribed in Clause 1 of this Article shall take responsibility for the truthfulness and accuracy of their amount of legal capital.

**Article 4. Basis for legal capital applicable to real estate enterprises**

The amount of legal capital prescribed in Article 3 of this Decree shall be determined according to the amount of charter capital of the enterprise as prescribed. The enterprise is not required to register the legal capital.

**Article 5. Organizations, households and individuals conducting sale, transfer, lease, and lease purchase of real estate prescribed in Clause 2 Article 10 of the Law on real estate trading**

Organizations, households and individuals conducting sale, transfer, lease, and lease purchase of real estate prescribed in Clause 2 Article 10 of the Law on real estate trading are not required to set up real estate enterprise and include:

1. Organizations, households and individuals conducting sale, transfer, lease and lease purchase of real estate without business purposes and organizations, households or individuals conducting sale, transfer, lease and lease purchase of real estate with business purposes and total investment are under 20 billion (excluding land levies).

2. Organizations transferring land use rights or sell buildings due to bankrupt, dissolution, or division.

3. Credit institutions, branches of foreign banks, Asset Management Company (AMC), Vietnam Asset Management Company (VAMC) and other organizations or individuals transferring land use rights, real estate projects, or selling buildings subject to mortgage for debt recovery.

4. Organizations, households or individuals transferring land use rights or selling buildings according to decisions of courts or competent agencies upon their dispute, complaints, or denunciation.

5. Organizations, households and individuals building houses for sale, lease or lease purchase not subject to enterprise establishment as prescribed in law on housing.

6. Agencies or organizations permitted to transfer land use rights or sell state-owned buildings by competent agencies as prescribed in law on management of public property.

7. Organizations, households and individuals selling, transferring, leasing, or leasing and purchasing their own real estate.

**Section 2: TYPES OF TEMPLATES OF CONTRACTS FOR REAL ESTATE TRADING**

**Article 6. Types of templates of contracts for real estate trading**

Types of templates of contracts for real estate trading issued together with this Decree include:

1. Contract for sale of existing buildings (off-the-plan buildings) using form No. 01 prescribed in Appendix issued herewith.

2. Contract for lease of existing buildings (off-the-plan buildings) using form No. 02 prescribed in Appendix issued herewith.

3. Contract for lease purchase of existing buildings (off-the-plan buildings) using form No. 03 prescribed in Appendix issued herewith.

4. Contract for transfer, lease, or sublease of land use rights using form No. 04a and form No. 04b prescribed in Appendix issued herewith.

5. Contract for transfer of the whole project (a part of a project) using form No. 05 prescribed in Appendix issued herewith.

**Article 7. Application of types of templates of contracts for real estate trading**

1. Templates of contracts for real estate trading issued herewith are used for reference during the process of negotiating and concluding contract.

2. Contracting parties may agree to modify Articles and Clauses in the contract templates provided that their own contract contains all primary contents prescribed in Article 18, Article 47 and Article 53 of the Law on real estate trading. Specific contents in the contract shall be agreed by contracting parties in accordance with regulations of law.

**Section 3: TRANSFER OF CONTRACTS FOR LEASE PURCHASE OF EXISTING BUILDINGS**

**Article 8. Conditions for transferring contract for lease purchase of existing buildings**

1. The lessee of contract for lease purchase of an existing building prescribed in Section 4 Chapter II of the Law on real estate trading may transfer such contract to another organization or individual if the application for issuance of Certificate of land use rights, ownership of houses and property on land (hereinafter referred to as the certificate) has been not submitted to the competent agency.

2. The transferee of the lease purchase contract may transfer such contract to another organization or individual if the application for issuance of the certificate still has been not submitted to the competent agency.

3. The whole lease purchase contract concluded with the lessor must be transferred. Regarding lease purchase contracts of single detached house or apartment, each detached house or apartment shall be transferred separately; regarding lease purchase contracts of multiple detached houses or apartments, all houses apartments shall be transferred.

**Article 9. Procedures for transferring contracts for lease purchase of existing buildings**

The transfer of contract for lease purchase of an existing building shall be made in writing and the written contract transfer agreement (hereinafter referred to as transfer agreement) must be notarized or authenticated as prescribed in Clause 2 of this Article, tax payment, recognition of investor in the written contract transfer and the issuance of the certificate shall follow the procedures below:

1. A transfer agreement of the contract using the form No. 06 prescribed in Appendix issued herewith shall be draught by the transferor and the transferee or a notary at the requests of contracting parties. The transfer agreement shall be made in 04 copies and notarized/authenticated as prescribed in Clause 2 of this Article (01 copy for the lessor; 01 copy for the tax authority; 01 copy for the transferor; and 01 copy for the transferee).

2.  Notarization or authentication of the transfer agreement:

a) If the transferor is a household, an individual or organization other than a real estate enterprise, the transfer agreement must be notarized or authenticated. Documents subject to notarization or authentication include:

- The initial contract for lease purchase concluded with the lessor and the transfer agreement of the preceding transfer if the contract has been transferred for at least two times (original copy);

- An ID card or passport applicable to the transferor being individual; or a decision on establishment or registration of establishment (certified true copy or photocopy with original copy for comparison) applicable to the transferor being organization;

- Other documents prescribed in law on notarization and authentication.

b) If the transferor is a real estate enterprise, the notarization or authentication of transfer agreement shall be agreed by contracting parties. If the notarization or authentication is agreed, it shall be implemented as prescribed in Point a of this Clause;

c) The notarial practice organization or authenticating authority shall notarize or authenticate the transfer agreement by the deadline prescribed in law on notarization or authentication.

3. The transferor and transferee of the lease purchase contract must pay taxes, fees and charges for the contract transfer as prescribed.

4. Recognition of the lessor in the transfer agreement:

a) Contracting parties must submit the following documents to the lessor:

- The initial contract for lease purchase of existing building concluded with the lessor (original copy);

- The notarized or authenticated transfer agreement; or the original copy of the written contract transfer of the preceding transfer (if the contract has been transferred for at least two times);

- A receipt of tax payment or certification of tax exemption prescribed in the law on taxation (original copy);

- An ID card or passport applicable to the transferor being individual; or a decision on establishment or registration of establishment (certified true copy or photocopy with original copy for comparison) applicable to the transferor being organization;

b) The lessor must certify the transfer agreement within 05 working days, from the date on which the transfer agreement is received and return all received documents, including 02 certified transfer agreements (01 copy for the transferor and 01 copy for the transferee). The lessor may not collect any expenses related to the transfer. The lessor must archive a set of documents (photocopies) on contract transfer as prescribed in Point a of this Article, including 01 original copy of the transfer agreement.

5. From the date on which the transfer agreement is certified by the lessor, the transferee shall keep exercise rights and perform obligations of the lessee as agreed.

6. The procedures for the contract transfer are the same in any time of transfer.

7. The last transferee of contract for lease purchase of existing building shall be issued a certificate by the competent agency as prescribed in law on land.

8. When following the procedures for issuance of certificate, the applicant shall submit, excluding documents prescribed in law on land, the following documents:

a) The initial contract for lease purchase (original copy);

b) The last transfer agreement certified by the lessor (original copy).

**Section 4: TRANSFER OF CONTRACTS FOR SALE OR LEASE PURCHASE OF OFF-THE-PLAN HOUSES**

**Article 10. Conditions for transferring contract for sale or lease purchase of off-the-plan houses**

1. The purchaser of a contract for sale of an off-the-plan house or the lessee of a contract for lease purchase of an off-the-plan house may transfer such contract to another organization or individual (regardless of actual transfer) provided that the application for issuance of certificate has been not submitted to the competent agency.

2. The transferee of the lease purchase contract may transfer such contract to another organization or individual if the application for issuance of the certificate is still has been not submitted to the competent agency.

3. Regarding sales contracts or lease purchase contracts of single detached house or apartment (off-the-plan house), each detached house or apartment shall be transferred separately; regarding sales contracts or lease purchase contracts of multiple detached houses or apartments, all houses apartments shall be transferred.

**Article 11. Conditions for transferring contract for sale or lease purchase of off-the-plan buildings**

1. Procedures of transferring contracts for sale of off-the-plan houses shall be prescribed in law on housing.

2. Procedures of transferring contracts for lease purchase of off-the-plan houses shall be prescribed in Article 9 of this Decree. Transfer agreement of contract for lease purchase of off-the-plan houses shall use the form No. 07 prescribed in Appendix issued herewith.

3. The last transferee of the contract for lease purchase of off-the-plan house shall be issued a certificate by the competent agency as prescribed in law on land.

4. When following the procedures for issuance of certificate, the applicant shall submit, excluding documents prescribed in law on land, the following documents:

a) The initial contract for lease purchase (original copy);

b) The last transfer agreement certified by the lessor (original copy).

**Section 5: Procedures for transfer of the whole or a part of a real estate project**

**Article 12. Procedures for transfer of the whole or a part of a real estate project decided by the People’s Committee of province or district (under decision on investment policies, decision on investment or acceptance of investment)**

Procedures for transfer of the whole or a part of a real estate project which the People’s Committee of province or district decides to give to another investor as follows:

1. The investor being transferor shall send an application for transfer of the whole or a part of the project to the People’s Committee of the province where the project is located or to the body which is authorized by the People’s Committee of the province, in particular:

a) Service of Construction, in case of the project of new urban area and housing development;

b) A specialized service prescribed by the People’s Committee of the province, in case of other type of project of real estate.

2. An application for transfer of the whole or a part of a project contains:

a) An application form for transfer of the whole or a part of the project sent by the transferor using form No. 08a and 08b prescribed in Appendix issued herewith;

b) Documents on the whole project or the part to be transferred include:

- An investment permit or an investment acceptance issued by the competent agency (certified true copy);

- A decision on approval for the project, a 1/500 detailed planning or a master plan (certified true copy);

- A certificate of the whole project or the part to be transferred (certified true copy).

c) A report on the process of project execution until the transfer time by the transferor using the form No. 09a and 09b prescribed in Appendix issued herewith.

d) Documents of the investor being transferee include:

- An application form for receiving transfer of the whole or the part of the project using form No. 10a and 10b prescribed in Appendix issued herewith;

- A certificate of business registration containing real estate business line or a certificate of enterprise registration whose charter capital is compliant with Article 3 of this Decree (certified true copy), unless the foreign investor has not established an economic organization as prescribed in law on investment;

- Proven document on owner’s equity as prescribed in law on investment and land. With respect to an operating enterprise, if there is no proven document on owner’s equity as prescribed in law on investment and land, it is required a certification issued by an independent audit organization or a financial statement whose owner’s equity is audited at the latest year (the year in which the contract is transferred or the previous year of such year); with respect to a new enterprise, if its capital is in the form of money in VND or foreign currency, the commercial bank where such enterprise opened its account shall certify the amount of deposit balance of the enterprise, if its capital is in the form of assets, a certificate of assessment of the assets’ value of the enterprise issued by a competent assessing organization is required.

3. Within 30 days from the day on which the satisfactory application is received, the central agency prescribed in Clause 1 of this Article shall consult with the Services of Planning and Investment, Service of Finance, Service of Natural Resources and Environment, Service of Construction, Department of Taxation and specialized Service shall carry out the assessment as prescribed in Article 14 of this Decree and request the People’s Committee of the province to decide the transfer permit. If the application is rejected, the People’s Committee of the province or the body which is authorized by the People’s Committee of the province shall provide the transferor with explanation.

4. Within 30 days from the day on which the decision on permission for project transfer is made by the competent agency (using the form No. 11 prescribed in Appendix issued herewith), contracting parties must finish the signing of transfer contract and project transfer. The transferee must keep executing the project or the part being transferred. The transferee must transfer all documents of the whole project or documents of the part being transferred, transfer note and list of documents to the transferee.

Before carrying out the transfer, the transferor must notify all their clients (if any) and announce by means of mass media before 15 days (at least 03 consecutive issues of a newspaper published in the locality or a local television station or a website of the central agency (if any) in terms of the transfer, rights and interests of clients and relevant entities). If any client or relevant entity wonders their rights and interests involved in the project or the part being transferred, the transferor is required to provide feedback before signing the transfer contract.

5. The transfer of land use rights of the project or the part being transferred shall comply with law on land.

**Article 13. Procedures for transfer of the whole or a part of a real estate project decided by the Prime Minister (decision on investment policies, decision of investment or investment acceptance)**

Procedures for transfer of the whole or a part of a real estate project which the Prime Minister decides to give to another investor as follows:

1. The investor being transferor shall send an application for transfer of the whole or a part of the project prescribed in Clause 2 of Article 12 of this Decree to the People’s Committee of the province where the project is located.

2. Within 45 days from the day on which the satisfactory application is received, the People’s Committee of the province shall consult with the Ministry of Planning and Investment, Ministry of Finance, Ministry of Natural Resources and Environment, Ministry of Construction, specialized Ministries, and assessment organization prescribed in Article 14 of this Decree and request the Prime Minister to decide the transfer permit.

3. Other contents of transfer of the whole or a part of a real estate project decided by the Prime Minister shall comply with procedures prescribed in Article 12 of this Decree.

**Article 14. Assessment and opinions about documents on transfer of the whole or a part of the project**

1. Contents of assessment and opinions about documents on transfer of the whole or a part of the project include:

a) The application for transfer of the whole or a part of the project prescribed in Clause 2 of Article 12 of this Decree;

b) Requirements applicable to the whole project or the part being transferred prescribed in Clause 1 Article 49 of the Law on real estate trading;

c) Requirements applicable to the transferor prescribed in Clause 2 Article 49 of the Law on real estate trading;

d) Requirements applicable to the transferee prescribed in Clause 3 Article 49 of the Law on real estate trading and legislation on land.

2. The central agency in charge of assessment prescribed in Clause 1 of Article 12 and authorities consulted about the application prescribed in Clause 3 of Article 12 and Clause 2 of Article 13 of this Decree shall give opinions about contents prescribed in Clause 1 of this Article, which specifies opinions about the project or part of project eligible for transfer. If the application is rejected, the central agency in charge of assessment and the consulted authorities shall provide the transferor with explanation.

**Chapter III**

**IMPLEMENTATION**

**Article. Implementation**

1. This Decree comes into force from November 1, 2015.

2. This Decree replaces Decree No. 153/2007/ND-CP dated October 15, 2007 of the Government providing guidance on the Law on real estate trading 2006.

**Article 16. Transitional regulations**

1. Any operating real estate enterprise failing to satisfy requirement pertaining to legal capital prescribed in this Decree is entitled to keep operating, provided that it must satisfy such requirement within 01 year from July 1, 2015.

2. Any real estate project which is received the investment decision, land allocation, land lease, or permit for project transfer and any contract for transfer, sale, lease, or lease purchase of real estate concluded before July 1, 2015 shall not be required to re-follow the procedures prescribed in the Law on real estate trading No. 66/2014/QH13.

3. Every contract for sale, transfer, lease, lease purchase of real estate, transfer of project, and every transfer agreement concluded before the effective of this Decree shall remain their validity and it is not required to comply with templates of contract and procedures prescribed in this Decree.

**Article 17. Implementation**

Ministers, Heads of ministerial-level agencies. Heads of Governmental agencies, Presidents of People’s Committees of central-affiliated cities and provinces and real estate enterprises, and relevant organizations or individuals shall implement this Decree./.

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|   | **ON BEHALF OF THE GOVERNMENT PRIME MINISTER** *(Signed and sealed)***Nguyen Tan Dung***(This translation is for reference only)* |