

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

No. 153/2007/ND-CP

Hanoi, October 15, 2007

DECREE

PROVIDING DETAILED REGULATIONS AND GUIDELINES FOR IMPLEMENTATION
OF THE LAW ON REAL ESTATE BUSINESS

THE GOVERNMENT

Pursuant to the Law on Organization of the Government dated 25 December 2001;

Pursuant to the Law on Real Estate Business dated 29 June 2006;

Having considered the proposal of the Minister of Construction;

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1 Governing scope

This Decree provides detailed regulations and guidelines for implementation of the Law on Real Estate Business regarding types of real estate permitted to be made available for trading; the legal capital requirements applicable in order for an organization or individual to conduct real estate business; purchase and sale of houses and buildings¹ in the form of advance payment; financial capability conditions applicable to investors of real estate projects; the assignment of entire new urban zone, residential zone or industrial zone technical infrastructure projects; training of, and issuance of certificates to real estate brokers, valuers, and managers and operators of real estate trading floors; and State administration of real estate business activities.

Article 2 Types of real estate permitted to be made available for trading

1. Houses and buildings as defined in the law on construction shall be permitted to be made available for trading, and comprise civil works, industrial works, road traffic works, irrigation works, and technical infrastructure works; but not civil servants' residences, headquarters of State bodies, State secret works, national defence and security works, works which are recognized historical and cultural sites or scenic sites owned by the State, and other buildings and works which [other] laws prohibit to be traded.

2. Land use rights shall be permitted to participate in the real estate market pursuant to the law on land.

3. Real estate being the houses and buildings, and the land use rights stipulated in clauses 1 and 2 respectively of this article must first satisfy all the conditions stipulated in article 7 of the Law on Real Estate Business before being made available for trading.

4. Based on the socio-economic developmental and real estate market status, the Prime Minister of the Government may amend and add to the types of real estate permitted to be made available for trading and to the other types of real estate stipulated in article 6.1(c) of the Law on Real Estate Business, in order to comply with the actual situation.

Chapter II

REAL ESTATE BUSINESS

Article 3 Legal capital requirements for an enterprise or co-operative to conduct real estate business

1. An enterprise or co-operative must have legal capital in order to conduct real estate business.
2. Certification of the legal capital of any enterprise or co-operative shall be implemented in accordance with the laws on enterprises, on co-operatives and on business registration.

Article 4 Purchase and sale in the form of advance payment of houses and buildings to be formed in the future

The investor of a real estate business project and a

1. Advance payments must be made on a number of occasions, and the initial payment may only be collected when the investor has commenced construction of technical infrastructure in accordance with the schedule and contents of the approved project. Subsequent occasions of collecting advance payments must be consistent with the schedule for construction of the house or building.

Residential zone projects, in addition to complying with the above provision, must also be implemented in accordance with the law on residential housing.

2. Investors must use advance payments from clients for the correct objective of investing in the creation of the real estate.
3. Clients making advance payments shall be entitled to the purchase or assignment price of the real estate as at the time of signing the contract, unless the parties otherwise agree.
4. Any investor who hands over the real estate [to the client] later than the scheduled date stipulated in the contract shall be contractually liable to the client and must pay the client interest on the advance payments for the period of delay, calculated at the commercial bank loan interest rate as at the time of handover of the real estate.

If an investor hands over a house or building incorrectly in terms of the quality or time-limit [stipulated in the contract] or incorrectly in terms of other contractual commitments, then the investor shall be liable to the client. The client shall have the right to demand the investor take measures to promptly remedy losses and to compensate for losses caused by the fault of the investor, and if the investor fails to do so then the client shall have the right to unilaterally

terminate or rescind the contract and the investor must refund the entire amount of money paid in advance together with interest thereon at the commercial bank loan interest rate.

5. Any client who fails to correctly implement its contractual undertaking to make advance payments shall be contractually liable to the investor and must pay the investor interest on late payment for the period of delay calculated at the commercial bank loan interest rate as at the time of payment. The investor shall have the right to demand that the client correctly implement its contractual undertakings and to pay compensation for loss or damage caused by the client, and if the client fails to do so then the investor shall have the right to unilaterally terminate or rescind the contract and the client shall be liable to pay the contractual penalty and shall be liable for any loss caused by the contractual breach.

6. Selection of the commercial bank loan interest rate stipulated in clauses 4 and 5 of this article must be agreed in the contract.

Article 5 Financial capability conditions applicable to investors of new urban zone, residential zone and industrial zone technical infrastructure projects

1. The investor of a new urban zone, residential zone or industrial zone technical infrastructure project must be the owner of the following investment capital in order to implement such project:

(a) Not less than twenty (20) per cent of the total investment [capital] of the approved project in the case of a new urban zone or industrial zone technical infrastructure project.

(b) In the case of a residential zone project, not less than fifteen (15) per cent of the total investment [capital] of the approved project if it uses less than twenty (20) hectares, and not less than twenty (20) per cent of the total investment [capital] of the approved project if it uses twenty (20) or more hectares of land.

2. The total investment [capital] of any new urban zone, residential zone or industrial zone technical infrastructure project shall be implemented in accordance with the provisions of the corresponding [relevant] law.

3. Capital owned by an investor means the investor's equity calculated up to the year prior to the year in which the investor implements such new urban zone, residential zone or industrial zone technical infrastructure project, and as specified in the investor's financial statements certified by an independent auditor. An authorized body must provide written certification in the case of a newly established enterprise or co-operative.

An investor shall be responsible to prove its financial capability to implement a project by formulating a list of the projects in which such investor is currently investing, and setting out the total investment capital of each project.

Article 6 Assignment of an entire new urban zone, residential zone or industrial zone technical infrastructure project

1. The assignment of an entire new urban zone, residential zone or industrial zone technical infrastructure project means the assignment of the entire rights, obligations and legal interests of the former investor to the new investor via a written contract, where such assignment is permitted by the competent State authority.

2. In the case of a new urban zone, residential zone or industrial zone technical infrastructure project currently being implemented but which is incomplete, and the investor meets difficulties [and/or] does not have sufficiently adequate conditions to continue to implement the project in accordance with the approved project schedule and contents, or where the investor no longer has a requirement to continue to implement the project, then the investor shall prepare an application file and send it to the provincial people's committee to consider permitting assignment of the entire project to another investor.

3. The authority which permitted the investment shall be the competent authority to permit assignment of the project. Any grant of permission to assign a project must ensure that the project is not interrupted and that its objectives remain unchanged, and the assignment must ensure the rights and obligations of the client and other related parties.

4. The conditions and procedures for assignment of an entire project shall be implemented in accordance with articles 7 and 8 of this Decree.

5. The former investor shall be responsible to promptly, completely and publicly notify [assignment of the entire project] and to satisfactorily resolve the legal rights and interests of the client and other related parties.

6. The new investor shall be liable to fully discharge the obligations of an investor stipulated in article 20 [of the Law on Real Estate Business] and shall be entitled to the rights and benefits of an investor stipulated in article 19 of the Law on Real Estate Business, in the documents of the competent State authority permitting the investment, and in the contract of assignment of the project as signed by both parties.

Article 7 Conditions for assigning an entire project

An entire project shall be permitted to be assigned when it satisfies all the following conditions:

1. The project is not in the category of projects which must be dealt with pursuant to article 10 of this Decree.

2. The project has been approved in accordance with law.

3. The investor already has the land use right via a land lease contract, a decision allocating land or a land use right certificate.

4. The work of site clearance and payment of compensation for the entire project or project phase has been completed, and there are technical infrastructure works corresponding to the contents and schedule for implementing the approved project.

5. A new investor must satisfy all the following conditions:

(a) The investor must be an organization or individual conducting real estate business who satisfies the conditions stipulated in article 8.1 of the Law on Real Estate Business and in article 3 of this Decree.

(b) The investor must satisfy the financial capability conditions applicable to project investors stipulated in article 5 of this Decree.

(c) The investor must provide a written undertaking to implement the project correctly in accordance with the approved schedule.

Article 8 Procedures for assignment of an entire new urban zone, residential zone or industrial zone technical infrastructure project

1. In the case of a project for which a provincial people's committee provided permission for the investment, then a provincial people's committee shall consider and resolve [the issue of assignment of such project]. In the case of a project for which the Prime Minister of the Government provided permission for the investment, then a provincial people's committee shall obtain opinions from the relevant authorities in order to submit a report to the Prime Minister for the latter to make a decision.

2. An investor shall send an application file for assignment of the entire project to the provincial people's committee in the locality of the project. The application file shall contain the following documents:

(a) Request for assignment of the entire project specifying the reason for the assignment, the status of implementation of investment in the project up until the date of the application, a proposal regarding the new investor, and a plan for resolving the rights and obligations of the client and related parties.

(b) The document permitting the investment from the competent State authority.

(c) The project

(d) The land lease contract, decision allocating the land, or land use right certificate.

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3. The provincial people's committee shall be responsible to consider and provide a written response to the investor granting or refusing to grant permission for assignment of the entire project, within a time-limit of forty five (45) days from the date of receipt of a complete and valid application file.

Article 9 Contract of assignment of an entire new urban zone, residential zone or industrial zone technical infrastructure project

1. A contract of assignment of an entire project shall be as agreed by the two parties, and must specify that the new investor is liable to fully discharge the obligations of the former investor owing to the client and related parties, and other obligations in accordance with the approved project contents.

2. The former investor must notify the contract of assignment of the entire project to the client and related parties in order for them to implement and perform such contract, and must also notify such contract to the relevant authorities to enable them to monitor and administer it.

Article 10 Dealing with a new urban zone, residential zone or industrial zone technical infrastructure project when the project investor is in breach

1. The authority which permitted the investment shall issue a decision revoking the written instrument which permitted the investment or the project investment certificate in order to hand over [the project] to another investor to continue to implement the project, in the following circumstances:

(a) The investor breached a provision of the laws on investment and construction, zoning, architecture [and/or] land administration and failed to promptly remedy such breach pursuant to a request from the competent State authority.

(b) The investor failed to correctly implement the contents of the project, or after twelve (12) months from the date of receipt of handover of the land failed to commence implementation of the project, or is more than twenty four (24) months behind the approved schedule.

2. Any investor whose project is revoked as stipulated in clause 1 of this article shall not be permitted to be assigned to act as investor of a new real estate project for a period of two (2) years as from the date on which such earlier project was withdrawn.

3. An authority which issues a decision withdrawing the written instrument which permitted the investment or the investment certificate shall be responsible:

(a) To require the former investor to resolve existing project issues and to ensure the rights, obligations and responsibilities of the client and related parties.

(b) To announce and to arrange selection of a new investor to continue implementation of the project.

Chapter III

TRAINING AND FOSTERING

Article 11 Training and fostering knowledge about real estate brokerage and valuation, and management and operation of real estate trading floors

1. Any individual engaged in the activity of real estate brokerage [or] valuation, [or] management and operation of a real estate trading floor must receive training on the law and on professional expertise in real estate brokerage [or] valuation, and management and operation of real estate trading floors.

2. Any establishment which provides the above-mentioned training must satisfy all the conditions stipulated in article 12 of this Decree.

3. Training establishments shall be permitted to hold training courses on real estate brokerage and valuation, on management and operation of real estate trading floors and on other matters in order to satisfy the requirements for conducting real estate business and the requirements of the real estate market.

Article 12 Conditions applicable to establishments providing training on real estate brokerage and valuation, and on management and operation of real estate trading floors

Establishments providing training on real estate brokerage and

1. An enterprise must have business registration for training, or any other institution [i.e. a training establishment which is not an enterprise] must have the function and duty to provide training.
2. The establishment must have a program, teaching materials and data which comply with the framework program promulgated by the Ministry of Construction.
3. Lecturers must have professional qualifications and experience appropriate for each subject, and must be professional teachers, experts, managers [and/or] people with certificates and experience in real estate business activities.

Article 13 Holding training courses on real estate brokerage and valuation, and on management and operation of real estate trading floors

1. A training establishment must publish the following information on the website of the Ministry of Construction prior to holding any training courses, namely the name and contact address of the establishment, the sectors in which it provides training, and its training program and lecturing staff. When providing training courses, a training establishment must provide written notification to the local Department of Construction.
2. The head of a training establishment shall make a decision on the following matters and shall be liable for such decision:
 - (a) To hold training courses on real estate brokerage and valuation, and on management and operation of real estate trading floors within its registered scope.
 - (b) To approve the program, teaching materials and data on such training courses on the basis of the framework program promulgated by the Ministry of Construction; and to ensure there are adequate facilities for students to study the law on real estate business activities and the law and professional practice in real estate brokerage and valuation, and management and operation of real estate trading floors.
 - (c) To collect training fees to ensure costs are covered in accordance with State regulations.
 - (d) To assess trainees' results of training and to issue certificates of completion of training to trainees who have satisfactory completed courses.
3. Once every six months, training establishments shall be responsible to report the results of their training courses to their local Department of Construction.

Departments of Construction shall be responsible to annually report to the Ministry of Construction the status of training on real estate brokerage and valuation, and on management and operation of real estate trading floors.

The Ministry of Construction shall be responsible to co-ordinate with provincial people's committees to inspect the activities of training establishments, and to promptly detect and deal with any breaches by such training establishments while holding training courses.

Article 14 Conditions and application files for issuance of real estate broker's certificates

1. An individual shall be granted a real estate broker's certificate when he or she satisfies all the following conditions:

- (a) Not being a State employee.
- (b) Having full capacity for civil legal acts; not being prohibited from practising pursuant to a decision of a competent authority, and not being currently subject to criminal prosecution or serving a prison sentence.
- (c) Having a certificate of completion of training on real estate brokerage.
- (d) Having submitted an application file for issuance of a real estate broker's certificate.

2. An application file for issuance of a real estate broker's certificate shall comprise:

- (a) Request for issuance of a real estate broker's certificate together with a photo certified by the peoples committee of the commune, ward or township (all hereinafter referred to as a commune people's committee) where the applicant resides.
- (b) Two coloured photos (size 3 x 4 cm) taken in the same year as the year of the application.
- (c) Copy of the applicant's identity card or passport.
- (d) Copy certificate of completion of training on real estate brokerage.

Article 15 Conditions and application files for issuance of real estate valuer's certificates

1. An individual shall be granted a real estate valuer's certificate when he or she satisfies all the following conditions:

- (a) Not being a State employee.
- (b) Having full capacity for civil legal acts; not being prohibited from practising pursuant to a decision of a competent authority, and not being currently subject to criminal prosecution or serving a prison sentence.
- (c) Having a certificate of completion of training on real estate valuation.
- (d) Having a college or university degree.

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- (a) Request for issuance of a real estate valuer's certificate together with a photo certified by the commune people's committee where the applicant resides.
- (b) Two coloured photos (size 3 x 4 cm) taken in the same year as the year of the application. (c) Copy of the applicant's identity card or passport.
- (d) Copy certificate of completion of training on real estate brokerage.

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Article 16 Order and procedures for issuance of real estate broker's and valuer's certificates

1. An applicant for a real estate broker's or valuer's certificate shall lodge his or her application file with the competent authority appointed by the provincial people's committee.
2. The competent authority shall be responsible to accept an application file, check it and issue a certificate within a time-limit of ten (10) working days from the date of receipt of the complete and valid application file. If an application file is incomplete or invalid, the competent authority must provide written notice to the applicant stating why the application file is incomplete or invalid, within a time-limit of five (5) days from the date on which the file was lodged.
3. An applicant must pay a fee of two hundred thousand (200,000) dong for the issuance of a real estate broker's or valuer's
4. Real estate broker's and valuer's certificates shall be valid for use nationwide.

The Ministry of Construction shall issue the standard form for real estate broker's and valuer's certificates to be uniformly used nationwide.

Article 17 Rights and obligations of applicants, and responsibilities of authorities issuing real estate broker's and valuer's certificates

1. Applicants for the issuance of real estate broker's and valuer's certificates shall have the following rights:
 - (a) To request the competent State authority to supply them with information about training courses, about issuance of certificates, and about administration of real estate brokerage and valuation practices.
 - (b) To require issuance of a certificate on time when the applicant satisfies all the conditions.
 - (c) To practise as a real estate broker or valuer in accordance with the items stipulated in the issued certificate.
 - (d) To lodge a complaint or denunciation in accordance with the law on complaints and denunciations for any breach of the law regarding training, or regarding issuance of certificates or administration of real estate broker's and valuer's practices.
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2. Applicants for the issuance of real estate broker's and valuer's certificates shall have the following obligations:
 - (a) To lodge an application file for the issuance of a certificate in accordance with [these] regulations, and to be legally liable for such application file.
 - (b) To pay the stipulated fees.
 - (c) Other obligations as stipulated by law.

3. Certificate-issuing authorities shall be responsible to publicly announce information about the procedures and application files for issuance of certificates; and they shall be liable for issuing incorrect certificates, for issuing certificates out of time, and for any negative acts causing difficulties for applicants; and if such conduct results in loss then they shall be liable to pay compensation in accordance with law.

Article 18 Re-issuance of real estate broker's and valuer's certificates

1. Any person who has been issued with a real estate broker's or valuer's certificate which is subsequently torn or lost may apply for re-issuance of the certificate.

2. An application file for re-issuance of a certificate shall comprise:

(a) Request for re-issuance of the certificate with a photo attached.

(b) Two coloured photos (size 3 x 4 cm) taken in the year of the request for re-issuance.

(c) The original certificate in a case where the certificate is torn. In a case where a certificate is lost and the application for re-issuance is made to a different authority, there must also

3. The order and procedures for re-issuance of certificates shall be implemented in accordance with article 16 of this Decree.

4. The contents of a re-issued certificate shall be the same as the contents which were recorded in the original certificate.

Article 19 Administration of real estate brokerage and valuation practices

1. The local authority administering real estate business activities and the authority issuing real estate broker's and valuer's certificates shall be responsible:

(a) To administer local real estate brokerage and valuation practices in accordance with law.

(b) To conduct checks and inspections, and to promptly deal with any breaches of law within their jurisdiction or to propose that the competent authority deal with such breaches.

(c) To provide annual reports, or to provide extraordinary reports on request, to the Ministry of Construction on the status of issuance and revocation of real estate broker's and valuer's certificates and on the administration of local real estate brokerage and valuation practices.

2. Any foreigner or Vietnamese who has a real estate broker's [or] valuer's practising certificate issued by a foreign country which is still valid shall [have such certificate] recognized and shall be permitted to use such certificate to practise in Vietnam. The practising certificate issued by the foreign country must be translated into Vietnamese, must be notarized or certified in accordance with the law of Vietnam, and must be sent to the local authority administering real estate business activities in the place where the foreigner or Vietnamese practises for monitoring and administrative purposes.

Article 20 Revocation of real estate broker's and valuer's certificates

1. The authorities issuing real estate

(d) To administer the organization of training courses for real estate brokers and valuers, and managers and operators of real estate trading floors.

(dd) To issue the framework program for training courses for real estate brokers and valuers, and managers and operators of real estate trading floors; to issue the standard form for real estate broker's and valuer's certificates; to provide guidelines on administration of training, and on real estate brokerage and valuation practices and on practice as a manager and operator of a real estate trading floor.

(e) To establish, and to administer the operation of, an information system on the real estate market and real estate business activities.

(g) To conduct international co-operation in the real estate business sector.

(h) To conduct checks and inspections of real estate business activities, to resolve complaints and denunciations, and to deal with breaches in accordance with its authority or to submit such matters to the competent body to deal with.

(i) To provide periodical and extraordinary reports to the Prime Minister of the Government on the status of real estate business activities nationwide.

2. The Ministry of Natural Resources and Environment shall be responsible, within the scope of its duties and powers, to provide guidelines for implementation of the provisions on administration of types of land participating in the real estate market, and shall issue specific provisions on land use rights of the types of real estate permitted to be made available for trading in accordance with the Law on Real Estate Business.

3. The Ministry of Finance shall be responsible, within the scope of its duties and powers, to provide guidelines on fees and charges and other financial obligations applicable to real estate business activities; and to provide guidelines on professional indemnity insurance for real estate valuers.

4. The State Bank of Vietnam shall be responsible, within the scope of its duties and powers, to research the issuance of a regime on credit assistance and on conducting payments in real estate business transactions via banks and credit institutions operating in Vietnam, in order to facilitate convenience and safety for all parties to such transactions.

5. Other ministries and branches shall be responsible, within the scope of their respective duties and powers, to co-ordinate with the Ministry of Construction in organizing administration of real estate business activities.

Article 23 Responsibilities of people's committees of provinces and cities under central authority
People's committees of provinces and cities under central authority shall be responsible:

1. To exercise State administration of real estate business activities within the localities which they manage.

2. To permit, in accordance with their authority, investment in and assignment of real estate business projects.

3. To directly invest, assist investment or implement policies encouraging investment in local new urban zone, residential zone and industrial zone technical infrastructure projects.

4. To direct and organize the issuance and revocation of real estate broker's and valuer's certificates; to appoint the authority competent to issue real estate broker's and valuer's certificates appropriate for the actual conditions within their localities; and to simplify procedures so that they do not cause difficulties for applicants for certificates.

To administer real estate brokerage and valuation practices, management and operation of real estate trading floors and other real estate services within their localities.

5. To disseminate the law on real estate business activities, and to organize system on the real estate market within their localities.

6. To conduct checks and inspections and to deal with breaches of the law during real estate business activities.

7. To provide periodical and extraordinary reports to the Ministry of Construction on the status of real estate business activities and the administration of real estate business activities within their localities.

Chapter V

IMPLEMENTING PROVISIONS

Article 24 Transitional provision

1. Any organization or individual who was granted a business registration certificate for real estate business or business services prior to the date on which this Decree takes effect, shall be permitted to continue to conduct business without conducting procedures for re-registration. Any organization or individual who has already conducted business registration for real estate brokerage [or] valuation but does not have a sufficient number of people with [real estate broker's or valuer's] certificates shall be permitted to continue to conduct business but must supplement the number of people with such certificates in accordance with [these] regulations prior to 1 January 2009.

2. As from the date on which this Decree takes effect up until the end of 31 December 2008, any organization or individual who registered the business line of real estate brokerage services, real estate valuation services [or] real estate trading floor services, but does not have sufficient people with a certificate³, shall still be granted a business registration certificate on condition that by 31 December 2008 at the latest such organization or individual supplements such certificate as stipulated by law.

As from 1 January 2009, any organization or individual who registers the business line of real estate brokerage services, real estate valuation services [or] real estate trading floor services must have sufficient people with the certificate stipulated by law.

3. As from the date this Decree takes effect until the end of 31 December 2008, any individual who has a price assessor's card issued by the competent State authority pursuant to Decree 101/2005/ND-CP of the Government dated 3 August 2005 on price assessments, and any

individual who has an engineering certificate for construction valuations issued pursuant to Decree 99/2007/ND-CP of the Government dated 13 June 2007 on administration of costs of investment and construction project works, shall be permitted to provide real estate valuation services.

As from 1 January 2009, any individual with a price assessment card or with an engineering certificate for construction valuations who wishes to conduct real estate valuation business

2. The Minister of Construction shall provide guidelines on, and shall be responsible to monitor implementation of this Decree.

FOR THE GOVERNMENT

PRIME MINISTER

Nguyen Tan Dung