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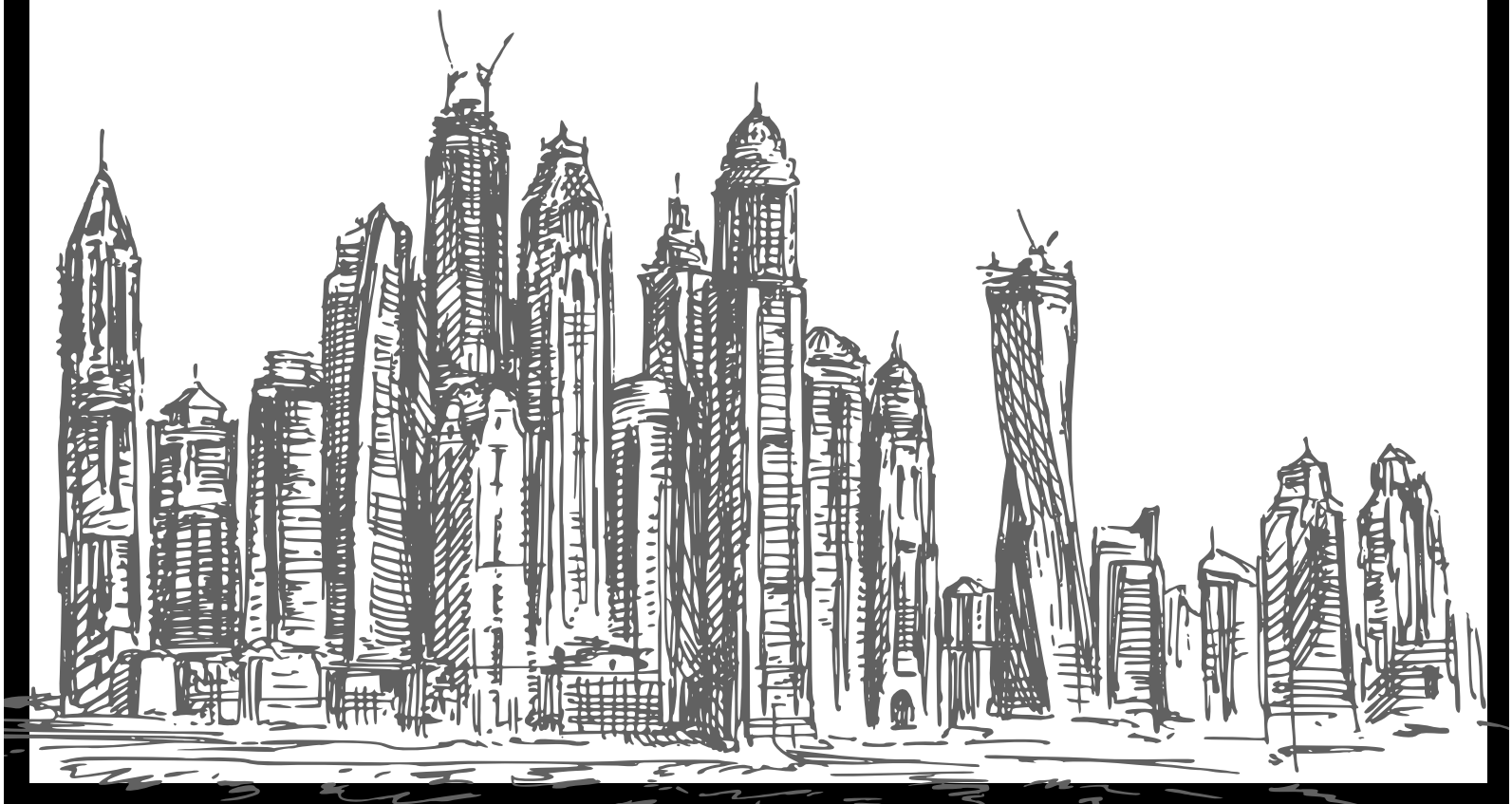
Advocates and Legal Consultants

Legal Implications Of MoU's In Property Transactions

BY

Dr. Reyadh Al Kabban



LEGAL IMPLICATIONS OF MoU'S IN PROPERTY TRANSACTIONS

Prior to the introduction of a unified contract for property transactions in the UAE, one would come across a situation where a Memorandum of Understanding (MoU) was executed between a Real Estate Broker and a prospective buyer to acquire a property in the UAE. This trend witnessed large scale property transactions in the Real Estate market wherein real estate brokers would sell off plan properties to prospective investors several times prior to their completion as the process was relatively simple and little thought was given to the security of transactions by purchasers and sellers alike. However, purchasers were never guaranteed a secure investment until they were officially registered as owners of their newly acquired properties at the Land Department (Oqood).

Brokers would eventually turn into a full service one stop shop wherein they would do market research, draft contracts (MoU's) and conduct the majority of the leg work while purchasers and sellers were only required to sign a MoU and attend a single visit to the Land Department in order to conclude their transactions. In some instances the purchaser would avoid registering the purchase at the Land Department in order to avoid paying the then 2% transfer fees with the intention to quickly flip the property to another purchaser and have them take on the payment of the transfer fees. However, the benefit of executing a MoU had its own set of disadvantages as they were drafted, for the most part, by brokers in a very basic and unscrupulous manner without any protection offered to either purchasers or sellers, only securing the brokers' annual commission. There were instances wherein MoU's were inadequately drafted thereby putting the purchaser at a disadvantage when selling the property or initiating legal proceedings against the Broker or seller in the event of a breach of terms and conditions stipulated in the MoU.

Even if the purchasers' rights and their overall interest was sufficiently protected under the MoU, purchasers were in for a shock in some instances when they realized that their purchased unit was not registered under their name at the Land Department but rather still under the name of the seller, particularly in occasions when properties were getting flipped at a high rate without the involvement of the Land Department. This arrangement also caused difficulties for sellers as they were compelled to defend themselves against legal proceedings initiated by purchasers to claim the paid purchased price for failure to handover the property particularly during the collapse of the property

market. On various occasions, sellers were unaware that their projects/properties were listed for sale by an authorized broker who was entitled to do so by way of power of attorney. On a side note, the collection of funds via power of attorney is a practise no longer entertained by the Land Department.

Apart from the above, purchasers' position in Court is further weakened when the Court determines that the MoU is not a legally binding document thereby disentitling them to make any claims against the broker or seller and more importantly claim their rights over the property. However, they are entitled to void the agreement and retrieve funds paid to sellers through legal proceedings.

Understanding the downside associated with executing an MOU, the government has introduced unified contracts for property transactions. The Government has made available to buyers, sellers and the brokers three forms namely Form A, B and F. These forms can be utilized on all kinds of sale and purchase transactions, irrespective of the type of property or its state of completion. The forms represent a required submission by the concerned parties and deposited with the Dubai Land Department thereby formalizing the transactions.

While the introduction of these forms is considered a welcomed initiative by the Government wherein the rights of all the parties associated with a real estate transaction are protected, the forms are still standard and neutral in nature. They do not shed light on issues of payment terms, mode of dispute resolution (i.e. Dubai Courts or Arbitration), treatment of the funds paid towards the purchase of the property, escrow account details, custodian of security cheques, construction milestones, force majeure, roles and obligations of all the parties to the transaction. The omission of key information brings the parties back to the same position with the sole consolation that the transaction is recognized and the agreement is valid and legally binding on the parties in the eyes of the UAE law. However, the Land Department accepts addendums to these agreements which reflects the contractual relationship between the parties to the transaction. Furthermore, it covers issues related to finances and dispute resolution thereby providing a safety net by further securing the rights of the parties, their investments and provides them with a platform to address their grievances in the event of breach of any of the terms and conditions stipulated in the MoU.

Additionally, the forms assists the Land Department officials in registering the details of the transaction without the requirement of reviewing the MoU and/or the Sale and Purchase Agreement at the time of registering the transaction thereby serving a dual purpose of saving time that would have been spent on sifting for identities and the number of transactions which are forwarded to the Land Department without the requisite information. The process also alerts the parties involved in the transaction of the documentation, identity proofs that are required to process the application and brings about an overall transparency in the transaction.

Despite the security and assurance provided by the Government, we advise the parties involved in property transaction related to MoUs, particularly purchasers, to be diligent and consider the following factors prior to executing a MoU:

- Ensure that the real estate broker is a registered and licensed broker to conduct such transactions
- Inquire about the Oqood (initial registration of sale) and ensure that the property is registered under your name
- Ensure that the broker has been duly authorized by the Seller by way of an authorization letter or power of attorney to conduct the transaction.
- Ensure that your rights and interest as a seller or a buyer has been adequately covered and allows you to initiate legal proceedings against the defaulting parties as a result of a breach in the terms and conditions of the contract.

RENT

BUILDING

REAL

AREA

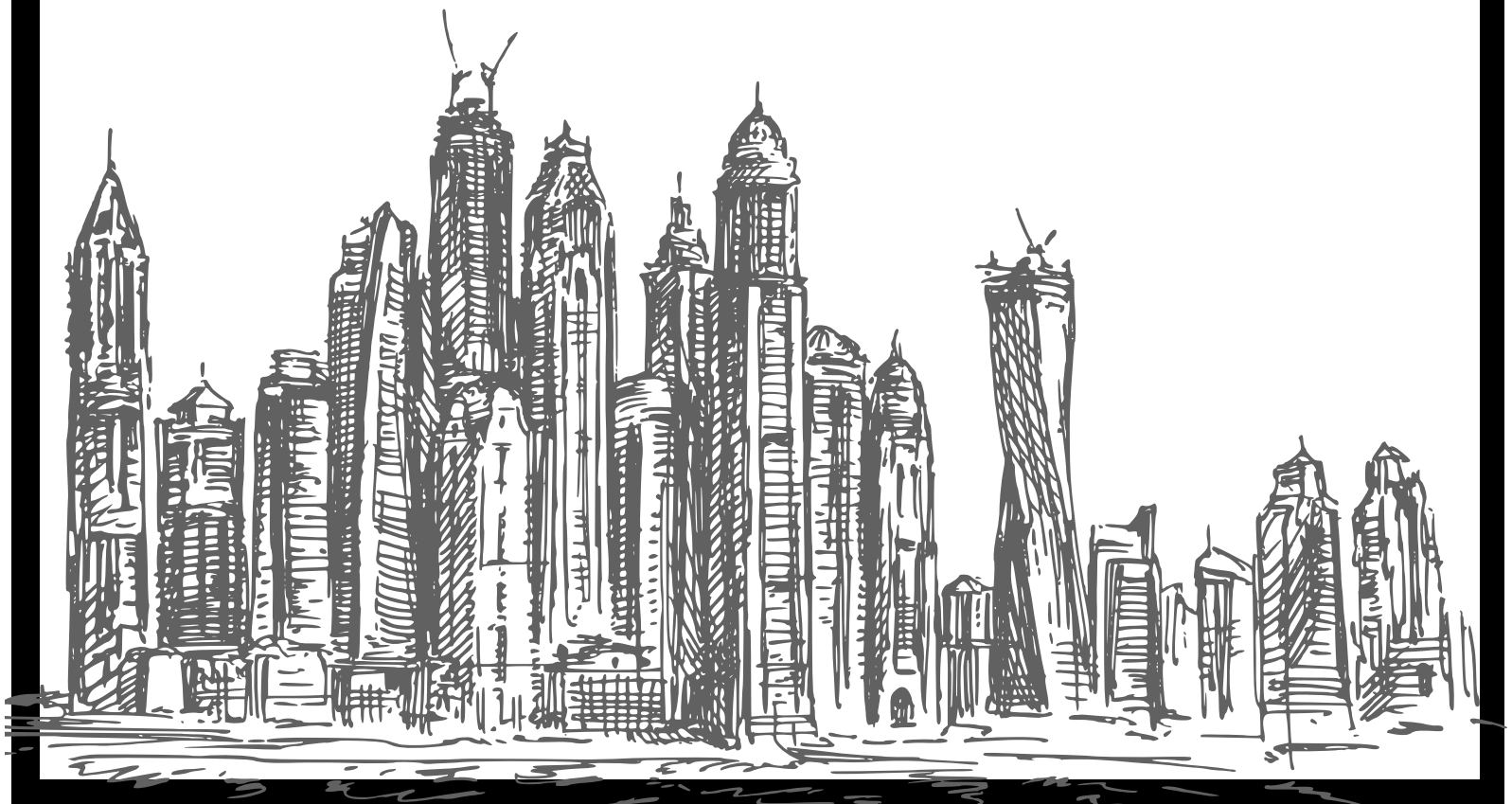
COMMERCIAL

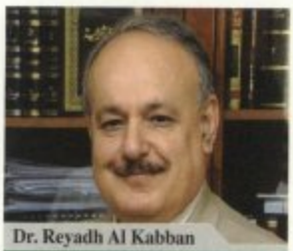
CONTRACT

LAND

OWNERSHIP

ESTATE





Dr. Reyadh Al Kabban
Founder and Managing Director, Al Kabban & Associates

About Dr. Reyadh Al Kabban
Dr. Reyadh Al- Kabban established Al Kabban & Associates, Advocates and Legal Consultants in 1993. He has dedicated more than 42 years of his life to the noble profession and has served as a Lawyer, Legal Consultant, Judge, Arbitrator and Jurist. He was admitted as a lawyer in 1971. He worked as an Advocate and Legal Consultant with the Iraqi Oil Company from 1975-1977. Dr. Reyadh is registered with several legal institutions across the UAE and internationally including DIAC, DIFC, ADCCAC, IBA, ICC and many other institutions. He obtained his LL.B from Basra University and his LL.M (Public Law and Taxation Law) from The University of Cairo. He also has a Doctorate of Philosophy in Maritime Law from Glasgow University a Diploma in Forensic Medicine.

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