

## UAE MORTGAGES – A LEGAL PERSPECTIVE

*(provided by Hugh Fraser International Legal Consultants)*

The property market in Dubai is developing at a rapid pace. Until Dubai issues its own property law or the UAE enacts a Federal law, there remain numerous uncertainties and gaps in the legal framework. It is especially evident in the guarded approach of banking institutions and financial institutions.

Mortgages are now available from most banks and a number of financial institutions in the UAE.

There are two types of mortgages available in the UAE market:

1. Conventional mortgages as known throughout most of the world; and
2. Islamic mortgages.

Interestingly enough, over 70% of the Islamic mortgages granted by one of the leading Lenders are to non-Muslims. There are a number of reasons why Islamic finance is appealing to non-Muslims such as the fact that there are no charges for early settlement of the loan.

The types of Islamic mortgages are:

1. **Murabaha** – the property is held in the name of the purchaser/s, payments are fixed for the duration of the loan. The bank purchases the property and then sells it to the borrower at a higher price.
2. **Ijara** – the property is held in the name of the financier and leased to the borrower. The property is transferred to the borrower on the last payment.
3. **Istisna'a** – construction finance. The borrower does not have to make any repayments until after the building is complete.
4. **Musharika** – joint venture between the financial institution and the borrower. The financial institution holds the greater share in the property and that share is progressively and proportionately reduced over time until the borrower owns the whole of the property.

When considering borrowing to purchase a property here in the UAE there are a number of factors that should be considered prior to paying the deposit:

1. UAE mortgages by non-UAE Nationals must be repaid by the age of 60 years – this means that for persons approaching 60 years, even if they can make the large repayments required in a short period of time, must be aware that for a conventional mortgage, there will no doubt be an early repayment fee.
2. Not all banks are lending on all developments – check with the developer which lending institutions are providing finance for the purchase of their properties. If the developer can't tell you...walk away.
3. Not all banks are providing finance for the premium – as a result, if one is purchasing the in resale market, the purchaser will need cash for at least the premium.
4. Some banks will not give final approval for a loan until the Sale and Purchase Contract is signed and provided to the bank – especially in the resale market, this can mean that bank finance will not be available at the time of transfer. A purchaser could also be at risk if the next installment is due very close to the transfer date and there is a delay in obtaining the Original Sale and Purchase Contract from the developer.

5. It is extremely difficult to obtain finance in Dubai for non-residents and offshore companies – the lending criteria for non-residents is extremely strict. Some brokers can obtain offshore finance for non-residents and offshore companies, however offshore collateral is required.
6. Consider all finance options – Islamic finance may be more appropriate for a purchaser, even if the purchaser is not Muslim.
7. Life Insurance is a prerequisite to final loan approval – the process for obtaining life insurance can be lengthy, in some cases taking months. Ensure that life insurance is in place prior to entering into any contract for the purchase of a property.

As in any jurisdiction, a borrower should always obtain independent legal advice prior to executing any mortgage documents. Mortgage documents are inherently one-sided in favour of the bank or financial institution. While the terms of the documents may not be able to be changed or amended, a lawyer can explain the effect of the clauses and highlight the important obligations on the borrower and identify any hidden fees or charges that are often not disclosed by the financial institution's representative. Entering into a mortgage is the biggest liability most people will ever assume and no one should rush or be pressured into entering into such a large commitment.

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