

# Housing Development (Control and Licensing) (Amendment) Act 2012 & (Amendment) Regulations 2015

## Housing Development (Control & Licensing) (Amendment) Act 2012

The Housing Development (Control and Licensing) (Amendment) Act 2012 was gazetted on 9 February 2012 and has come into force on 1 June 2015. The Amendment Act was passed to amend various provisions of the existing Housing Development (Control And Licensing) Act 1966, which regulates the control and licensing of the housing development business in Peninsular Malaysia and other matters connected therewith. The key changes brought about by the Amendment Act 2012 are briefly described below:

- **Section 3: Interpretation of 'housing developer'**

The definition of 'housing developer' has been expanded to include a person or body appointed by the court to be the provisional liquidator or liquidator for the housing developer in the event the housing developer is under liquidation.

- **Section 6: Condition or restriction for the grant of a licence**

With the enforcement of the Amendment Act 2012, the deposit for obtaining a Developer's Licence has been revised from RM200,000 to "a sum equivalent to 3% of the estimated cost of construction as certified by an architect in charge of the housing development".

The estimated cost of the construction has been defined as the cost of constructing a housing development and includes financial costs, overhead costs as well as all other expenses necessary for the completion of the housing development excluding land cost.

- **Section 8A: Statutory termination of the Sale and Purchase Agreement (SPA)**

The amendment allows individual purchasers to terminate the SPA at any time under the following circumstances:

- » the licensed housing developer refuses to carry out or delays or suspends or ceases work for a continuous period of six months or more after the execution of the SPA;
- » the purchaser has obtained the written consent from the end financier; and
- » the Controller has certified that the licensed housing developer has refused to carry out or delayed or suspended or ceased work for a continuous period of six months or more after the execution of the SPA.

In the event the purchaser exercises his right to terminate the SPA, the developer is required to refund all monies paid by the purchaser within 30 days of such termination, free from interest. The developer also has to bear the cost and expenses for the removal of all encumbrances on the land, claimable as a civil debt.

Non-compliance of this new section is an offence and on conviction, shall be liable to a fine of not less than RM50,000 but not exceeding RM250,000 and to a further fine not exceeding RM5,000 for every day during which the offence continues after conviction.

- **Section 16AD: Criminal penalty for failure to comply**

The penalty for any person who fails to comply with an award made by the Tribunal within the period specified by the Tribunal has been revised/raised in the Amendment Act 2012 where upon conviction, a developer will be liable to a fine of not less than RM10,000 but not exceeding RM50,000 or imprisonment of not exceeding two years or both.

- **Section 18A: Offences relating to abandonment of housing development**

The Amendment Act introduces a new section which criminalises project abandonment. A developer is considered having abandoned a project when he refuses to carry out or delays or suspends or ceases work continuously for a period of six months or more or beyond the stipulated period of completion as agreed under the Sale and Purchase Agreement.

Project abandonment is an offence and upon conviction, shall be liable to a fine which shall not be less than RM250,000 but not exceeding RM500,000 or imprisonment of not exceeding three years or both.

- **Section 24: Powers to make regulations**

The maximum penalty for any act or omission in contravention of any regulations has been increased from RM20,000 to RM50,000.

- **Savings and transitional**

Under the savings and transitional provision, any actions or proceedings which commenced or pending immediately before the date of coming into operation of the Act shall, after the date of coming into operation of the Act (1 June 2015), be continued as if the Act has not been amended.

Where a licensed housing developer has been granted a licence immediately before the date of coming into operation of the Act (before 1 June 2015) but has not paid the deposit under subsection 6(1) of the Act, the provision of the principal Act applicable to the payment of deposit shall continue to apply as if the principal Act had not been amended.

## Housing Development (Control & Licensing) (Amendment) Regulations 2015

With the enforcement of the Housing Development (Control & Licensing) (Amendment) Act 2012, the corresponding Regulations have also been amended and came into operation on 1 July 2015. The key highlights of the Housing Development (Control & Licensing) (Amendment) Regulations 2015 are as follows:

- **Regulation 4: Renewal of a housing developer's licence**

The amended Regulation 4 has shorten the time limit to renew a Developer's Licence from 60 days to 14 days before the date of expiry. A housing developer is required to renew his Developer's Licence until the Certificate of Completion and Compliance (CCC) for the project is granted.

- **Regulation 5: Advertisement and sale permit**

Developers are required to provide accurate information including the difference in price of property. Any misleading statement, false representation or description of the particular or information required including the difference in price of property is an offence.

- **Regulation 8: Advertisement shall not contain certain description**

A new subregulation (1A) has been introduced which prohibits the following in any advertisements made by developers:

- » offer of free legal fees;
- » projected monetary return gains and rental income;
- » claim of panoramic view;
- » travelling time from housing projects to popular destinations; and
- » any particulars to which a housing developer cannot genuinely lay proper claim.

- **Regulation 11: Contract of Sale**

The new amended Regulation (11) (2) has expanded the prohibition on collection of any payment by whatever name called except as prescribed by the contract of sale. Under the amended Regulation, the prohibition not only applies to housing developer but is also applicable to all persons including parties acting as stakeholders.

## Housing Development (Housing Development Account) (Amendment) Regulations 2015

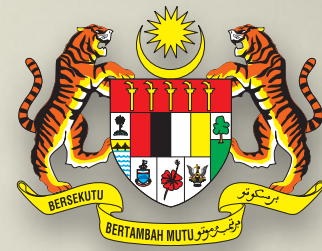
The implementation of the Housing Development (Control & Licensing) (Amendment) Act 2012 and (Amendment) Regulations 2015 is appended with the Housing Development (Housing Development Account) (Amendment) Regulations 2015 which has come into force on 1 July 2015 as well. The key highlights of the changes are as follows:

- Regulation 3A: Deposit made by the Developer**  
 In line with the amendments to the principal Act, Regulation 3A has been amended to reflect the increased in deposit from RM200,000 to "an amount equivalent to 3% of the estimated cost of construction as certified by an architect in charge of the housing development".
- Regulation 4A: Purchaser's financier to pay direct into the Account**  
 Period of payment increased from 21 working days to 30 working days. A new sub-regulation has also been introduced which requires any payments with regard to the redemption sum under Schedules G and H to be paid directly to the bank/ financial institution (bridging financier) who will issue a statement to the developer and purchaser that such payment has been made.
- Regulation 8: Conditions for withdrawal of monies from Housing Development Account**  
 Amendments introduced to provide for mode of payment other than cash such as online transfer.
- Regulation 11: Withdrawal of all monies in Housing Development Account**  
 Completion of housing development has been specified with the Certificate of Completion and Compliance (CCC). A new provision has also been introduced which only allows for withdrawal after the defects liability period has expired.
- Regulation 11A: Controller may use money in the Housing Development Account**  
 A new sub-regulation has been introduced to enable the Controller to utilise the monies in the Account to comply with an Award made by the Tribunal.
- Regulation 12C: Penalty**  
 With the amendments to the Regulations, the maximum penalty for offences has been increased from RM5,000 to RM50,000.

## Sale and Purchase Agreement (SPA)

Below are some of the significant changes made to the Sale and Purchase Agreement (SPA):

- » Inclusion of Housing Development Account number as well as the name and registered office of the bank/financial institution.
- » Inclusion of the solicitor acting for each party (purchasers and developers).
- » Developers are required to settle the redemption sum within the earlier stages of the development [Stages 2(a), (b) and (c) of the Third Schedule.
- » Various periods used throughout the SPA such as 14 days, 21 days and etc are all replaced with 30 days in order to standardise the periods throughout the agreement.
- » In the case of Government servants obtaining financial facilities from the Government, developers are not entitled to impose late payment charges for a period of six months from the date of signing of the SPA.
- » In the event the developer fails to pay the liquidated damages (LAD), the purchaser shall be entitled to deduct such liquidated damages from any instalment of the purchase price due to the developer.
- » The amendments provide for delivery of vacant possession (VP) with a valid and registrable instrument of transfer of the property/parcel together with a separate issue document of title / strata title to be presented for registration in favour of the purchaser.
- » The percentage of payments under the Third Schedule has been amended in which Stages 2 (g) and (h) have been reduced from 5% to 2.5% for each stage whilst the percentage for Stage 3 has been increased from 12.5% to 17.5%.
- » Inclusion of allocation of share units assigned to the Parcel (for stratified properties).
- » A new clause has been introduced which provides for the developer to apply to the Housing Controller for a certification in writing for the handing over of vacant possession if the strata title has not been issued for any reason not attributable to the developer (for stratified properties).



## Enforcements of Amended/New Acts and Regulations

The following Acts governing the property industry which had been gazetted in 2012 and 2013 have now come into operation on 1 June 2015:

No	Acts	Date of Gazette	Date of Enforcement
1	Housing Development (Control and Licensing) (Amendment) Act 2012	9 February 2012	1 June 2015
2	Strata Titles (Amendment) Act 2013	7 February 2013	1 June 2015
3	Strata Management Act 2013	8 February 2013	1 June 2015

With the enforcement of the Acts, the corresponding Regulations have also been gazetted:

No	Regulations	Date of Gazette	Date of Enforcement
1	Housing Development (Control and Licensing) (Amendment) Regulations 2015	1 June 2015	1 July 2015
2	Housing Development (Housing Development Account) (Amendment) Regulations 2015	1 June 2015	2 June 2015
3	Strata Management (Maintenance & Management) Regulations 2015	1 June 2015	2 June 2015
4	Strata Management (Strata Management Tribunal) Regulations 2015	1 June 2015	1 July 2015

All members are to strictly adhere to and comply with the provisions of the governing Acts and Regulations and familiarise themselves with the Acts and Regulations, particularly the amended/new provisions to ensure due compliance.

The above Acts and Regulations are available for downloading from the Attorney General Chambers' website at [www.federalgazette.agc.gov.my](http://www.federalgazette.agc.gov.my).