
IMMOVABLE PROPERTY (SPECIFIC PERFORMANCE) ORDINANCE 2012

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IMMOVABLE PROPERTY (SPECIFIC PERFORMANCE) ORDINANCE 2012

An Ordinance to amend and consolidate the law relating to the specific performance of contracts for the sale and assignment of immovable property

G. E. STACEY
ADMINISTRATOR

20th June 2012.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title and commencement

This Ordinance may be cited as the Immovable Property (Specific Performance) Ordinance 2012 and comes into force on 1 August 2012.

2. Interpretation

In this Ordinance—

“appropriate Area Officer” means the Area Officer in the Area where the immovable property is situated;

“assignee in a security” means the assignee in a security assignment contract which has been deposited under section 11;

“assignment contract” means a written contract whereby the purchaser in a contract for the purchase of immovable property (the “property contract”) assigns rights or corresponding obligations (or both) in the property contract, to a third party, either free of charge or otherwise;

“assignor of a security” means the assignor in a security assignment contract which has been deposited under section 11;

“co-owned” means any part of a co-owned building which has not been registered as a unit;

“contract”, except where the context otherwise requires, means—

- (a) a contract to sell or exchange immovable property; or
- (b) an exchange-in-kind contract;

“court” means the Resident Judge’s Court;

“deposit” means the deposit of a true copy of the contract with the appropriate Area Officer in accordance with section 3 (or section 11 in the case of the deposit of a security assignment contract);

- “encumbrance” has the meaning given in section 2(1) of the Transfer and Mortgage Ordinance;
- “exchange-in-kind contract” means a written contract between a provider, a registered owner of immovable property, (“P”), and a beneficiary (“B”), whereby B undertakes to develop the property in consideration of the transfer to B of—
- (a) any part, or an undivided ideal share, of the immovable property; or
 - (b) the entire or a part of an undivided ideal share of the immovable property with the concurrent undertaking of the obligation of B to transfer a part thereof, after the development, to P;
- “ideal share” means property held in equal shares by 2 or more registered owners where each share is not shown as a separate interest on the land register;
- “immovable property” has the meaning given in section 2 of the Tenure, Registration and Valuation Ordinance and it includes an encumbrance acquired upon the registration of a lease contract, which is registered in accordance with the provisions of that Ordinance;
- “land register” has the meaning given by section 2 of the Tenure, Registration and Valuation Ordinance**(a)**;
- “limited co-owned property” means part of a co-owned building granted in accordance with section 38F of the Republic’s Immovable Property (Tenure, Registration and Valuation) Law**(b)** for the exclusive use of by one or more but not all units of a co-owned building;
- “part of immovable property” means any part of immovable property including a plot under division, a floor or a part of a floor, a room, office, flat, residence, shop or any other part of land or building which—
- (a) is determined on a plan, sketch or otherwise; and
 - (b) subject to the provisions of the Tenure, Registration and Valuation Ordinance, may be registered separately;
- “prohibition” has the meaning given in section 2(1) of the Transfer and Mortgage Ordinance;
- “purchaser” means a person, in whose name immovable property is to be transferred, in accordance with the contract, for a consideration and it includes an assignee in an assignment contract;
- “registered” has the meaning given in by section 2 the Tenure, Registration and Mortgage Ordinance**(c)**;
- “security assignment contract” means a written contract whereby the purchaser (the “assignor”) in a contract for the purchase of immovable property (the “property contract”) assigns to a 3rd person (the “assignee”), the rights of the assignor in the property contract so as to secure a monetary obligation;
- “specific performance” means the performance of obligations which derive from a contract following an order by a court, including the registration of immovable property to which the contract relates;
- “Tenure, Registration and Valuation Ordinance” means the Immovable Property (Tenure, Registration and Valuation) Ordinance**(d)**;
- “Transfer and Mortgage Ordinance” means Immovable Property (Transfer and Mortgage) Ordinance 1966**(e)**;
- “vendor” means the person referred to in a contract as a vendor whether that person is—
- (a) registered as owner of the entire immovable property;
 - (b) registered as owner of an undivided ideal share;
 - (c) registered as owner of immovable property for which there is a signed agreement of distribution, so that each owner is entitled to possess, use and dispose the share corresponding to that person freely;
 - (d) a beneficiary in an exchange-in-kind contract.

3. Formalities necessary for the deposit of a contract

- (1) An Area Officer may only admit the deposit of a contract by any of the contracting parties if the formalities specified in this section are satisfied.

- (2) At least one of the vendors must be registered as an owner of the immovable property, or part of the immovable property, which is the subject of the contract, before deposit of the contract.
- (3) The contract must—
 - (a) be in writing;
 - (b) include adequate particulars of the identities of the contracting parties and be signed by each of them;
 - (c) identify the immovable property which is the subject of the contract; and
 - (d) specify the consideration.
- (4) Except in the circumstances specified in subsections (6) and (7), the contract must be deposited with the appropriate Area Officer within 6 months of the date the contract is made.
- (5) If the immovable property is co-owned and not all the registered owners are vendors, the contract must be accompanied by an agreement which must—
 - (a) give the vendor the right to possess, use and dispose freely of the part of the immovable property which is the subject of the contract; and
 - (b) be signed by all the registered owners and their signatures must be witnessed.
- (6) In the case of an exchange-in-kind contract, the time for the deposit of the contract referred to in subsection (4) commences upon the transfer of the immovable property to the beneficiary.
- (7) If the immovable property is not registered in the name of at least one of the vendors when the contract is made, the contract may be deposited within 6 months of the date of that registration.
- (8) If the purchaser is an assignee in an assignment contract which is concluded prior to the deposit of the contract, the deposit of the contract must be accompanied by a copy of the assignment contract and a certificate of settlement of tax imposed in accordance with the Capital Gains Tax Ordinance 2006(f).
- (9) If an assignment contract is concluded in relation to a contract which has been deposited in accordance with this section—
 - (a) a copy of the assignment contract must be presented to the appropriate Area Officer within 2 months of the signature of the assignment contract;
 - (b) the copy must be accompanied by a copy of the tax certificate referred to in subsection (8); and
 - (c) the copy must be attached to the contract which has been deposited.
- (10) Despite the provisions of the Contract Ordinance(g), or any other Ordinance, a clause in a contract made after the day this Ordinance comes into force purporting to exclude the right to deposit a contract in accordance with this section is void.

4. Vendor's obligations

- (1) Providing a purchaser has complied with subsection (2), a vendor must not mortgage immovable property which is the subject of contract before the contract has been deposited.
- (2) A purchaser ("P") complies with this subsection if P fulfils all the purchaser's contractual obligations due until the date of deposit of the contract.
- (3) A vendor who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine not exceeding €5,000, or both such penalties.

5. Effect of deposit of a contract

- (1) The deposit of a contract constitutes an encumbrance on the immovable property to which the contract relates, and the order of priority of the encumbrance follows the order of priority at the date of deposit of the contract.
- (2) If the contract relates to a part of a registered property, the entire property is subject to the encumbrance, but if a part is registered separately only that part is subject to the encumbrance.

- (3) Subject to subsection (4), if the immovable property to which the contract relates is subject to a mortgage which precedes the date of deposit of the contract,—
 - (a) the purchaser may pay the mortgagee an amount determined in accordance with section 7(4) to (6), and in accordance with the repayment conditions of the mortgage;
 - (b) the mortgagee must accept payment of the amount referred to in paragraph (a); and then
 - (c) the encumbrance of the mortgage follows in priority to the deposit of the contract, irrespective of repayment of the entire mortgage.
- (4) If a contract was deposited prior to the day this Ordinance comes into force, the written consents of the vendor and the mortgagee are required for paragraph (3) to have effect.
- (5) The encumbrance created upon deposit of a contract secures the amount that the purchaser paid against the consideration of the sale, or the amount of the value of the object of an exchange-in-kind contract until—
 - (a) an order for specific performance under section 7; or
 - (b) payment of compensation where subsection (10) applies.
- (6) The encumbrance is valid until—
 - (a) it is cancelled or withdrawn;
 - (b) the end of the period for filing an appeal against the decision of a court ordering removal of the encumbrance; or
 - (c) the date of the court's judgment, where an appeal is filed and on appeal the court orders removal of the encumbrance.
- (7) Subject to subsection (8), the deposit of a contract has effect as a mortgage for the purpose of—
 - (a) sections 29(1), 31(1), 41(6) and 42(2) and (3) of the Transfer and Mortgage Ordinance; and
 - (b) any legislative provision which refers to—
 - (i) a prior mortgage;
 - (ii) the disposal of the proceeds of sale in relation to a subsequent mortgage;
 - (iii) the compulsory sale of an undistributed property; or
 - (iv) the payment of compensation as a result of compulsory acquisition or requisition.
- (8) Unless the prior consent of the purchaser is obtained, sections 29(1) and 31(1) of the Transfer and Mortgage Ordinance do not have effect in relation to the contract where—
 - (a) a contract has been deposited prior to the date this Ordinance comes into force; and
 - (b) the entire interest in the immovable property is to be sold.
- (9) Where subsection (10) applies, the deposit of the contract has effect as a mortgage—
 - (a) from the date of the deposit;
 - (b) in favour of purchaser (in accordance with the Transfer and Mortgage Ordinance); and
 - (c) which is equal to the amount of compensation ordered by the court.
- (10) This subsection applies where—
 - (a) a court does not order specific performance in accordance with section 7, but orders that compensation be paid to a purchaser; and
 - (b) the purchaser has fulfilled the obligations of the contract.
- (11) The deposit of a contract has no effect in relation the sale of immovable property ordered by a court prior to the deposit.

6. Formalities necessary for an order for specific performance of a contract

- (1) A court may order specific performance of a contract under section 7 providing—

- (a) the contract is deposited; and
 - (b) a claim for the issue of an order is made within the time limit provided for in law for claims of breach of contract.
- (2) If a contract is in writing but has not been deposited in accordance with section 3, or is a verbal contract, a court may order specific performance if —
- (a) a claim is made and the court considers it is fair and reasonable having regard to all the circumstances of the case;
 - (b) the court is satisfied that the rights of 3rd parties arising from prior encumbrances or prohibitions are not prejudiced;
 - (c) the contract determines the identities of the contracting parties and the immovable property which is the subject of the contract; and
 - (d) at least one of the vendors is registered as the owner of the immovable property, or part of the immovable property to which the contract relates.

7. Enforcement of a contract

- (1) A court may make an order for the specific performance of a contract under any conditions it considers necessary.
- (2) In particular an order may do all or any of the following—
 - (a) require the vendor to obtain certificates, permits or approvals provided for in legislation necessary for the separate registration of the immovable property;
 - (b) appoint a person other than the vendor to take the action required in paragraph (a);
 - (c) order payment of expenses incurred.
- (3) A court order relating to expenses incurred in the separate registration of immovable property to which the contract relates takes effect as an encumbrance in the same manner as the registration of a judgment under section 53 of the Civil Procedure Ordinance(**h**), and is an encumbrance on all shares of immovable property for which separate registration is made.
- (4) A court may make an order for specific performance where a mortgage has been deposited prior to the deposit of a contract, if it is satisfied that the purchaser has paid an amount which corresponds to the mortgage debt on the immovable property which is the subject of the contract.
- (5) In the case of a contract for the sale of part of mortgaged property, the amount to be paid under subsection (4)—
 - (a) is determined by the value of the part of the immovable property to be sold as a proportion of the total value of the mortgaged immovable property, expressed as a percentage (“the value co-efficient”); and
 - (b) in the case of limited co-owned property, the value co-efficient excludes the value of that part of the property.
- (6) A value co-efficient which arises on the basis of a planning permit is to be determined by the vendor, and must be deposited with the appropriate Area Officer prior to the sale.
- (7) Where an action for the specific performance of a contract is brought by an assignee in a security, and the court orders specific performance, the court must order the registration of the immovable property, in the name of the purchaser and the simultaneous registration of the mortgage on the new title.

8. Enforcement of a court order

- (1) A person who has obtained a court order for specific performance must present that order to the appropriate Area Officer.
- (2) With the exception of encumbrances created by way of a court order made pursuant to section 7(2) or (3), the Area Officer must ensure that all registration of the immovable property necessary for the enforcement of the order takes place, irrespective of any encumbrances or prohibitions burdening the property, or its owner, which follow in priority to the contract.
- (3) If a court order relates to the specific performance of a security assignment contract, and the assignor of the security to the benefit for whom the order has been made does not take the necessary steps to enforce the order, the assignee in the security may take the necessary steps.

- (4) An Area Officer, a person with the benefit of an order, or the assignee in a security may apply to the court in relation to any matter arising from the enforcement of an order, and the court may make such further orders as it considers necessary.

9. Right to specific performance ceases if the property is not registered with a specified period

- (1) If a person with the benefit of a court order for specific performance does not present the order to the appropriate Area Officer within the period of 1 year, starting with the date of the order, the order ceases to have effect unless it is renewed in accordance with subsection (2).
- (2) A court may order that an order be renewed and further renewed for a period or periods, each not exceeding 1 year, if it considers it fair and reasonable having regard to all the circumstances of the case.
- (3) An application for renewal may be made before or after the period of validity of the order has expired.

10. Effect of registration under a court order for specific performance

- (1) The effect of registration of a person as an owner of property under a court order for specific performance is that the person's rights and interests in the property are as specified in the contract for which specific performance is ordered.
- (2) A court may order that the property is delivered to that person or that the person obtains possession of the property in such manner as the court considers appropriate.

11. Deposit of a security assignment contract

- (1) An assignee in a security may deposit a security assignment contract with the appropriate Area Office, if the contract to which it relates has already been deposited.
- (2) An Area Officer may only admit the deposit of a security assignment contract if the formalities specified in subsection (3) are satisfied.
- (3) The security assignment contract must—
 - (a) be in writing;
 - (b) include adequate particulars of the identities of the contracting parties, be signed by each of them and their signatures witnessed;
 - (c) specify the contract to which it relates; and
 - (d) specify the monetary obligation which it secures.
- (4) The deposit of a security assignment contract constitutes an encumbrance on the contract to which it relates and retains the order of priority created as a result of the deposit of that contract.
- (5) If an assignor of a security does not fulfil the obligations arising from the security assignment contract, the assignee in the security may file a claim under section 7 for specific performance of the contract to which it relates.
- (6) Subsection (5) does not preclude a purchaser who is also an assignee in a security seeking an order for specific performance of the contract under section 7.
- (7) An Area Officer must not transfer property (in accordance with the Transfer and Mortgage Ordinance) which is subject to a security assignment contract deposited under this section until that contract is withdrawn or removed.
- (8) Where the monetary obligation to which the security assignment contract secures has been settled or ceases to exist, the assignee in the security must notify the appropriate Area Officer and take the necessary steps to ensure that the deposit of the security contract is withdrawn.
- (9) The assignor of a security may apply to a court for an order that the deposit of the security contract be withdrawn where —
 - (a) the assignee in the security fails to withdraw the deposit of the security assignment contract in the circumstance specified in subsection (8);
 - (b) the assignee in the security refuses to accept payment of the amount of the monetary obligation for which the security assignment contract has been granted; or

- (c) the assignor of a security cannot pay the amount secured by the security assignment contract because—
 - (i) the place of residence of the assignee in the security is unknown and the assignee cannot be traced;
 - (ii) the assignee in the security is deceased and the personal representatives or heirs cannot be traced; or
 - (iii) the assignee in the security is a company or partnership which no longer exists.
- (10) On making an order under subsection (9) the court may impose such conditions as are fair and reasonable having regard to all the circumstances of the case.
- (11) Where a security assignment contract has been deposited, the assignor of the security may not, without the prior consent of the assignee in the security —
 - (a) withdraw the deposit of the contract or cancel the contract to which the assignment security contract relates; or
 - (b) conclude an assignment contract.
- (12) Where a security assignment contract has been deposited and the vendor terminates the contract to which the security assignment contract relates, the vendor must inform the assignee.
- (13) The encumbrance created by the deposit of a security assignment contract is valid until—
 - (a) it is cancelled or withdrawn;
 - (b) the end of the period for filing an appeal against the decision of a court ordering removal of the encumbrance; or
 - (c) the date of the court’s judgment, where an appeal is filed, and on appeal the court orders removal of the encumbrance.

12. Court may allow deposit of a contract or filing of an appeal outside a prescribed time limit

Despite sections 3(4) and 6(1)(b), a court may upon a relevant application allow the deposit of a contract or filing of a claim for specific performance outside the prescribed time limits if it considers it fair and reasonable in order to protect the purchaser.

13. Savings of court’s power

This Ordinance does not deprive the court of any power to award damages for breach of contract where the court considers fit, instead of ordering specific performance of the contract.

14. Liability of the vendor’s estate

- (1) Providing subsection (2) is satisfied, if a vendor dies subsequent to the execution of a contract the purchaser is entitled to claim all such relief against the administrator of the vendor’s estate, as the purchaser may claim under this Ordinance
- (2) This subsection is satisfied where there has been compliance with all the formalities necessary for the enforcement of a contract under section 7 or an enforcement of a court order under section 8, as the case may be.

15. Remedies of the vendor

Where section 14(2) is satisfied, but a purchaser refuses to pay the purchase money and accept the property, the remedy of the vendor under the contract lies in damages only.

16. Delegation of functions to the Republic

The functions of the appropriate Area Officer specified in this Ordinance are general delegated functions for the purpose of the Delegation of Functions to the Republic Ordinance 2007(i).

17. Transitional provisions

- (1) This Ordinance applies to contracts deposited under the Sale of Land (Specific Performance) Ordinance 1973 irrespective of whether any judicial proceedings are pending on the day this Ordinance comes into force.

- (2) An existing contract, made prior to the day this Ordinance comes into force, may be deposited in accordance with section 3 within a period of 6 months, starting on the day this Ordinance comes into force, even if the deadline for the deposit of a contract under the Sale of Land (Specific Performance) Ordinance 1973(j) has elapsed.

18. Repeals

The following Ordinances are repealed—

- (a) the Sale of Land (Specific Performance) Ordinance 1973; and
- (b) the Sale of Land (Specific Performance) (Amendment) Ordinance 2011(k).

Notes

- (a) A revised definition of land register was inserted by section 2 of the Immovable Property (Tenure, Registration and Valuation) (Amendment) Ordinance 2011 (Ordinance 7/11).
- (b) Cap. 224 Statute Laws of Cyprus revised edition 1959, section 38F was inserted by Law 6(I)/93.
- (c) A revised definition of registered was inserted by section 2 of Ordinance 7/11(referred to above).
- (d) Cap. 224, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/12) provides for the interpretation of such legislation.
- (e) Ordinance 16/66, as amended by Ordinances 14/70, 8/78 and 11/12.
- (f) Ordinance 2/06, as amended by Ordinance 13/08.
- (g) Cap 149, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/12) provides for the interpretation of such legislation.
- (h) Cap 6, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance (Ordinance 8/12) 2012 provides for the interpretation of such legislation.
- (i) Ordinance 17/07.
- (j) Ordinance 4/73.
- (k) Ordinance 4/11.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Immovable Property (Specific Performance) Ordinance 2012 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The purpose of the Ordinance is to set out the procedures which must be followed where there is a contract for the sale of land (immovable property), and the purchaser later seeks a court order for specific performance of that contract. The Ordinance replicates the Republic’s Sale of Immovable Property (Specific Performance) Law (Law 81(I)/2011) and repeals the Sale of Land (Specific Performance) Ordinance 1973.

4. Section 3 sets out the formalities which are required for the deposit of a contract. The basic rule is that it must be deposited with an Area Officer within 6 months of the contract being made. An Area Officer may only accept deposit if the contract is in writing, identifies the contracting parties, is signed by them and describes the land. A clause in a contract purporting to exclude the right to deposit a contract is void.

5. Section 4 makes it a criminal offence for a vendor to mortgage a property after a contract for the sale of land has been made, but before it is deposited.

6. The effect of the deposit of a contract is set out in section 5. A deposit creates an encumbrance of the property which is the subject of the contract. For the purpose of specified provisions of the Immovable Property (Transfer and Mortgage) Ordinance 1966 and other legislative provisions referring to mortgagees and compulsory purchase, the deposit of a contract takes effect as a mortgage. It therefore has priority over a subsequent mortgage or other encumbrance on the land.

7. Sections 6 and 7 make provision for making a claim for specific performance and the powers of the court. The time limit for an application to a court is the same as in a claim for breach of contract. The court has the power to order specific performance in relation to a contract, which has not been deposited, if the court considers, inter alia, that it is fair and reasonable and that it will not prejudice the rights of 3rd parties. A court can make any order it considers necessary to ensure specific performance, and an order for expenses.

8. Section 8 provides that the person with the benefit of a court order is to present it to an Area Officer. This must be done within one year of the date of the order (section 9), but, on application, the court has the power to renew and further renew this period, but on each occasion for no more than one year.

9. Section 11 makes provision for the deposit of a security assignment contract with an Area Officer. This is a contract whereby the purchaser (the “assignor”) in a contract for the purchase of land assigns to a 3rd person (the “assignee”) the rights of the assignor on the basis of the contract for the purchase of land so as to secure a monetary obligation. On settlement of this obligation the assignee must withdraw the deposit. If the assignee does not withdraw the deposit, the assignor may make an application to the court for it to be withdrawn.

10. If a vendor dies after the making and deposit of a contract the purchaser may bring a claim for specific performance against the vendor’s estate (section 14). Section 15 stipulates that where the purchaser does not pay the purchase price, the only remedy for a vendor is damages.

11. Section 16 delegates the functions of an Area Officer to the Republican counterpart. The effect of this is that a deposit of a contract is made to an officer at the District Lands Office.

12. Section 17 makes transitional provisions. A contract made before 1 August 2012 (the date this Ordinance comes into force) may be deposited within the period of 6 months starting on 1 August 2012 (i.e. on or before 31 January 2013). This Ordinance has effect in relation to contracts deposited under the repealed Sale of Land (Specific Performance) Ordinance 1973.

(SBA/AG/2/LD/589)

