



VIETNAM



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Guidance on mortgages of residential houses yet to be built

On December 9, 2015 the State Bank of Vietnam issued Circular No. 26/2015/TT-NHNN guiding on procedures for mortgage and lifting mortgage of houses yet to be built (Circular 26). Apart from regulations on lifting mortgages, Circular 26 provides guidance on the mortgage of houses formed in the future (Future House) and residential housing development projects (Project) only at credit institutions.

According to Article 1 of Circular 26, the Future Houses and/or the Projects could be used as secured assets to be mortgaged at credit institutions. Such regulation is evaluated as an effective way to improve both real estate markets and credit services in Vietnam. Developer/purchasers could mobilise the amount of money from mortgaging the Future House and/or the Project as secured assets, and on the other hand, credit institutions could collect the mortgage interest and fees.

However, not all Future Houses and/or Projects can be mortgaged. Circular 26 provides specific conditions of the Future Houses and/or the Projects to be mortgaged. Particularly, subject to a certain case, all conditions stipulated in Article 7 of

Circular 26 shall be satisfied. Notable conditions stipulated in Circular 26 are that in the case of mortgage by the developer, the Project shall fall in the list of residential house development projects in compliance with Article 8 of Circular 26. Accordingly, the Future Houses and the Projects to be mortgaged by developers at credit institutions include:

- Construction projects or renovation projects for building a separate houses or a group of houses;
- Investment projects for building houses which have technical infrastructure in sync with social infrastructure in rural areas;
- Investment projects for building urban areas or building on a land with mixed use which is an available area for building houses;
- Investment projects for building the houses with mixed use of residential and business.

In addition, in the case of the Future Houses mortgaged by the developer, the completion of the foundation of the building is required as a condition of entering into a mortgage transaction.

In respect of limitation in mortgage of

the Future Houses or the Projects, Circular 26 provides that in a case where a Future House or Project has been mortgaged, the developer or purchaser can only mortgage part of the Project exclusive to the secured Future House in previous transactions. Also, in case the property rights of the assets (the Future Houses, Projects) have been mortgaged, such assets are prohibited to be used as the secured property in another mortgage transaction.

In respect of conducting the mortgage transaction, specific rights and obligations of the mortgager and mortgagee are clarified clearly in Article 4 and Article 5 of Circular 26. In case of mortgage transactions entered into by and between purchaser and mortgagee, a developer must provide fully and truly all documents in relation to the Future Houses upon request of relevant parties and promptly support parties in performing the mortgage at credit institutions in compliance with the laws of Vietnam.

Circular 26 also provides that parties in the mortgage transaction shall comply with relevant regulations on notarisation and registration of mortgages as a secured transaction according to the laws of Vietnam.

In the event of a mortgage transaction entered into by parties before December 10, 2015 in which secured assets are the Projects or the Future Houses, parties shall implement the content of the mortgage contract in compliance with former regulations of the laws of Vietnam at the time of signing. All amendments and supplements of the mortgage contract from the date of December 10, 2015 must conform to the provisions of Circular 26. Circular 26 took effect on December 10, 2015 and replaces former regulations on mortgage and lifting mortgage of houses yet to be built.

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