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NEW REGULATIONS OF 2023 HOUSING LAW ON THE MANAGEMENT AND USE OF APARTMENT BUILDINGS



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On June 29, 2024, the National Assembly adopted the Law No. 43/2024/QH15 on amendment and supplementation of a number of articles of the Land Law No. 31/2024/QH15, the Residential Housing Law No. 27/2023/QH15, the Law on Real Estate Business No. 29/2023/QH15, the Law on Credit Institutions No. 32/2024/QH15, among these, it notably highlights that the Residential Housing Law No. 27/2023/QH15 dated November 27, 2023 (the “2023 Housing Law”) comes into effect on August 01, 2024, five months earlier than its previous effective date. With the expectations and directives of the National Assembly to address the backlog of issues of the Residential Housing Law No. 65/2014/QH13 dated November 25, 2014 (the “2014 Housing Law”), the 2023 Housing Law codifies certain provisions from guidance documents and introduced numerous clearer

regulations for the management of residential house construction investment projects. Regarding the management and use of apartment buildings, the 2023 Housing Law introduces the following new provisions:

Firstly, while the 2014 Housing Law only prohibits improper use of apartment buildings and encroachment upon common space, the 2023 Housing Law specifically categorizes prohibited acts in the management and use of apartment buildings, with several new prohibitions added.

Compared to the 2014 Housing Law, the 2023 Housing Law introduces numerous new prohibitions, aimed at enhancing the management and protection of the living environment of residents; specifically, the 2023 Housing Law acknowledges that failure to pay maintenance fees and misuse of operational management and maintenance fees are strictly prohibited acts. This provision ensures that the financial funds for the maintenance and operation of the apartment buildings are collected and used for the right purposes, thereby maintaining the quality and safety of the construction works, and protecting the interests of other apartment building owners who comply with regulations. The 2023 Housing Law also prohibits acts that affect the order and landscape of the apartment buildings, including painting, decorating the exterior in contravention of regulations on design, architecture, and keeping or releasing livestock or poultry, and

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slaughtering livestock within the apartment area, contributing to protecting the common living environment, ensuring order and aesthetic harmony, creating a civilized, clean and beautiful living environment for all apartment owners.

In addition, the 2023 Housing Law also strictly prohibits the division of apartments without the permission of competent state authorities (“State Authority”). This prohibition helps to ensure the structural safety of the apartment buildings, maintain consistency in the planning, prevent infrastructure overload, and address other safety issues during the use of apartment buildings.

Secondly, the Housing Law 2023 introduces a number of specific regulations in construction of parking spaces of apartment buildings, as well as codified a number of provisions in the Regulations on management and use of apartment buildings to ensure the legality in practical application and implementation.

Design of apartment buildings must allocate the area for each type of vehicle: While the 2014 Housing Law generally requires ensuring the construction of parking spaces in accordance with approved design and construction standards, the 2023 Housing Law codifies the provisions in the Regulations on management and use of apartment buildings, specifically detailing that parking spaces can be arranged in the basement levels or other areas inside or outside the apartment buildings.

Additionally, the 2023 Housing Law requires the developers of investment projects of apartment building construction (referred to as the “Developer”) to allocate the area for each type of vehicle in the design of the apartment buildings. These specific requirements aim that the State Authority shall have a more comprehensive and accurate assessment of the quality and safety of the construction works, evaluate the impact of the apartment building project on the transportation system in the surrounding area, prevent Developer from changing the use purpose of designated parking areas contrary to the approved design, and ensure the common ownership and use of the apartment owners for parking space (aside from car parking space).

Regulations on charging area: In addition to the regulations on the allocation of separate parking spaces for each type of vehicle, the addition of requirements on charging area for electric motor vehicles to be arranged in compliance with the construction standards is a notable new point, demonstrating the preparation of the 2023 Housing Law for the development of new technologies, meeting the increasing social demand and trend for electric vehicles. However, this provision of the 2023 Housing Law is not yet sufficiently specific on whether all apartment buildings’ designs must include electric charging areas as a mandatory requirement or not. Given the current situation where residents charge electric vehicles haphazardly without ensuring fire safety and considering recent incidents of fires caused by explosions during charging, it is very urgent to

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provide explicit guidance and standards for designing electric charging areas in apartment buildings. Currently, the Ministry of Science and Technology has developed and issued 11 Vietnamese standards for electric vehicle charging stations (including 9 standards for charging stations and 2 standards for electric vehicle battery exchange); additionally, the Ministry is in the process of revising legal regulations and proposing additional 18 standards related to electric vehicle charging stations and associated electric equipment (as mentioned in Official Letter No. 149/BKHCN-TDC dated January 18, 2024 of the Ministry of Science and Technology). These standards provide clear guidelines and frameworks for Developer to implement and adhere to when constructing and designing electric charging areas within apartment buildings, ensuring the safety of property and lives of residents in these areas.

Developer is required to publicly disclose the investment costs for the construction of car parking spaces: The 2023 Housing Law clearly stipulates that in cases where apartment buyers do not purchase or rent a car parking space, this car parking space is under the management of the Developer and the investment cost for construction of these parking spaces shall not be included in the apartment selling price. Also, the 2023 Housing Law requires the Developer to publicly disclose the investment cost for constructing car parking spaces, to help the apartment buyers understand whether the composition of the apartment selling price paid includes the

cost for the construction of car parking spaces. This regulation aims to address the practical issue where Developer of some residential housing projects designate car parking spaces as their private property without clearly specifying whether the investment costs for constructing these spaces are allocated into the apartment sale price for apartment buyers. However, there is a need for more specific guidelines on the timing and method for the Developer to publicly disclose the cost of construction of car parking spaces so that buyers can be informed before deciding to sign the apartment sale and purchase contract.

Thirdly, the 2023 Housing Law introduces a method to determine the area of loggia when determining the use area of apartments and other areas in the apartment buildings.

Accordingly, the area of the loggia is measured as the entire floor area from the inner edge of the common wall or the apartment partition walls. This specific regulation helps determine the accurate calculation method for the loggia area within apartments in the apartment, and reduces the Developer's ambiguity in the calculation method to increase the area of the apartment when determining the selling or leasing price of apartments.

Simultaneously, under this provision, the 2023 Housing Law clearly stipulates the ownership right of equipment and components attached to the balcony and loggia of the apartment. In the event of equipment and

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components attached to balconies and loggias but are the parts of the vertical surface of the construction works according to the design documents, such equipment and components shall be determined as under the common ownership of the apartment buildings. This regulation facilitates both Developer and buyers in clearly distinguishing between private ownership and common ownership when equipment and components are attached to the parts under private ownership, addressing the ambiguity under the 2014 Housing Law where the definition of private ownership includes technical equipment systems exclusively used or attached to the apartment or to other areas of private ownership.

Fourthly, the 2023 Housing Law removes some additional costs from the service fee for management and operation of apartment building compared to the 2014 Housing Law.

The 2023 Housing Law additionally excludes two types of fees from the service fee for management and operation of apartment building including (i) fee for purchasing fire and explosion insurance, and (ii) remuneration to the apartment building Management committee. This new provision aims at clearly separating the service fee for management and operation of apartment building from expenses related to the operations of the Management committee, whereby the Management Board's remuneration will be decided by the apartment building general meeting and be separately contributed, to avoid affecting the decision-

making, contribution, and use of the service fee for management and operation, and potential disputes related to the service fee for management and operation of apartment building.

The 2023 Housing Law also supplements the responsibility of the provincial-level People's Committee in promulgating a framework for the service fee for management and operation of apartment buildings to serve as a reference for parties involved and in cases where an agreement on service fees cannot be reached, the service fee under such framework promulgated by the provincial-level People's Committee will be applied.

Fifthly, the 2023 Housing Law adds specific regulations on the handover of infrastructure works in the apartment buildings area.

The 2014 Housing Law lacks of regulations on the handover of infrastructure works, and the timing and method for handing over infrastructure works from the Developer to the State Authority. The 2023 Housing Law adds specific regulations on this issue. Accordingly, in case of handing over infrastructure works according to the approved design/project policy, the infrastructure works must be handed over to the State Authority after the acceptance of the construction works and upon the request of the Developer. The handover process must be recorded in writing between the Developer and the State Authority. The provisions of Articles 157 and 158 of the 2023 Housing Law also clearly define the

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responsibility for the maintenance of technical infrastructure works; accordingly, in case the technical infrastructure works have not yet been handed over to the State Authority, the Developer remains obligated to maintain, manage and operate it according to the approved project specifications, ensuring that the works do not adversely affect the community and living environment of the apartment building residents.

The above contents represent notable new points introduced by the 2023 Housing Law concerning the management and use of apartment buildings, contributing to enhance

clarity and transparency in the management of apartment buildings, increasing the responsibilities of involved parties, and contributing to a good, safe, and sustainable living environment for residents, and aligning with the National Assembly's direction when enacting and promulgating the 2023 Housing Law. However, for these new regulations to be effectively implemented in practice and aligned with the realities in Vietnam, it is required to have specific implementation guidelines from the Government and relevant Ministries and agencies in the coming time.

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Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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