

# HOMEOWNER'S RIGHTS AND RESPONSIBILITIES

■ It is important to have a basic understanding of the legal framework

WITH THE booming UAE economy, many are becoming homeowners. Whether they purchased a villa, townhouse or an apartment, more and more people in the UAE are trading in their rental payments for mortgage payments or, if they are fortunate, outright purchase of their own home.

They no doubt will soon discover that although there are many joys and rights that accompany homeownership there are also responsibilities and obligations.

To be able to navigate one's way through the challenges of homeownership, it is important to have a basic understanding of the legal framework that dictates such rights and responsibilities.

The basic rights associated with homeownership in the UAE, whether through freehold or 99-year leasehold, consist of the right of ownership, the right of disposal, the right to grant usufruct and the right to grant an easement or right of way.

There is also the right to mortgage, the right of exploitation, and the right against unfair expropriation. Some of these rights are discussed below.

## Right of ownership

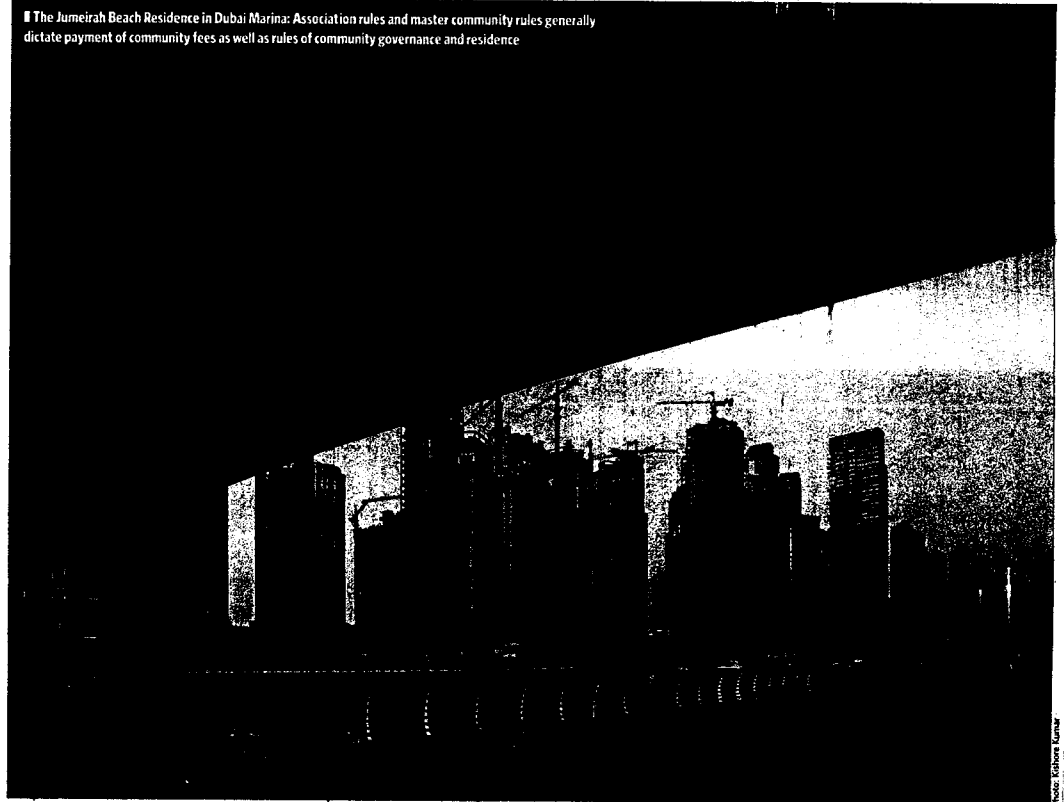
The right of ownership is the power of the owner to dispose of his property, whether of the property itself, or of the benefit or exploitation of it as specified in Article 1133 of the UAE Civil Code (Federal Law No. 5 of 1985, as amended). Such right is unlimited in time with respect to freehold properties, and limited to 99 years with respect to 99-year leasehold properties.

Standard sales contracts in the UAE additionally promise the grant of 'clear and unencumbered freehold title to, or 99-year leasehold of, the property. These are subject only to instruments, easements, rights of way, covenants or agreements with or in favour of a government authority. Such additional promise ensures that the property is reasonably free of legal encumbrances or restrictions against ownership.

## Right to mortgage

An owner has the right to mortgage his property for satisfaction of his or her debt, Article 1399 of the Civil Code. A mortgage

■ The Jumeirah Beach Residence in Dubai Marina: Association rules and master community rules generally dictate payment of community fees as well as rules of community governance and residence



must be registered at the Land Department to be legally effective if title to the property is registered.

If the title is not registered, as in the case of certain new freehold/99-year leasehold properties, then the interest of the bank is noted by the developer that maintains the record of ownership. In the event of Islamic finance, the ownership of the property is transferred to the bank until the debt is repaid.

## Right of exploitation

The owner has the right to beneficial use of the owned property, and to its yield, fruits and produce, and to dispose of it in any manner permitted by law. Such right of exploitation is a commonly expected component of freehold ownership by purchasers of property.

## Right against unfair expropriation

Expropriation of ownership of property shall be conducted for the public benefit and be conducted against fair compensation and in accordance with the provisions of law.

Hence, a homeowner has the right to expect that his or her property will not be taken or expropriated by the government except in such exceptional circumstances and then against fair compensation. Such principle is in accordance with and similar to many other jurisdictions' laws and procedures relating to expropriation.

## Additional rights

There are certain other sources of homeowner's rights including the sale and purchase agreement, homeowners' association rules, master community rules, and

other provisions of the Civil Code/other applicable laws.

Importantly, it should be noted that many such rights can be restricted or taken away by contract or by applicable law/zoning regulations. Additionally, association rules and master community rules generally dictate payment of community fees as well as rules of community governance and residence. Also, applicable laws including the Civil Code contain certain restrictions associated with ownership such as not impeding the passage of light to a neighbour, not causing nuisance, and not invading the airspace of a neighbour.

We shall review certain of these responsibilities and restrictions associated with homeownership in the next article.

The writer is a partner in the law firm of Afridi & Angell.