



NEW REGULATION: GUIDELINES ON REGISTRATION OF MORTGAGING OF LAND USE RIGHTS

On 25th of November, 2019, Ministry of Justice has promulgated Circular 07/2019/TT-BTP guiding on registration of mortgaging of land use rights ("Circular 07"). These new regulations will enter into force on 10th of January, 2020, guiding regulations in Decree 102/2017/ND-CP of the Government on registration of security interests; and replace Joint Circular No. 09/2016/TTLT-BTP-BTNMT of Ministry of Justice and Ministry of Natural Resources and Environment, which was stipulated on 23rd of June, 2016. Circular 07 has several remarks as follows:

1. Supplement regulations permitting the registration of mortgaging of investment projects on housing construction, construction works

Accordingly, Circular 07 has specified cases of land use right registration, including:

- (i) Registration of mortgaging of land use rights;
- (ii) Registration of mortgaging of land-attached properties;
- (iii) Registration of mortgaging of land use rights and land-attached properties;
- (iv) Registration of mortgaging of future-acquired land-attached properties;
- (v) Registration of mortgaging of land use rights as well as future-acquired properties on land;
- (vi) Registration of mortgaging of investment projects on housing construction, construction works as non-residential and other construction works compliance with law;
- (vii) Registration of changes to registered mortgaging;

- (viii) Registration of written notification of settlement of collaterals in case mortgaging has been registered;
- (ix) Removal of mortgage registration.

Therefore, comparing to current regulations, from 10th of January, 2020, "Investment projects on housing construction, construction works as non-residential and other construction works" are required to be registered as mortgaging.

Please note that the registration procedure of mortgaging of the above mentioned is proceeded under the same registration procedure of mortgaging of land use rights, future-acquired land-attached properties including residential houses, construction works.

2. Guidelines on registration of mortgaging land use rights, land-attached properties, which are common properties

In case of common properties of spouses, business household, properties of proprietorship, in order to avoid refusal during the registration process of mortgaging due to the fact that the information about the mortgagor, which is declared in the Mortgage agreement of land use rights and properties on land ("Mortgage agreements"), is inconsistent with the information declared on the Certificate of land use rights and land-attached properties ("Certificate"), Circular 07 regulates that the Land Registration Office shall conduct mortgage registration under these following cases:

- (i) Mortgaging of land use rights and land-attached properties, which are the common assets of husband and wife, in case that the Certificate only shows information of either husband or wife while the mortgagor in Mortgage Agreements include both husband and wife.



(ii) Mortgaging of land use rights and land-attached properties which are the common assets of household, in case that the Certificates only show information of the household's owner while the notarized Mortgage Agreements shows the mortgagor being not only the household's owner but also other household's members whose shared common land use right and ownership of properties on land.

In case land and attached properties is under the land use right and common ownership of household's members, but one or a number of members have request on the mortgage registration of their own right of use and ownership. In that case, before the mortgage registration, the requestor shall conduct procedures of separating land use rights, land-attached properties ownership, procedures of splitting a land parcel to obtain Certificates.

(iii) Mortgaging of land use rights and land-attached properties that Certificates named the proprietorship, while the mortgagor in the Mortgage Agreement is the owner of the proprietorship, or both the owner and his/her husband/wife.

If you are interested in the content of this newsletter or you need professional legal advice, please feel free to contact with LuatViet as information follows:

Ho Chi Minh office

Suite 2002, 20th Floor, Centec Tower
72-74 Nguyen Thi Minh Khai street, District 3, HCMC, Vietnam

Tel: +84 (28) 3824 8440 | Fax: +84 (28) 3824 8441

Email: canh.tran@luatviet.com

Hanoi Office

No 03-0A, 3rd floor, Pan Pacific Hanoi,
No. 1 Thanh Nien street, Truc Bach ward,
Ba Dinh district, Ha Noi.

Tel: +84 (24) 371 543 05 | Fax: +84 (24) 371 543 06

Email: linh.tran@hn.luatviet.com

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