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DAILY EDITION

LEGAL WISE BY MDME | AVOIDING THE PITFALLS OF PROPERTY TRANSACTIONS



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The Macau Real Estate market is reviving at an accelerated pace. A year-on-year comparison last December shows the average price increased 32%, and the number of property transactions more than doubled.

However, a market frenzy is conducive to rushed decisions in detriment of proper planning and risk assessment, and few people know enough of finance, real estate and the law to make an informed decision. Therefore, reputable mediation, proper financial guidance, and technically sound legal advice are pillars of calculated investment in the property market.

In order to find the right property, there are several reputable real estate agencies and brokers in Macau, who usually charge a one-off service fee of 1% of the purchase price, to be paid by the party being assisted - if both parties are assisted by the same broker, each shall pay 1%. This brokerage/agency fee will usually be payable as soon as any agreement is signed between the seller and buyer (even on a provisional basis), regardless of whether the purchase goes through.

After identifying a suitable property, buyers should request a valuation of the same from more than one bank, not only to assess the perceived market value of the property, but also to determine which bank can provide them the maximum loan/mortgage - up to the limit of 70% of the unit's price or value (whichever is lower), under the Banking Regulatory Authority's directives - and the lowest interest rates and monthly repayments. Most Macau banks will be happy to assist with this exercise at no cost, or at a relatively small charge.

Purchasers should keep in mind that Stamp Duty (transaction tax) will be levied on the total price of the transaction upon execution of a promissory agreement, and be payable within 30 days of signing of the respective agreement, even if only a small deposit has been put forward.

The final stage of a property ownership transfer requires Notary intervention, but up to that stage legal representation or assistance is not mandatory. However, the complexity of the different land holding regimes - leasehold versus freehold - and of the contracts involved - mediation agreement, promissory sales/purchase agreement, loan agreement, property insurance, etc. - require a clear understanding of the parties' rights and duties under said contracts. First-time purchasers or sellers should avoid signing on impulse, and seek independent confirmation that any given document sufficiently protects their position and is in line with the common practice and legal provisions of Macau. In this regard, confirmation should be sought that the person(s) appearing as the seller(s) on the documents are indeed the owners of the property and can dispose of the same freely; that the property has no registered encumbrances; and that no irrevocable PoA for disposal of the property has been issued to a third party.

Furthermore, buyers should be aware of several related concepts and of some issues that commonly arise during or after purchase, such as the net and gross areas of the property; the special transaction tax which becomes payable upon reselling the property within the two years immediately following the purchase (which can amount to between 10 and 20% of the sales price); the additional 10% tax payable by non-Macau ID holders; and whether the property is under a current lease agreement, which by law shall continue in force until its term.

Finally, due to the peculiarities of the Macau real estate environment, buyers are advised to request information on facts that may have an impact on the resale price, such as the age of the property, whether maintenance of the building is being carried out regularly and the management fees are paid, the amount of the monthly management fees, and the yearly cost of the government land lease (if any).

We know that for most buyers, the burden involved in purchasing a property with their hard-earned money is not to be taken lightly, so good preparation goes a long way to protecting and maximizing their investment.



João Encarnação*



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