



# LEGAL NEWSLETTER

## APRIL 2024

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## New and highlight points of Real Estate Business Law 2023

The recently implemented Real Estate Business Law 2023 is receiving big attention from the management board, investors, real estate brokers, project investors and other entities. Besides the provisions taken over from Real Estate Business Law 2014 (amended and supplemented in 2020), Real Estate Business Law 2023 has some new, optimizing points. Therefore, in this article, TNTP will deliver to our readers new and highlight points of the Real Estate Business Law 2023.

### 1. Real Estate Business Law 2023 narrows the scope of governing

Real Estate Business Law 2023 has narrowed the scope of governing compared with Real Estate Business Law 2014. Article 1 added the case that the Law will not be applied such as: Selling the house, construction site, transfer the land use right due to liquidation, dissolution, split-off, split-up; transfer ownership of housing or buildings and/or land use rights in case of split-off, split-up, consolidation or merger; sell, transfer or lease real estate which is public property; sell housing or buildings or transfer land use rights according to judgments or decisions issued by competent courts or arbitration awards or decisions, or decisions issued by competent authorities when settling disputes; transfer, lease or sublease land use rights, except investors that transfer, lease, sublease rights to use land that already has infrastructure within real estate projects; and Leasing of social housing to workers and employees by the Vietnam General Confederation of Labour that acts as the supervisory authority of such social housing projects... This helps the provision of this Law will not overlap the provisions of the Civil Code, Real Estate Law, Housing Law, Civil Judgement Enforcing Law, Enterprise Law, Investment Law,...

### 2. Supplementing and completing regulations on conditions for organizations and individuals doing real estate business

#### 2.1. Conditions for real estate business organizations

Specifically, the Law on Real Estate Business 2023 has added several conditions such as: Maintaining the safe ratio of outstanding credit debt, outstanding corporate bond debt to the owner's equity, and equity allocation to ensure the minimum ratio percentage of total project investment capital in case a real estate enterprise simultaneously implements many projects. Stricter regulations aim to screen real estate businesses that have enough financial capacity to participate in the market, partly limiting risks for investors.

#### 2.2. Change conditions for individuals doing real estate business

A notable point of the Real Estate Business Law 2023 for individuals is the regulation that Vietnamese people residing abroad are Vietnamese citizens with full rights to do real estate business, buy, rent, and lease purchase real estate like domestic individuals. Thus, Vietnamese people residing abroad who are Vietnamese citizens (holding Vietnamese nationality) have the same rights and obligations related to real estate business as Vietnamese citizens in the country.

## New and highlight points of Real Estate Business Law 2023

### 3. Amend and supplement to strictly regulate conditions and conduct the business of housing and construction works formed in the future

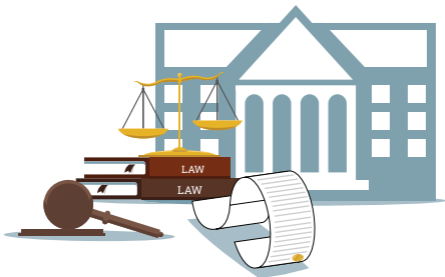
#### 3.1. Project investors must fulfill financial obligations regarding land for land use rights associated with houses and construction works put into business

In addition to the provisions of the Real Estate Business Law 2014, which stipulates the conditions for houses and construction works in real estate projects to be put into the business by the investor, Point c, Clause 2, Article 14 of Real Estate Business Law 2023 add the following condition: "The project investor has fulfilled its financial obligations regarding land including land use fees, land rent and taxes, fees, and charges related to land (if any) to the State according to the provisions of law for land attached to houses and construction works put into business". The above regulations helps the state control and limit cases where investors avoid fulfilling tax obligations to the state.

#### 3.2. Regulations on guarantee terms for the sale, lease, and purchase of housing formed in the future

Guarantee terms in the sale and lease purchase of future housing are specifically stipulated in Article 26 of the Law on Real Estate Sales 2023. Accordingly, the project investor, before selling or leasing housing formed in the future, must obtain bank approval to issue a guarantee for the investor's financial obligations to the buyer or tenant-buyer when the investor does not hand over the house as committed.

In addition, the provision further stipulates guarantees for the sale and lease purchase of housing formed in the future, allowing customers to choose whether or not to have a guarantee for the investor's financial obligation to them in the event of not handing over the house as committed. This new regulation ensures both strictness and flexibility for the parties to negotiate, and customers can choose and decide whether or not to have a guarantee for the investor's financial obligations to them.



## New and highlight points of Real Estate Business Law 2023

### 4. Additional regulations on real estate project transfer

The Real Estate Business Law 2014 allows investors to transfer real estate projects in the event that there has been a decision to allocate land, lease land, allow change of land use purpose and fulfill land-related financial obligations, including land levy, land rent and other relevant taxes, fees and charges (if any), towards the State in respect of the land area used for implementing the project or its part to be transferred without requiring certificate of land use rights as prescribed by the Land Law.

In general, Real Estate Business Law 2023 still retains the provisions of the Real Estate Business Law 2014 on authority and procedures for transferring investment projects. However, Real Estate Business Law 2023 adds regulations on cases where the Prime Minister authorizes the Provincial People's Committee to decide to allow the transfer of part of a real estate project for which the investment guidelines or investment has been decided or approved by the Prime Minister.



### 5. Tighten regulations on lot division and sale of plots

Article 31 of Real Estate Business Law 2023 stipulates that it is not allowed to self-transfer land use rights to individuals who self-build houses in 01 of the 02 following cases: (1) Located in a ward, district or city of the special-class, class-I, class-II, class-III; (2) land use rights are not put for sale in an auction for constructing a housing investment project according to the provisions of the Land Law. For the remaining areas, the Provincial People's Committee, based on local actual conditions, determines areas in which rights to use land that already has infrastructure can be transferred by project investors to individuals for building their own housing. Thus, the new regulations have tightened the division of plots and sale of plots for all ward areas of class-III urban areas.

## New and highlight points of Real Estate Business Law 2023

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### 6. Payment in real estate business must be transferred

Pursuant to clause 2, Article 48 of the Real Estate Business Law 2023 regulating Payment in Real Estate Business, "Real estate project investors, real estate enterprises, and real estate service enterprises shall receive payments for real estate business contracts or real estate service contracts from clients through their accounts opened at Vietnamese credit institutions or foreign bank branches lawfully operating in Vietnam".

Therefore, real estate project investors and real estate enterprises must receive payment through banks. Consequently, the new law has gradually improved the legal framework and increased the implementation of non-cash payments in real estate transactions to control cash flow in real estate transactions and prevent violations such as tax evasion and money laundering.

However, it should be noted that the Real Estate Business Law 2023 does not regulate the case of individuals doing small-scale real estate business, organizations and individuals selling houses and construction works for non-business purposes or below the prescribed level on whether payment must be received through bank transaction.

Above are some new and highlighted points of the Real Estate Business Law 2023. TNTP hopes the article will come in handy to our readers.

Best regards,

## Law on Housing 2023 and the new points that can create a “game-changing” housing market in Vietnam

On November 27, 2023, during the 6th session of the 15th National Assembly, the amended Law of Housing was officially passed and will come into force as of January 1, 2025. Notably, there are many new provisions to deal with current societal issues in Vietnam and tighten the legal framework for state management of various types of housing. This article focuses on highlighting new points that have a significant impact on Vietnam's housing market. Such content may change the citizen's behaviors regarding buying, selling, investing, constructing, and other purposes.

### 1. Tightening regulations on the sale of dividing land lots

Under Clause 2, Article 41 of Decree 43/2014/NĐ-CP detailing a number of articles of the land law, investors of projects on construction of houses for sale or for combined sale and lease may transfer land use rights in the form of sale of dividing land parcels for sale *into the areas outside the inner districts of special urban centers; areas with strict requirements on landscape architecture, central areas, and around buildings that are prominent architectural points in urban centers; the frontages of regional- or higher-level roads and main landscape roads in urban centers.*

However, according to Clause 5 Article 5 of the Law of Housing 2023, the areas where division of land parcels for sale are not permitted have been expanded to include *“developers of housing investment and construction projects shall develop houses for sale in respect of wards, districts, cities in special, class I, class II, and class III urban areas. In respect of other areas, provincial People's Committees shall, depending on local conditions, determine areas where developers of housing investment and construction projects develop houses for sale, lease purchase, or lease or transfer land use rights in the form of land subdivision to allow buyers to build their own houses.”*

Thus, compared to current regulations, the Law on Housing 2023 has expanded the areas where land parcel division for sale is not allowed. In particular, developers of housing investment and construction projects are not allowed to transfer Land use rights in the form of land parcel division for sale in respect of wards, districts, and cities in special, class I, class II, and class III urban areas. For other areas, provincial People's Committees have the authority to determine areas for land parcel division for sale. First, this regulation is designed to align with the Law on Real Estate Business 2023's provisions. Additionally, tightening regulations on land parcel division for sale may mitigate and stabilize the situation of rampant land splitting for conversion into residential land, breaking urban planning, land wastage, and the speculation of real estate in recent years.

## Law on Housing 2023 and the new points that can create a “game-changing” housing market in Vietnam

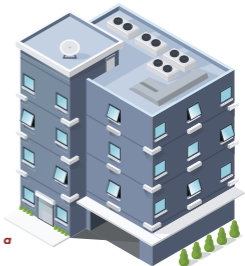
### 2. New regulations on mini apartments

#### 2.1. Definition of mini apartments

"Mini apartments" is a familiar term for the model of multi-storey apartments with multiple apartment units for sale, combined sale, and lease, or lease. Mini apartments have moderate sizes and affordable prices, making them suitable for individuals with medium to low incomes. Article 57 of the Law on Housing 2023 describes this type of housing as a "Private multi-storey, multi-unit houses for sale, lease purchase, and lease," with the following structure:

Houses of at least 2 storeys where each storey accommodates dwelling units designed, built for sale, lease purchase, or a combination of sale, lease purchase, lease; or

Houses of at least 2 storeys and at least 20 dwelling units for lease.



#### 2.2. Eligibility for individuals who have a demand to invest in mini-apartments

According to the provisions of Clause 1 of Article 57 of the Law on Housing 2023, individuals who want to construct mini apartments must satisfy the eligibility of developers of housing investment and construction projects. According to Article 35 of the Law on Housing 2023, developers of housing investment and construction projects include cooperative enterprises, joint cooperatives, and foreign-invested business organizations established and operating under Vietnamese laws, and satisfy requirements such as:

Have equity under real estate trading laws for implementation of each housing investment and construction law; and

Obtain land use rights for each type of housing investment and construction law under the Law on Housing 2023 or be assigned with land or leased land by Land Law; and

Have sufficient capacity and experience in executing housing investment and construction projects as per legal regulations.



## Law on Housing 2023 and the new points that can create a “game-changing” housing market in Vietnam

### 2.3. Eligibility for constructing mini apartments

Individuals have the right to use the land for constructing residential houses of at least 2 storeys and less than 20 dwelling units where each storey accommodates dwelling units designed and built for lease, shall comply with the following regulations:

Satisfy construction requirements of private multi-storey multi-unit houses according to regulations of the Minister of the Ministry of Construction;

Satisfy fire safety requirements under regulations on fire safety applicable to private multi-storey multi-units houses; and

Satisfy conditions regarding roads for firefighting facilities prescribed by provincial People's Committees in respect of private multi-storey and multi-unit houses.

Individuals who have the right to use residential land building houses of at least 2 storeys and at least 20 dwelling units where each storey accommodates dwelling units designed, built for sale, or lease purchase must satisfy eligibility similar to those of individuals who want to construct mini apartments.

### 2.4. Mini apartments are granted ownership rights

Based on Clause 2 of Article 57 of the Law on Housing 2023, apartments that satisfy the above conditions shall be issued with a certificate according to land laws. However, this matter has not yet been specifically guided.

In general, the Law on Housing 2023 supplements regulations on the conditions, and standards for building mini apartments. This will form the basis for tighter and more effective management of this type of housing, contributing to ensuring fire fighting and prevention, satisfying construction standards, facilitating operation and use of mini apartment types, as well as ensuring stability in safety and health for residents.

However, the eligibility that individuals must satisfy to participate in investing in this type of housing is conflicting with the Law on Housing 2023. In particular, to invest in the construction of mini apartments, individuals must meet conditions to become project developers of housing investment and construction projects according to this Law. Meanwhile, to become investors, those entities must be Cooperative enterprises, joint cooperatives engaged in real estate trading.

## Law on Housing 2023 and the new points that can create a “game-changing” housing market in Vietnam

### 3. Unlimited ownership duration of apartment buildings

The Law on Housing 2023 does not set a limit on the duration of ownership but only the lifespan of apartment buildings. Specifically, Article 58 of this Law stipulates that the lifespan of apartment buildings shall be determined by design dossiers and the actual useful life of apartment buildings according to the conclusion of competent authority. Suppose the lifespan of apartment buildings according to design dossiers expires or the apartment buildings in question are damaged, prone to collapse, or do not guarantee safety for owners and users of apartment buildings before the expiry of lifespan. In that case, provincial People's Committees shall coordinate the inspection and quality assessment of apartment buildings according to the regulations.

This regulation is reasonable because the ownership rights of each entity to their property need to be protected by law and can only be terminated at the will of the owner. Moreover, setting a time limit for apartment ownership may affect the mentality of buyers, leading to behavioral changes, and not choosing to buy the apartment.

### 4. New preferential policies for social housing

- (a) Adding entities allowed to buy social housing: Pursuant to Article 76 of the Law of Housing 2023, two new entities are allowed to buy social housing including (i) Students, learners in universities, academies, higher education institutions, colleges, vocational education and training facilities, specialized education institutions as per the law; students of public ethnic boarding schools; and (ii) Enterprises, cooperatives, and joint cooperatives in industrial parks.

Moreover, according to the Law on Housing 2023, within 5 years, the buyer, lease-purchaser can only resell the social housing to developers of social housing investment and construction projects or entities eligible for purchase of social housing at a maximum price equal to the sale price of the social housing under sale contracts signed with developers of social housing investment and construction projects.



## Law on Housing 2023 and the new points that can create a “game-changing” housing market in Vietnam

### (b) Adding incentives for developers of housing investment and construction projects

Exempted from land rent, the land levy for the land area of the projects; are not required to determine land value, calculate land rent, land levy from which they have been exempt; are not required to apply for exemption from land rent and land levy, except for other cases as specified by law (Point a Clause 2, Article 85);

Eligible for maximum profit of 10% of total investment regarding the area on which social housing is built (Point c, Clause 2, Article 85);

Allowed to reserve up to 20% of total residential land area for construction of commercial services, commercial housing property structures, separately record expenditure and revenues, must not include costs for investment and construction of service and mercantile structures in social housing price, and may benefit from all revenues generated by the service and mercantile structures, must pay the entire land use fee for the commercial construction area (Point d, Clause 2, Article 85).

Expanding the entities eligible for assistance policies regarding social policies and adding incentives for investors participating in social housing construction projects promote the development of this type of housing at present. This is the orientation of the State in developing society which is suitable for the current economic and social situation of Vietnam, supporting medium and low-income groups to attract skilled labour among localities, stabilizing production, and improving people's lives.

The above are some of the highlight new points of the Law of Housing 2023 that TNTP wants to convey to readers.

Best regards,

## Case Law No.33/2020/AL regarding a person allocated land by the State and got the land managed and used stably and permanently by another

*Land is one of the common objects of dispute today. Among them are disputes regarding a person allocated land by the State and got the land managed and used stably and permanently by another, which is still taking place in many localities. During the process of using land, the person who is "asked" to manage or "borrow" the land has improved the land, built stable housing, and registered to declare land use rights without the person to whom the land was allocated by the State knowing nothing or having no opinion. Usually, these disputes originate from the time when the State was still in the stage of completing the law and implementing the policy of allocating land to people for settlement and stable living in the 1970s. Therefore, Case law No. 33/2020/AL was issued as an explanation and to apply to similar disputes that occur. In this article, TNTP's lawyers will comment and clarify the content of this Case law No. 33/2020/AL.*

### 1. Summary of the case

(a) Mr. Le Ngoc U and Ms. Bui Thi T were from Hamlet D, Ward D1, District P, Hung Yen Province. Mr. Le Ngoc H who was Ms. Bui Thi P's husband was the only son of Mr. U and Ms. T. In 1973, Mr. U went back to his hometown to apply to the People's Committee of Ward D1, District P, Hung Yen Province for a land with an area of 1,079 m2.

(b) In 1976, Mr. H went back to his hometown to build a house with 3 compartments, 01 attic, and the subconstruction included a kitchen, well, bathroom, and toilet on that land plot so that Mr. U and Ms. T who had been retired would stay. Mr. U and Ms. T stayed there for a while, then they moved into the village.

(c) In 1977, Mr. Le Ngoc C1, a younger brother of Mr. U, borrowed that house and land plot so that his son, Mr. Le Ngoc T2 could stay.

(d) On January 22, 1994, Ms. T died and so did Mr. U on December 20, 1995. They both died without a will. According to Ms. P, before Ms. T died, she had handled documents showing the commune's allocation of land to Mr. U in Village D in 1973. However, in 2008, due to a historic flood in Lang Son, Ms. P's house flooded, and all her personal documents were damaged.

(e) In 2008, Mr. Le Ngoc T2 met Mr. H and requested him to write a power of attorney so that Mr. T2 could receive compensation for the State's land acquisition to construct Road 38B. In June 2009, Mr. H died without a testament but told Ms. P to return to her hometown to reclaim the house and land that had been borrowed by Mr. T2.



## Case Law No.33/2020/AL regarding a person allocated land by the State and got the land managed and used stably and permanently by another

(f) Ms. P and her children are Mr. Le Ngoc T1 and Ms. Le Thi Thanh X requested Mr. T2's family to return the whole house and land plot and the compensation of VND 398.638.000 for the State's land acquisition in 2008.

(h) In the Civil First-instance Judgment No. 01/2015/DS-ST dated March 31st, 2015, the People's Court of Phu Cu District decided:

Mr. Le Ngoc T2 and Ms. V were assigned to manage and use according to actual measurement data on August 8, 2014, which is 990m<sup>2</sup>. The residential land was 816m<sup>2</sup>; the pond land was 174m<sup>2</sup> (with attached diagram). Mr. Le Ngoc T2 and Ms. Doan Thi V were obliged to register the assigned land use right at the competent authority, under the land laws.

The houses, constructions, trees and crops on land plots were in possession of Mr. T2 and Ms. V.

Forcing Mr. Le Ngoc T2 and Ms. Doan Thi V to pay Ms. Le Thi Thanh X and Mr. Le Ngoc T1 the value of the inheritance that Ms. X and Mr. T1 inherited from Mr. Le Ngoc U and Ms. Bui Thi T, which was VND 191,864,200 (One hundred ninety-one million and eight hundred sixty for thousand and two hundred dong).

(i) On April 15th, 2015, the defendant Le Ngoc T2 appealed a part of the Judgment.

(j) At the Civil Appellate Judgment No. 25/2017/DS-PT dated September 28th, 2017 of the People's Court of Hung Yen, it was decided that: Amending the First-instance Judgment No. 01/2015/DS-ST dated March 31, 2015 of the People's Court of Phu Cu District, Hung Yen province as follows:

Assigning to Mr. Le Ngoc T2 and Ms. Doan Thi V a land area of 621.2 plot No. 117, map sheet No. 15 of map 299 established in 1981 at Village D, Commune Đ1, District P under the name of Mr. Le Ngoc U.

Assigning to Ms. Le Thi Thanh X, Mr. Le Ngoc T1, and Ms. Bui Thi P (another name: Bui Thi Huong P) an area of 369m<sup>2</sup> (including 174.2m<sup>2</sup> of pond land) at land plot No. 117, map sheet No. 15, map 299 established in 1981 at Village D, Commune Đ1, District P under the name of Mr. Le Ngoc U and the property on the ground was a building with four-level house with corrugated iron roof, a breeding shed, and surrounding walls to the West of the allocated land. Ms. Bui Thi P managed the assets of Ms. Le Thi Thanh X and Mr. Le Ngoc T1 (the allocation of the land, assets, and dimensions has a specific diagram attached).

Ms. Bui Thi P (other name: Bui Thi Huong P) must repay Mr. Le Ngoc T2 and Ms. Doan Thi V the value of the construction on the land plot, which was VND 47,068,000 (Forty-seven million and sixty-eight thousand dong).

Forcing Mr. Le Ngoc T2 and Ms. Doan Thi V to repay Ms. Bui Thi P, Ms. Le Thi Thanh X, and Mr. Le Ngoc T1 the value of the inheritance that Ms. P, Ms. X, and Mr. T1 inherited from Mr. Le Ngoc U and Ms. Bui Thi T, which was VND 199,319,000 (One hundred ninety-nine million, three hundred and nineteen thousand dong).

(k) On October 25th, 2017, Mr. Le Ngoc T2 submitted the written request to review the civil appellate judgment under the cassation procedure.

## Case Law No.33/2020/AL regarding a person allocated land by the State and got the land managed and used stably and permanently by another

### 2. Assessment of the Court

Based on the testimony of the parties, the parties recognized that the land area of plot number 31, map number 269 in Village D, Commune D1, District P, Hung Yen Province was originally gifted to Mr. Le Ngoc U by the People's Committee of commune D1 in 1973. This land plot is currently managed and used by Mr. Le Ngoc T2 and Mr. T2 has not obtained the certificate of land-use rights.

Mr. U and his wife lived for a short time, then moved to Lang Son to live with Ms.P and her husband. That house was lent by Mr. C1's family so that Mr. T2 could live in it. Meanwhile, Mr. T2 and Ms. S (Mr. C1's wife) did not admit to borrowing Mr. U's house and land. They affirmed that because Mr. C1's family was not eligible for land allocation for residing, Mr. U, on behalf of Mr. C1's family, applied for the land allocation. Mr. C1 was the person who directly received the land and let Mr. T2 and his wife live on that land and presented Mr. T2's confirmation of having received the land and building construction on the land to prove it. Based on the witnesses' confirmation, it was shown in the appraisal record of Mr. T2's house bricks and bricks brought by Ms. P from Lang Son that there was a basis to determine that houses and properties on land were founded by Mr. T2's family.

Regarding the disputed land, it was found that Ms. P and Mr. T2 could not provide papers proving their lawful land use right. However, based on the testimony of the involved parties and the verification minutes at the People's Committee of Commune D1, Mr. Ta Quang H (as a cadastral official of Cooperative D1 in 1960-1978) had the basis to determine that in 1973, Mr. Le Ngoc U was granted land by the People's Committee of Commune D1. It was shown in the verification minute with the cadastral official of Commune D1 that Mr. U was the owner of the disputed land plot on the plot map in 1981 and the declaration record in 1982; Mr. Le Ngoc T2 was the owner of the disputed land plot on the commune cadastral map in 1998 and the declaration record in 1998. The fact was that Mr. U and Mr. H's family did not live on this land plot and has been managed and used by Mr. T2's family since 1975 and Mr. T2's family has paid housing and land tax. Mr. Ta Quang H, who delivered the land to Mr. U, also confirmed that the plot of land was not used by Mr. U but by Mr. T2. Then, Mr. U asked for another land because the old plot of land was used by Mr. T2 and the cooperative granted him a second plot of land.



## Case Law No.33/2020/AL regarding a person allocated land by the State and got the land managed and used stably and permanently by another

**Content of case law:** Although Mr. U was granted the land, Mr. U did not use it but allowed Mr. T2 to use it from 1975 until now. In the process of using the land, Mr. C1 and Mr. T2's family had to hire people to fill the ground and build and repair houses many times. Mr. U and Mr. H both know this but there was no dispute. The People's Committee of Commune Đ1 and the witnesses living in this locality determined that Mr. U and Mr. H did not live on the land and did not build a house. After Mr. U and his wife died, Mr. H established a written commitment to confirm that Mr. U had not lived on that land, the land-use rights would be assigned to Mr. T2 and the family had no opinion. Thus, Mr. U was the person granted the land but he did not use it and allowed Mr. T2 to use it since 1974 until now.

In the process of using the land, Mr. T2 built a house and declared and paid the house and land-use tax. Thus, according to the law provisions on land, Mr. T2 was considered to be granted a certificate of land-use rights. The fact that Mr. U did not use the land but his name was on the map No. 299 and the declaration record in 1982 was incorrect and was not a basis to determine that Mr. U was the legal owner of this land. The fact that the First-instance Court and the Appellate Court, based on the allocation of land to Mr. U, determined that the disputed land was owned by Mr. U and his wife accepted the petition of the plaintiffs and deducted for Mr. T2's effort was unreasonable.

### 3. Comment on Case law

The Court decides the merit based on the following details:

- (i) After being allowed to "borrow" the land, the Defendant, Mr. T2, directly used the land and many times he hired people to level the land, and build and repair houses on the land. Mr. H's family knows this entire process but has no opinion about the Defendant's actions;
- (ii) Mr. T2 proactively registered, declared and fulfilled the obligation to pay land tax to the State;
- (iii) Mr. H wrote a commitment paper stating that he would deliver the land use rights to Mr. T2, Mr. H's family had no opinion about that land plot.

Thus, the Court has based on the actual will of each party without relying on or depending on the origin of the land assigned to any object by the State or the plot map or inventory showing the land owner at that time. Case law has shown that these documents are only a form to help provide and authenticate information when necessary and are a tool to help the State manage land. Therefore, these documents are not an accurate basis for settlement as they contradict and deviate from the actual land use.

## Case Law No.33/2020/AL regarding a person allocated land by the State and got the land managed and used stably and permanently by another

At the same time, the Court based on Article 236 of the Civil Code 2015 on the Establishment of ownership rights resulting from prescriptive periods with respect to possession or deriving benefits from property unlawfully, accordingly, the Defendant meets all 04 conditions:

- (i) Bona fide;
- (ii) Continuous;
- (iii) Publicity; and
- (iv) Within 30 years for real estate.

Therefore, although Mr. T2 had no legal basis for being allocated land or having land use rights, Mr. T2 "bona fide" possessed and used the land plot. Mr. T2 built a house and lived stably ("continuously") from the time he "borrowed" the land in 1974 until a dispute arose ("30-year period"), with the local government and many people working admit that Mr. T2's family lives on the plot of land ("public"). The judgment of the Precedent has enough legal grounds to confirm Mr. T2's status as a bona fide possessor and that Mr. T2 is in this case being considered for issuance of a Land Use Rights Certificate.

Thus, it can be seen that Case law No. 33/2020/AL has helped improve land law and protect the legitimate rights of bona fide land users when there is no legal basis for land-use rights. Thereby, we can see that Case law has protected and prioritized the actual will of the parties to resolve disputes originating from the time the State allocated land in the 1970s.

Above is the article "**Case law No. 33/2020/AL** regarding a person allocated land by the state and got the land managed and used stably and permanently by another" by TNTP. We hope the article will be helpful to readers.

Sincerely,



# LEGAL NEWSLETTER APRIL 2024

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