

Overview of the Management Plans of Businesses

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Due to the changing and developing economic and social conditions in Turkey and the world and the resulting constant and rapid development of urbanization, the demand for residence and business centers has risen as more people live in collective building structures. With regard to real estate, not only the technical infrastructure in the construction of modern collective building structures plays a crucial role, but also the legal infrastructure needs to be firmly established.

The legal infrastructure of real estate has been regulated under Condominium Law no. 634 (“Condominium Law”). The Condominium Law was not meeting the needs of today's real estate world. Therefore it was amended by the Turkish Grand National Assembly with Law Amending the Condominium Law no. 5711. As a consequence of the amendment, a new Condominium Law was formed.

The management plan is a significant document constituting the legal infrastructure of a piece of real estate. Article 28 of the new Condominium Law states the following issues;

(i) The management plan shall determine the method of management, the object and manner of use, the remuneration of managers and controllers and other details regarding management. The management plan has the force of an agreement binding on all condominium owners.

(ii) In the absence of any provisions in the management plan, disputes arising from the management of the main property shall be settled according to this law and to general legislation.

(iii) The votes of four-fifths (4/5) of condominium owners are required for any modification in the management plan. The right of condominium owners to apply to the court according to Article 33 is reserved.

(iv) The management plan and amendments thereof shall be binding on all condominium owners and their heirs and general legatees and their managers and controllers.

(v) The date of the management plan and of all subsequent amendments shall be entered in the column entitled “statements” of the condominium owner-

ship log and they shall be attached to the management plan and kept with the documents regarding the establishment of condominium ownership.

Management Plan and Business Centers

The reason to arrange a management plan for a piece of real estate is to establish condominium ownership or a constitution of servitude. For establishing condominium ownership, regarding the alteration of the main property to condominium ownership, the owners, co-owners and/or all stakeholders of that piece of real estate have to submit the (i) general construction license; (ii) layout plan; (iii) residential usage license; (iv) list showing building plot share of each independent division and its type such as flat, residence or place of business in notarized document form and signed by the owner or all stakeholders of the main property; and (v) a management plan to title deed.

Condominium ownership must be established for constructions like business centers. Modern business centers clearly consist of a main building, flats, common premises, independent divisions, annexes etc. Therefore a management plan must be prepared and must be signed by the owner, co-owners or stakeholders who shall constitute the condominium owners at the business center.

The management plan of a business center is like a private contract that binds all condominium owners. Furthermore, it regulates the condominium owners' rights, privileges, obligations and debts, the main building's expenses and common expenses, dividing the common expenses among condominium owners, and also it indicates the main area, independent divisions and the common premises, the usage of the areas, the manager and the controller's duties to the business center, the position of condominium owners that do not fulfill their debts and obligations arising from management plan etc. Additionally, the management plan for the business center also attempts regulate special conditions that are not possible to foresee and prevent probable disputes between condominium owners at the business center.

Content of the Management Plan of Business Centers

The following subjects must be regulated under a business center's management plan.

General Provisions

This part of the management plan regulates the basic needs of condominium ownership. The main property's location, the number of independent divisions, flats and the facilities in the flats, the units stated as common premises, the scope of the management plan etc. are articulated in this section.

Also, the other significant issues in this part are: (i) The alteration of the management plan; the management plan may only be amended upon the voting approval of four-fifths (4/5) of all the condominium owners. (ii) The basic rules for common premises; the condominium owners cannot establish an unlawful right beyond the common premises and cannot make a rental contract. Unless the common premises are hired or assigned, they shall be deemed to be hired or assigned as the land share portion of the common premises. The condominium owners shall not prepare a clause such as restricting the applicable portion of the common expenses, in order not to undertake the common premises expenses on the management plan. (iii) The basic usage of the business center; the business center cannot be used as nightclub, casino etc.

Managing Bodies

The managing bodies of the business center are the board of condominium owners, the manager or board of managers, and the controller or control board. The

basic details of the managing bodies are as follows: Board of Condominium Owners: The meeting of condominium owners shall be held at the time indicated in the management plan and at least once a year. If no time is indicated, it shall be held during the first month of each calendar year. When there is an important cause, the meeting of condominium owners may be called at any time, by the manager or the controller or one-third (1/3) of the condominium owners by indicating the reasons, with a notice sent by registered mail or signed by all of the condominium owners, at least fifteen (15) days prior to the date specified for the meeting.

The right to participate in the meeting of condominium owners only belongs to condominium owners. If the independent division is under the ownership of more than one person, the ownership may give permission to one of them to participate in the meeting.

The main property shall be managed according to the resolutions taken by the board of condominium owners according to the agreement, the management plan and the provisions of the new Condominium Law. All condominium owners and their heirs and general legatees and managers and controllers shall abide by the resolutions passed by the board of condominium owners.

If an injunctive relief related to suspension of execution of the resolution is taken, the resolutions passed by the board of condominium owners shall not be applied.

The Manager and Board of Managers: The Board of Condominium Owners may entrust the management of the main property to a person called manager or to a committee of three persons called the board of managers to be chosen from among themselves or outsiders. The specific duties of the board of managers are regulated under provisions 35, 36, 37 and 39 of the new Condominium Law. The board of condominium owners decides whether a manager who has been appointed from among condominium owners shall participate in normal management expenditures, and should he/she participate, in what proportion he/she shall participate. If no decision has been made to this end, the manager does not participate in half his/her share of the normal management expenditures during his/her management period. If the manager is chosen from outside, then the remuneration must be regulated under this provision.

The Controller or Control Board: The board of condominium owners may entrust the duty of monitor-

ing to a controller or to a control board chosen from among themselves by numerical majority or by majority of building plot shares. In this case, the controller or the control board shall submit to the board of the condominium owners, at the times indicated in the management plan and in the absence of such a plan, in the course of the first month of such calendar year, a report indicating the results of the audit and their opinion regarding the method of management of the main property. This report shall be duplicated and a copy shall be sent by registered mail to each condominium owner.

Independent Divisions, Annexes, and the Usage of the Common Premises

In this section the rights and obligations regarding the independent divisions, annexes and common premises are regulated. The condominium owners shall use these areas in accordance with good faith. None of them may override the others' rights to these areas. The condominium owners shall not make any alteration on independent divisions, annexes and common premises that affects the architecture of the main building. Additionally, the general usage principles of the business center are articulated under this section, including the decoration, the cleaning, entrance and exits etc. of the business center.

Moreover; no servitude may be established on an independent division if it is incompatible with condominium ownership and with the rights of other condominium owners.

Participation Portion in the General Common Expenses

In this part of the business center's management plan the common premises shall be indicated. The condominium owners cannot give up their usage right wholly or partially. Also they cannot refuse to pay the general common expenses by leaving the common premises empty.

These include especially the foundations and main walls, cross beams, columns, and curtain walls which constitute the load bearing system and other elements of the load bearing system, common walls separating independent divisions, ceilings and floors, yards, main entrance doors, entrances, staircases, elevators, landings, corridors and common WCs situated therein, common laundry and drying rooms, common coal-cellars and garages, recesses and closed places allocated to the protection of electric, water and gas supply meters situated outside the independent divisions, central heating rooms, wells and cisterns, common water tanks and underground shelters. Sewers and garbage ducts situated outside the division of each condominium owner, and central heating, water, gas and electric installations, common networks and antennae for telephone, radio and television, air conditioning installations, roofs, chimneys, common terraces situated on the roofs, gutters and fire escapes are also deemed to be common premises.

Other Provisions

This section regulates invalidity and notification provisions etc.