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# 中华人民共和国城市房地产管理法（2009修正）

# Law of the People's Republic of China on the Administration of Urban Real Estate (Revision 2009)

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(1994年7月5日第八届全国人民代表大会常务委员会第八次会议通过，根据2007年8月30日第十届全国人民代表大会常务委员会第二十九次会议《关于修改〈中华人民共和国城市房地产管理法〉的决定》第一次修正，根据2009年8月27日第十一届全国人民代表大会常务委员会第十次会议《关于修改部分法律的决定》第二次修正)

(Adopted at the 8th session of the Standing Committee of the 8th National People's Congress on July 5, 2007; amended for the first time in accordance with the Decision on Revising the Law of the People's Republic of China on the Administration of Urban Real Estate adopted at the 29th session of the Standing Committee of the 10th National People's Congress on August 30, 2007; and amended for the second time in accordance with the Decision on Amending Certain Laws adopted at the 10th session of the Standing Committee of the 11th National People's Congress on August 27, 2009)

第一章 总则

Chapter 1 General Provisions

第一条   为了加强对城市房地产的管理，维护房地产市场秩序，保障房地产权利人的合法权益，促进房地产业的健康发展，制定本法。

Article 1 This Law is formulated for the purposes of strengthening administration of urban real estate, safeguarding the order of real estate market, protecting the legitimate rights and interests of real estate rights holders and promoting the healthy development of real estate industry.

第二条   在中华人民共和国城市规划区国有土地(以下简称国有土地)范围内取得房地产开发用地的土地使用权，从事房地产开发、房地产交易，实施房地产管理，应当遵守本法。

Article 2 Obtaining the land-use right for development of real estate, engaging in development of real estate and transaction of real estate, and exercising administration of real estate in the State-owned land within a planned urban district in the People's Republic of China (hereinafter referred to as the State-owned land) shall comply with this Law.

本法所称房屋，是指土地上的房屋等建筑物及构筑物。

"Houses" as used in this Law means buildings and structures such as houses on the land. "

本法所称房地产开发，是指在依据本法取得国有土地使用权的土地上进行基础设施、房屋建设的行为。

Development of real estate "as used in this Law means acts of building infrastructure and houses on the State-owned land, the land-use right for which has been obtained in accordance with this Law.

本法所称房地产交易，包括房地产转让、房地产抵押和房屋租赁。

Real estate transactions referred to in this Law shall include transfer, mortgage and leasing of real estate.

第三条   国家依法实行国有土地有偿、有限期使用制度。但是，国家在本法规定的范围内划拨国有土地使用权的除外。

Article 3 The State shall practise a compensatory and terminable system for the use of State-owned land in accordance with law. However, allocation of the land-use right by the State under this Law shall be excepted.

第四条   国家根据社会、经济发展水平，扶持发展居民住宅建设，逐步改善居民的居住条件。

Article 4 The State shall, based on the social and economic development, support the development of construction of residential houses so as to gradually improve the housing conditions of residents.

第五条   房地产权利人应当遵守法律和行政法规，依法纳税。房地产权利人的合法权益受法律保护，任何单位和个人不得侵犯。

Article 5 Obligees of real estate shall abide by the laws, administrative rules and regulations and pay taxes according to law. The legitimate rights and interests of real estate right holders shall be protected by the law and shall not be infringed by any organisation or individual.

第六条   为了公共利益的需要，国家可以征收国有土地上单位和个人的房屋，并依法给予拆迁补偿，维护被征收人的合法权益;征收个人住宅的，还应当保障被征收人的居住条件。具体办法由国务院规定。

Article 6 For public interests, houses of units or individuals on the State-owned land may be expropriated by the State, compensations for their resettlement shall be paid according to law, and their lawful rights and interests shall be protected; and where the housings of individuals are expropriated, their living conditions shall be guaranteed. The specific measures shall be formulated by the State Council.

第七条   国务院建设行政主管部门、土地管理部门依照国务院规定的职权划分，各司其职，密切配合，管理全国房地产工作。

Article 7 The department of construction administration and the department of land administration under the State Council shall, in accordance with the division of functions and powers prescribed by the State Council, attend to their own duties, act in close coordination and manage the work concerning real estate of the whole country.

县级以上地方人民政府房产管理、土地管理部门的机构设置及其职权由省、自治区、直辖市人民政府确定。

Institutional structures, and functions and powers of the departments of housing administration and land administration under the people's governments at or above the county level shall be determined by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

第二章 房地产开发用地

Chapter 2 Land Used for Development of Real Estate

第一节 土地使用权出让

Section 1 Grant of Land Use Right

第八条   土地使用权出让，是指国家将国有土地使用权(以下简称土地使用权)在一定年限内出让给土地使用者，由土地使用者向国家支付土地使用权出让金的行为。

Article 8 Granting of the land-use right refers to acts that the State grants land users the right to use the State-owned land (hereinafter referred to as the land-use right) for a certain number of years and the users shall pay the State a granting fee for the land-use right.

第九条   城市规划区内的集体所有的土地，经依法征收转为国有土地后，该幅国有土地的使用权方可有偿出让。

Article 9 The land-use right for the collective-owned land within a planned urban district may be granted with payment only after it is requisitioned in accordance with the law and turned into State-owned land.

第十条   土地使用权出让，必须符合土地利用总体规划、城市规划和年度建设用地计划。

Article 10 Granting of the land-use right must conform to the overall planning for land utilization, urban planning and the annual plan for land to be used for construction.

第十一条   县级以上地方人民政府出让土地使用权用于房地产开发的，须根据省级以上人民政府下达的控制指标拟订年度出让土地使用权总面积方案，按照国务院规定，报国务院或者省级人民政府批准。

Article 11 Where the local people's governments at or above the county level grant land-use right for development of real estate, they must, based on the quota set by the people's governments at or above the provincial level, draw up plans for the total area for annual granting of the land-use right, which shall, according to the regulations of the State Council, be reported to the State Council or the provincial people's government for approval.

第十二条   土地使用权出让，由市、县人民政府有计划、有步骤地进行。出让的每幅地块、用途、年限和其他条件，由市、县人民政府土地管理部门会同城市规划、建设、房产管理部门共同拟定方案，按照国务院规定，报经有批准权的人民政府批准后，由市、县人民政府土地管理部门实施。

Article 12 Granting of the land-use right shall be carried out by the people's governments of the cities or counties in a planned and step-by-step way. With regard to each lot granted, plans for its purposes, term of use, and other conditions shall be worked out by the departments of land administration under the people's governments of the cities and counties in conjunction with the competent departments of urban planning, construction and housing administration. Such plans shall, according to the provisions of the State Council, be implemented by the departments of land administration under the people's governments of the cities or counties after their submission to and approval by the people's governments with due authority for approval.

直辖市的县人民政府及其有关部门行使前款规定的权限，由直辖市人民政府规定。

The limit of authority of a county People's Government of a centrally-administered municipality and its relevant departments in respect of the provisions of the preceding paragraph shall be stipulated by the People's Government of the centrally-administered municipality.

第十三条   土地使用权出让，可以采取拍卖、招标或者双方协议的方式。

Article 13 The land-use right may be granted by means of auction, bidding or agreement between the two parties.

商业、旅游、娱乐和豪华住宅用地，有条件的，必须采取拍卖、招标方式;没有条件，不能采取拍卖、招标方式的，可以采取双方协议的方式。

For Land used for commercial, tourism, recreation and luxury housing purposes, where conditions permit, the means of auction or bidding shall be adopted; where conditions do not permit and it is impossible to adopt the means of auction or bidding, the means of agreement between the two parties may be adopted.

采取双方协议方式出让土地使用权的出让金不得低于按国家规定所确定的最低价。

Fees for granting the land-use right by means of agreement between the two parties shall not be lower than the minimum price determined in accordance with the provisions of the State.

第十四条   土地使用权出让最高年限由国务院规定。

Article 14 The maximum term for the granting of the land-use right shall be prescribed by the State Council.

第十五条   土地使用权出让，应当签订书面出让合同。

Article 15 Granting of the land-use right shall be conducted through concluding a written granting contract.

土地使用权出让合同由市、县人民政府土地管理部门与土地使用者签订。

The contract for granting the land-use right shall be concluded between the departments of land administration under the people's governments of the cities or counties and the land users.

第十六条   土地使用者必须按照出让合同约定，支付土地使用权出让金;未按照出让合同约定支付土地使用权出让金的，土地管理部门有权解除合同，并可以请求违约赔偿。

Article 16 A land user must pay the fees for the granting of the land-use right as agreed upon in the granting contract. In default of such payments, the department of land administration shall have the power to rescind the contract and may demand compensation for the breach of contract.

第十七条   土地使用者按照出让合同约定支付土地使用权出让金的，市、县人民政府土地管理部门必须按照出让合同约定，提供出让的土地;未按照出让合同约定提供出让的土地的，土地使用者有权解除合同，由土地管理部门返还土地使用权出让金，土地使用者并可以请求违约赔偿。

Article 17 Where a land user has paid the fees for the granting of the land-use right as agreed upon in the granting contract, the department of land administration under the people's government of the city or county must provide the land granted as agreed upon in the granting contract; In default of such provision, the land user shall have the right to cancel the contract, the fees for granting the land-use right shall be returned by the department of land administration, and the land user may demand compensation for the breach of contract.

第十八条   土地使用者需要改变土地使用权出让合同约定的土地用途的，必须取得出让方和市、县人民政府城市规划行政主管部门的同意，签订土地使用权出让合同变更协议或者重新签订土地使用权出让合同，相应调整土地使用权出让金。

Article 18 Where a land user who needs to modify the land-use purpose agreed upon in the contract for granting the land-use right, he must obtain the consent of the granting party and the competent administrative department for urban planning under the people's government of the city or county, conclude an agreement on the modification of the granting contract or conclude a new contract for granting the land-use right and the fees for granting the land-use right shall be accordingly readjusted.

第十九条   土地使用权出让金应当全部上缴财政，列入预算，用于城市基础设施建设和土地开发。土地使用权出让金上缴和使用的具体办法由国务院规定。

Article 19 All the fees for granting the land-use right shall be turned over to the State Treasury and incorporated into the budget so as to be used for the construction of urban infrastructure and for land development. Specific measures for the turning over and use of the fees for granting the land-use right shall be formulated by the State Council.

第二十条   国家对土地使用者依法取得的土地使用权，在出让合同约定的使用年限届满前不收回;在特殊情况下，根据社会公共利益的需要，可以依照法律程序提前收回，并根据土地使用者使用土地的实际年限和开发土地的实际情况给予相应的补偿。

Article 20 Before the term for the use of land specified in the contract for granting the land-use right expires, the State is not to recover the land-use right obtained by the land user in accordance with the law. Under special circumstances as required by public interests, the State may, in accordance with legal procedures, recover the land-use right before the expiration of the term and shall make appropriate compensation based on the number of years of utilization and the actual development of the land by the land user.

第二十一条   土地使用权因土地灭失而终止。

Article 21 The land-use right shall be terminated with loss of the Land.

第二十二条   土地使用权出让合同约定的使用年限届满，土地使用者需要继续使用土地的，应当至迟于届满前一年申请续期，除根据社会公共利益需要收回该幅土地的，应当予以批准。经批准准予续期的，应当重新签订土地使用权出让合同，依照规定支付土地使用权出让金。

Article 22 Where the term for the use of land specified in the contract for granting the land-use right expires, and the land user needs to continue the use of the land, the land user shall apply for an extension of the term no later than one year ahead of the expiration. Such an application shall be approved except for the land to be reclaimed as required by public interests. Upon approval of the extension, the land user shall enter into a new contract for the granting of the land-use right and pay fees for the granting in accordance with the relevant regulations.

土地使用权出让合同约定的使用年限届满，土地使用者未申请续期或者虽申请续期但依照前款规定未获批准的，土地使用权由国家无偿收回。

Where the term for the use of land specified in the contract for granting the land-use right expires, and the land user has not applied for an extension of the term or his application therefore is not approved in accordance with the provisions in the preceding paragraph, the land-use right shall be reclaimed by the State without compensation.

第二节 土地使用权划拨

Section 2 Grant of Land-use Right

第二十三条   土地使用权划拨，是指县级以上人民政府依法批准，在土地使用者缴纳补偿、安置等费用后将该幅土地交付其使用，或者将土地使用权无偿交付给土地使用者使用的行为。

Article 23 Allocation of the land-use right refers to acts that the people's government at or above the county level, after the land user has paid compensation and expenses for resettlement, etc., approves in accordance with the law to allocate the land to the land user or gratuitously allocates the land-use right to the land user.

依照本法规定以划拨方式取得土地使用权的，除法律、行政法规另有规定外，没有使用期限的限制。

Where the land-use right has been obtained by means of allocation in accordance with the provisions of this Law, except as otherwise provided by laws, administrative rules and regulations, there shall be no restriction with respect to the term of use.

第二十四条   下列建设用地的土地使用权，确属必需的，可以由县级以上人民政府依法批准划拨：

Article 24 The land-use right for the following land used for construction may, if really necessary, be allocated upon approval by the people's government at or above the county level in accordance with the law:

(一)国家机关用地和军事用地;

1. Land used for State organs or military purposes;

(二)城市基础设施用地和公益事业用地;

2. Land for urban infrastructure or public welfare;

(三)国家重点扶持的能源、交通、水利等项目用地;

3. Land used for projects of energy, communications or water conservancy, etc. which are selectively supported by the State; and

(四)法律、行政法规规定的其他用地。

(IV) Other land as provided for by laws or administrative regulations.

第三章 房地产开发

Chapter III Development of Real Estate

第二十五条   房地产开发必须严格执行城市规划，按照经济效益、社会效益、环境效益相统一的原则，实行全面规划、合理布局、综合开发、配套建设。

Article 25 The development of real estate must be strictly subjected to the urban planning and carried out in a manner of overall planning, rational distribution, comprehensive development and construction with supporting facilities, in line with the principle of combining the economic, social and environmental benefits.

第二十六条   以出让方式取得土地使用权进行房地产开发的，必须按照土地使用权出让合同约定的土地用途、动工开发期限开发土地。超过出让合同约定的动工开发日期满一年未动工开发的，可以征收相当于土地使用权出让金百分之二十以下的土地闲置费;满二年未动工开发的，可以无偿收回土地使用权;但是，因不可抗力或者政府、政府有关部门的行为或者动工开发必需的前期工作造成动工开发迟延的除外。

Article 26 Where the land-use right has been obtained by means of granting for development of real estate, the land must be developed according to the land-use purpose and the time limit for starting the development as agreed upon in the contract for granting the land-use right. Where one year has elapsed from the date for starting the development as agreed upon in the granting contract and the land is not yet developed, fees for idle land which is equivalent to twenty percent or less of the fees for granting the land-use right shall be collected; where two years have elapsed and the land is still not developed, the land-use right may be reclaimed without compensation, however, the circumstances wherein the delay in starting the development is caused by force majeure or acts of governments or their departments concerned or by the early preparations necessary for starting the development shall be excepted.

第二十七条   房地产开发项目的设计、施工，必须符合国家的有关标准和规范。

Article 27 Design and construction of real estate development projects shall comply with the relevant standards and norms of the State.

房地产开发项目竣工，经验收合格后，方可交付使用。

A completed real estate development project may be delivered for use only upon passing inspection.

第二十八条   依法取得的土地使用权，可以依照本法和有关法律、行政法规的规定，作价入股，合资、合作开发经营房地产。

Article 28 The land-use right obtained pursuant to the law may, in accordance with the provisions of this Law and relevant laws, administrative rules and regulations, be valued and contributed as shares in developing and operating real estate in the form of joint ventures or contractual joint ventures.

第二十九条   国家采取税收等方面的优惠措施鼓励和扶持房地产开发企业开发建设居民住宅。

Article 29 The State shall adopt preferential measures in aspects such as taxation to encourage and support real estate development enterprises to develop and construct residential houses.

第三十条   房地产开发企业是以营利为目的，从事房地产开发和经营的企业。设立房地产开发企业，应当具备下列条件：

Article 30 A real estate development enterprise is an enterprise engaged in real estate development and operation for purpose of profit. To establish a real estate development enterprise, the following conditions shall be met:

(一)有自己的名称和组织机构;

1. Having its own name and organizational structure;

(二)有固定的经营场所;

2. Having a fixed business place;

(三)有符合国务院规定的注册资本;

3. have registered capital conforming to the provisions of the State Council;

(四)有足够的专业技术人员;

(IV) having sufficient professional and technical personnel; and

(五)法律、行政法规规定的其他条件。

(V) Other conditions prescribed by laws and administrative regulations.

设立房地产开发企业，应当向工商行政管理部门申请设立登记。工商行政管理部门对符合本法规定条件的，应当予以登记，发给营业执照;对不符合本法规定条件的，不予登记。

To establish a real estate development enterprise, an application for registration of establishment shall be submitted to the administration for industry and commerce. Where conditions specified in this Law are met, the administrative department for industry and commerce shall register the establishment and issue a business license. Registration shall not be made, where such conditions are not met.

设立有限责任公司、股份有限公司，从事房地产开发经营的，还应当执行公司法的有关规定。

To establish a limited liability company or a joint stock limited company engaged in real estate development and operation, relevant provisions of the Company Law shall also be complied with.

房地产开发企业在领取营业执照后的一个月内，应当到登记机关所在地的县级以上地方人民政府规定的部门备案。

A real estate development enterprise shall file records with the department stipulated by a People's Government of county level and above at the location of the registration authorities within one month from collection of the business licence.

第三十一条   房地产开发企业的注册资本与投资总额的比例应当符合国家有关规定。

Article 31 The ratio of registered capital to total investment amount of a real estate development enterprise shall comply with the relevant provisions of the State.

房地产开发企业分期开发房地产的，分期投资额应当与项目规模相适应，并按照土地使用权出让合同的约定，按期投入资金，用于项目建设。

Where a real estate development enterprise develops real estate in phases, the amount of phased investment shall be commensurate with the scale of the project and the capital shall be put into construction of the project on schedule as agreed upon in the contract for granting the land-use right.

第四章 房地产交易

Chapter 4 Transaction of Real Estate

第一节 一般规定

Section 1 General Provisions

第三十二条   房地产转让、抵押时，房屋的所有权和该房屋占用范围内的土地使用权同时转让、抵押。

Article 32 In the transfer or mortgage of real estate, the ownership of the house and the land-use right to the house site shall be transferred or mortgaged therewith.

第三十三条   基准地价、标定地价和各类房屋的重置价格应当定期确定并公布。具体办法由国务院规定。

Article 33 The basic land price, standard land price and replacement prices for houses of various types shall be determined and made public regularly. The specific measures shall be formulated by the State Council.

第三十四条   国家实行房地产价格评估制度。

Article 34 The State shall practise an appraisal system for real estate prices.

房地产价格评估，应当遵循公正、公平、公开的原则，按照国家规定的技术标准和评估程序，以基准地价、标定地价和各类房屋的重置价格为基础，参照当地的市场价格进行评估。

Valuation of real estate prices shall comply with the principles of equitableness, fairness and transparency; valuation shall be carried out pursuant to the technical standards and valuation procedures stipulated by the State and based on the benchmark land price, valuated land price and replacement price for various types of buildings and with reference to the local market prices.

第三十五条   国家实行房地产成交价格申报制度。

Article 35 The State shall practise a report system for real estate transaction prices.

房地产权利人转让房地产，应当向县级以上地方人民政府规定的部门如实申报成交价，不得瞒报或者作不实的申报。

An obligee of real estate shall, in transfer of his real estate, truthfully report the transaction price to the department designated by the local people's government at or above the county level and shall not make a concealed or false report.

第三十六条   房地产转让、抵押，当事人应当依照本法第五章的规定办理权属登记。

Article 36 Where real estate is transferred or mortgaged, the party concerned shall register the ownership of the real estate pursuant to the provisions of Chapter V of this Law.

第二节 房地产转让

Section 2 Transfer of Real Property

第三十七条   房地产转让，是指房地产权利人通过买卖、赠与或者其他合法方式将其房地产转移给他人的行为。

Article 37 Transfer of real estate refers to acts that an obligee of real estate transfers his real estate to another person through sale, donation or other legal means.

第三十八条   下列房地产，不得转让：

Article 38 No following real estate shall be transferred:

(一)以出让方式取得土地使用权的，不符合本法第三十九条规定的条件的;

1. The land-use right has been obtained by means of granting, however, not meeting conditions set forth in Article 39 of this Law;

(二)司法机关和行政机关依法裁定、决定查封或者以其他形式限制房地产权利的;

2. the judicial department or administrative agency adjudicated or decided to seal up the right to the real estate or restrict the owner in other forms;

(三)依法收回土地使用权的;

3. The land-use right has been reclaimed in accordance with the law;

(四)共有房地产，未经其他共有人书面同意的;

(IV) For jointly-owned real estate, written consent of other co-owners has not been obtained;

(五)权属有争议的;

(V) The ownership is under dispute;

(六)未依法登记领取权属证书的;

(VI) The real estate has not been registered in accordance with the law and the certificate of the ownership has not been obtained;

(七)法律、行政法规规定禁止转让的其他情形。

(VII) Other circumstances under which transfer is prohibited by laws and administrative regulations.

第三十九条   以出让方式取得土地使用权的，转让房地产时，应当符合下列条件：

Article 39 Where the land-use right has been obtained by means of granting, transfer of the real estate shall meet the following conditions:

(一)按照出让合同约定已经支付全部土地使用权出让金，并取得土地使用权证书;

1. All assignment fees for the land use right have been paid according to the assignment contract, and the land use right certificate has been obtained;

(二)按照出让合同约定进行投资开发，属于房屋建设工程的，完成开发投资总额的百分之二十五以上，属于成片开发土地的，形成工业用地或者其他建设用地条件。

(II) Having invested for development as agreed upon in the granting contract and having fulfilled twenty-five percent or more of the total investment for development in the case of housing projects, or having constituted conditions of land-use for industrial purposes or other construction projects in the case of developing tracts of land.

转让房地产时房屋已经建成的，还应当持有房屋所有权证书。

Where real estate is transferred with the construction of houses completed, the certificate of the house ownership shall be acquired.

第四十条   以划拨方式取得土地使用权的，转让房地产时，应当按照国务院规定，报有批准权的人民政府审批。有批准权的人民政府准予转让的，应当由受让方办理土地使用权出让手续，并依照国家有关规定缴纳土地使用权出让金。

Article 40 Where the land-use right has been obtained by means of allocation, the transfer of the real estate shall, according to the regulations of the State Council, be reported for examination and approval to the people's government that has the authority for approval. Upon approval of the transfer by the people's government with the authority for approval, the transferee shall go through the formalities for the granting of the land-use right and pay the fees therefore according to the relevant regulations of the State.

以划拨方式取得土地使用权的，转让房地产报批时，有批准权的人民政府按照国务院规定决定可以不办理土地使用权出让手续的，转让方应当按照国务院规定将转让房地产所获收益中的土地收益上缴国家或者作其他处理。

Where the land-use right has been obtained by means of allocation and where, when the transfer of the real estate is reported for approval, the people's government that has the authority for approval decides in accordance with the regulations of the State Council that the formalities for granting the land-use right need not be gone through, the transferor shall, pursuant to the regulations of the State Council, turn over to the State the proceeds obtained from land in the transfer of the real estate or dispose of such proceeds otherwise.

第四十一条   房地产转让，应当签订书面转让合同，合同中应当载明土地使用权取得的方式。

Article 41 For the transfer of real estate, a written transfer contract shall be concluded in which the means of obtaining the land-use right shall be stated.

第四十二条   房地产转让时，土地使用权出让合同载明的权利、义务随之转移。

Article 42 When real estate is transferred, the rights and obligations stated in the contract for granting the land-use right shall be transferred therewith.

第四十三条   以出让方式取得土地使用权的，转让房地产后，其土地使用权的使用年限为原土地使用权出让合同约定的使用年限减去原土地使用者已经使用年限后的剩余年限。

Article 43 Where the land-use right has been obtained by means of granting and after the real estate has been transferred, the term for the use of the land-use right shall be the remaining years after subtracting the years of use by the former land user from the original term agreed upon in the contract for granting the land-use right.

第四十四条   以出让方式取得土地使用权的，转让房地产后，受让人改变原土地使用权出让合同约定的土地用途的，必须取得原出让方和市、县人民政府城市规划行政主管部门的同意，签订土地使用权出让合同变更协议或者重新签订土地使用权出让合同，相应调整土地使用权出让金。

Article 44 Where the land-use right has been obtained by means of granting and after the real estate has been transferred, the transferee modifies the land-use purpose agreed upon in the contract for granting the land-use right, the transferee must obtain consent from the transferor and the administrative department for urban planning under the people's government of the relevant city or county, and conclude an agreement on the modification of the contract for granting the land-use right or enter into a new contract for granting the land-use right and readjust the fees for granting the land-use right accordingly.

第四十五条   商品房预售，应当符合下列条件：

Article 45 For the presale of commercial houses, the following conditions shall be met:

(一)已交付全部土地使用权出让金，取得土地使用权证书;

1. Having paid all the fees for the granting of the land-use right and obtained the certificate of the land-use right;

(二)持有建设工程规划许可证;

2. Having a permit for construction project planning;

(三)按提供预售的商品房计算，投入开发建设的资金达到工程建设总投资的百分之二十五以上，并已经确定施工进度和竣工交付日期;

(III) The funds put into the development construction having reached twenty-five percent or more of the total investment for the construction project, computed on the basis of the commercial houses provided for pre-sale, and the schedule of construction and the date of completion for delivery having been set; and

(四)向县级以上人民政府房产管理部门办理预售登记，取得商品房预售许可证明。

(IV) Having made registration for presale with the administrative department in charge of house property under the people's government at or above the county level and having obtained the certificate of permission for the presale of commercial houses.

商品房预售人应当按照国家有关规定将预售合同报县级以上人民政府房产管理部门和土地管理部门登记备案。

Pre-sellers of commercial houses shall, in accordance with the relevant regulations of the State, submit the presale contracts to the departments of housing administration and departments of land administration under the people's governments at or above the county level for registration and record.

商品房预售所得款项，必须用于有关的工程建设。

Proceeds from the presale of commercial houses must be used for the relevant construction projects.

第四十六条   商品房预售的，商品房预购人将购买的未竣工的预售商品房再行转让的问题，由国务院规定。

Article 46 In the case of presale of commercial houses, matters concerning the transfer of unfinished presale commercial houses that the buyers have purchased shall be prescribed by the State Council.

第三节 房地产抵押

Section 3 Mortgage of Real Estate

第四十七条   房地产抵押，是指抵押人以其合法的房地产以不转移占有的方式向抵押权人提供债务履行担保的行为。债务人不履行债务时，抵押权人有权依法以抵押的房地产拍卖所得的价款优先受偿。

Article 47 Mortgage of real estate refers to acts that a mortgagor provides the mortgagee security for the payment of a debt with his legal real estate in the manner that the possession of his real estate is not transferred. Where a debtor fails to pay his debt, the mortgagee shall have the right in accordance with the law to enjoy the priority in compensation to be paid with funds obtained from auction of the real estate mortgaged.

第四十八条   依法取得的房屋所有权连同该房屋占用范围内的土地使用权，可以设定抵押权。

Article 48 A mortgage may be created on the ownership of a house obtained according to law together with the land-use right to the house site.

以出让方式取得的土地使用权，可以设定抵押权。

A mortgage may be created on the land-use right obtained by means of granting.

第四十九条   房地产抵押，应当凭土地使用权证书、房屋所有权证书办理。

Article 49 The mortgage of real estate shall be dealt with on the strength of the certificate of the land-use right and the certificate of ownership of the house.

第五十条   房地产抵押，抵押人和抵押权人应当签订书面抵押合同。

Article 50 For the mortgage of real estate, the mortgagor and the mortgagee shall enter into a written mortgage contract.

第五十一条   设定房地产抵押权的土地使用权是以划拨方式取得的，依法拍卖该房地产后，应当从拍卖所得的价款中缴纳相当于应缴纳的土地使用权出让金的款额后，抵押权人方可优先受偿。

Article 51 Where the land-use right on which a mortgage is created has been obtained by means of allocation, the mortgagee may enjoy the priority in compensation only after the amount equal to the fees for the granting of the land-use right has been paid from the funds obtained from auction of the real estate done in accordance with the law.

第五十二条   房地产抵押合同签订后，土地上新增的房屋不属于抵押财产。需要拍卖该抵押的房地产时，可以依法将土地上新增的房屋与抵押财产一同拍卖，但对拍卖新增房屋所得，抵押权人无权优先受偿。

Article 52 After a contract for the mortgage of the real estate has been concluded, newly-built houses on the land shall not be regarded as the mortgaged asset. If the mortgaged real estate needs to be sold by auction, the newly-built houses on the land may be auctioned off according to law together with the mortgaged assets. However, the mortgagee shall not have the priority in compensation with respect to the funds obtained from auction of the newly-built houses.

第四节 房屋租赁

Section 4 Lease of the Premises

第五十三条   房屋租赁，是指房屋所有权人作为出租人将其房屋出租给承租人使用，由承租人向出租人支付租金的行为。

Article 53 Leasing of real estate shall refer to the act of lease of building by the owner to a lessee and payment of rent by the lessee to the lessor.

第五十四条   房屋租赁，出租人和承租人应当签订书面租赁合同，约定租赁期限、租赁用途、租赁价格、修缮责任等条款，以及双方的其他权利和义务，并向房产管理部门登记备案。

Article 54 In the lease of a house, the leaser and the leasee shall conclude a written lease contract defining such matters as the term, purpose and price of the lease, liability for repair, as well as other rights and obligations of both parties, and shall register the lease with the department of housing administration for the record.

第五十五条   住宅用房的租赁，应当执行国家和房屋所在城市人民政府规定的租赁政策。租用房屋从事生产、经营活动的，由租赁双方协商议定租金和其他租赁条款。

Article 55 Lease of residential houses shall be carried out in accordance with policies on lease formulated by the State and the people's government of the city where the houses are located. Where houses are leased for activities of production and business operation, the rent and other terms for the lease shall be determined by both parties through consultation.

第五十六条   以营利为目的，房屋所有权人将以划拨方式取得使用权的国有土地上建成的房屋出租的，应当将租金中所含土地收益上缴国家。具体办法由国务院规定。

Article 56 Where an owner of a house, for profit-making purposes, leases the house built on the State-owned land, the land-use right for which has been obtained by means of allocation, he shall turn over to the State the proceeds derived from the land and contained in the rent. The specific measures shall be formulated by the State Council.

第五节 中介服务机构

Section 5 Intermediary Service Agencies

第五十七条   房地产中介服务机构包括房地产咨询机构、房地产价格评估机构、房地产经纪机构等。

Article 57 Intermediary service agencies for real estate include real estate consultant agencies, real estate price appraisal agencies and real estate broking agencies.

第五十八条   房地产中介服务机构应当具备下列条件：

Article 58 Intermediary service agencies for real estate shall meet the following conditions:

(一)有自己的名称和组织机构;

1. Having its own name and organizational structure;

(二)有固定的服务场所;

2. Having fixed service places;

(三)有必要的财产和经费;

(III) to have necessary property and funds;

(四)有足够数量的专业人员;

(IV) to have sufficient professional personnel; and

(五)法律、行政法规规定的其他条件。

(V) Other conditions prescribed by laws and administrative regulations.

设立房地产中介服务机构，应当向工商行政管理部门申请设立登记，领取营业执照后，方可开业。

For establishing an intermediary service agency for real estate, an application for registration of the establishment shall be submitted to the administrative department for industry and commerce and a business license shall be obtained, before it starts its business.

第五十九条   国家实行房地产价格评估人员资格认证制度。

Article 59 The State shall practise a qualification authentication system for real estate price appraisers.

第五章 房地产权属登记管理

Chapter 5 Administration of Real Estate Ownership Registration

第六十条   国家实行土地使用权和房屋所有权登记发证制度。

Article 60 The State shall practise a system of registration and certification for land-use right and ownership of houses.

第六十一条   以出让或者划拨方式取得土地使用权，应当向县级以上地方人民政府土地管理部门申请登记，经县级以上地方人民政府土地管理部门核实，由同级人民政府颁发土地使用权证书。

Article 61 Where the land-use right is to be obtained by means of granting or allocation, an application for registration shall be submitted to the department of land administration under the local people's government at or above the county level. Upon verification by the department of land administration under the local people's government at or above the county level, the certificate of the land-use right shall be issued by the people's government at the corresponding level.

在依法取得的房地产开发用地上建成房屋的，应当凭土地使用权证书向县级以上地方人民政府房产管理部门申请登记，由县级以上地方人民政府房产管理部门核实并颁发房屋所有权证书。

Where a house is built on the land for real estate development obtained pursuant to the law, an application for registration shall, on the strength of the certificate of land-use right, be submitted to the department of housing administration under the local people's government at or above the county level. The department of housing administration under the local people's government at or above the county level shall issue a certificate of the ownership of the house after verification.

房地产转让或者变更时，应当向县级以上地方人民政府房产管理部门申请房产变更登记，并凭变更后的房屋所有权证书向同级人民政府土地管理部门申请土地使用权变更登记，经同级人民政府土地管理部门核实，由同级人民政府更换或者更改土地使用权证书。

Where transfer or modification of real estate is to be made, an application for registration of the modification of house property shall be submitted to the department of housing administration under the local people's government at or above the county level and on the strength of the certificate of the modified ownership of the house, an application for registration of the modification of the land-use right shall be submitted to the department of land administration under the people's government at the corresponding level. Upon verification by the department of land administration under the people's government at the corresponding level, a new or a modified certificate of the land-use right shall be issued by the people's government at the corresponding level.

法律另有规定的，依照有关法律的规定办理。

Where provided otherwise by laws, the provisions of such laws shall apply.

第六十二条   房地产抵押时，应当向县级以上地方人民政府规定的部门办理抵押登记。

Article 62 Where real estate is to be mortgaged, registration of mortgage shall be made with the department designated by the local people's government at or above the county level.

因处分抵押房地产而取得土地使用权和房屋所有权的，应当依照本章规定办理过户登记。

Where the land-use right and the ownership of a house have been obtained from disposal of mortgaged real estate, the change of ownership for the land-use right and the house shall be registered in accordance with the provisions of this Chapter.

第六十三条   经省、自治区、直辖市人民政府确定，县级以上地方人民政府由一个部门统一负责房产管理和土地管理工作的，可以制作、颁发统一的房地产权证书，依照本法第六十一条的规定，将房屋的所有权和该房屋占用范围内的土地使用权的确认和变更，分别载入房地产权证书。

Article 63 Where a department of the local people's government at or above the county level is in charge of both housing administration and land administration as determined by the people's government of the relevant province, autonomous region or municipality directly under the Central Government, such department may make and issue the uniform certificate of the ownership of real estate, in which the confirmation and modification of the ownership of houses and the land-use right of the house site shall be recorded respectively in accordance with the provisions of Article 61 of this Law.

第六章 法律责任

Chapter 6 Legal Liabilities

第六十四条   违反本法第十一条、第十二条的规定，擅自批准出让或者擅自出让土地使用权用于房地产开发的，由上级机关或者所在单位给予有关责任人员行政处分。

Article 64 Persons accountable for violation of the provisions of Article 11 and Article 12 in approving assignment or making assignment of land use right arbitrarily for real estate development use shall be subject to administrative punishment meted out by the superior authorities or their reporting unit.

第六十五条   违反本法第三十条的规定，未取得营业执照擅自从事房地产开发业务的，由县级以上人民政府工商行政管理部门责令停止房地产开发业务活动，没收违法所得，可以并处罚款。

Article 65 Whoever, in violation of the provisions of Article 30 of this Law, engages in business of real estate development without obtaining a business license shall be ordered to stop activities of real estate development and confiscated of his unlawful proceeds and may be concurrently imposed a fine by the administrative department for industry and commerce under the people's government at or above the county level.

第六十六条   违反本法第三十九条第一款的规定转让土地使用权的，由县级以上人民政府土地管理部门没收违法所得，可以并处罚款。

Article 66 Whoever, in violation of the provisions of paragraph 1 of Article 39 of this Law, transfers the land-use right shall be confiscated of his unlawful proceeds and may be concurrently imposed a fine by the department of land administration under the people's government at or above the county level.

第六十七条   违反本法第四十条第一款的规定转让房地产的，由县级以上人民政府土地管理部门责令缴纳土地使用权出让金，没收违法所得，可以并处罚款。

Article 67 Persons guilty of violation of the provisions of the first paragraph of Article 40 on transfer of real estate shall be ordered by the land administration authorities of a People's Government of county level and above to pay land use right assignment fee; illegal income shall be confiscated and a fine may be imposed.

第六十八条   违反本法第四十五条第一款的规定预售商品房的，由县级以上人民政府房产管理部门责令停止预售活动，没收违法所得，可以并处罚款。

Article 68 Whoever, in violation of the provisions of paragraph 1 of Article 45 of this Law, pre-sells commercial houses shall be ordered to stop activities of presale, confiscated of his unlawful proceeds and may concurrently be imposed a fine by the department of housing administration under the people's government at or above the county level.

第六十九条   违反本法第五十八条的规定，未取得营业执照擅自从事房地产中介服务业务的，由县级以上人民政府工商行政管理部门责令停止房地产中介服务业务活动，没收违法所得，可以并处罚款。

Article 69 Whoever, in violation of the provisions of Article 58 of this Law, engages in intermediary services for real estate business without obtaining a business license shall be ordered to stop activities of intermediary services for real estate business, confiscated of his unlawful proceeds and may concurrently be imposed a fine by the administrative department for industry and commerce under the people's government at or above the county level.

第七十条   没有法律、法规的依据，向房地产开发企业收费的，上级机关应当责令退回所收取的钱款;情节严重的，由上级机关或者所在单位给予直接责任人员行政处分。

Article 70 Whoever collects fees from a real estate development enterprise without the basis of laws, rules and regulations shall be ordered by the organ at a higher level to return the fees thus collected; if the circumstances are serious, the person who is held directly responsible shall be given an administrative sanction by the organ at a higher level or by the unit to which he belongs.

第七十一条   房产管理部门、土地管理部门工作人员玩忽职守、滥用职权，构成犯罪的，依法追究刑事责任;不构成犯罪的，给予行政处分。

Article 71 Where functionaries of departments of housing administration or land administration commit negligence of duty or abuse of power and the case constitutes a crime, they shall be investigated for criminal responsibilities in accordance with the law; if the case does not constitute a crime, they shall be given administrative sanctions.

房产管理部门、土地管理部门工作人员利用职务上的便利，索取他人财物，或者非法收受他人财物为他人谋取利益，构成犯罪的，依法追究刑事责任;不构成犯罪的，给予行政处分。

Personnel of real estate administration authorities and land administration authorities guilty of taking advantage of their positions to accept property from others illegally shall be subject to administrative punishment if the case does not constitute a criminal offence; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

第七章 附则

Chapter 7 Supplementary Provisions

第七十二条   在城市规划区外的国有土地范围内取得房地产开发用地的土地使用权，从事房地产开发、交易活动以及实施房地产管理，参照本法执行。

Article 72 This Law shall be applied mutatis mutandis in obtaining the land-use right for development of real estate, engaging in development of real estate and transaction of real estate, and exercising administration of real estate in the State-owned land outside of a planned urban district.

第七十三条   本法自1995年1月1日起施行。

Article 73 This Law shall go into effect as of January 1, 1995.