



**DISCUSSION ON THE LEGALITY AND REASONABILITY OF THE  
REGULATIONS PROHIBITING LAND LOT DIVISION AND SALE  
FROM THE PEOPLE'S COMMITTEE OF HO CHI MINH CITY**

As updated by ATA in the Legal Updates on November 1, 2024, the People's Committee of Ho Chi Minh City ("**HCMC**") issued Decision 83/2024/QĐ-ĐT ("**Decision 83**") on October 21, 2024, which explicitly prohibits the subdivision and sale of land plots in all real estate projects (including commercial housing projects) within the city (including the five suburban districts of Binh Chanh, Hoc Mon, Can Gio, Cu Chi, and Nha Be), except for cases where subdivision and sale of land plots are implemented for the purpose of relocating residents in accordance with regulations. This regulation by Ho Chi Minh City has greatly impacted the city's real estate market. Additionally, as the economic "locomotive" of the country, this regulation has been and is significantly affecting real estate businesses and the real estate market in Vietnam as a whole.

Many businesses and organizations operating in the fields of real estate and real estate law have expressed opposition to Decision 83, arguing that the content of this document is not consistent with the provisions of the Law on Land, the Law on Real Estate Business, and the Law on Housing. Recently, the Ho Chi Minh City Real Estate Association ("**HoREA**") sent a document to the People's Committee of HCMC with the content: "Propose detailed regulations on determining areas where real estate project investors, housing projects are allowed to transfer land use rights with technical infrastructure for individuals to build houses in the communes, excluding towns in the five districts of HCMC." Accordingly, HoREA requested that the HCMC People's Committee reconsider and amend the provisions of Clause 1, Article 2 of Decision 83/2024/QĐ-ĐT towards detailing the determination of areas where real estate project investors, housing projects are allowed to transfer land use rights with technical infrastructure for individuals to build houses in the communes, excluding towns in the five districts of Binh Chanh, Nha Be, Hoc Mon, Cu Chi, and Can Gio, and not falling under cases of land use rights auction for housing construction project investment as prescribed by the Land Law, in accordance with Clause 6, Article 31 of the Law on Real Estate Business 2023 and Clause 5, Article 5 of the Law on Housing 2023.

As a specialized firm in legal consulting in the fields of land and real estate, ATA has prepared this Legal Articles to "Discuss the legality and reasonableness of Ho Chi Minh City's prohibition on the subdivision and sale of land plots." Our Legal Article aims to provide our readers with comprehensive perspectives and proper evaluations of the State's policies and laws, while also assisting businesses and organizations operating in the real estate sector with additional legal foundations in their efforts to advocate for their own interests.

## **1. Does Decision 83 "conflict" with the provisions of the current Law on Land, the Law on Real Estate Business, and the Law on Housing?**

In our opinion, without discussing the positive or negative impacts of Decision 83, legally, this document is entirely consistent with current legal provisions. Let's analyze the relevant legal regulations with ATA to clarify this issue.

As we known, the issue of "**subdivision and sale of land plots**" was previously regulated by the Law on Land 2013 and the implementing guidelines using the general term "**transfer of land use rights in the implementation of housing construction investment projects**." Accordingly, the law stipulates in a "**permissive**" direction for the implementation of subdivision and sale of land plots if they meet the conditions guided by the Government, and the provincial People's Committees will base on these guiding regulations to "**implement**." This is reflected in Article 194 of the Law on Land and Article 41 of Decree 43/2014/ND-CP (amended by Clause 17, Article 1 of Decree 148/2020/ND-CP) detailing the implementation of some articles of the Law on Land, specifically:

***“Article 194. Conditions for transferring land use rights in housing construction investment projects; infrastructure construction investment projects for transfer or lease***

1. *The transfer of land use rights in housing construction investment projects shall be implemented according to the following provisions:*
2. *The provincial People's Committee, based on the Government's regulations on urban type conditions, shall allow housing construction investment project investors to transfer land use rights in the form of land subdivision after completing the investment in infrastructure construction and fulfilling financial obligations regarding the land;”*

***“Article 41. Conditions for transferring land use rights in housing construction investment projects for sale or combined sale and lease***

1. *The conditions for housing construction investment projects for sale or combined sale and lease to transfer land use rights in the form of land subdivision and sale of land plots include: ...*
2. *The provincial People's Committee is responsible for publicly announcing the areas where housing construction investment projects for sale or combined sale and lease are allowed to transfer land use rights in the form of land subdivision and sale of land plots before implementing investment projects.”*

Meanwhile, the legal documents on land, real estate, and housing issued in 2023 have fundamentally adjusted the issue of “granting decision-making authority to allow the subdivision and sale of land plots” to the provincial People's Committees.

Specifically, Clause 6, Article 31 of the Law on Real Estate Business 2023 stipulates as follows:

***“Article 31. Conditions for land with technical infrastructure in real estate projects to be transferred for individuals to build houses***

6. *The land is not in the wards, districts, cities of special type I, type II, and type III urban areas; not in cases of auctioning land use rights for investment in housing construction projects as prescribed by the Land Law. For the remaining areas, the provincial People's Committee shall base on local conditions to determine the areas where project investors are allowed to transfer land use rights with technical infrastructure for individuals to build houses.”*

The Law on Real Estate Business 2023 and its implementing documents do not provide detailed guidance or explanation on the issue of "local conditions". Accordingly, in principle, the provincial People's Committees have full authority to balance and determine this issue.

With the above provisions, the Law on Real Estate Business 2023 has granted proactive authority (in other words, decentralization) to the provincial People's Committees in determining and deciding the areas where project investors are allowed to transfer land use rights for individuals to build houses, including not allowing this activity in any area within the management jurisdiction. This is a fundamental change in the Real Estate Business Law 2023 compared to previous regulations.

Thus, it can be affirmed that the HCMC People's Committee's decision not to allow "subdivision and sale of land plots" across the entire city, except for cases of resettlement, is in accordance with current legal provisions.



## **2. Analysis and evaluation of the impact of the prohibition on the subdivision and sale of land plots on the market and real estate businesses**

From a positive perspective, we believe that Decision 83 is a "strong-handed" measure by HCMC to redirect the investment and real estate transaction trends of both residents and professional investors. Accordingly, this regulation forces buyers to shift to other types of real estate, such as apartments, pre-built houses, industrial real estate, or transferring entire real estate projects instead of focusing on individual land plots. This will help prevent speculation and resale aimed at inflating real estate prices, which do not reflect the actual value of the property and do not meet the practical usage needs of residents. Developing real estate through projects also ensures the overall construction planning, improves the technical infrastructure system within the city, facilitates more synchronized urban management, prevents unlicensed and illegal construction, and ensures aesthetics, synchronization, and harmony in the overall urban landscape, thereby enhancing the quality of living space for residents.

However, in the long term, Decision 83 may create adverse effects on the real estate market and the capital market serving real estate, as follows:

Firstly, buying and selling "subdivided land plots" is a "reasonable" investment method for both investors and real estate buyers. For investors, subdividing land plots creates more products, more business opportunities, saves investment costs, and allows investors to bring products into business earlier than having to complete the construction of buildings on the land, thereby generating cash flow and early income for investors to reinvest or implement subsequent projects. For real estate buyers, "subdivided land plots" are a reasonable investment channel with lower initial investment costs compared to investing in assets on the land, while early ownership and use rights meet individual investment or usage needs. In general, the commercial benefits of "subdivided land plots" are undeniable. Limiting or prohibiting the subdivision and sale of land plots will leave investors without a quick and efficient capital turnover channel, creating financial pressure on the ongoing project and affecting other projects. On the other hand, for the public, buying completed/available real estate products will increase the total costs that buyers have to pay, especially in the context of middle and low-income earners lacking sufficient financial capacity, also posing challenges for access and not to mention the ability to buy and own real estate products for settling down.

Secondly, subdividing land plots (or transferring land use rights with technical infrastructure for individuals to build houses) has been recognized as a business method and a type of real estate product in the Law on Real Estate Business. Currently, most provinces and cities across the country still allow investors to implement such projects. HCMC's prohibition of this activity within the city limits has restricted the investment project opportunities and real estate product trading opportunities for both project investors and real estate buyers, creating inequality compared to investors and buyers in other provinces and cities nationwide. Meanwhile, HCMC is the largest real estate market in the country, with the highest real estate demand and value. This may make HCMC's investment and real estate market less attractive to both domestic and international investors.

Thirdly, HCMC's sole prohibition of subdividing land plots may create a "wave" of real estate investment shifts to neighboring localities. The unavoidable direct consequence is that real estate prices in these localities will also increase, and the chain reaction is that access to housing for residents in rural – suburban areas will become even more difficult.

***In our opinion, Decision 83, with its prohibition on subdividing land plots, is a step towards stabilizing the real estate market in HCMC in the short term. However, in the long run, the City***

*Government needs to fully consider, evaluate, and address the consequences of this regulation to create an equal investment and business environment, meet the practical needs of residents in settling down, and implement the Constitutional provision that “The State has policies to develop housing, creating conditions for everyone to have a place to live.”*

## ABOUT US

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All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

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