

Early Title Registration: Developers' RISK or OPPORTUNITY?

Over the past decade, real estate development in Georgia has experienced sustained growth, driven by increasing demand that has led to a rise in both developers and projects. A primary funding source for these ventures is revenue from early property sales, with many developers beginning pre-sales at the project's inception, sometimes even before securing construction permits.

Purchasing nothing more than "air" was challenging in Georgia not long ago, leading to thousands of disappointed buyers when developers failed to

uphold their end of the deal and deliver the promised projects. While purchasing property at an early stage presents legal risks, it remains attractive from an investment perspective. Early-phase property prices are typically lower, offsetting legal risks with potential investment gains.

Despite the appeal of early investment, it entails a major risk: the inability to secure a registered title on the property at that stage of construction. Developers often resist implementing mitigation measures due to high demand in the real estate

market. However, offering title registration can increase a project's attractiveness by providing early investors with a form of safety net, enhancing their confidence in the investment.

This article explores the practical aspects of the legal relationship between developers and property buyers in Georgia, focusing on the challenges of ownership registration and examining whether these difficulties can be mitigated effectively.

Drawing on years of market experience and legal advisory work with developers and buyers, we have observed several different structures of title transfer. Some developers defer registering any ownership rights until construction is fully completed, while others offer registration of future ownership rights pending project finalization. Frequently, title transfer is linked to payment milestones: some developers transfer ownership once a portion of the sale price is paid, while others wait until the full payment has been received.

Developers' reluctance to register future or full ownership rights with the National Agency of Public Registry (the authority responsible for real estate rights registration) often arises from market misconceptions. Many developers fear that a buyer's registered rights could impede project progress, complicate necessary project modifications, or provide buyers with leverage to misuse their rights in ways that may negatively impact the developer. Additionally, developers are concerned that if buyers default on payment schedules, revoking registered rights could become complex, potentially resulting in prolonged legal disputes.

The key question: Are these perceived fears valid or can they be managed contractually? We say that a well-crafted contract can mitigate these risks, fostering mutually beneficial relationships between the businesses and their consumers. The contract allows parties to implement proactive measures to reduce the likelihood of buyer interference in project development. From a financial standpoint, it is prudent for developers to retain ownership until the purchase price is paid in full. Transferring full ownership shifts the asset out of the developer's control, which could become problematic if the buyer defaults on payment.

A balanced approach is to register buyers' future ownership rights before the sale price is fully paid. This arrangement provides buyers with a sense of security while allowing developers to retain control over the asset. Additionally, contractual mechanisms can enable streamlined processes to revoke future ownership rights in the Public Registry if the buyer breaches payment terms. Once the full purchase price is paid, promptly transferring ownership benefits developers in two ways: first, the asset is no

longer exposed to the developer's own liabilities and is shielded from the developer's creditors; and second, it allows the developers to remove the asset and any associated property tax liabilities from their balance sheets.

In conclusion, transferring property ownership during construction in Georgia presents unique challenges. By aligning with buyers' expectations, mitigating risks, and fostering transparency through tailored contractual mechanisms and registration practices, developers can contribute to a more stable and transparent real estate market.



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