

Clarifying a Blurred Line

The Distinctions between Apartment Suite Hotels and Serviced Apartments

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In recent years, the real estate market has grown increasingly complex. Residential real estate has become useful not only as a place to live but also as an investment. Many kinds of investment concepts for residential properties have come into being, and advertisements for “apartment suite hotels” and “serviced apartments” have caught the public’s eye.

Different Land Use Rights Term

Despite attempts by some developers to combine the advantages of each, these two types of residential property have significantly different legal characteristics. As defined in the *Shanghai Urban Planning Management Technical Provisions (for Land Use and Construction Management)*, promulgated on 1 December 2003, the term apartment suite hotel refers to a hotel with units that are leased on a long-term basis, while the term serviced apartment refers to an apartment building with units that are sold. An apartment suite hotel is classified under the hotel construction category, but a serviced apartment is classified under the residential construction category. Both an apartment suite hotel and a serviced apartment may be managed by a specially appointed property management company and offer hotel services such as housekeeping and uniform-clad doormen.

In accordance with the *Municipal Land Classification and Land Planning Standards*, issued by the Ministry of Construction, and the *Land Classifications in China*, issued by Ministry of State Land and Resources, the land used to build an apartment suite hotel is zoned for financial and commercial purposes or for commercial and service purposes. The land use rights terms for each of these classifications is 40 years. The land used to build a serviced apartment, by contrast, is zoned for residential purposes, with a land use rights period of 70 years.

Different Administrative Approvals

These differences have a considerable impact on the relative investment values of hotel suite apartments and serviced apartments, which in turn drive property developers to attempt to blur the distinctions in the minds of unsuspecting home buyers. It is necessary, therefore, for the government to remain vigilant in carrying out its examination and supervision responsibilities from the onset of a property development project.

In accordance with the *Provisions on the Administration of Urban Real Property Development and Business Regulations*, a property developer is required to obtain a Handbook of Property Development Projects (the “Handbook”) and a Certificate for Development and Operations, issued by the relevant department in charge of the administration of real estate (“Property Authority”). Where the development project is a serviced apartment, the Handbook classifies the project as commodity housing; where the development project is an apartment suite hotel, it is classified as housing for commercial or other uses (such as offices, shops, etc.). This key distinction is determined during the preliminary examination and approval process.

During the commodity housing pre-sales stage, the developer is required to provide its Handbook when it applies for a Commodity Housing Pre-sales Permit. If the project is classified as a serviced apartment, the developer will be issued a Commodity Housing Pre-sales Permit, and at the completion of the project the house purchaser will obtain a Certificate of Limited Housing Ownership. If, on the other hand, the project is classified in the Handbook as an apartment suite hotel, the developer will not be issued a Commodity Housing Pre-sales Permit. Even upon completion, the Property Authority may refuse to issue a Certificate of Limited House Ownership because hotel rooms are not regarded as independent units. Hence, the developer first must carry out the procedures for preliminary approval to partition the hotel rooms for sale.

Irrespective of the rules, sales of residential properties classified as apartment suite hotels still can be found in some areas. I once conducted a survey and discovered that to evade government supervision some clever property developers in their design plans would independently partition some space for residential purposes without clearly indicating the nature of the project as an apartment suite hotel and vaguely describe it as housing for commercial or other uses. As a result, the Property Authority would classify the project as commodity housing and issue a Commodity Housing Pre-sales Permit. The developer would then sell the units of the apartment suite hotel as commodity housing.

Different Investment Values

As a residence, a serviced apartment has a natural advantage over an apartment suite hotel. For example, in some regions buyers of serviced apartments are permitted to register ownership if the construction area or purchase price of their unit exceeds a certain amount. The purchaser of a serviced apartment also may enjoy certain preferences from the local government, including reduced deed tax or business tax, minimum down payment thresholds or property management fees. The property may enjoy special rights to the enjoyment of daylight for no less than two hours in winter, and the owner will be entitled to compensation in accordance with the relevant laws and regulations if his rights are infringed. Finally - and perhaps most importantly - under the Property Rights Law buyers of serviced apartments have the right to automatically extend their land use rights after 70 years. An apartment suite hotel, by contrast, does not provide any of the above advantages.

On the other hand, as a rental investment option, the Property Rights Law actually makes a serviced apartment less valuable than an apartment suite hotel. Prior to the enactment of the Property Rights Law, one key selling point for a potential buyer of a serviced apartment was that he or she could entrust a management company to rent it to a third party as a form of hotel premises from which the owner could derive rent, and thus a higher investment return. The Property Rights Law, however, states that an owner may not change a residential premises into a business premises, except upon approval in compliance with laws, regulations and administrative decrees. This provision restricts an owner of a serviced apartment from changing the legal nature of his or her property to a hotel (or other business model), and greatly reduces the use of a serviced apartment as an investment property.

In contemplating the purchase of a residential unit, a potential buyer must thoroughly investigate the legal nature of the property, including its planned purpose, the term of the land use rights, the developer's sales permit and the existence of any preferential policies and leasing restrictions. The legal distinctions between hotel suite apartments and serviced apartments have a considerable impact on their relative investment value to a buyer, and property developers have a financial interest in blurring the lines.

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