

LEGISLATIVE COUNCIL BRIEF

SALES DESCRIPTIONS OF UNCOMPLETED RESIDENTIAL PROPERTIES

INTRODUCTION

At the meeting of the Executive Council on 10 July 2001, the Council ADVISED and the Acting Chief Executive ORDERED that the need for the Sales Descriptions of Uncompleted Residential Properties Bill should be reassessed some time early next year in the light of the latest developments described in paragraphs 3 to 7 below.

BACKGROUND AND ARGUMENT

General Background

2. In view of its complexity, the Sales Descriptions of Uncompleted Residential Properties Bill (the Bill) was published as a White Bill on 7 April 2000, followed by a three-month public consultation period. Over 50 submissions from various sectors of the community were received. The main issues of controversy include the definition of floor area measurements, the need for up-to-date floor plan, location plan and disposition plan, and criminal liability for developers and their staff. The Administration held detailed discussions with major organisations and professional institutes with a view to resolving the polarized views and dealing with some strongly held objections.

Present Position

3. After detailed deliberations in the last 12 months, the Administration considers that the circumstances which led to the drafting of the Bill in 1998 have changed significantly.

(a) Reduced need for legislation

4. Sentiments of consumers and investors towards the purchase of property have significantly changed. Flats are in large supply. In a buyers' market, developers have to provide detailed information on every aspect of the development and purchasers take time to compare different developments before buying flats.

(b) Voluntary compliance by private developers

5. The Real Estate Developers Association of Hong Kong (REDA) has recently agreed to the Housing Bureau's suggestion of taking positive and constructive steps in response to the community's demand for comprehensive and accurate information relating to flats for sale. REDA has issued in June 2001 a comprehensive set of guidelines for voluntary compliance by its members. As REDA represents the vast majority of developers in Hong Kong, compliance with the guidelines will mean that flat purchasers will be able to make informed comparisons between prices and other features of different housing developments. Amongst other things, REDA's guidelines have adopted the same method of calculating the saleable area of a flat as in the Bill.

6. The main difference between REDA's guidelines and the requirements under the Bill lies in the definition of Gross Floor Area (GFA). The Bill proposes to adopt a definition of GFA which excludes areas exempted under the Building Ordinance. REDA has adopted a GFA calculation which is the market practice in the real estate industry for decades and is commonly adopted for both the first-hand and the second-hand markets. This GFA adopted by REDA is the sum of the saleable area, the apportioned share of common areas (such as clubhouses, lift lobbies, management offices etc. with the apportionment to individual units clearly listed), and areas for the exclusive use of the purchaser. However, flat purchasers will be able, under REDA's guidelines, to calculate for themselves the GFA of flats according to the definition in the Bill, since the apportionment of various common areas will be clearly listed.

(c) Law Reform Commission's proposals as regards sales descriptions of completed flats

7. The Law Reform Commission has set up a Sub-committee to look into sales descriptions of completed residential flats in both the primary and secondary markets. Public consultation ended in March 2001. The Commission is now preparing its final recommendations. It would be desirable for the Government to await the Commission's final recommendations and then decide whether to enact a uniform or composite set of legislation for completed and uncompleted properties.

Further Considerations

8. The Administration wishes to study the Bill further in order to decide on some controversial but key issues:

(a) Whether to criminalise the provision of inaccurate or incomplete sales information

9. During the consultation period, strong views were expressed that disputes arising from matters relating to the sale and purchase of residential properties are civil matters between vendors and purchasers. There is the worry that, once sales information is accorded legal status, any discrepancy or inaccuracy may be exploited by litigious flat purchasers to rescind agreements for sale and purchase, particularly during a downturn in the property market. (Information contained in sales brochures is included hitherto for reference and indication only.) Furthermore, certain information contained in sales brochures is susceptible to changes, and the mandatory inclusion of such information may lead to disputes. The Bill is the first piece of proposed legislation which requires the exact provision of a long list of particulars on uncompleted domestic properties, some of which are subject to changes beyond the control of developers.

(b) Implications of Housing Authority/Housing Department's (HA/HD) exemption from criminal liability

10. Many commentators have criticised the proposed exemption from criminal liability for members of the HA/HD provided they act in good faith as an example of double standard. On the other hand, it would be unfair to impose criminal liability on senior civil servants who are not personally involved in preparing sales brochures. Other organisations, such as the Housing Society and the Urban Renewal Authority, have asked for similar exemption from criminal liability. The position of their directors as well as Government-appointed directors on the Boards of the Mass Transit Railway Corporation and Kowloon-Canton Railway Corporation will also need to be considered.

(c) Other issues

11. There are many issues in the Bill where it is difficult to balance adequate consumer protection for home purchasers and the need for the real estate industry and professionals to maintain flexibility over residential construction projects, some of which may span as long as 20 months. For example, actual site formation works may reveal problems that require adjusting the layout of buildings and facilities and thus affecting the disposition plan; and the availability of fittings and finishes cannot be confirmed at the time when the sales brochures are printed.

The Way Forward

12. The Administration will review the situation some time early next year in the light of the adequacy or otherwise of sales information made available to flat purchasers by all developers in Hong Kong including the Housing Authority and Housing Society. The Administration will also take into account the Law Reform Commission's final recommendations on sales descriptions of completed flats so that the protection of all flat purchasers can be considered at the same time.

PUBLICITY

13. The Legislative Council Panel on Housing will be briefed on 18 July 2001. A spokesman will be available for answering media enquiries.

ENQUIRIES

14. Enquiries on this brief could be referred to Miss M. L. Wong, Principal Assistant Secretary for Housing (1), on telephone number 2509 0343.

Housing Bureau
Government Secretariat
10 July 2001