

## **Legislative Council Panel on Housing**

### **Law Reform Commission of Hong Kong - Report on Local Completed Residential Properties**

#### **Purpose**

This paper sets out the main recommendations of the Law Reform Commission (LRC) in its *Report on Local Completed Residential Properties* published in September 2002. The paper also outlines the LRC's views as to how its recommendations should be implemented.

#### **Background**

2. The present report is the third part of an LRC project on the sales descriptions of residential property. The LRC's recommendations on the sales descriptions of local uncompleted residential property were contained in its report published in April 1995. In September 1997, the LRC published its final recommendations in respect of the sales descriptions of overseas uncompleted residential property.

3. This third part of the LRC's study covers the sales descriptions and other pre-contractual matters relating to the sale of completed residential properties in Hong Kong.

4. By "pre-contractual" matters is meant any sales matters which arise before the time of contract, that is to say, the signing of the formal sale and purchase agreement. Unlike uncompleted flats (which are mostly sold by developers), completed residential properties are sold either by developers in the first-hand market or by property owners in the second-hand market. The present study covers completed residential properties offered for sale not only by developers in the first-hand market but also those offered for sale by private vendors in the second-hand market.

## **The report's general approach to the second-hand market**

5. In the second-hand market there will rarely, if ever, be a sales brochure as the vendors are mainly private individuals. Thus, the report explores other means of imposing positive disclosure duties on private vendors. It looks at the feasibility of introducing a Vendor's Information Form (VIF). It also considers the possibility of inserting certain standard clauses (such as a cooling-off period) into the preliminary agreement.

6. The law currently imposes few positive duties, if any, on a vendor of a second-hand property to disclose particulars of the property for sale. In some overseas jurisdictions, the vendor is required to provide certain minimum information to the prospective purchaser. The lack of a positive disclosure requirement, and experience elsewhere, convinced the LRC of the desirability of requiring the provision of a VIF.

7. The VIF would be filled in by the vendor and would contain various particulars of the unit offered for sale in the second-hand market. This would include details such as the saleable area, the level of management fees and the particular services available. A vendor would be required to make the VIF available when his unit is put on the market for sale, whether or not this was done through an estate agent.

8. The report also recommends a cooling-off period of three working days for both the vendor and the purchaser in the sale of second-hand completed flats. There may be circumstances where a purchaser is persuaded to enter into a contract against his better judgement by an aggressive estate agent or vendor. The provision of a cooling-off period would allow the purchaser to withdraw from the preliminary agreement if he subsequently considers it not to be in his best interests to complete the transaction. The party making use of the cooling-off period to cancel the preliminary agreement would be liable to forfeiture of a specified percentage of the purchase price. This forfeiture provision would work as an effective deterrent to potential speculative activities.

9. The LRC's main recommendations in respect of properties offered for sale on the second-hand market are -

- (a) The introduction on a voluntary basis of a VIF for the sale of completed residential properties, which should be encouraged by the relevant professional bodies in Hong Kong. Only if the VIF cannot be introduced voluntarily in

this way should the Government consider introducing legislation to make the VIF compulsory.

- (b) If the Government decides to make the VIF compulsory, the Government should review the Estate Agents Ordinance to reconcile the disclosure duties of the vendor and the estate agent.
- (c) The Administration should consider establishing a centralised property information system.
- (d) The preliminary agreement should contain a standard clause giving the vendor and the purchaser of second-hand completed flats a cooling-off period of three working days. This standard clause should be implied by legislation into preliminary agreements.

### **The general approach to the first-hand market**

10. Completed units in the first-hand market are those units which have become "completed" with the issue of the Occupation Permit. These units are offered for sale by developers in much the same way as if they were still uncompleted. The LRC's previous *Report on Local Uncompleted Residential Properties* made a number of recommendations on ways to improve the quality of sales particulars and other matters relating to local uncompleted flats. The majority of those recommendations focus on the contents of the sales brochure. The LRC takes the view that many of these recommendations can be extended to cover local completed flats in the first-hand market, subject to necessary modifications.

11. So far as completed residential properties sold by developers in the first-hand market are concerned, the LRC's main recommendations are:

- (a) For "left-over" units (meaning those flats which were first marketed when uncompleted but are still unsold by the time they are completed), developers should be required to make available the most recent sales brochures and a VIF. However, up-to-date sales brochures should always be made available for flats marketed for the first time after completion. All information in a sales brochure must be accurate at the time the completed property is offered for sale.

- (b) The definition of saleable area should be standardised for use in sales literature. It should be mandatory to include saleable areas in sales literature.
- (c) Where there is no right of inspection before entering a preliminary sale and purchase agreement, the sales brochure should contain certain details of the fittings and finishes.
- (d) The developer should be required to state accurately in the sales brochure the intended uses of the land within the boundaries of the development which are known to the developer at the date of printing of the sales brochure.

### **Enforcement of the recommendations**

12. The LRC Sub-committee appointed to examine this subject identified three alternative ways of applying the recommendations to local completed flats offered for sale by developers in the first-hand market. These were –

- (a) voluntary compliance by developers;
- (b) Government encouraging good market practices, while actively continuing to look into the need for legislation; and
- (c) legislation.

13. The Sub-committee was unable to reach an agreed view as to which of these alternatives should be pursued and left this question for the LRC to decide. The LRC unanimously concluded that the recommendations in this report in respect of the first-hand market should be implemented by legislation. The arguments for and against each of the three options are set out in paragraphs 6.84 to 6.91 of the report.

### **The importance of public education**

14. The LRC takes the view that purchasers can best protect themselves by exercising due care before entering into a transaction. The report therefore recommends that the Government should launch publicity programmes to educate the public on the need to exercise due care when buying properties.

## **Way forward**

15. The Secretary for Justice, as Chairman of the LRC, formally referred the report to the Secretary for Housing, Planning & Lands for his consideration on 10 September 2002.

Law Reform Commission of Hong Kong  
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