

Legislative Council Panel on Housing

Arrangements for Selling first-hand Residential Units

Purpose

This paper updates Members on the situation of monitoring sales of first-hand private residential properties.

Background

2. Since 2001, the Real Estate Developers Association of Hong Kong (REDA) has established a self-regulatory regime asking its members to comply with the guidelines issued by REDA when they put up uncompleted residential units for sale. Last year, in response to public concerns over arrangements for selling uncompleted residential properties, the Administration urged REDA to review its guidelines. REDA responded positively and announced a set of more detailed guidelines on 24 June 2005. Copies of REDA's guidelines issued in 2001 and 2005 are at Annex 1 and Annex 2 respectively.

3. REDA's guidelines ask developers to include essential information in sales brochures for prospective purchasers' reference. This information includes: a location plan, floor plans, information on fittings and finishes, floor areas, dimensions of car park spaces, salient terms of the land lease and the Deed of Mutual Covenant, anticipated completion date of the buildings and facilities, information on management fees, etc. REDA's guidelines also ask developers to provide a copy each of the land lease and the Deed of Mutual Covenant at their sales offices for prospective purchasers' perusal.

4. Since August 2001, the Administration has set up a website and a telephone hotline to receive complaints from the public relating to sales brochures of uncompleted residential properties. Follow-up actions are taken based on the complaints received.

5. Aside from REDA's self-regulatory regime, the Consumer Council plays a key role in promoting consumer education, reminding prospective property buyers of the things they need to pay attention to before purchasing properties. The Estate Agents Authority (EAA) has also stepped up enforcement actions and has been taking measures to raise the calibre of estate agents. The above three-pronged approach serves to protect the interests of prospective property purchasers.

6. Furthermore, where the developments are governed by the Lands Department's Consent Scheme, the Lands Department will take appropriate action against developers, if they are reported to have committed any breach of the requirements of the Consent Scheme. In case of minor breaches of the Consent Scheme (e.g. disclosure of incomplete information), the Lands Department may warn and require the developers concerned to rectify the information. In the case of the more serious breaches, the Lands Department may suspend or withdraw the consent and make it a condition of reinstatement that the developer must advise purchasers of their right to rescind the Agreement with full refunds plus interest. In the most serious cases, the Lands Department may consider that a breach would justify re-entry under the lease.

Latest Position

Sales arrangements after announcement of REDA's new guidelines

7. Since REDA issued the more comprehensive guidelines on 24 June 2005, there have been discernible improvements in the arrangements for selling uncompleted residential properties. During this period, we have received seven complaints relating to sales of first-hand residential units. We have taken follow-up actions in respect of six of the seven complaints, and the complainants concerned have not made further enquiry. As for the remaining case, the complainant has only recently provided us with details of the case, and we are now following up on the information. Details of the above complaints are set out in **Annex 3**.

Widening scope of information disclosed in sales brochures

8. In response to media coverage about information disclosed in sales brochures, we have put forward our concerns to REDA. REDA has agreed to ask its members to –

- (a) include in sales brochures information about “defect liability period” for first-hand residential units; and
- (b) provide copies of the latest House Rules at the sales office for prospective buyers’ perusal if some of the units are occupied and House Rules are adopted.

The above arrangements provide more comprehensive information to property buyers.

Disclosure of accurate sales figures

9. To enable the existing monitoring mechanism to keep pace with changing circumstances, we together with the Consumer Council and

EAA, meet regularly with REDA to review the operation of the regime, and to convey to REDA public concerns over the arrangements for selling residential properties. In the light of the community's recent concerns about sales arrangements for first-hand residential units, we have urged REDA to look into ways to further improve the current regime. In view of recent reports regarding disclosure of inaccurate sales figures, REDA has undertaken to remind its members to –

- (a) ensure that disclosed sales figures are accurate; and
- (b) enhance clarity of sales figures by standardizing the definition of “sales” to refer to the signing of a Provisional Agreement for Sale and Purchase.

Consumer education

10. The Consumer Council actively promotes consumer education to remind purchasers to be mindful of how they need to protect their own interests. Recently, the Consumer Council and EAA have jointly published a checklist to be inserted in sales brochures, listing out the things that buyers of first-hand residential properties should pay particular attention to. The checklist reminds buyers that they should think carefully and make appropriate enquiry before purchasing properties. A copy of the checklist is at **Annex 4**.

Conclusion

11. We will continue to meet with the Consumer Council, EAA and REDA on a regular basis to closely monitor the operation of the self-regulatory regime and identify scope for further improvement to

enable the regime to meet the needs of consumers and the real estate sector. If necessary, the Government would seek appropriate measures to further strengthen the deterrent effect of the existing mechanism.

Housing, Planning and Lands Bureau

June 2006



Guidelines for Sales Descriptions of Uncompleted Residential Properties

A. Information on residential properties for sale

The following information concerning the residential properties should be provided in sales brochures:

1. floor area of the residential properties

The calculation of the saleable area and gross floor area of the residential properties should be standardized as follows:

- i. The saleable area of a residential property shall be calculated in accordance with the definition set out in the standard form of Agreement for Sale and Purchase as provided in LACO Circular Memorandum 40A. The criteria of calculation are listed out in Annex A.
- ii. The gross floor area of a residential property shall be the sum of its saleable area, its apportioned share of the common areas, together with any other area which is for the exclusive use of its purchaser. The apportionment to the individual residential property attributable to common areas such as clubhouses, lift lobbies, management offices, etc shall be listed clearly.

2. floor plan

Floor plans of typical and non-typical floors should be shown. It is sufficient to show only one plan to represent a number of floors with similar layout and external dimensions. The floor plan should contain dimensions of compartments of the residential properties and the floor-to-floor height of the residential properties in each case in accordance with the latest building plan approved by the Building Authority. A note should be inserted at a conspicuous place adjacent to the floor plan to bring to the reader's attention that the internal areas of upper floors may be slightly greater than that of the lower floors.

3. prominent fittings and finishes



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B. Information on the development and adjacent areas

1. Location plan

The location plan should show existing communal facilities as listed under Annex B located within a distance of 0.25km from the boundary of the development. Existing and proposed land uses of an area within 0.5km of the boundary as shown in the latest Outline Zoning Plan should be included. The location plan should indicate the location of public transport terminals and rail stations and any pictorial presentations should be drawn to scale.

2. Disposition plan

The disposition plan should show the location and layouts of buildings, open areas and facilities within the boundary of the development and the expected completion date of the buildings and facilities.

3. Conditions of the Government lease

The sales brochures should contain information on salient conditions of the Government lease including user restrictions, expiry date, any community facilities to be constructed and any obligations to construct or maintain structures or landscape inside or outside the boundary of the land on which the development is to be constructed, etc.

4. Deed of mutual covenant

The sales brochures should contain information on salient provisions of the Deed of Mutual Covenant including common parts, undivided shares, sharing of management fees, appointment of manager, retained areas, etc.

5. Slope maintenance

The sales brochures should set out clearly the obligations of owners to maintain slopes etc. together with a plan showing such slope etc. and the undertakings, if any, of the developer to carry out any work on any slopes etc.



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C. Timing of provision of sales brochures

The sales brochures and price list should be made available before the date of public sale of the residential properties. For additional residential properties to be offered at the same sale exercise, the price list of such residential properties should be provided before the date of their public sale.

D. Notice as to possible changes

The sales brochures should state their date of printing. The latest version of the sale brochures should be made available at the sales office immediately on the first date of public sale. A conspicuous note should be inserted to alert readers about information which is subject to change.



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Extracted from LACO Circular Memorandum 40A, Appendix XII A

Annex A

Definition Of "Saleable Area"

"Saleable area" means :-

- (i) in relation to a unit enclosed by walls, the floor area of such unit (which shall include the floor area of any balconies and verandahs), measured from the exterior of the enclosing walls of such unit except where such enclosing walls separate two adjoining units in which case the measurement shall be taken from the middle of those walls, and shall include the internal partitions and columns within such unit; but shall exclude the common parts outside the enclosing walls of such unit Provided That if any of the enclosing walls abut onto a common area, then the whole thickness of the enclosing walls which so abut shall be included;
- (ii) in relation to any cockloft, the floor area of such cockloft measured from the interior of the enclosing walls of such cockloft;
- (iii) in relation to any bay window which does not extend to the floor level of a unit, the area of such bay window measured from the exterior of the enclosing walls or glass windows of such bay window and from the point where the bay window meets the wall dropping to the floor level of a unit but excluding the thickness of such wall;
- (iv) in relation to any carparking space, the area of such carparking space (the dimensions of which should be separately set out) measured from the interior of its demarcating lines or enclosing walls, as the case may be;
- (v) in relation to any yard, terrace, garden, flat roof or roof, the area of such yard, terrace, garden, flat roof or roof measured from the interior of their boundary lines, and where the boundary consists of a wall, then it shall be measured from the interior of such wall.



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Annex B

The location plan should show clearly and identify all free standing and purpose-built facilities, such as:-

- i. clinics;
- ii. fire stations and ambulance depots;
- iii. funeral parlours and cemeteries;
- iv. judicial facilities;
- v. refuse collection points;
- vi. hospitals;
- vii. markets;
- viii. police stations;
- ix. public car parks and lorry parks;
- x. public conveniences;
- xi. public transport terminals and rail stations;
- xii. public utility installations;
- xiii. religious institutions;
- xiv. schools;
- xv. social welfare facilities and
- xvi. sports facilities and sports grounds

within 0.25km from the boundary of the lot.



Guidelines for Sales Descriptions of Uncompleted Residential Properties • Supplementary Guidelines on Private Sale

To enhance the transparency of the private sale mechanism, the following supplementary guidelines are to be adopted by all members of The Real Estate Developers Association of Hong Kong with immediate effect. Should there be any conflict between these guidelines and the conditions of the LACO Consent Scheme, the LACO Consent Scheme shall prevail.

Please note that these guidelines do not apply to sales to investors and staff.

Provision of Sales Brochures and other Essential Information

1. Sales brochures should be made available to prospective purchasers at least 24 hours before the private sale.
2. Sales brochures should contain essential information in respect of the property offered for sale, including but not limited to the following:
 - Floor area and floor plan
 - Prominent fittings and finishes
 - Location plan drawn to scale
 - Disposition plan
 - Salient conditions of the Government lease
 - Salient provisions of the draft DMC
 - Obligations for slope maintenance if any
 - Anticipated completion date
 - Management fee details



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3. A copy of the draft DMC and the Government lease should be provided at the sales office for free inspection by prospective purchasers.
4. An enquiry counter should be set up at the sales office and a hotline be made available to provide information relating to the property being offered for sale.
5. Leaflets on useful information for flat purchasers published by the Consumer Council and/or the Estate Agents Authority should be made available at the sales office.
6. Reasonable steps should be taken to inform purchasers of subsequent material changes with regard to the information provided in the sales brochures.

Provision of Price List

7. The price list and the list of units on offer should be made available at the sales office to prospective purchasers and also through estate agents (if engaged).
8. The price list of the first batch of the units on offer, which should be of a reasonable quantity, should be provided at least 24 hours before the private sale.
9. Should prices be subsequently changed or additional units offered, an updated price list should be provided as soon as possible.

Announcement of Sales Performance

10. Members are free to decide on whether or not to make public the results of their sales. If they choose to publicize, any information provided must be as accurate as possible.



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Conduct of Sale

11. Members should ensure that their sales activities are conducted in an orderly manner.

Engagement of Estate Agency

12. Members should specify in their promotional materials the name of any estate agency engaged by them.
13. Clear instructions on sales arrangements must be provided to the engaged estate agency.
14. Appropriate action should be taken against any estate agent (if estate agency is engaged) who is found to have adopted unprofessional sales practices.

Monitoring

15. Random check on the compliance with these Guidelines by members will be conducted by the REDA Secretariat.

24 June 2005

**Complaints Received by the Housing, Planning and Lands Bureau
since REDA's promulgation of the more comprehensive guidelines**

on 24 June 2005

	Gist of complaint	Reply /Follow-up actions
1.	The developer did not provide a price list.	Reply to complainant: The flat was offered for sale as completed flat. In response, the developer said a price lists had been prepared for the sales.
2.	The developer did not provide a price list.	Reply to complainant: The flat was offered for sale as a completed flat. In response, the developer said price lists had been prepared for the sales.
3.	The complainant worried that the sale unit might not be ready for occupation on the scheduled completion date.	Reply to complainant: As the completion date of the property was not yet due, the complainant could further follow-up the matter of the flat he brought was not ready for occupation by the expected date. The complainant has made no further enquiry.
4.	The complainant had suffered losses as a result of misleading information provided in the sales brochure.	Reply to complainant: Whether a transaction had involved elements of a misleading nature is up to the court to decide. The complainant had approach the Small Claims Tribunal.
5.	The complaint alleged that investors were misled by the developer's suspected market manipulation. The Legislative Council Secretariat forwarded this complaint to Housing, Planning and Lands Bureau and asked for comments.	Reply to the Legislative Council Secretariat: Whether fraud and misrepresentation were involved in the transactions should be up to the court to decide in accordance with under the legislation concerned.
6.	The materials used in the flats and the design of the lobby are not what the developer claimed in the marketing.	Reply to the complainant: Purchasers may consider taking legal action to seek damages if they think misrepresentation was involved in the sales.
7.	The developer did not provide a price list	The complainant did not provide details of complaint until June. Housing, Planning and Lands Bureau is following-up on the information received.

Notes to Purchasers of First-hand Properties



(Residential)

applicable to developments under the "Consent Scheme"

1. Before you decide to purchase a first-hand residential property, you should :

- remember that buying uncompleted flats is not the same as acquiring completed properties;
- calculate the total expenses of the purchase, such as solicitors' fees, mortgage charges, insurance fees and stamp duty;
- select the appropriate payment method; calculate the amount of the mortgage loan to ensure it is within your repayment ability;
- visit the development site and get to know the surroundings of the property (including transportation and community facilities), and check town planning proposals and decisions which may affect the property;
- study the Sales Brochure carefully for details such as saleable area, internal fittings and finishes, the expected completion date, management fees (i.e. what items are included, such as internet fees and club house fees) and find out the salient terms of the Government Lease, terms of the Deed of Mutual Covenant (DMC), etc.;
- have the right to request to read the Government Lease and the DMC free of charge. For example, information regarding ownership of the rooftop and external walls can be found in the DMC;
- check recent transaction prices of comparable properties for comparison;
- ensure that any important matters explained or guaranteed to you by the developer's staff or other persons are written into (1) both the provisional and formal agreements for sale and purchase as part of the contractual terms; or (2) a separate written agreement.

2. Before you appoint an estate agent to look for a property, you should :

- find out whether the estate agent will act on your behalf only (if the agent also acts for the developer, he/she may not be able to protect your interests in the event of a conflict of interest);
- find out whether any commission is payable to the agent and, if so, its amount and the time of payment (all of these to be agreed between the agent and you);
- note that only licensed estate agents or salespersons may accept your appointment. If in doubt, you should request the estate agent or salesperson to produce his/her Estate Agent Card, or call the Estate Agents Authority on 3102 0838 to make enquiries. The Licensee List is also available at the Estate Agents Authority website: www.eaa.org.hk;
- note that some developers handle sales themselves and you can decide whether to appoint an estate agent.

3. Before you purchase an uncompleted flat, you should :

- seek confirmation from the developer whether a "Consent to Sell" has been issued by the Lands Department;
- note that the developer and estate agent are not allowed to receive any deposit or "reservation fee" before the developer has obtained the "Consent to Sell";
- note that the deposit should be made payable to the stakeholder solicitor of the development;
- understand that your deposit of up to 5% of the property price may be forfeited if you withdraw from the Provisional Agreement for Sale and Purchase.

4. Before you engage a solicitor, you should :

- consider engaging your own solicitor to protect your interests (if the solicitor also acts for the developer, he/she may not be able to protect your interests in the event of a conflict of interest);
- compare the charges of different solicitors.

Estate Agents Authority
(Enquiry hotline : 2111 2777)

EAA 地產代理監管局
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