

立法會

Legislative Council

LC Paper No. CB(1)394/06-07(06)

Ref : CB1/PL/HG

Panel on Housing Meeting on 4 December 2006

Background brief on sales arrangements for uncompleted first-hand residential properties

Purpose

This paper sets out the major concerns relating to the sales arrangements for uncompleted residential properties and summarizes major discussions on related issues by Members at meetings of the Panel on Housing and other occasions of the Legislative Council (LegCo).

Problems associated with sale of uncompleted residential units

2. Inadequate and misleading sales information on uncompleted residential properties is of concern to prospective buyers. Problems such as inaccurate size of the property, misleading descriptions of fittings and finishes, sketchy layout and location plans were rampant in Hong Kong in the eighties and early nineties. The problems were even more serious with overseas uncompleted residential properties sold in Hong Kong, particularly those located in the Mainland. In recent years, concerns have been raised about the provision and dissemination of misleading information to the market regarding the prices of property transactions and sales figures. As the number of such complaints grows, there are increasing calls for measures to address the problems.

Proposals to tackle the problems associated with sale of uncompleted residential units

3. To tackle the problems, the then Attorney General and the then Acting Chief Justice referred to the Law Reform Commission (LRC) for consideration the law governing the protection of prospective purchasers of uncompleted properties in relation to inadequate or misleading sales information or particulars in June 1992.

LRC later appointed a subcommittee in November 1992 to first consider the sales descriptions of local uncompleted residential properties, and then of overseas uncompleted residential properties.

4. LRC published the Report on Description of Flats on Sale (the First Report) and the Report on Sales Description of Overseas Uncompleted Residential Properties (the Second Report) in April 1995 and September 1997 respectively, which set out the recommendations for improving the quality and reliability of sales brochures and price lists in relation to local and overseas uncompleted residential properties. The reports pointed to the need of providing prospective property buyers with important information in sales brochures including floor area, floor plan, details of fittings and finishing, location and layout plans, date of completion etc., and information on prices and number of units put up for sale before the sale. The LRC recommended that the recommendations in the two reports be enforced by legislation to bring about the most effective results.

The Sales Descriptions of Uncompleted Residential Properties Bill

5. In March 1999, in the light of LRC's recommendations in the First Report, the Administration briefed the Panel on Housing (the Panel) on its plan to introduce the Sales Descriptions of Uncompleted Residential Properties Bill (the Bill). Details of the Bill are in **Appendix I**. After taking into account the views expressed by the Panel, the Administration revised the original proposals and published a White Bill (**Appendix II**) for public consultation in April 2000. The White Bill seeks to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats.

6. The Panel discussed the recommendations of the First Report and the Second Report, and proposals in the White Bill at a number of meetings from 1995 to 2000. The major deliberations by the Panel are summarized in **Appendix III**. Given the significant implications of the White Bill, a subcommittee was formed under the Panel to study it further. The subcommittee examined in detail the proposals contained in the White Bill, with particular focus on how the provisions would ensure the supply of accurate and adequate information on uncompleted residential properties by property developers. The report of the subcommittee is hyperlinked in **Appendix VIII**.

7. On 10 July 2001, the Executive Council ordered that the need for the Bill be reassessed in the light of the latest developments. Given the significant change towards a buyers' market after the property slump in 1997, coupled with the promulgation of a set of comprehensive guidelines developed by the Real Estate Developers Association of Hong Kong (REDA) for voluntary compliance by its members in response to the community's demand for comprehensive and accurate information relating to flats for sale, the Administration considered there was a

reduced need for the Bill. The matter was discussed by the Panel on 18 July 2001. In response to members' concern, the Administration affirmed that it would re-consider the introduction of the Bill in the event of recovery of the property market which warranted greater consumer protection.

8. In September 2002, LRC released the Report on Local Completed Residential Properties: Sales Descriptions and Pre-contractual Matters, which was the third part of its project on the sales descriptions of residential properties. The Panel received a briefing on the report on 6 January 2003. At the meeting, concern was raised on the Administration's failure to take forward recommendations in the First Report and the Second Report by introducing relevant legislation. Nonetheless, there was view that implementation of LRC's recommendations by legislation might not be necessary. The Administration explained that there were divergent views on the recommendations and considered that a holistic approach had to be adopted in considering the recommendations in the three reports which were inter-related.

9. At the Panel meeting on 12 April 2005, the Administration up-dated members on the position of proposal to introduce legislation to regulate sales brochures for overseas and local uncompleted residential properties. Pointing out that, the self-regulatory regime by developers on the provision of sales information on local uncompleted residential properties implemented since mid 2001 had been satisfactory and the number of complaints received had been small and properly dealt with, the Administration considered that the regime had struck a proper balance between protecting consumers' interests and providing an environment conducive to business development. Hence, the Administration did not intend to resuscitate the proposal to enact legislation to regulate sales brochures for local uncompleted residential properties. While there was support for the Government to enforce regulation on the provision of sales information on properties by way of legislation to enhance the protection for the interests of prospective purchasers instead of relying on non-statutory guidelines developed by REDA, there was view that the REDA's guidelines was a more flexible and practical approach in addressing public concern. REDA's guidelines issued in 2001 is in **Appendix IV**.

Dissemination of misleading information to the property market

10. At the meeting on 4 July 2005, the Panel met with representatives from REDA, the Estate Agents Authority (EAA) and the Consumer Council (CC) for views to enhance the transparency of private sale of local uncompleted residential units and the accuracy of sales figures released to the public. Members noted that in light of the public concerns on the matter, REDA had issued a set of supplementary guidelines on private sale which took effect on 24 June 2005 (**Appendix V**). The Administration was urged to introduce legislation for regulating sales brochures for local uncompleted residential units, and measures, such as requiring developers to provide prospective buyers with the price list of all flats on offer, for strengthening regulation over private sale. The Administration responded that besides REDA's

guidelines, CC and EAA had been respectively invited to step up publicity to promote public awareness on the protection of consumers' rights in property acquisition and to enhance the standards and professionalism of estate agents.

11. At the Council meeting on 26 April 2006, an oral question was raised on the collection and dissemination of information on property transactions. Concern was expressed about dissemination of false and misleading information including prices and sales figures by developers and estate agents in order to boost the property market. At the Council meeting on 7 June 2006, a motion on "Regulating the transactions of new private residential properties" was moved to urge the Government, among other things, to introduce the Sales Descriptions of Uncompleted Residential Properties Bill into the LegCo, formulate legislation for regulating the sale of new residential properties, draw up guidelines on property sales and promotion activities, and study the provision of a cooling-off period in the contracts of new private residential properties. The motion was negatived. In response to the motion, the Administration re-iterated its position that the three-pronged approach involving joint efforts from REDA, EAA and CC had greater flexibility and could better cater for the needs of the local property market compared with the option of regulating the market by means of legislation.

Measures to strengthen the monitoring of sales of uncompleted residential units

12. At the meeting on 3 July 2006, the Administration updated the Panel on recent developments regarding the monitoring of sale arrangements of first-hand private residential properties. The Administration highlighted that the three-pronged approach had greater flexibility and could better cater for the changing needs of the local residential property market compared to the option of regulation through legislation. The Lands Department (LandsD) would take appropriate action against developers if there was any breach of the requirements of the Consent Scheme for sale of uncompleted residential units. Moreover, REDA had standardized the definition of "sales" to refer to the signing of a provisional agreement for sale and purchase in order to enhance clarity of the sales figures, and asked its members to include in their sales brochures information about "defect liability period" for first-hand residential units and to ensure that the disclosed sales figures were accurate. EAA and CC had also jointly published a checklist listing out the things that buyers of first-hand residential properties should pay particular attention to in order to protect their own interests (**Appendix VI**). However, the Administration re-iterated that it would consider other appropriate measures to strengthen the deterrent effect of the existing mechanism and it had not ruled out the option of enacting legislation to regulate the sale of uncompleted residential units. The issue would be revisited if the situation so warranted. The Administration also undertook to follow up with REDA on members' suggestions regarding prompt provision of price list for additional units on offer during first-sale and standardizing the calculation of gross floor area of units.

Latest Development

13. Media reports on incidents where some developers failed to comply with the spirit of READ's guidelines on sale of uncompleted residential units have aroused considerable public concern. On 25 August 2006, the Administration met with REDA, CC and EAA to discuss the matter and reached the following agreements (a copy of the press release is in **Appendix VII**):

- (a) For the first batch of flats for sale, at least 20 flats or 20 per cent of the first batch of flats need to be put up for sale whichever figure is the higher;
- (b) The price list has to be published and made available to prospective buyers immediately upon announcement of subsequent batches of sale;
- (c) Developers undertake to sign provisional sale and purchase agreement as soon as possible;
- (d) Developers would consider how to better delineate responsibility and authority vis-à-vis their agents; and
- (e) (The Government) will continue to work together with REDA, CC and EAA to further improve the guidelines as necessary.

14. In order to enhance supervision on the sales of uncompleted residential units, REDA announced on 25 September 2006 to set up a Compliance Committee to handle related complaints. Meanwhile, EAA issued on 24 October 2006 a new Practice Circular on guidelines that estate agency practitioners should follow when dealing with first sales of residential properties.

15. In November 2006, REDA announced the details of its 14-member Compliance Committee including industry players and legal experts to investigate into complaints into non-compliance with READ's guidelines. In order to further improve selling arrangements, REDA also proposed to require its members to submit an auditor's certification before sales to show that they had complied with the guidelines.

16. The Panel has invited representatives from the Administration, REDA, EAA and CC to discuss at the coming meeting on 4 December 2006 on new measures initiated by REDA and EAA to improve the self-regulatory regime of developers for selling uncompleted residential units and to enhance the professional standards of estate agency practitioners respectively.

Reference

17. A list of relevant papers with their hyperlinks at the LegCo Website is in **Appendix VIII**.

Council Business Division 1
Legislative Council Secretariat
30 November 2006

**Details of the proposed Sales Descriptions of
Uncompleted Residential Properties Bill**

The proposed legislation will:

- (a) require developers to provide sales brochures regarding the sale of uncompleted residential properties;
- (b) require specified information be provided in sales brochures;
- (c) empower the Government to enforce the proposed legislation by investigating alleged breaches relating to non-provision of such information;
- (d) stipulate penalties for non-compliance; and
- (e) provide legal remedies for purchasers who suffer losses as a result of breaches or non-compliance.

2. The specified information to be provided in sales brochures includes the following -

- (a) floor area;
- (b) fittings and finishes;
- (c) location plan;
- (d) layout plan;
- (e) floor plan;
- (f) carparking spaces;
- (g) permitted uses of the land where the property is situated;
- (h) salient conditions of the Government lease;
- (i) salient provisions in the Deed of Mutual Covenant;
- (j) defects liability period;
- (k) completion date;
- (l) slope maintenance;
- (m) price list and number of units put up for sale;
- (n) financial and mortgaging arrangements; and
- (o) supplementary charges payable on taking possession of the property.

(Source: Extracts from LC Paper No. CB(1)919/98-99 provided by the Administration.)

CONSULTATION PAPER ON THE SALES DESCRIPTIONS OF UNCOMPLETED RESIDENTIAL PROPERTIES BILL

BACKGROUND

Existing protection for purchasers of uncompleted residential properties in Hong Kong is inadequate as there is no legislation requiring property developers to provide sufficient and accurate information on these properties in sales brochures.

2. The Law Reform Commission (LRC) recommended in its report issued in April 1995 that legislation should be introduced to require developers to produce sales brochures for the sale of local uncompleted residential properties, and that the brochures should contain certain specified information, with appropriate penalties for non-compliance.

3. Following publication of the LRC's recommendations, the Government consulted interested parties including the Consumer Council, the Real Estate Developers Association of Hong Kong, the legal profession and professional bodies on the subject. Based on feedback received, the Government has drafted the Sales Descriptions of Uncompleted Residential Properties Bill : a copy is at Annex. Because of widespread interest in the community in this subject, the Government has decided to publish the Bill as a White Bill for public consultation before introducing draft legislation into the Legislative Council.

SALES DESCRIPTIONS OF UNCOMPLETED RESIDENTIAL PROPERTIES BILL

Objective

4. The Sales Descriptions of Uncompleted Residential Properties Bill seeks to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats. The Bill represents a major step forward in consumer protection.

Main proposals

5. The Bill requires all developers to provide sales brochures regarding any public sale of uncompleted residential properties, and stipulates certain key information to be included in these brochures. The specified information includes location plan, floor plan, floor area, fittings and finishes, car parking spaces, salient conditions of the Government lease, salient provisions in the Deed of Mutual Covenant, defect liability period, completion date, slope maintenance, price list, number of units put up for sale, mortgage loans and payment scheme, and other fees and charges payable.

6. The Bill proposes to standardise the definition of floor area of uncompleted units for sale, and makes it mandatory to state the "saleable area" and the "gross floor area". Ancillary accommodation (such as bay windows and roof) should be listed separately. Both the "saleable area" and the "gross floor area" are popular terms known to the public, and are commonly used in sales brochures. However, the absence of

a standardised method of measurement often confuses purchasers and makes comparison difficult. The Bill seeks to eliminate the present confusion in the methods of calculating floor area.

Salient provisions of Bill

(A) *Scope of Proposed Legislation* (Clauses 2 and 3)

7. The Bill covers all uncompleted residential properties situated in Hong Kong and offered for sale to the public. This includes private residential developments, flats developed and sold by the Hong Kong Housing Authority and the Hong Kong Housing Society, and certain exempted developments under the Buildings Ordinance (Application to the New Territories) Ordinance. The developer is defined as the person who commissions the construction, owns the property and offers the residential properties in a public sale.

(B) *Location Plan and Disposition Plan* (Sections 4, 5 and 25 of Schedule 1)

8. A sales brochure should contain a **location plan** showing the position of the relevant development, the major communal facilities and the use/intended use of land as shown in the latest town plan. A **disposition plan** of the buildings within the development, including major roads, open areas, transport, communal and recreational facilities should also be provided.

(C) *Floor Plan* (Section 6 of Schedule 1)

9. Floor plans of all typical and non-typical floors, including rooftop, entrance floors and car parks, drawn to scale, should be provided. These include separate floor plans showing the thickness of the load bearing walls at the lowest, median and top levels of the building.

(D) *Floor Area* (Section 7 of Schedule 1)

10. Developers are required to state in sales brochures the "saleable area" and the "gross floor area" of all flats of an uncompleted residential property. The area of bay windows, roof and other ancillary facilities should be stated separately.

(a) *Saleable area* (Schedule 3)

11. "Saleable area" refers to the floor area contained within the enclosing walls of a residential unit measured up to the external edge of the enclosing wall or the centre line of a separating wall between two adjoining units. We propose to revise the Chinese translation from "實用面積" (which is commonly used but is easily misinterpreted) to "出售面積".

(b) *Gross floor area* (Schedule 2)

12. "Gross floor area" should be the proportionate share of the total domestic gross floor area of the development calculated in accordance with the Building (Planning) Regulations as approved by the Building Authority. This is equal to the saleable area of the flat together with a

proportionate share of all common areas approved by the Building Authority. The method of apportionment and the main components of common areas must be detailed in the sales brochure.

(E) *Fittings and Finishes and Sample Property* (Clause 11 and Section 32 of Schedule 1)

13. A sales brochure should contain a description of fittings and finishes. If a sample property is offered by the developer, it should be accurate in terms of dimension and partition. The sample flat should carry a notice giving the "saleable area" and the "gross floor area" of the property, and a statement as to whether the interior finishes, fittings, appliances and furniture displayed are included in the sale price.

(F) *Government Lease and Deed of Mutual Covenant* (Section 12 of Schedule 1)

14. A sales brochure should contain a summary of the salient terms of the Government lease and the Deed of Mutual Covenant, including user restrictions, details of land lease, Government rent, property management arrangements.

(G) *Documents for Public Inspection* (Clause 10 and Section 23 of Schedule 1)

15. The developer should make available, at his office and at each sales office, two copies each of the Deed of Mutual Covenant, building plans and town plans referred to in the sales brochure, and the standard agreement for sale and purchase of properties for inspection by the public free of charge during the sale period.

(H) *Advertisements* (Clause 12 and Section 16 of Schedule 1)

16. There should be a notice stating clearly that purchasers should refer to the sales brochure for details. If the sale price per square foot or square metre calculated on the basis of "gross floor area" or any other basis is stated in an advertisement or a sales brochure, the price per square foot or square metre calculated on the basis of "saleable area" must also be shown.

(I) *Penalties* (Clauses 5, 9, 10, 11, 12 and 13)

17. For failure to provide a sales brochure containing information specified in the Bill, a fine of \$5 million on conviction upon indictment, or a fine of \$100,000 on summary conviction is proposed. If the dimension of any part of a sample property is different from the information stated in the notice displayed in the sample property, a fine of \$1 million on conviction upon indictment, or a fine of \$100,000 on summary conviction is proposed. There are penalties for other failures.

(J) *Legal Remedies* (Clause 6)

18. Certain essential information such as land use, salient clauses in the Government lease and the Deed of Mutual Covenant, provisions concerning slope maintenance as disclosed in the sales brochure shall be representation of fact made by the developer to the purchaser in respect of the contract for sale and purchase of the property. This will facilitate purchasers to pursue contractual remedies for inaccurate information. Other information such as finishes, fittings and defect liability period disclosed in a sales brochure

will be implied as a term of contract. Purchasers may seek compensation for losses as a result of the developer's non-compliance. The Bill will not diminish in any way the existing rights of purchasers.

(K) Defence (Clauses 14 and 15)

19. Since developers may rely on other persons to provide the required information, it is proposed that developers should be allowed to invoke the defence of "due diligence". However, where an offence is committed by a corporation and is proved to have been committed with the consent of or proved to be attributable to the neglect of an officer of the corporation, that officer and the corporation can both be liable for the offence.

(L) Enforcement (Section 2 of Schedule 1)

20. The Government proposes to enforce the Bill upon receipt of complaints. The Buildings Department will act as the lead department to receive complaints and will make referrals where appropriate. The Department of Justice will be responsible for prosecuting developers in case of non-compliance.

(M) Power of the Secretary for Housing (Clauses 18 and 19)

21. The Bill empowers the Secretary for Housing to make rules and amend the schedules.

COMMENTS

22. Members of the public are invited to give their comments on the White Bill. Views can be sent in writing on or before 7 July 2000 to:

Housing Bureau
Government Secretariat
Murray Building, 18th Floor
Garden Road
Central
Hong Kong

Facsimile No. : 2509 9988
E-mail Address: sdbill@hb.gcn.gov.hk

23. The Housing Bureau reserves the right to publish all views and comments, and to disclose the identity of the source. Any part of the submission, which is considered confidential, should be clearly marked. The Housing Bureau will take the request into account in making its decision on whether or not to disclose such information.

Housing Bureau
Government Secretariat
7 April 2000

Major deliberations by the Panel on Housing on the proposals in the Law Reform Commission's Report on Description of Flats on Sale (First Report) and Report on Sales Description of Overseas Uncompleted Residential Properties (Second Report)

Location plan, layout plan and floor plan

The First Report stated that it would be too onerous to require developers to disclose the intended uses of the land outside the boundaries of the development, except the specific uses required by the Government Lease. Purchasers should ascertain the land uses for themselves from, say, the latest issue of the outline zoning plans. At the Panel meeting on 5 June 1995, members queried the rationale behind such a statement. They stressed the importance of ensuring purchasers would have easy access to full details on land use.

2. In the light of members' view, the Administration prescribed in the Bill a requirement for a sales brochure to include a location plan showing the relevant development and its adjacent areas. The plan should cover major communal facilities and uses of land known to the developer within the plan. The sales brochure should also provide a layout plan of buildings within the development and where applicable, major roads, open areas, prominent transport, communal and recreational facilities as well as undeveloped land within the boundary of the development. If specific covenants in the Government lease required the developer to put aside any land inside or outside the boundary of the development to particular uses, the developer should also state these uses in the brochure. In addition, a sales brochure should contain floor plans which were drawn to scale, reasonably legible and show floor plans of all typical and non-typical floors, including rooftop, entrance floors and carpark.

Floor area

3. The First Report recommended that the measurement of floor area of residential properties for disclosure in sales brochures should be standardized. In this connection, the Administration prescribed in the Bill a new definition of "building area" to replace "gross floor area" (GFA) which was commonly used in sales brochures but did not have a standardized method of measurement. The term "building area" referred to the aggregate of the "saleable area" of a property plus the apportioned common areas which was for the common use and benefit of the development. The term "saleable area" had been standardized and adopted in sales brochures and agreements for sale and purchase since the 1980's. "Saleable area" referred to the area contained within the enclosed walls of the unit measured up to the exterior face of an

external wall or the centre line of a separating wall between adjoining units, as the case might be. In other words, “saleable area” of a unit had included the thickness of external walls, internal columns and partitions. The Bill further required the inclusion of “internal floor area” (IFA) in sales brochures which should be the area contained within the enclosing walls of a property measured to the interior face of the external wall or separating walls but included all internal partitions and columns within the unit.

4. At the Panel meeting on 1 March 1999, some members opined that IFA should refer to the area contained within the internal walls of property but excluding all internal partitions. This would enable the purchasers to have a clear idea of the exact area which could be put to use. Other members however pointed out that there were various technical and practical difficulties in measuring IFA accurately since it was not uncommon that the external walls on the lower floors of a high-rise building were thicker than those on the higher floors.

5. Having regard to the views of the Panel and various sectors, the Administration revised the original proposals and included in the White Bill a mandatory requirement for the disclosure of “saleable area” and GFA. GFA of a residential property was an apportioned share of the total domestic gross floor area of the development calculated in accordance with the Building (Planning) Regulations as approved by the Building Authority.

6. At the Panel meeting on 7 April 2000, a member maintained that IFA should be used in sales brochures. He even opined that the White Bill should require developers to guarantee that IFA of the completed properties would be as stated in the sales brochures. Otherwise, developers should be required to adjust the property prices downwards as a remedy if the properties turned out to be significantly smaller. Another member however had no strong views on which terms should be adopted to express the floor area. He held the view that the most important thing was to ensure an identical system of floor area measurement.

Fittings, finishes and sample property

7. The First Report recommended that there should be a list of specified fittings and finishes in all sales brochures. All information in the sales brochure had to be accurate at the time of first sale of units in a development. Advertisements (other than a sales brochure) for the public sale of flats by developers or the private sale of flats by property agents had to state that a sales brochure was available, and the information given in any advertisement had to be consistent with the information given in the sales brochure.

8. In the light of the recommendation in the First Report, the Bill stipulated that a sales brochure should contain a list of fittings and finishes of the property. If a sample property was built for inspection, it should be reasonably representative in its dimensions to the type of residential properties offered for sale. The developer should display a notice at a conspicuous place in the sample

flat stating the relevant floor areas, and whether the interior finishes, fittings, fixtures, appliances, furniture displayed in the sample property were included in the sales prices or were different from those of the properties offered for sale. At the Panel meeting on 1 March 1999, members stressed the need that the arrangement of the furniture within a flat in a sales brochure should be drawn to scale.

Engagement of licensed estate agents in Hong Kong to handle overseas residential properties

9. The Second Report recommended that any vendor of overseas uncompleted residential properties had to engage a licensed estate agent in Hong Kong if he wished to advertise those properties for sale in Hong Kong. Any advertisement published in Hong Kong had to specify the estate agent and provide his licence number. The agent would be under a duty to make available the sales brochure to the purchaser and to ensure that any information it contained was accurate. The agent would be liable for any false or misleading information in the advertisement or in the sales brochure.

10. At the Panel meeting on 17 November 1997, members expressed concern about the proposal to make estate agents primarily responsible for providing sales information, and to hold them liable for the accuracy of the information. They did not agree that estate agents should be held liable for any acts of overseas developers in view of their intermediary role. Individual members also proposed the following measures in dealing with the problems associated with overseas uncompleted properties -

- (a) exploring the viability of adopting the system where progress payments would be released to overseas developers in accordance with the actual progress of construction, and local solicitors would be appointed as the stakeholders in order to keep the stake held funds in Hong Kong;
- (b) prescribing regulations to restrict the sale of overseas uncompleted residential properties in Hong Kong with a view to arousing an awareness of the risks involved;
- (c) establishing a compensation mechanism in Hong Kong to deal with purchasers' claims in the event of delayed completion or project failure;
- (d) identifying a local agent to be held solely responsible for problems arising from the sale of overseas properties;
- (e) stepping up cross-border co-operation with the Mainland authorities so that purchasers of properties in the Mainland could claim against parties concerned in accordance with the laws in both jurisdictions; and

- (f) lobbying the relevant Mainland authorities to have regard to the current practices in Hong Kong when finalizing their reform package on property transactions.

(*Source:* Extracts from LC Paper No. CB(1)1218/04-05(08) Background brief on sales descriptions of overseas and local uncompleted residential properties (provided by the LegCo Secretariat).)



THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Tel: 2826 0111 Fax: 2845 2521

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



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2521

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.



香港地產建設商會

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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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Tel: 2826 0111 Fax: 2846 2521

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.



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.

Tel: 2826 0111 Fax: 2845 2521

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.



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Appendix V

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Tel: 2826 0111 Fax: 2845 2521

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

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)



地產代理監管局
ESTATE AGENTS AUTHORITY

48/F, Hopewell Centre,
183 Queen's Road East, Wanchai, Hong Kong
Fax : 2598 9596

Website: <http://www.eaa.org.hk>

Consumer Council
(Enquiry hotline : 2929 2222)



消費者委員會
CONSUMER COUNCIL

22/F, K. Wah Centre,
191 Java Road, North Point, Hong Kong
Fax : 2590 6271

Website: <http://www.consumer.org.hk>

Press Release

Agreement made with developers on flat sales

Following is a statement delivered by the Permanent Secretary for Housing, Planning and Lands (Housing), Mr Thomas Chan Chun-yuen, after a meeting with The Real Estate Developers Association of Hong Kong, the Consumer Council and the Estate Agents Authority today (August 25):

"Today we met with the Real Estate Developers Association and have made a number of agreements with them:

1. For the first batch of flats for sale, at least 20 flats or 20 per cent of the first batch of flats need to be put up for sale whichever figure is the higher;
2. The price list has to be published and made available to prospective buyers immediately upon announcement of subsequent batches of sale;
3. Developers undertake to sign provisional sale and purchase agreement as soon as possible;
4. Developers would consider how to better delineate responsibility and authority vis-a-vis their agents;
5. We will continue to work together with the Real Estate Developers Association of Hong Kong, the Consumer Council and the Estate Agents Authority to further improve the guidelines as necessary."

Ends/Friday, August 25, 2006

Issued at HKT 21:14

Arrangements for selling first-hand residential units

List of relevant papers

Council/Committee	Date of meeting	Paper
Housing Panel	2 December 1996	LC Paper No. CB(1) 2067/95-96 Minutes (http://www.legco.gov.hk/yr96-97/english/panels/hg/minutes/hg021296.htm)
Housing Panel	17 November 1997	LC Paper No. CB(1) 275/97-98 LC Paper No. CB(1) 491/97-98(05) (http://www.legco.gov.hk/yr97-98/english/panels/hg/papers/hg17114d.htm) Minutes (http://www.legco.gov.hk/yr97-98/english/panels/hg/minutes/hg171197.htm)
Housing Panel	1 March 1999	LC Paper No. CB(1) 919/98-99 (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg0103_7.htm) Minutes (http://www.legco.gov.hk/yr98-99/english/panels/hg/minutes/hg010399.htm) LC Paper No. CB(1) 1347/98-99(01) (http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg01037a.htm)
Housing Panel	7 April 2000	LC Paper No. CB(1) 1315/99-00(01) Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/minutes/hg070400.pdf)

Council/Committee	Date of meeting	Paper
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	28 April 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un280400.pdf)
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	16 May 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un160500.pdf)
Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill	13 June 2000	Minutes (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un130600.pdf) Report LC Paper No. CB(1) 1936/99-00 (http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/report/a1936e.pdf)
Housing Panel	18 July 2001	LegCo Brief HB(CR)3/2/9 (http://www.legco.gov.hk/yr00-01/english/panels/hg/papers/brief.pdf) Minutes (http://www.legco.gov.hk/yr00-01/english/panels/hg/minutes/hg010718.pdf)
Housing Panel	6 January 2003	LC Paper No. CB(1) 2597/01-02(01) LC Paper No. CB(1) 591/02-03(04) (http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0106cb1-591-4-e.pdf) Minutes (http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030106.pdf)
Housing Panel	12 April 2005	LC Paper No. CB(1) 1218/04-05(08) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0412cb1-1218-8-e.pdf)

Council/Committee	Date of meeting	Paper
		<p>LC Paper No. CB(1) 1218/04-05(09) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0412cb1-1218-9-e.pdf)</p> <p>Minutes (http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050412.pdf)</p>
Council meeting	18 May 2005	<p>LegCo question (http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0518ti-translate-e.pdf)</p>
Housing Panel	4 July 2005	<p>LC Paper No. CB(1)1965/04-05(01) (English version only) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1965-1-e.pdf)</p> <p>LC Paper No. CB(1) 1944/04-05(03) (http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1944-3-e.pdf)</p> <p>Minutes (http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050704.pdf)</p>
Council meeting	26 April 2006	<p>LegCo question (http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0426ti-translate-e.pdf)</p>
Council meeting	7 June 2006	<p>Motion debate (http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0607ti-confirm-c.pdf)</p> <p>Speech by the Secretary for Housing, Planning and Lands (http://www.info.gov.hk/gia/general/200606/07/P200606070300.htm)</p>
Housing Panel	3 July 2006	<p>LC Paper No. CB(1) 1857/05-06(03) (http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg0703cb1-1857-3-e.pdf)</p> <p>LC Paper No. CB(1) 1857/05-06(04) (http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg0703cb1-1857-4-e.pdf)</p>

Council/Committee	Date of meeting	Paper
		Minutes (http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hg060703.pdf)

Council Business Division 1
Legislative Council Secretariat
30 November 2006