

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
房屋及規劃地政局
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Translation

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By fax

Miss Connie Szeto
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8 Jackson Road
Central
Hong Kong

Dear Miss Szeto,

**Arrangements for Selling Uncompleted
First-hand Residential Units**

With reference to the letter dated 28 November 2006 from the Hon Lee Wing-tat, we would like to set out our response as follows.

The Consent Scheme

Lands Department's (LD) Consent Scheme was introduced in 1961. Developers are required to comply with the relevant requirements under the Consent Scheme before they can obtain LD's pre-sale consent. Many of the provisions of the Scheme afford protections for buyers. These provisions include requirement to demonstrate developers' financial ability to cover balance of the construction costs; use of standard form of Agreement for Sale and Purchase (ASP) for transactions (such form contains various standard clauses intended to protect buyers' interest, it was also agreed by the Law Society, Real Estate Developers Association (REDA) and other professional bodies); holding sales proceeds in stakeholder's account as construction expense; mandatory disclosure of information in advertisements and sales brochures; disclosure of potential conflicts of interest between the developer and its professional advisors; purchaser's right of rescission in the event of non-completion of development, etc.

Where the developments are governed by LD's Consent Scheme, the LD 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 (e.g. late registration of ASP), the LD may warn and require the developers concerned to rectify the matter. In the case of more serious breaches, the LD may, depending on seriousness of the breaches, suspend or withdraw the consent or re-entry under the lease. LD will investigate and follow up on any complaint against breaches and take appropriate actions. Information relating to the cases of non-compliance of the Consent Scheme over the past five years is set out in the Annex.

The Government has been maintaining dialogue with REDA, the Consumer Council and Estate Agent Authority (EAA) to explore rooms for further improvement to developers' self-regulatory regime. Should the current regime prove to be inadequate to achieve the expected result, we would not rule out the possibility of taking stringent steps to improve sale arrangements for uncompleted residential units, including the option of legislative control or enhancement measures of the Consent Scheme.

Complaints on Sale Arrangements

A total of 45 complaints relating to the sale of first hand residential units were received between November 2003 and November 2006. Among these complaints, 11 of them were referred by the Consumer Council.

The REDA's Guidelines

According to REDA, a total of 321 real estate developers have become its members who are required to comply with REDA's guidelines when selling uncompleted residential units. There is no statistics on how many real estate developers are not members of REDA. With a view to improving public access of information about the REDA's guidelines, we have liaised with the Consumer Council and EAA to make available the REDA's guidelines on the internet as soon as possible.

The REDA's guidelines require the developers to provide at the sales offices the sale information of the development and other relevant information for public's reference, including land lease, draft Deed of Mutual Covenant, sales brochures and price lists issued by developers. The Hon Lee Wing-tat's suggestion of uploading the above information on the internet is noted and reflected to REDA.

Sale Arrangements for Uncompleted Residential Units under the Non-Consent Scheme

We have put forward to REDA public's concern over the sale arrangements for uncompleted residential units under the Non-Consent Scheme, urging them to consider following the Consent Scheme's requirements when selling uncompleted units under the Non-Consent Scheme, and to state in the sales brochure whether the uncompleted residential units on sale are governed by the Consent Scheme or not. REDA agreed to consider the suggestions.

Yours sincerely,

[Signed]

(K K Yeung)

for Secretary for Housing, Planning and Lands

**Cases of Non-Compliance of Lands Department's Consent Scheme
Over the Past Five Years**

	Nature of breach	Punitive action by Lands Department
1.	Failure to complete the development and misappropriation of stakeholders' money	Pre-sale consent suspended on 21.5.2003 Pre-sale consent cancelled on 10.6.2003
2.	Lowering the amount of preliminary deposits to less than 5% of the purchase price without Lands Department's approval	Pre-sale consent suspended on 15.10.2004 Consent reinstated on 21.10.2004 on the condition that all purchasers would be offered the option of cancelling their Provisional or formal Agreement for Sale and Purchase (ASP) at no cost with full refund plus interest.
3.	Variation of the approved form of ASP without Lands Department's approval – The saleable area of filtration plant room was included in the sale of a penthouse unit	Warning Letter issued on 25.5.2006. The developer was required to amend the subject ASP and pay double fee to the Lands Department. The developer was also required to advise the purchaser of his/her right to seek independent legal advice.

Cases of minor breach waived by Lands Department upon developer's explanation or rectification of the matter

	Nature of breach
1.	Sale of 2 units to 1 single purchaser ¹
2.	Late execution and registration of 1 ASP
3.	Sale of more than 2 car parking spaces to purchaser of 1 unit ¹
4.	Failure to disclose names of developer, its parent company, Authorised Person (AP), AP Firm, Solicitors and Mortgage Bank in advertisements
5.	Omission of statement in sales brochure that vendor could retain 5% of the purchase price in the event of purchasers' cancellation of ASP
6.	Late registration of 1 ASP
7.	Failure to disclose the number of units reserved for private sale in advertisements

¹ The provision restricting each purchaser to buy not more than 1 residential unit and 2 car parking spaces was abolished on 3 December 2002.