

For Information

Legislative Council Panel on Housing

Major Consumer Protection Features in Lands Department's Consent Scheme

1. Financial arrangements to cover the outstanding development costs

1.1 Before giving consent to sell, LACO ensures that arrangements are in place by the developer to finance the outstanding development costs. Only two methods of financing are acceptable to LACO :

(1) the procurement of a Bank Undertaking, in an amount sufficient to cover the outstanding development costs certified by the Authorized Person ("AP") of the project; or

(2) by way of a Building Mortgage secured on the lot, the undrawn facilities being sufficient to cover the outstanding development costs.

1.2 The developer's parent company (if any) is required to covenant with purchasers in the Agreement for Sale and Purchase ("ASP"), if it has provided unsecured loans to finance the development project.

2. Partial release from Mortgagee's security

Where there is a Building Mortgage with a security over the lot, the Mortgagee is required to give an undertaking to unconditionally discharge a unit and release it from the security upon completion of sale and purchase, where the full purchase price of that unit has been paid into the stakeholder account to be opened with the Mortgagee Bank.

3. Sale proceeds to be held in Stakeholder Account

3.1 Sale proceeds must be deposited in a Stakeholder Account in a licensed bank to be held against the development costs. No part of

the stakeholder money may be paid to the developer until, firstly, the full amount of the development costs has been covered and, secondly, the money owed under any building mortgage has been paid.

3.2 The operation of a Stakeholder Account by the solicitors is made transparent to the developer, AP and any Mortgagee Bank, through the solicitor's reporting on a monthly basis the receipt and application of funds in the account.

3.3 Money to be drawn from a Stakeholder Account for payment of development costs can only be released against AP's certificates to contractors already identified by the AP.

4. Technical ability of the developer in completing the development

4.1 The foundations of the development must be completed, and consent to commence building works on the superstructure of the building must be obtained from the Building Authority ("BA") before LACO would give consent.

4.2 The AP must certify the Total Development Costs and the amount paid and amount remaining outstanding on a quarterly basis. This is to enable LACO to verify whether there is sufficient finance for the project, and for the monitoring by the developer, its solicitor as stakeholder and any Mortgagee Bank in relation to the operation of the stakeholder account.

4.3 The AP must advise the estimated date of compliance with the land grant, which date will be inserted in the ASP for enforcement of contract in relation to the timely completion of a development.

5. Disclosure of potential conflict of interest between the developer and its professional advisers

5.1 Solicitors and the AP must disclose any personal and financial relationships with the developer, its parent company and the Main Superstructure Contractor. The relationships caught by the Consent Scheme are set out in detail in paragraph 5.2 of the Annex to LACO

Circular Memorandum (“CM”) No. 54. LACO must also be kept informed of any changes.

5.2 Where any personal or financial relationships exists, LACO required public disclosure of the relationship, and will require further verification of project costs by independent AP or Quantity Surveyor, or will seek specific assurance from the related party to ensure their independence in the project.

6. Mandatory disclosure of information in Sales Brochure and Advertisements

6.1 A sales brochure containing all the information set out in Appendix XII of LACO CM No. 40C should be made available to prospective purchasers prior to the sale. Any disclaimer of the accuracy of any information in sales brochures will be considered a breach of the terms of LACO’s consent.

6.2 Since 2004, LACO further requires the disclosure in the sale brochure and advertisements of names of the major parties involved in the development project. The parties include the developer’s parent company, solicitors, AP and its firm, Mortgage Bank and Main Superstructure Contractor.

The mandatory disclosure of information is to enable the public to make informed decisions.

7. Mandatory disclosure of price list in public sale

The price list of units offered for public sale should be made available to prospective purchasers in advance of registration.

8. Control over the form of the ASP

The ASP must be in an approved form, which follows a standard form. The ASP contains consumer protection features, including a definition of the saleable area of the unit to be sold, specification for a payment schedule, provisions for completion of development with right of rescission by the purchaser if the development is not completed in time,

vendor's warranties and express rights of the purchaser, defined responsibilities as to costs and charges under the ASP, inclusion of a schedule of fittings and finishes for the unit, and provisions for defect liability etc. Variation to the standard form is not normally allowed. LACO also requires all ASPs to be registered in the Land Registry for the protection of purchasers under the Land Registration Ordinance.

9. Control over any change of Solicitors

Whenever there is any change of Solicitors acting for the developer in the sale of units, whether it is a substitution of solicitors or an addition of solicitors, LACO's prior approval must be sought.

10. Contingency in the event of cost overrun

The developer is required to notify LACO of any likely increase in the total development costs. If the cost overrun is 10% or more above the total development costs previously certified, the developer must show to the satisfaction of LACO that it has adequate finance to cover also the amount of the cost overrun.

11. "Warning to Purchasers" as to join legal representation

The developer must incorporate in the sales brochure and preliminary agreements the bilingual notice "Warning to Purchasers" prescribed in the Solicitors' Guide to Professional Conduct to facilitate purchasers to make a decision as to whether to choose separate legal representation before entering into the ASP.

12. Provision of information to purchasers

Purchaser can obtain from the developer's solicitors information as to the total development costs and the amount paid on a monthly basis, upon payment of a nominal fee.