

立法會
Legislative Council

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Panel on Housing

Meeting on 4 April 2011

**Updated background brief on
Regulation of sales of first-hand private residential properties
(position as at 29 March 2011)**

Purpose

This paper sets out the background to and the progress of regulation of the sales of first-hand private residential properties. It also provides a brief account of the views and concerns expressed at meetings of the Council and the Panel on Housing (the Panel) on the subject matter.

Problems associated with sales of uncompleted residential properties

2. Inadequate and misleading sales information on uncompleted residential properties is of concern to prospective buyers as they have no opportunity to view the properties before purchase. 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 80s and early 90s. 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 on 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 sales of uncompleted residential properties

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 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. 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

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

5. The Panel discussed the recommendations of the First Report and the Second Report, as well as the proposals in the White Bill at a number of meetings from 1995 to 2000. The major deliberations by the Panel are summarized in **Appendix I**. 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 below.

6. 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. REDA's guidelines are given in

Appendix II. 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.

7. 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 sales descriptions of residential properties. The Panel received a briefing on the report on 6 January 2003. At the meeting, some members raised concern on the Administration's failure to introduce relevant legislation to take forward the recommendations in the First Report and the Second Report. Other members however held the 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 hence a holistic approach had to be adopted in considering the recommendations in the three reports which were inter-related.

8. At the Panel meeting on 12 April 2005, members were up-dated on the Administration's position on the proposal to introduce legislation to regulate sales brochures for overseas and local uncompleted residential properties. According to the Administration, the self-regulatory regime on the provision of sales information on local uncompleted residential properties implemented by REDA since mid 2001 had been satisfactory, and the number of complaints received had been small and properly dealt with. Given that the self-regulatory regime had struck a proper balance between protecting consumers' interests and providing an environment conducive to business development, the Administration did not intend to resuscitate the proposal to enact legislation to regulate sales brochures for local uncompleted residential properties. Some members remained of the view that instead of relying on the non-statutory guidelines developed by REDA, the introduction of legislation to regulate the provision of sales information on residential properties could enhance protection of interests of prospective purchasers. Other members considered that the REDA's guidelines were a more flexible and practical approach in addressing public concern.

Dissemination of misleading information to the property market

9. At the Panel meeting on 4 July 2005, representatives from REDA, the Estate Agents Authority (EAA) and the Consumer Council (CC) were invited to express views on enhancement of transparency of private sale of local uncompleted residential properties, and accuracy of sales figures released to the public. The Panel noted that in the light of public concerns on the matter, REDA had issued a set of supplementary guidelines on private sale which took effect on 24 June 2005 (**Appendix III**). Some members re-iterated the need

for legislation to regulate sales brochures for local uncompleted residential properties, and measures (such as requiring developers to provide prospective buyers with the price list of all flats on offer) to strengthen 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.

10. At the Council meeting on 26 April 2006, an oral question was raised on the collection and dissemination of information on property transactions. There was concern 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 Legislative Council, formulate legislation for regulating the sales 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 properties

11. At the meeting on 3 July 2006, the Panel was updated on recent developments regarding the monitoring of sales arrangements for first-hand private residential properties. According to the Administration, 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 properties. 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 properties 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 IV**). The Administration

re-iterated that it would consider other appropriate measures to strengthen the deterrent effect of the existing mechanism, and that it had not ruled out the option of enacting legislation to regulate the sales of uncompleted residential properties. 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 standardization of the calculation of gross floor area of units.

12. Following media reports on incidents where some developers failed to comply with REDA's guidelines on sales of uncompleted residential properties, the Administration met with REDA, CC and EAA on 25 August 2006 to discuss the matter and reached a number of agreements as set out in the press release in **Appendix V**. To enhance supervision on sales of uncompleted residential properties, REDA announced on 25 September 2006 that a Compliance Committee comprising industry players and legal experts would be set up to handle related complaints. Meanwhile, EAA issued on 24 October 2006 a new Practice Circular for estate agency practitioners to follow when dealing with first sales of residential properties.

13. At the Panel meeting on 4 December 2006, REDA, EAA and CC were invited to discuss the new measures initiated by REDA and EAA to improve the self-regulatory regime of developers for sales of uncompleted residential properties, and to enhance the professional standards of estate agency practitioners respectively. While appreciating REDA's efforts in improving self-regulation, some members remained of the view that the self-regulatory regime was ineffective because unlike other professional institutions, REDA and its members were not subject to any professional accreditation and REDA did not have any statutory power to disqualify its members in the event of malpractices or misconduct. Besides, not all developers were members of REDA. Given the need to allow time to try out the new measures for improving the self-regulatory regime, the Administration was urged to continue monitoring and assessing the operation/effectiveness of the regime, and report back to the Panel after implementation of the new measures for one year.

14. In the light of increasing demand from the public and prospective buyers for greater transparency in the provision of information, particularly on definitions of floor area and public open/public facilities, by developers on uncompleted first-hand residential properties and sales arrangements, the Administration had explored with REDA, CC, EAA and other relevant parties possible improvement measures. The Panel was briefed on 3 March 2008 on measures to enhance the presentation of floor area (including saleable area) information in sales descriptions, including sales brochures and price lists, for first-hand residential properties. The background brief on disclosure of saleable area in sales descriptions for residential properties is hyperlinked below.

At the meeting on 17 June 2008, the Panel noted that the Administration had reached a consensus with REDA to issue a new guidelines and a price list template for developers to adopt a standardized presentation of floor area, and to include only the area of the unit and the balcony in the calculation of the standardization definition of “saleable area”. Other areas, such as bay window, should not be included but would be separately listed out item by item. Meanwhile, consideration was given to making the standardized presentation of “saleable area” a requirement under the Consent Scheme. Necessary amendment to the relevant provisions of the Consent Scheme would be made as soon as possible after consultation with relevant parties. Other improvement measures (such as enhancing transparency of information on "public open space/public facilities", enhancing sales arrangements for uncompleted properties and clarity of market information, and strengthening the regulation of estate agents and public educations) were being contemplated to offer greater protection for prospective buyers of uncompleted first-hand residential properties.

Nine new enhancement measures and 12 requirements

15. During the debate on the 2010-2011 Budget at the Council meeting on 21 April 2010, the Financial Secretary announced additional nine new enhancement measures to regulate the sales of first-hand residential properties. These measures include -

- (a) developers should duly observe REDA’s guidelines when selling all uncompleted and completed first-hand private residential properties;
- (b) developers should provide on-site unit(s) at the development for the public to visit when selling completed first-hand residential properties;
- (c) developers should indicate, at the same time when making public the transaction information under the existing “five-day disclosure rule”, those transactions which involve members of the Board, and their immediate family members;
- (d) show flats have to comply with a list of requirements (Annex to LC Paper No. CB(1) 1909/09-10(05)), including the requirement that there should be at least one show flat showing the same conditions of the actual flat to be handed over to buyers upon completion in respect of internal partitions, fittings and finishes, and complimentary appliances (i.e. the unmodified show flat);

- (e) more units should be included in the first price list. For small-scale developments, the minimum number of units to be included in the first price list will be 30 units or 30% of the total number of units put up for sale in each batch, whichever is the higher. For large-scale developments, the minimum number of units to be included in the first price list will be 50 units or 50% of the total number of units put up for sale in each batch, whichever is the higher;
- (f) the requirement for making public the sales brochure should be advanced from the existing 24 hours prior to the commencement of sale, to seven calendar days prior to the commencement of sale;
- (g) developers should make public the price list at least 3 calendar days in advance of the commencement of sale when selling any number of units to whichever parties;
- (h) promotional materials for the development should clearly provide the name of the district where the development is located and the address of the development; and
- (i) developers should concurrently upload the sales brochures and all the price lists onto their websites.

16. At the Council meeting on 28 April 2010, a motion on "Strengthening the regulation of the sale of residential properties" was carried. The wordings of the motions are hyperlinked below for ease of reference.

17. The nine new enhancement measures to strengthen the regulation of the sales of first-hand residential properties and the 12 new requirements on show flats were discussed at the Panel meeting on 24 May 2010. The majority of members held the view that Administration had inclined to developers and failed to regulate property sales in the past to protect the interest of consumers. They pointed out that there was conflict of interest on the part of REDA in enforcing the guidelines, particularly in the absence of a monitoring mechanism on REDA's operation. Besides, REDA could not ensure compliance with the guidelines by those developers who were not members of REDA. Given that the nine new enhancement measures were meant to enhance the stability and sustainability of the property market, these should be implemented in the form of legislation to provide greater protection to property buyers. Noting that the Administration would take actions as appropriate if the new enhancement measures were found to be ineffective, some members enquired if there were objective criteria to assess the effectiveness of the new measures and if so, the time frame for assessment.

18. Recent cases involving large-scale omission of floor numbers and alleged manipulation of property prices had again aroused much public concern on the need to strengthen the regulation of sales of first-hand residential properties. When the subject was discussed at the Panel meetings on 12 and 20 July 2010, the majority of members were gravely disappointed at the Administration's reluctance in introducing legislation to regulate the sales of private residential properties despite repeated requests from LegCo. The Administration was urged to relay members' views on the need for legislation to regulate property sales to the Chief Executive for consideration in his Policy Address in October 2010.

19. At the Council meeting on 26 January 2011, an oral question was raised on the regulation of the sales of first-hand private residential properties.

Steering Committee on the Regulation of Sale of First-hand Residential Properties by Legislation

20. To further strengthen the regulation of the sales of first-hand private residential properties, the Transport and Housing Bureau has established a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues pertaining to the regulation of the sales of first-hand properties by legislation. The Steering Committee has commenced work in November 2010 and will come up with practical recommendations for the consideration of the Secretary for Transport and Housing by October 2011. The Administration's target is to take forward the subsequent consultation in the form of a White Bill in order to expedite the process.

Latest development

21. The Administration proposes to brief members on the work of the Steering Committee at the Panel meeting on 4 April 2011.

Relevant papers

Information paper provided by the Administration for the Housing Panel meeting on 2 December 1996

<http://www.legco.gov.hk/yr96-97/english/panels/hg/papers/p2067e.pdf>

Minutes of the Housing Panel meeting on 2 December 1996

<http://www.legco.gov.hk/yr96-97/english/panels/hg/minutes/hg021296.htm>

Report on Sales Descriptions of Overseas Uncompleted Residential Properties published by the Law Reform Commission of Hong Kong (LC Paper No. CB(1) 275/97-98)

Information paper provided by the Administration for the Housing Panel meeting on 17 November 1997 (LC Paper No. CB(1) 491/97-98(05))
<http://www.legco.gov.hk/yr97-98/english/panels/hg/papers/hg17114d.htm>

Minutes of the Housing Panel meeting on 17 November 1997
<http://www.legco.gov.hk/yr97-98/english/panels/hg/minutes/hg171197.htm>

Information paper provided by the Administration for the Housing Panel meeting on 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

(LC Paper No. CB(1) 1347/98-99(01))
<http://www.legco.gov.hk/yr98-99/english/panels/hg/papers/hg01037a.htm>

Minutes of the Housing Panel meeting on 1 March 1999
<http://www.legco.gov.hk/yr98-99/english/panels/hg/minutes/hg010399.htm>

Consultation Paper on the Sales Descriptions of Uncompleted Residential Properties Bill (LC Paper No. CB(1) 1315/99-00(01))

Minutes of the Housing Panel meeting on 7 April 2000
<http://www.legco.gov.hk/yr99-00/english/panels/hg/minutes/hg070400.pdf>

Minutes of the Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill meeting on 28 April 2000
http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un280400.pdf

Minutes of the Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill meeting on 16 May 2000
http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un160500.pdf

Minutes of the Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill meeting on 13 June 2000
http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/minutes/un130600.pdf

Report of the Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill to Housing Panel circulated on 30 June 2000
http://www.legco.gov.hk/yr99-00/english/panels/hg/un_resid/report/a1936e.pdf

Legislative Council Brief on Sales Descriptions of Uncompleted Residential Properties for the Housing Panel meeting on 18 July 2001 (Ref: HB(CR)3/2/9)
<http://www.legco.gov.hk/yr00-01/english/panels/hg/papers/brief.pdf>

Minutes of the Housing Panel meeting on 18 July 2001
<http://www.legco.gov.hk/yr00-01/english/panels/hg/minutes/hg010718.pdf>

Report on Local Completed Residential Properties: Sale Descriptions and Pre-contractual Matters for the Housing Panel meeting on 6 January 2003 (LC Paper No. CB(1) 2597/01-02(01))

Information paper provided by the Administration for the Housing Panel meeting on 6 January 2003
<http://www.legco.gov.hk/yr02-03/english/panels/hg/papers/hg0106cb1-591-4-e.pdf>

Minutes of the Housing Panel meeting on 6 January 2003
<http://www.legco.gov.hk/yr02-03/english/panels/hg/minutes/hg030106.pdf>

Information paper provided by the Administration for the Housing Panel meeting on 12 April 2005
<http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0412cb1-1218-9-e.pdf>

Minutes of the Housing Panel meeting on 12 April 2005
<http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050412.pdf>

Question at the Council meeting on 18 May 2005
<http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0518ti-translate-e.pdf>

Information papers provided by the Administration for the Housing Panel meeting on 4 July 2005
<http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1965-1-e.pdf>
<http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg0704cb1-1944-3-e.pdf>

Minutes of the Housing Panel meeting on 4 July 2005
<http://www.legco.gov.hk/yr04-05/english/panels/hg/minutes/hg050704.pdf>

Question at the Council meeting on 26 April 2006
<http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0426ti-translate-e.pdf>

Motion at the Council meeting 7 June 2006
<http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0607-translate-e.pdf>

Speech by the Secretary for Housing, Planning and Lands at the Council meeting 7 June 2006
<http://www.info.gov.hk/gia/general/200606/07/P200606070300.htm>

Information paper provided by the Administration for the Housing Panel meeting on 3 July 2006

<http://www.legco.gov.hk/yr05-06/english/panels/hg/papers/hg0703cb1-1857-3-e.pdf>

Minutes of the Housing Panel meeting on 3 July 2006

<http://www.legco.gov.hk/yr05-06/english/panels/hg/minutes/hg060703.pdf>

Information paper provided by the Administration for the Housing Panel meeting on 4 December 2006

<http://www.legco.gov.hk/yr06-07/english/panels/hg/papers/hg1204cb1-394-5-e.pdf>

Minutes of the Housing Panel meeting on 4 December 2006

<http://www.legco.gov.hk/yr06-07/english/panels/hg/minutes/hg061204.pdf>

Information paper provided by the Administration for the Housing Panel meeting on 17 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/hg/papers/hg0617cb1-1656-3-e.pdf>

Minutes of the Housing Panel meeting on 17 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/hg/minutes/hg080617.pdf>

Motion moved by Hon James TO as amended by Hon WONG Kwok-hing at the Council meeting on 28 April 2010

http://www.legco.gov.hk/yr09-10/english/counmtg/motion/m_papers/cm0428cb3-619-e.pdf

Information paper provided by the Administration for the Housing Panel meeting on 24 May 2010

<http://www.legco.gov.hk/yr09-10/english/panels/hg/papers/hg0524cb1-1909-5-e.pdf>

Minutes of the Housing Panel meeting on 24 May 2010

<http://www.legco.gov.hk/yr09-10/english/panels/hg/minutes/hg20100524.pdf>

Question raised by Hon LEE Wing-tat at the Council meeting on 26 January 2011

http://www.legco.gov.hk/yr10-11/english/counmtg/agenda/cm20110126.htm#q_3

Administration reply to question raised by Hon LEE Wing-tat at the Council meeting on 26 January 2011

<http://www.info.gov.hk/gia/general/201101/26/P201101260169.htm>

Council Business Division 1
Legislative Council Secretariat
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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 carparks.

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).)



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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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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.



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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 carparks 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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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



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
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)

CCC 消費者委員會
CONSUMER COUNCIL

22/F, K. Wah Centre,
191 Java Road, North Point, Hong Kong
Fax : 2550 5271
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
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