

Residential Properties (First-hand Sales) Bill

Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 15 May 2012 (Part II)

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 15 May 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's responses to items 1 to 6 and 8 to 13 have been set out in LC paper CB(1) 2014/11-12(01). The responses to items 7 and 14 are set out below.

(7) To advise with illustrations the application of "owner" under clauses 48, 49 and 50 in the sale and purchase agreement for specified residential properties in different situations, including sale by the agent of an owner, sale under a power of attorney, sale by the liquidator of a developer company, and sale by the person/representative of the estate of a deceased owner. For the sake of clarity, consideration should be given to replacing the term "owner" with "vendor" under these clauses with proper adaptation.

2. As we have given an extended meaning to “vendor” under clause 7 of the Bill¹, it would not be appropriate to use “vendor” for clauses 48, 49 and 50 under which the obligations should be imposed on “owner”. In the context of those clauses, if an owner of a property enters into an agreement or preliminary agreement through an agent or under a power of attorney, the agreement or preliminary agreement is still entered into by the owner. On the other hand, if a company is in the process of winding up, the liquidator may sell the company's property in the name of the company by exercising the power to sell under section 199 of the Companies Ordinance (Cap. 32). In that case, the company in liquidation would be regarded as “owner”. A personal representative, who represents the deceased in regard to his estate, may dispose of the deceased's property. In that case, the personal representative would be regarded as “owner”.

¹ The definition of vendor under the Bill includes both the “owner” and the “person engaged by the owners to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the development” (e.g. the developer in a joint venture). This is to ensure that, where appropriate, both the owner of the residential property and the person so engaged can be held responsible for offences relating to sales practices.

(14) To consider including in the Bill a requirement for vendors to update the sales brochures (say in the form of corrigendum) in the event of changes in material facts (such as change in building plan).

3. The Bill as currently drafted requires the sales brochure to be accurate as at the date of printing. We note some Members' suggestion that vendor should be required to update the sales brochure whenever the key information in the sales brochure becomes outdated. We also note some other Members consider it impractical to require vendors to do so, as it will mean frequent and endless updating.

4. Having taken into account Members' views, on balance, we suggest requiring that the sales brochure being made public in relation to a sale has to be the one which is printed or updated (if necessary) within the past six months. Under this proposed requirement, vendors are required to examine/update the sales brochure every six months in the course of the sale.

5. With this new requirement in place, we consider the vendor's information form (VIF)² can be simplified, i.e. if the information is already provided in the sales brochure, there should be no need to repeat them again in the VIF. We further propose that whenever vendors sell first-hand completed residential properties, they should provide a VIF for the reference of prospective purchasers, regardless of whether the developments have been offered to be sold as an uncompleted development.

6. We will propose Committee Stage Amendments to the Bill to reflect the above requirements.

Transport and Housing Bureau
May 2012

² Under the current drafting of the Bill, VIF is used to provide updated information to prospective purchasers under two situations: (1) when the residential property is sold to the sitting tenant (clause 56); and (2) when a completed property, which has been offered to be sold when the development or the phase was an uncompleted development or phase, is offered to be sold.