

香港地產建設商會的信頭
Letterhead of THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG
KONG

Comments
of The Real Estate Developers Association of Hong Kong
on the Building Management (Amendment) Bill 2000

1. General

- 1.1 The Real Estate Developers Association of Hong Kong would like to submit our views on the Building Management (Amendment) Bill 2000. We have grave concern on clause 3(b) of the Bill, which if passed as currently drafted, would lower the quorum necessary for convening an owners' meeting for the purpose of forming an owners' corporation ("OC") to 10% of the owners.
- 1.2 As much as we appreciate the good intent of this clause 3(b) which is to facilitate the setting up of the OC for new buildings, we are concerned that this clause will potentially cause disruption to the smooth management of residential development.

2. The Principle of Majority Rule

- 2.1 Firstly, with regard to the quorum of 10% of owners, we believe this is not reasonable, as it violates the principle of majority rule, which is the practice generally adopted in democratic decision-making process.
- 2.2 As the formation of an OC is a very significant decision that will affect the management of a residential development, we believe the quorum for convening the meeting calling for the formation of such should be adequately supported by a majority of owners. The proposed quorum of 10% is by far too low. The current quorum of 50% under section 2(2)(b) of the existing ordinance is, we consider, appropriate.

3. Fairness to all Owners

- 3.1 Under clause 3(b), an OC can be formed with the support of 10% of the owners of the occupied phases of a development, notwithstanding that there may be other phases still under construction. This could not be fair to the owners of the uncompleted phases. They are unable to participate in

the decision-making process which forms the OC, which, once formed, could and would make decisions that affect the uncompleted portion of the development which they are going to occupy.

- 3.2 Furthermore, it is common for a large-scale residential development being developed in phases to be under a single master layout plan, which sets out the comprehensive design and planning of owners' facilities, including clubhouse, internal roads, commercial spaces and other back-house provisions. Out of practicality, the master layout plan may be revised from time to time during the construction period, subject to Government approval, to take into account of changing circumstances.
- 3.3 The formation of an OC during the construction period will enable a small group of owners of the completed earlier phase(s) to make decisions which are binding on the whole development, and may even block any revision to the master layout plan, thus affecting the development of subsequent phases. The success and harmony of a large-scale development hinges on the comprehensive implementation of the project in a smooth, uninterrupted manner. We are concerned that the decisions of a minority group of owners may not necessarily be in the interest of the majority. It may even lead to conflicts and disputes arising from different opinions on the overall implementation, including the location of common utilities, such as refuse collection points and mechanical utilities.
- 3.4 While the Administration has suggested that this problem can be solved by isolating the different phases of a development by inserting specific conditions in the Deeds of Mutual Covenant ("DMC"), we have reservation on such "solution", as all DMCs are subject to the approval of the Legal Advisory and Conveyancing Office ("LACO"). Whether LACO would approve such conditions is open to question. Furthermore, should a dispute arising from this conflict be brought to the Court, the provisions of the DMC will be overridden by the Building Management Ordinance.

4. Small Factions Confrontation

- 4.1 As a responsible member of the community, we must point out that this amendment, whilst negligent of the interest of the majority owners, may bring about an undesired and undesirable effect of promoting rivalry

amongst small groups of owners. It is not inconceivable to find two or more owners' meetings being held in opposition, each having 10% of the owners in attendance. What is more preposterous is that at this stage the majority owners of the latter phases are actually not represented in any of the meetings.

4.2 Such confrontation and rivalry, if allowed to take place, would not help the harmony of the neighbourhood. It would discourage the participation of responsible owners in the management of their property, which we believe is never the intent of the proposed legislation. Under the existing legislation, owners have every access to set up Owners' Committees, which enjoy almost all the powers of the Owners' Corporation. It is only fair and reasonable that the Owners' Corporation be set up only upon completion of all the phases, when it will be truly representative of the interests of all the owners.

With views as above, may we request Honourable Members to urge the Administration to reconsider the implications of clause 3(b) in the overall context of community harmony.

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3 April 2000

Appendix 1

Deed of Mutual
Covenant
incorporating
Management
Agreement (if any)

(16) (a) Notwithstanding that these Conditions shall have been observed and complied with to the satisfaction of the Director, the Purchaser shall not assign, mortgage, charge or part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein or enter into any agreement so to do except by way of an assignment or other disposal of undivided shares in the whole of the lot together with the right to the exclusive use and occupation of individual floors and units in any building or buildings erected thereon and even then such assignment or other disposal shall be subject to the following conditions :

- (i) the Purchaser shall first submit to and obtain the approval in writing of the Director to a Deed of Mutual Covenant incorporating a Management Agreement (if any) (hereinafter referred to as "the DMC") to be entered into between the Purchaser and the assignees from him of undivided shares in the whole of the lot;
 - (ii) the DMC must be in a form and contain the provisions which the Director shall approve or require and it (and any approved amendment or amendments to it) must be registered by Memorial against the lot in the Land Registry/ New Territories Land Registry;
 - (iii) the Purchaser must comply with the approved terms and conditions of the DMC. No amendment thereto may be made without the prior written consent of the Director and the payment of such fees as may be required;
 - (iv) every assignment or other disposal of an undivided share or shares in the lot shall be subject to and with the benefit of the DMC;
 - (v) in the DMC the Purchaser must allocate to those parts of the lot which comprise the common areas or structures for the common use and benefit of owners for the time being of the lot (hereinafter referred to as "the Common Areas") a number of undivided shares in the lot which in the opinion of the Director is appropriate;
 - (vi) the Purchaser may not assign, mortgage or charge (except by building mortgage or charge under Special Condition No. (") hereof) or otherwise dispose of or part with the possession of any undivided shares allocated to the Common Areas or any interest therein or enter into any agreement so to do except that upon execution of the DMC the whole of the said undivided shares in the Common Areas shall be vested in the manager appointed in accordance with the DMC who must hold the said undivided shares on trust for the benefit of all owners for the time being of undivided shares in the lot;
 - (vii) the DMC must provide that, subject to sub-clause (viii) hereof, on termination of the manager's appointment the manager must assign the said undivided shares free of costs or consideration to its successor in office;
 - (viii) if an Owners' Corporation is formed under the Building Management Ordinance (Cap. 344), it may require the manager, in accordance with the DMC to assign the undivided shares in the Common Areas and transfer the management responsibilities to it free of costs or consideration, in which event, the said Owners' Corporation must hold them on trust for the benefit of all owners for the time being of undivided shares in the lot.
- (b) Sub-clause (a) of this Special Condition shall not apply to :
- (i) an assignment, underletting, mortgage or charge of the lot as a whole; or
 - (ii) an underletting of a part of the building erected thereon.

* Insert appropriate
S.C. No.