

立法會
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by the Administration and
cleared by the Chairman)

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LegCo Panel on Housing

**Subcommittee to study the Sales Descriptions
of Uncompleted Residential Properties White Bill**

**Minutes of third meeting
held on Tuesday, 13 June 2000, at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon LEE Wing-tat (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Edward HO Sing-tin, SBS, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon CHAN Kam-lam
Dr Hon YEUNG Sum
- Members absent** : Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
- Public officers attending** : Ms Lorna WONG
Principal Assistant Secretary for Housing
- Mr Gilbert MO
Deputy Law Draftsman
- Ms Cynthia LEE
Government Counsel

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Assistant Secretary (1)4

I Meeting with the Administration

(LC Paper No. CB(1)1800/99-00(01) and a chart showing the division of provisions in Schedule 1 to the Bill tabled at the meeting and circulated to members thereafter vide LC Paper No. CB(1)1854/99-00)

The Principal Assistant Secretary for Housing (PAS for H) briefed members on the paper from the Administration. She stressed that the paper had only set out the Administration's initial response to issues raised by the deputations which attended the meeting of the Subcommittee on 16 May 2000. Upon completion of the relevant consultation exercise in July 2000, the Administration would examine all views gathered before finalizing the blue bill which they aimed to introduce in the next legislative session.

Floor area

Net usable area

2. Mr YEUNG Sum said that he was aware that the net usable areas of some properties were significantly smaller than their listed areas, and urged the Administration to seriously consider requiring developers to specify the net usable areas of uncompleted residential properties in the sales brochures in recognition of the importance of the decision to purchase a property. PAS for H said that this was one of the main focus of discussion during the construction exercise. Both the developers and the surveyors were concerned about the technical difficulties in providing measurements of the net usable area. Notwithstanding, she assured members that the Administration would consider both sides of the arguments when finalizing the draft legislation.

3. The Chairman however recalled that the Hong Kong Institute of Surveyors was not firmly against the disclosure of the net usable area but had proposed that such be disclosed for reference only. PAS for H agreed to consider this suggestion but pointed out that since the provision of saleable area and gross floor area in the sales

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4. As to Mr YEUNG Sum's suggestion on the provision of the net usable area in the sales brochures with a margin of acceptable discrepancy, PAS for H said that while the Administration would consider this suggestion, it had to be noted that, as the Consumer Council had also pointed out earlier, the introduction of such a legal allowance might not necessarily be in the best interest of consumers. This was because such an arrangement would at the same time imply that it would be acceptable for the developer to provide a smaller flat if the difference between the listed net usable area and the actual one was within the allowed range.

5. Addressing Mr YEUNG Sum's concern about variations in the thickness of the load bearing walls and hence the net usable area on different floors, PAS for H assured members that in recognition of the above, the Bill had already required the floor plan to show the thickness of the load bearing walls of a residential property situated on the top, median and the lowest floors on which the type of residential property was situated.

Other options and considerations

6. In reply to Mr Edward HO's enquiries, PAS for H confirmed that the inclusion of "another definition of floor area apart from the gross floor area and the saleable area" in the sales brochure had been proposed by the Hong Kong Institute of Real Estate Administration (HKIREA). Members noted that this proposed definition was the "unit gross floor area" which would also include some of the exempted areas not accountable for the plot ratio. They also noted that the Administration considered the proposal undesirable because the provision of standardized measurements of the floor area was important and the inclusion in the sales brochure of too many different types of floor area would only create confusion. Moreover, the unit gross floor area could hardly help to reflect the net usable area.

(Post-meeting note: HKIA has proposed the inclusion of "Building Area" in their written submission.)

7. The Chairman highlighted different presentations of the floor area currently adopted by developers, some of whom listed such details as the thickness of partition walls while others just stated the flat size, and enquired how the Bill would help to standardize the presentation of the floor area. In reply, PAS for H referred members to section 7, Part I of Schedule 1, which only required the developer to state in the sales brochure the saleable area and the gross floor area. She noted that there were suggestions of requiring the developers to provide in sales brochures the minimum dimensions of certain parts, such as bedrooms, of the uncompleted units. She said the Administration would give consideration to this suggestion.

8. Pointing out that there might be difficulties in imposing additional requirements on developers in relation to the floor area, the Chairman opined that as a professional body, the Real Estate Developers Association of Hong Kong (REDA) should encourage its members to engage in good trade practices. For example, to provide consumers with more details on their flats than required, or ensure good workmanship to maximize the internal floor area. Mr HO Sai-chu concurred with him and said that under the present economic climate where developers had to actively promote the sale of their flats, developers were more willing to engage in good practices to build up a good reputation for themselves. PAS for H shared their views.

Subsequent changes in phased developments

9. Mr Edward HO highlighted the concern of REDA, HKIREA and the Hong Kong Institute of Architects that the requirement of providing detailed information on later phases of a large residential development would reduce the flexibility of the developers in refining the overall design of the project in later phases, and urged the Administration to explore ways to address their concern. In response, the Deputy Law Draftsman (DLD) explained that according to clause 2 of the Bill, “development” was defined as “where the construction of 2 or more buildings can, by reason of the engineering, structural or architectural connection between such buildings, reasonably be regarded as one single project, the collection of such buildings”. The different phases of a phased development might therefore be regarded as independent projects such that at each phase the developer might only need to disclose and be bound by details of the phase in question.

10. Mr Edward HO remained to be assured, and pointed out that details on other phases might need to be listed as well because the Bill would require the sales brochure to contain a location plan showing the development and the land use or intended land use of any land within 0.5 km from the boundary of the lot upon which the development was constructed. In response, PAS for H and DLD clarified that in complying with this requirement, the developer of a phased development would only have to state the intended use of the land whereon the other phases would be constructed to the best of his knowledge. As such, if the details on the other phases were not finalized then, he could simply state that the land would be for residential use. At Mr HO’s request, DLD agreed to consider explaining more clearly in the Bill that the different phases of a phased development might be considered as independent projects if they met the above quoted definition of “development” in clause 2.

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11. The Chairman and Mr Edward HO pointed out that the developer might need to highlight in the sales brochure of the first phase of a phased development facilities to be provided in subsequent phases to boost the sale of his flats, and expressed concerns about the legal liability on the part of the developers for such disclosure. Addressing Mr HO’s concern about the consequence of disclosing such details, DLD explained that the Bill would only effect civil consequence for inaccuracy of property

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details disclosed. As to the Chairman's concern about how the purchaser's right to know the future facilities to be included in a phased development without misrepresentation could be safeguarded, PAS for H maintained that the Bill in its present form would ensure that consumers could have access to important information which they should take into account when deciding whether to purchase a property. She however acknowledged the need to maintain a balance between consumers' expectations and developers' need to highlight future facilities to boost sale of their flats, and agreed to explore the feasibility of specifying in the sales brochures that details on facilities to be provided in subsequent phases were subject to changes, and to identify ways to notify purchasers of such subsequent changes.

12. On how disputes between the purchaser and the developer in relation to subsequent changes to disclosed details could be handled, PAS for H advised that as such disputes involved private parties, they would need to be resolved through civil proceedings. In this regard, DLD supplemented that the purchaser could always pursue contractual remedies for inaccuracy of information according to relevant contract laws although to succeed he would have to prove to the court that the case was a misrepresentation of fact and that he had relied on such a fact to make the purchase decision. In reply to the Chairman on the success rate of such cases, DLD said that no detailed research had been conducted in this area but since some cases were settled at different stages of litigation, the relevant trial results, if available, would not be indicative of the use of litigation. He however admitted that due to high litigation costs, the number of successfully concluded cases should be small.

Division of provisions

13. Addressing the Chairman's concern about difficulties facing individual purchasers in taking civil actions against resourceful developers for misrepresentation, DLD advised that such could in part be overcome by requiring the developer to disclose in the sales brochure certain essential information under Parts II and III of Schedule 1 to the Bill. PAS for H supplemented that this was because while the developer would not be directly held responsible for information required under Part I, the information provided pursuant to Part II would constitute a representation of fact made by the developer to the purchaser in respect of the contract for sale and purchase of the property and as a result, such representation would be presumed to have induced the purchaser to enter into the relevant sale and purchase contract.

14. In this connection, DLD briefed members on the chart tabled at the meeting concerning division of the required information among the three parts of Schedule 1. He stated that as the relative importance and controllability of such information were subject to value judgments, the Administration was open-minded and would seriously consider the relevant views received during the public consultation before finalizing the three parts. However, he also pointed out that in considering what information to include in the three respective parts, members should note that according to contract laws, misrepresentation would only apply where facts were involved but not opinions

or matters beyond the control of developers. As such, it would be more appropriate to put “completion schedule” under Part I instead of Parts II and III because the developer could only estimate the completion schedule which would be subject to the influence of many external factors beyond his control. Only when the developer was fully aware of inevitable future delays but still claimed that his development would complete in time could he be sued for misrepresentation.

15. In reply to Mr Edward HO on the meaning of the expression “no special status” used in the chart to describe information provided under Part I, DLD explained that this meant that no presumption would be made in relation to such information, whereas the information to be provided under Parts II and III would be presumed to be representation of fact and implied contractual terms respectively. He clarified that whichever part was involved, the aggrieved purchaser would similarly have to take civil action against the developer, but civil actions in pursuit of remedies for inaccurate information provided under Parts II and III would have a better chance of success than that as provided under Part I. In response to Mr HO’s remark on the slight difference among the three parts, DLD agreed that since civil actions had to be taken for pursuing civil remedies, it would be very much the court’s decision as to whether there had been misrepresentation.

16. Believing that the purchaser would be able to pursue contractual remedies for inaccurate information provided under Parts II and III more easily, the Chairman was concerned about the limited amount of information to be required under Parts II and III. In his view, many of the details to be disclosed under Part I were also of significant concern and relevance to a purchase decision and hence should be provided under Parts II and III instead. For example, the disposition plan and layout plan, which according to his experience in handling complaints were subjects of many disputes, in particular complaints that the actual facilities were not up to the standards described in the sales brochure. In response, PAS for H commented that such cases involved subjective judgment and were therefore difficult to handle. DLD also reiterated that apart from considering the importance of the information to the purchaser in making the purchase decision, equal emphasis had to be placed on the degree of control which the developer had over the items concerned.

17. The Chairman was not convinced, and sought to ensure that the Administration had conducted some scientific surveys or thorough internal deliberations before deciding what information to be provided under the different parts of Schedule 1. In justifying why certain items of information were required under Part I and not Parts II or III, DLD advised that information such as the price list involved general information, it might be more appropriate to require its provision rather than stipulating for the accuracy of the information therein. As for the floor area, and car parking spaces whose availability could be a very important consideration according to the Chairman, DLD explained that both could be affected by changes in the plan due to geological conditions of the construction site. He further stressed that in the case of uncompleted flats, changes were always inevitable because many

unforeseen technical problems might emerge during the construction process. He however assured members that if the developer knew that according to land grant conditions, his development could only provide 100 car parking spaces but deliberately exaggerated the number, the aggrieved purchaser could take civil actions against him for misrepresentation.

18. The Assistant Legal Adviser 1 referred to the note to the chart, which said that in the case of innocent misrepresentation, the court might award damages in lieu of rescission, and pointed out that according to section 3 of the Misrepresentation Ordinance (Cap. 284), the types of misrepresentation referred to should include both innocent and negligent misrepresentation. DLD confirmed her points and clarified that in both cases, the court might award damages in lieu of rescission.

Comparison of the sale price

19. Pointing out that the gross floor area could hardly reflect the usable area, the Chairman questioned the need to provide for its disclosure. In his view, the disclosure of gross floor area would only facilitate the calculation of the sale price per square foot on it to effect a lower price for quotation in advertisements to attract purchasers. In response, PAS for H explained that since developers would be required to state both the gross floor area and the saleable area in sales brochures, it followed that references to both should be allowed when stating the sale price in advertisements. DLD however assured members that consumers would not be misled by such references because the Bill would require that if the sale price per square foot or square metre calculated on the basis of the gross floor area or any other basis was stated in an advertisement or a sales brochure, the price per square foot or square metre calculated on the basis of the saleable area must also be shown. He further explained that the gross floor area was an important reference because sometimes the potential purchaser might need to compare the price of an uncompleted flat with that of a completed one, where the gross floor area might be the only floor area available for comparison. Moreover, since the sale prices highlighted in advertisements were normally the prices of the cheapest flats, purchasers should not refer to them for the average price per square foot but should work out the actual price per square foot of the flat of his choice on the basis of its price and floor area.

20. The Chairman was not convinced of the need to disclose the gross floor area for price comparison between uncompleted and completed flats. He pointed out that in the absence of requirements regarding the disclosure of floor area of completed flats, the developer of completed flats would normally quote the unit gross floor area instead to exaggerate the floor area. In response, PAS for H emphasized that by proposing the adoption of standardized measurements of both the gross floor area and the saleable area of uncompleted flats, the Bill could at least facilitate accurate comparison of the size (and price) of uncompleted residential properties. She also reported that a Subcommittee under the Law Reform Commission was examining the sales descriptions of completed flats. In this regard, she noted the Chairman's suggestion

that in disclosing the floor area of various types of flats, the saleable area should be adopted as the standard. She further explained that uncompleted flats had been given the priority in such efforts because in the absence of the actual units for inspection, the potential purchasers of uncompleted flats had greater need for more written information on the flats to help them make the purchase decision.

Concerns in relation to the sample property

21. The Chairman noted that the Administration was of the view that if a sample property was provided, it should be representative of the actual unit for sale in terms of dimensions and internal partition, and enquired whether this would mean that the Administration would seek to ensure that flats would not be unduly reduced by thicker partition walls to the effect that while in the sample property the bedroom could accommodate a standard-size bed, the one in the actual unit could not. In reply, DLD assured members that the developer would not intentionally build thicker walls as this would not benefit any party. While highlighting REDA's and HKIREA's concerns about the requirements regarding the accuracy of the internal dimensions of sample properties, PAS for H also assured members that the Administration was fully aware that for potential purchasers, the sample property could serve very important reference purposes.

22. Mr NG Leung-sing pointed out that not all "bedrooms" in a flat were necessarily big enough to accommodate a standard-size bed, and opined that in such cases the rooms concerned should not be described as "bedrooms" in the sample property. In response to the Chairman on the existence of any stipulations to this effect, DLD replied in the negative but stated that as the sales brochure would be required to show the floor plan, and the sample property would also need to be representative of the actual unit for sale in terms of dimensions and internal partition, the consumer should be able to decide whether a particular room could be used as a bedroom.

23. The Chairman however highlighted cases where the furniture in the sample property was specially designed to give consumers the false impression that the rooms therein were spacious enough to accommodate many pieces of furniture. In response, DLD said that in visiting sample properties, the consumer should exercise care in ascertaining the actual size of the different rooms. He however pointed out that the Bill could at least ensure that the dimensions of the sample property were representative of the actual unit.

24. In recognition that the Bill would only require the developer to state the size of a flat and not the size of individual rooms in it, Mr NG Leung-sing considered it necessary to require the developer to keep the sample property for purchasers' reference for a certain period of time to help ensure that the size of the rooms in the completed unit would be as displayed. Commenting on the proposal, DLD highlighted the difficulties in so doing having regard to the high rental payable for the

sample property and the long duration pending completion of development. Notwithstanding, he assured members that clause 11(3)(e) could ensure the developer would state in the sample property the dimensions of each part of it. Mr NG Leung-sing however said that the above clause could serve little purpose if the sample property would be demolished together with the signage of the dimensions of its different parts.

25. Miss CHAN Yuen-han shared Mr NG Leung-sing's views and said that as many purchasers might not know how to work out the room size, there was a need to provide them with clear indications of the size of the different rooms in a property and hence their usability. In consideration that home purchase was a costly decision, she urged the Administration to redraft clause 11(3)(e) in such a way as to ensure that the indications of room size in the sample property would be clear and accurate. Mr HO Sai-chu however highlighted the difficulty in listing the exact room size having regard that the thickness of the partition walls might be affected by workmanship. In his view, provision of the appropriate length of the four sides of a room should suffice.

26. In addressing members' concerns about the size and usability of the different rooms in a property, PAS for H emphasized that the proposed requirement of the developer to show the thickness of load bearing walls was already a step forward in Government efforts to provide as much information as possible to enable the purchaser to have a clear idea of the usable area of an uncompleted property on sale. She and DLD however agreed to examine how clause 11 (3)(e) could be better phrased as proposed and to ensure that the information provided in the sample property would serve as a useful reference for prefecture flat buyers.

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27. The Chairman highlighted cases where the sample property had given the consumers a misleading perspective of the surrounding environment of the development. In response, PAS for H pointed out that the floor on which a flat was situated might affect its view.

II Any other business

28. At the Chairman's request, the Administration undertook to take into consideration the views of the Panel when finalizing the draft legislation. In this regard, members agreed that the Subcommittee should make a report to the Housing Panel before the end of the legislative session.

(Post-meeting note: A report on the deliberations of the Subcommittee was circulated vide LC Paper No. CB(1) 1937/99-00 on 30 June 2000.)

Clerk

29. The meeting ended at 6:10 p.m.

Legislative Council Secretariat
4 October 2000