

**Consumer Council 's submission to
the Bill Committee on
Sales Descriptions of Uncompleted Residential Properties**

1. Overall View

- 1.1. The Consumer Council welcomes the Bill as it provides the long over due regulatory mechanism to protect prospective buyers of uncompleted residential properties, regardless of whether the property developments fall under the Consent or Non-Consent scheme. We fully support the Bill's pronounced principles.
- 1.2. We consider that it is a piece of comprehensive legislation designed to cater for the unique circumstances of Hong Kong. This legislation is necessary as many people have to rely on the sales descriptions provided by developers for making purchase decisions before the completion of property developments.
- 1.3. It is expected such requirements provided by the Bill as to showing thickness of load bearing walls, floor plans, location plans and disposition plans will enhance transparency of the information contained in the property sales brochures and advertisements. We strongly believe that the prospective buyers are able to make much better informed choices in their purchases and consequently sales disputes can be minimized.
- 1.4. We also believe that the Bill could provide a sound statutory basis for buyers of uncompleted properties to seek redress for variations which do not conform with the descriptions.

2. Descriptions of Floor Area

- 2.1. The Consumer Council supports giving clear definition to terms that have hitherto been subject to arguments especially on gross floor area. We are aware of the fact that many potential purchasers would regard the calculation of saleable area measuring from the external edge of the enclosing walls of the properties but including the internal walls and other permanent partitions within the properties as inadequate. A majority would prefer to be informed of the internal floor area of properties instead.
- 2.2. The Consumer Council would support the listing of internal floor area if the professionals concerned could confirm that this can be done. The Council

understands that, as in prevailing versions of agreement for sale and purchase, the professionals would allow a variation margin of 5% upward or downward over the floor area estimated to be sold only due to changes to building plans and no compensation is allowed for variation in area falling within that range. According to the professionals and developers, most properties are built to plan with little variations. However, they have contended that if they were to provide internal floor area, the discrepancies would be a lot greater due to variations in workmanship and they would ask that an overall marginal tolerance be set. We are unable to subscribe to such a trade-off.

2.3. We are concerned that the imposition of such an overall allowable variation is not in the interest of the prospective property buyers. We consider the variation limit of even 5% (with the building plan) is already too much a concession for the purchaser to accept. Further we believe that it is not in the interest of purchasers to be bound by terms of the agreement to accept such variation without compensation.

2.4. Whilst it would take a long time to gauge consumer preference under the circumstances, Council would support the listing of dimensions in clear terms for the purchasers to work out the floor area. Unless and until someone has come up with a better proposal, we believe this is a more preferable alternative than committing consumers to accept an overall allowable variation of 5% or higher from the estimated floor area.

3. Price Information

3.1. The Council is glad to see that price of relevant properties will have to be expressed in a common set of measurements including price per unit of saleable area in any event.

3.2. The Council fully supports the prescription of calculating price in terms of saleable area. We are also pleased to see that such a uniformed way for the disclosure of property price is also applicable to price advertised in other printed materials such as newspapers.

4. Penalty

4.1. The Council supports the imposition of penalties and believes that it will serve the purpose of deterring non-compliance of the requirements laid down in the Bill.

4.2. However, in order to address the concern that the maximum penalty of \$5 million is not adequate under all circumstances, the Council suggests that penalty imposed could be made commensurable with financial gains under provisions as in the case of the Telecommunications Ordinance Amendment Bill.

5. Information in sales brochure deemed representation of fact (section 6)

5.1. The Bill proposes, under section 6(1), that information listed in Part II of Schedule 1 of the Bill to be included in sales brochures shall be a representation of fact and purchasers shall be presumed to have been induced by such representation to entered into the contract. This is commendable since purchasers can be relieved of the onus of proving reliance in a case for misrepresentation.

5.2. However, we feel that the average buyers will find information contained in Part I of Schedule 1, such as layout plan, surrounding land use and prominent communal facilities, of more immediate concern and relevance to their purchase decisions. We cannot expect the prospective buyers to be able to have access to such information except through the developer. We would therefore suggest that section 6(1) be extended to cover information set out in Part I of Schedule 1 in order to afford greater consumer protection.

6. Provisions relating to sample properties (section 11)

6.1. The Council welcomes the prescription of requirements concerning sample properties but notes that there is no requirement that such sample properties be presented in perspective of the surrounding physical environment that the completed properties will be located in.

6.2. We feel that the Bill should set out certain minimum requirements in this respect in order to assist potential buyers. For instance, when the sample properties are not on the site location and amidst the surrounding environment, developers should be required to provide at the same venue either a miniature model of or otherwise display conspicuously the layout plan or photos showing the physical setting for the public's information.

7. Objects to be shown in Location and Disposition Plans (Clauses 4 & 5, Part I, Schedule 1)

While the diameter of 0.5 km from any point at the boundary of the development plot is an acceptable distance, we are concerned that features above ground level such as ancestral tombstones would appear objectionable even from a greater distance, and we can foresee disputes arising from non-disclosure of features and facilities if there is no definition of "prominent" as used in clause 5. We therefore suggest that a minimum list of prominent features be prescribed.

8. Preservation of evidence

8.1. We are concerned with possible disputes over the state of the properties on completion. We suggest that developers should be required to preserve the relevant sales brochure, miniature models and photographs depicting the interior of sample properties. The preservation of evidence will be of benefit to both the developer and the purchaser to facilitate proof in court if necessary.

8.2. In our view, a reasonable time should be 1 year after issue of the occupation permit. We understand that normally remedial work would have been completed within the building warranty period and any complaint concerning such work would have arisen within this time.

9. Responsibilities in case of winding up of developer (clause 22, Part I, Schedule 1)

9.1. This clause requires a clear statement as to the allocation of responsibilities in the winding up of the developer including the warranty or guarantee of the building works. While that may be referable to contract law, we feel that it will be of tremendous help to purchasers to have stated expressly in the sales brochure as basic information the parties responsible and the extent of responsibilities for the warranty or guarantee of the building works.

9.2. We would take this opportunity to raise a related course of concern. That is, it is not uncommon for a developer to be incorporated for and subsequently wound up after completion of building projects. Latent defects may surface after the winding up of such developers. In such cases, the individual flat owners may have no recourse to the developer concerned. We appreciate this issue is not directly relevant to the Bill under study and we would urge the administration to study the matter at a later date.

10. Conclusions

- 10.1. The Consumer Council would urge for the Bill in general with necessary amendments to be passed as soon as possible for consumer protection. We believe the regulatory mechanism for this area of consumer protection has been long over due.
- 10.2. We believe there are some issues, such as the stating of internal floor area, which are subjects of grave public concern. However we could see that no easy resolution can be reached shortly. Moreover there are issues, such as the adequacy of penalty, which takes time to bear out. We therefore propose that the Administration should set out a time schedule for their review so that there can be early passage of the bulk of the Bill.

Consumer Council
16 May 2000