

2231 3722
2845 1017
LACO/HQ/127 III

LACO/Headquarters
20/F, North Point Government Offices,
333 Java Road, North Point, Hong Kong

10 December 2001

Legal Advisory and Conveyancing Office ("LACO")
Circular Memorandum No. 40C

Lands Department Consent Scheme
Sale of units in uncompleted private residential developments
**(excluding Private Sector Participation Scheme,
Sandwich Class Housing Scheme and Flat for Sale Scheme)**

I. Disclosure of sales information

(a) Sales brochures for private purchases

To give prospective purchasers of units reserved for any internal or private sale (hereinafter referred to as "prospective private purchasers") the same degree of consumer information as in public sales, the Real Estate Developers Association of Hong Kong has agreed that sales brochures, containing the same information to be made available to the public for any public sale, should also be provided to prospective private purchasers to help them to make better informed decisions in their purchase of units.

To implement this, all consents to sell residential units in uncompleted developments to be given by LACO from today will require that the developer must provide prospective private purchasers with sales brochures complying with LACO Circular Memorandum No. 40 (as amended from time to time) when the private sale is announced or made known in any way.

In respect of any future private sale, the consent for which has already been given, developers are requested to comply voluntarily with the requirement, notwithstanding that a specific term to that effect has not been incorporated in the consent for those developments.

(b) Sales brochures and price lists for public sales

With immediate effect, the requirement to provide sales brochures and price list(s) to the public will be not less than 7 **calendar** days prior to commencement of registration of purchasers. The change will apply to all future public sale irrespective of whether consent has already been issued or not.

-
- (c) The opportunity has also been taken to review the requirements in relation to the contents of sales brochures to bring them in line with the current requirements. Attached is an Appendix to replace Appendix XII to LACO Circular Memorandum No. 40A. Appendices A and B to Appendix XII remain unchanged. All consents issued from today onward will be subject to the requirements in new Appendix XII. Developers are also requested to comply voluntarily with the requirements in new Appendix XII for developments in respect of which consent has already been issued.

II. No reference to be made to the Consent Scheme in sales brochures or advertisements

Press advertisements and sales brochures often contain reference to LACO's consent to the sale of the development. Such a reference is quite misleading to the public, as it may mislead potential purchasers as to the extent of Government's control over the sale of the development.

All consents to sell to be issued from today onward will be subject to a requirement that no advertisement, or sales brochure or other material shall contain any statement that any aspect of the development or any documents are subject to, or approved under, the Lands Department Consent Scheme, so as to avoid any misleading impression to potential purchasers.

Developers are also expected to comply with this requirement for developments in respect of which consent has already been issued, except where the relevant advertisements and/or sales brochures have already been printed or released rendering amendments impossible.

III. Balloting as an option to developers in public sale

Since the suspension of the requirement for public ballot in February 2001, LACO has received requests from some developers for approval to use balloting in the sale of their developments in view of large response from the public. For transparency of sale and maintenance of public order in the conduct of sale, Government has no objection to developers using a ballot as a means to select successful applications in

a public sale as an alternative for the whole or any part of the units in a development on any one occasion, should they so wish. The option will be incorporated in all future consents to sell private residential units.

For developments in respect of which consent had already been given, developers may exercise that option without further reference to LACO, subject to the following conditions which shall be deemed to be incorporated into those consents :

- (1)(i) At the time of registration, each prospective purchaser shall be allocated a number in the strict sequence of their registration so as to entitle him to return to the sales office(s) at the time of the sale to personally select a unit for purchase from those (if any) Units designated for sale by balloting, remaining unsold, subject to condition (1)(ii) below; and
 - (ii) on completion of registration and prior to selection of units, the developer will at random rearrange by some means, whether electronically or otherwise, all registration numbers and so as to result in a new sequence of registration numbers which randomly determines the priority of prospective purchasers for selection of units, which will be published at the sales office(s) and in major newspapers prior to selection of units.
- (2) The unaudited report and subsequent audited report on the conduct of sales to be submitted to LACO in accordance with the conditions of consent shall contain all information relating to the method and results of the ballot.

LACO Circular Memorandum No. 40, as varied by LACO Circular Memoranda Nos. 40A and 40B, is hereby further amended. Except as varied by this Circular Memorandum, all other terms of the Consent Scheme remain in full force and effect.

Copies of this Circular Memorandum and enclosure may be downloaded from the Lands Department website at www.info.gov.hk/landsd/.

(T. E. Berry)
Deputy Director/Legal
for Director of Lands

To : All Solicitors

Appendix XII

The sales brochure shall include the following information, which must be accurate at the time of printing the sales brochure :

1. Introduction

General description of development; the identity of the intended manager, if known.

2. Location Plan

Including up-dated information on prominent environmental features in the vicinity, e.g. public park, swimming pool, refuse collection point etc.; intended user of surrounding areas, if known.

3. Layout Plan Drawn to Scale

Including communal facilities (and their completion dates if possible); undeveloped land and its intended use within the boundary of the development; the scale used.

4. Salient Points of Government Lease

Including lot number; lease term; user restrictions on the lot; onerous lease conditions (if any) which would restrict purchasers' usual legal rights.

5. Detailed Plan of a Typical Floor

Showing all principal external dimensions of the unit; external dimensions of individual compartments in each unit; the scale used, a note informing prospective purchasers (i) the internal areas of units on upper floors will generally be slightly larger than lower floors due to the reducing thickness of structural walls on upper floors (ii) if there are special fittings/features affecting the enjoyment of the owner of a unit (e.g. exposed pipes) (the location of such special fittings/features should be specified). In case there is any non-typical floor, a separate floor plan should be shown.

6. Schedule of Flat Size

Setting out the total saleable area (as defined in Appendix A) of each unit. The areas of any cockloft, bay window, carparking space, yard, terrace, garden, flat roof, roof and any other area as may be permitted by LACO to be included in the saleable area should be specified separately.

7. Fittings and Finishes

Refer to Appendix B.

8. Anticipated Completion Date of the Building

9. Salient Points of DMC

Including definition of common areas; terms of appointment of Manager; principle/basis of fixing management fee; management fee deposit; a note informing prospective purchasers that a full script of the DMC is available upon request.

10. Carpark

Specify the location, number and the minimum dimensions of the carparks.

11. Miscellaneous Payments upon Delivery of Unit

Including debris removal fee, reimbursement to vendor for water/electricity/gas deposit (inform purchasers of the obligation to pay such fees even though the exact amount is unknown).

12. Date of Printing of Sales Brochure

13. Names of Contractors and other Authorized Persons

14. Maintenance of Slopes

If the Government Grant requires the owners to maintain at their expense any slopes within and/or outside the lot, a note informing prospective purchasers of such requirement and that under the Deed of Mutual Covenant the Manager is to be given full authority by all the owners to carry out the necessary slope maintenance works in accordance with all guidelines issued from time to time by the appropriate government department and each owner will be obliged to make contributions towards the costs of such works. A plan showing the slopes and any retaining walls or other related structures already constructed or to be constructed within and/or outside the lot should be included in the sales brochure.

15. Preliminary Deposit

The sales brochure should contain a prominent statement that the preliminary deposit tendered by applicants at the time of registration will be encashed and the proceeds thereof held or refunded by the stakeholders without interest.

16. Cancellation Agreement

The sales brochure should contain a prominent statement that in the event of the vendor, at the request of the purchaser, agreeing (at his own discretion) to cancel the sale and purchase or the obligations of the purchaser thereunder, the vendor will retain the sum of 5% of the total purchase price of the unit (and any parking space) in addition to payment by the purchaser of all legal costs, charges or disbursements (including stamp duty, if any) incurred by the vendor in connection with the cancellation of the sale and purchase.

The sales brochure shall not contain any statement to the effect that the Agreements for Sale and Purchase or the Deed of Mutual Covenant or any other aspect of the development is subject to the Lands Department Consent Scheme or has been approved by LACO or the Lands Department.