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22 August 2002

Legal Advisory and Conveyancing Office
Circular Memorandum No. 48

Lands Department Consent Scheme

I. Advertising of Units

II. Requirement for 30% Investment

III. Variations to the Standard Form of Agreement for Sale and Purchase

I. Advertising of Units

1. Conditions of Sale, Grant etc. prohibit grantees from soliciting, whether directly or indirectly or through any agent, any money, money's worth or other valuable consideration by means of any transaction, conditional or unconditional whereby a lot or any part thereof or any interest therein or any building or part of any building thereon may be sold, or enter into any agreement so to do, without the prior written consent of the Director of Lands, before compliance with the lease conditions. LACO has always taken the view that soliciting in this context includes the publicising or advertising of units available for sale, before a consent to sell is issued.

2. However, to allow developers to promote their developments earlier, notwithstanding the restriction in land grants quoted above, in future, LACO will permit the commencement of promotional activities for the sale of units in a development prior to the issue of the consent to sell. The permission to commence promotional activities will be given by LACO on receipt of a formal application for consent and upon confirmation from the developer's solicitors that the consent fee for the application has been settled. The permission will be given in writing either separately or by incorporation into a letter of requisitions from LACO on the consent application. The permission shall be subject, inter alia, to the following conditions :

- (a) The developer must specify and make known to the public in any publicity or promotional material or activities for the sale of units in a development that the consent of LACO to sell units in the development has not yet been obtained, and

- (b) Where the development is advertised in print, a copy of the advertisement shall be forwarded to LACO within 3 days after the advertisement first appears.

3. Developers may pursuant to a permission to commence promotional activities (1) release to the public details of the development (excluding the price list), whether by way of print, television, radio or other electronic media, on-line, or in its sales offices; (2) issue sales brochures which must comply with LACO Circular Memorandum No. 40 (as amended from time to time); (3) promote the viewing of models of estates and show flats (of size and layout accurately representative of the actual units); and (4) organize competitions, campaigns and other activities for publicising the development to be put on sale.

4. This permission to launch promotional activities shall not be construed as a consent to sell nor shall it be taken as implying that LACO's consent will be forthcoming for any development, which will only be given upon the developer fulfilling all the usual requirements for the giving of consent. No preliminary agreement, reservation form of any kind whatsoever, or any other document, whether it is stated to be binding or not, shall be signed; no name or legal identification document of any intending purchasers or their choice of units shall be taken, registered or kept by the developer or his agent(s) with the intention of reserving a unit; neither shall any reservation fee, deposit or other consideration be accepted by the developer, his solicitors or agents, before the consent to sell has been given by LACO.

5. If any developer does not comply with the conditions specified in this Circular as to permission for promotional activities or if there is any complaint relating to the maintenance of order in any sales office, public place, or elsewhere, or any misrepresentation of sales information in any advertisement or promotional activities, or at any time as LACO may in its absolute discretion consider it appropriate, the permission for commencement of promotional activities for the sale of units in a development prior to the issue of the consent to sell may be withdrawn immediately. The developer shall cease all promotional activities in relation to the development upon receipt of any notice from LACO of withdrawal of the permission.

6. The permission to publicise will apply to current and new applications for consent for all uncompleted residential, commercial and industrial developments, but excluding those to be sold under the Private Sector Participation Scheme and the Flat For Sale Scheme.

II. Requirement for 30% investment

1. It has been a long-standing requirement that the developer must have invested in the project a substantial amount, being at least 30% of the total cost of the land and the proposed development, before consent to sell is given. Government has recently completed a review of this requirement and is satisfied that the requirement has always been fulfilled by developers due to the fact that the land premium (including the before value and land acquisition costs in lease modifications and land exchanges) and the cost of foundations and piling have always well exceeded 30% of the total cost. Government has, therefore, decided that the requirement to prove the 30% investment in the certificate of the Authorised Person can now be dispensed with for all applications for consent, including those currently being processed by LACO. Apart from this, all other requirements for giving of consent, in particular the completion of the development foundations and the provision of sufficient finance to meet all outstanding construction costs, remain in place.

III. Variations to the Standard Form of Agreement for Sale and Purchase ("ASP")

1. The standard form of ASP should normally be adopted without change for the sale of uncompleted units under the Lands Department Consent Scheme. However, from time to time LACO receives applications for variation to the prescribed form of ASP. Solicitors are reminded that requests for variation to the standard form will not normally be entertained and any such request may involve consultation and will invariably cause delay in processing and the issuing of the consent.

2. Where a request for variation to the prescribed form of ASP must be made, the solicitors for the developer shall in future:

- (a) provide full justification for each variation; and
- (b) highlight the proposed variations in the draft ASP submitted in duplicate, with deletions preferably shown by striking through and additions shown by underlining. Any wording replacing the prescribed ones should be shown as superscript above the prescribed wording in the submitted draft.

If Solicitors wish to propose amendments to any variation already proposed, only these pages of the ASP on which these amendments are proposed should be submitted to LACO - the relevant pages should be submitted in duplicate with the proposed amendments highlighted in the same manner as in (b) above but highlighted in such a way that these proposed amendments are readily apparent.

3. Any variation to the prescribed form of ASP without the proper approval of LACO may lead to suspension of the consent to sell. Depending upon the circumstances, LACO may also take other action.

LACO Circular Memorandum No. 40 (as varied), is hereby further amended.

Except as varied by this Circular Memorandum, all other terms of the Lands Department Consent Scheme remain in full force and effect.

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

A handwritten signature in black ink, appearing to be 'A L Robertson', written in a cursive style.

(A L Robertson)
Deputy Director/Legal (Ag)
for Director of Lands

To : All Solicitors