

Doc Type	HOC
Paper No	38/94
Title	Law Reform Commission Description of Flats on Sale
CONTENTS	<p>38/94</p> <p>THE HONG KONG HOUSING AUTHORITY</p> <p>Memorandum for the Home Ownership Committee</p> <p>Law Reform Commission Description of Flats on Sale</p> <p>PURPOSE</p> <p>To seek Members' endorsement of a proposed response to the Consultative Document issued by the Law Reform Commission's Sub-committee on Description of Flats on Sale.</p> <p>BACKGROUND</p> <p>2. In November 1992, the Law Reform Commission appointed a sub-committee to consider the following terms of reference and to make proposals to the Law Reform Commission for reform -</p> <p>"Should the law governing the protection of prospective purchasers and purchasers of uncompleted residential property in relation to inadequate or misleading sales information or particulars be changed and, if so, in what way?"</p> <p>3. The sub-committee, has now produced a consultative document containing its tentative recommendations on ways to curb misleading descriptions of flats on sale in Hong Kong. The full document is held by the Committees' Secretary and is available for Members' perusal on request. A summary of the consultative document is at the Annex.</p> <p>Present Position</p> <p>4. The pre-sale of flats in uncompleted developments may be divided into two categories</p> <p>(a) The "Consent Scheme", which generally applies to the development of lots where the Government leases stipulate that the prior consent of the Director of Lands must be obtained before uncompleted units can be sold. The conditions for granting consent are varied to meet changing needs to protect purchasers of uncompleted units. There is therefore already some degree of control by Government over the contents of sales literature and the extent and accuracy of information provided by the developer. Standardised agreements for sales and purchase must be used</p> <p>(b) "Non-Consent Scheme" refers to property developments where there are no lease conditions stipulating that prior consent of the Director of Lands is required for the sale of uncompleted units.</p> <p>5. Broadly speaking, the sub-committee recommends improvements to the requirements of the existing Consent Scheme and also recommends that similar control should be extended to Non-Consent Scheme developments. These changes should be enforced by legislation.</p> <p>6. The major areas on which recommendations are made in the document are listed below -</p> <p>(a) Statutory definitions of gross floor area and saleable area;</p> <p>(b) Full information, and scales, on floor plans, and availability of building plans;</p>

- (c) Descriptions of fittings and finishes;
- (d) Detailed location and layout plans;
- (e) Estimated dates for occupation permit, certificate of compliance and completion of construction;
- (f) Developers' charges for transfers of purchases to third parties;
- (g) Mortgage facilities;
- (h) Preliminary agreements for sale and purchase;
- (i) Defect Liability Period;
- (j) Deeds of Mutual Covenant;
- (k) Conditions of Land Leases;
- (l) Internal sales of flats;
- (m) Sales brochures; and
- (n) Enforcement by legislation.

VIEWS OF THE DEPARTMENT

Application to the Home Ownership Scheme (HOS) and Private Sector Participation Scheme (PSPS)

7. The implementation of the report would have very little impact on the Authority because the HOS and the PSPS already comply with virtually all the recommendations. The PSPS is already governed by the Consent Scheme. At present the HOS is not controlled by the Consent Scheme, largely because the legal documents are already prepared by the Legal and Conveyancing Office (LACO) of the Lands Department, which is the approving authority under the Consent Scheme. As for brochures and price lists, the Department voluntarily ensures that these are in compliance with the guidelines of the Consent Scheme.

8. However, the consultative document suggests that HOS should be excluded from the proposed legislative control. It is difficult to see the benefit to the Housing Authority resulting from this suggestion, and why HOS should be treated differently. It is, therefore, proposed to comment to the sub-committee that the HOS should not be excluded.

Application to the Private Sector

9. The recommendations of the sub-committee are strongly supported. There is a need for protection of the consumer at a time when he is contemplating one of the most important and expensive decisions in his lifetime. For flats in uncompleted buildings the only source of information is from the developer's publicity, literature, brochures and price lists. It is essential that these should be complete and accurate. It is proposed that a response should be made to the sub-committee, on behalf of the Authority on these lines.

10. A few minor technical points have been identified and comment will be made separately by the Department to the Sub-committee.

RECOMMENDATION

11. It is proposed to reply to the sub-committee, on behalf of the Housing Authority, that -

- (a) the recommendations contained in the consultative document are acceptable;
- (b) the proposal for statutory control of the description of flats on sale is strongly supported; and
- (c) the Home Ownership Scheme should not be exempt from the proposed legislation.

PRESUMPTION

12. It is not thought that Members will object to the recommendation above. If no objection or request for discussion is received by the Committees' Secretary by noon on 28 June 1994, Members' approval will be presumed and appropriate action taken.

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