

25 September 1997
(Thursday)

Law Reform Commission Issues
Report on Sales Descriptions of
Overseas Uncompleted Residential Properties

The Law Reform Commission today (Thursday) issued a report on the ways to curb misleading advertisements for overseas uncompleted residential properties advertised or offered for sale in Hong Kong.

The report contains the Commission's final recommendations on sales descriptions of overseas uncompleted residential property, and reflects the comments made in response to a Consultative Document issued in September 1996. Mr Kennedy Wong Ying-ho, Chairman of the LRC sub-committee on sales descriptions of uncompleted residential property, said that the problems of inadequate and misleading sales information in the sale of overseas uncompleted units are manifold. Most sales brochures and advertisements, for instance, do not give a definite date of the property being ready for occupation. Failure to complete construction on time is, therefore, one of the most serious problems. Mr Wong said purchasers should be given better protection by getting adequate and accurate sales information, albeit at the expense of added costs and inconvenience to developers and estate agents.

The main recommendations in the report are:

- Any vendor of overseas uncompleted residential property must engage a licensed estate agent in Hong Kong. However, this requirement shall not apply to the sale of a single dwelling by a private individual.
- No media in Hong Kong (including television, radio and printed media) shall publish an advertisement for sale of overseas uncompleted residential property unless it refers to a licensed estate agent in Hong Kong, together with the estate agent's licence number. However, the requirements shall not apply to advertisements for the sale of a single dwelling by a private individual, nor to advertisements of overseas property not put up for sale in Hong Kong.
- The estate agent who is referred to in the advertisement shall be liable for all false or misleading information in the advertisement and in all sales brochures not forming part of the advertisement.
- Anything in any advertisement or sales brochure which is false or misleading should constitute a breach of the proposed legislation.
- Up-to-date sales brochures must be made available to prospective purchasers. It should be the licensed estate agent's responsibility to make available the sales brochure. All information in the sales brochure must be accurate at the time the property is first advertised for sale.
- The sales brochure must be available in Chinese. If there are discrepancies between the Chinese and any other version of the sales brochure, purchasers can choose which version or part thereof is applicable.
- The sales brochure must state the date of the property being ready for occupation and the grounds on which the date of completion can be extended.

- The sales brochure must state whether there are any mechanisms for protecting all deposits and instalments paid by purchasers in the event of delayed completion or project failure.
- Any description of the fittings and finishes in the sales brochure must be accurate.
- Anything stated in advertisements or sales brochures about gifts and benefits including nationality schemes must be accurate and not misleading.
- The Hong Kong definition of saleable area must be adopted in all sales brochures and advertisements of overseas uncompleted residential property. The saleable area must be disclosed in the sales brochure.
- All the recommendations should be enforced by legislation.

The report also recommended Government to undertake a separate study to find out the appropriate financial measures (including stakeholding, trust account, insurance and bonds put up by developers) to protect all deposits and instalments paid by purchasers in the event of project delay or failure.

Background Note

In November 1992, the Law Reform Commission appointed a sub-committee to consider the sales descriptions of uncompleted residential property, chaired by Professor Derek Roebuck formerly of the Department of Law of the City University. The sub-committee includes among its members lawyers, architects, surveyors and others with relevant expertise. Professor Roebuck had been Chairman of the sub-committee for over four years until he resigned from the subcommittee in July 1997. Mr Kennedy Wong Ying-ho succeeded him as new Chairman of the sub-committee.

In September 1994, the sub-committee completed their study on the first part of the reference relating to local uncompleted flats and made their proposals for reform to the Commission. The sub-committee's proposals were largely adopted by the Commission and formed the basis of the Commission report published in April 1995 on the sales descriptions of local uncompleted residential property.

Afterwards, the sub-committee went on to the second part of their study, namely, the sales descriptions of overseas uncompleted residential properties, including those situated in mainland China. In September 1996, the subcommittee issued a Consultative Document containing their interim recommendations for public consultation.