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Legal Advisory and Conveyancing Office
Circular Memorandum No. 51

Review of the Consent Scheme

The Working Group

A Working Group comprising representatives from REDA, HKAB, HKIA, the Consumer Council, HKIS, the Law Society, HKIREA, HPLB, ICAC and LACO has been set up to review the Consent Scheme. Four meetings have been held so far. Progress has been made. A number of important issues will continue to be discussed. The fifth meeting of the Working Group will be held on Thursday, 28 August 2003.

Members of the Working Group were informed at the meeting on 7 August 2003 that it is intended that the final report of the Group is to be provided by the end of September/early October 2003. With the co-operation of members of the Working Group, LACO is confident that the final report will be completed by then.

The New Measures

New measures have been introduced by LACO on a trial basis. The new measures will be applied to all consents to sell until further notice on a case by case basis. LACO is adopting a flexible approach to the implementation of the measures. If practitioners or their clients experience any difficulty in complying with these measures they are welcome to approach LACO.

The new measures are: -

1. Disclosure of More Information

LACO CM No. 40 requires the disclosure of the names of contractors, the Authorized Person ("AP"), and the intended manager in sales brochures. Under the new measure additionally the names of the developer and its parent company, of the AP, of the architect firm to which the AP belongs and of the solicitor firm(s) representing the developer in the sale of units and the mortgagee bank (if any) have to be disclosed in sales brochures and advertisements. However, it has been agreed by LACO that in e.g. television and radio advertisements it is not possible to include all the required information.

The above information is to be included in the monthly press release of LACO to the public, the fax-on-demand service of LACO's Consent Hotline and the Lands Department website.

2. Substitution or Addition of Firms of Solicitors

It is a present requirement of the Consent Scheme that, if following the issue of a consent to sell, a firm of solicitors is to act in lieu of or in addition to the firm which has obtained the consent, that the substitute or additional firm(s) register a statutory declaration in similar form to that required of the firm which has applied for consent. Usually, a copy of these statutory declarations is submitted to LACO. A number of errors in these "supplementary" statutory declarations have been noted by LACO. Accordingly, LACO has decided that these "supplementary" statutory declarations should be checked and as an adjunct to this LACO should check: -

- (a) bearing in mind that joint representation of both vendors and purchasers is allowed under the Consent Scheme, that any "new" firm has the resources to properly advise purchasers having regard to the number of partners and solicitors in the firm and the number of units in respect of which the firm has been instructed. In cases of doubt, the firm will be asked to inform LACO of the previous experience of the firm in handling the number of conveyances for which they are now being instructed. Such firms will be invited to demonstrate that they have the necessary resources to handle the conveyancing;

- (b) that there are proper arrangements in hand as to stakeholder accounts. It has been suggested that where a number of firms are acting in relation to the same development that the lead firm alone should operate the stakeholder account – this should assist in providing greater security for stakeholder funds and the monitoring of the account as well as eliminating the need to obtain consent from all firms under the new measure no. 4 below; and
- (c) that there is no conflict of interest.

3. Additional Notifications to Purchasers

The LACO approved form of ASP requires the vendor to notify purchasers: -

- (a) under Clause 4(2) any application for extension of the Building Covenant (“BC”) period but the Vendor has no obligation to notify purchasers if the Vendor fails to apply for or obtain an extension or to complete construction of the development within the period whether extended or not. Under Clause 4(3) a purchaser has right of rescission if the Vendor fails to apply for and obtain any necessary extension or to complete the development by the expiry date of the BC; and
- (b) under Clause 4(5)(b) any extension of time granted by the AP (e.g. on account of inclement weather) under Clause 4(5)(a) but the Vendor has no obligation to inform purchasers if construction is not completed by the date for completion of construction in Clause 4(1)(c) or by the date as extended by the AP under Clause 4(5)(a). Under Clause 4(4)(a) the purchaser has a right of rescission if the Vendor fails to complete the development by the date in Clause 4(1)(c) or by that date as extended by the AP under Clause 4(5)(a).

If purchasers have a right of rescission upon the occurrence of an event and that event will or may not be known to them but is known to the Vendor, it is important that the Vendor informs purchasers of the event having occurred. Accordingly, under the new measures, Vendors are obliged to notify purchasers of: -

- (a) any failure to apply for or obtain any necessary BC extension or to complete construction of the development before expiry of the BC and to draw the attention of purchasers to their rights of rescission under Clause 4(3); and
- (b) the reasons for any extension by the AP and any failure to complete construction of the development by the contractual date for completion in Clause 4(1)(c) or by the date as extended by the AP under Clause 4(5)(a).

4. Payments out of Stakeholder Accounts

- (a) Previously there have been no terms or conditions in consents to sell dealing with the situation where the developer has instructed more than one firm of solicitors to act on the sale of units in a development and purchase monies are paid into a number of stakeholder accounts. To ensure that there are proper arrangements in place as to the release of monies from the stakeholder accounts, as a new measure, LACO requires the written consent of all the firms instructed as to any release from any of the stakeholder accounts. LACO understands that this is in line with the usual arrangements entered into between firms where more than one firm is instructed on the sale of units in a development.
- (b) Under the Consent Scheme, purchase monies are paid into a stakeholder account. Monies from that account may be used to pay construction costs or to repay the Building Mortgage (if any). To ensure that units are released from the Building Mortgage where the purchase price of those units has been paid in full, LACO considers that there should be no releases from stakeholder accounts without the endorsement of the Building Mortgagee – a new measure to that effect has been introduced. LACO understands that this is in line with most if not all Building Mortgages which require the written consent, approval or endorsement of the Mortgagee to the release of any of the stakeholder monies.

The measures nos. 1, 3 and 4 will be incorporated into consents to sell issued henceforth by LACO. Where consents to sell have already been issued, LACO hopes that brochures and advertisements will include the additional information in

measure no. 1 and that in measure no. 4 will be implemented where the arrangements in measure no. 4 are not already in place. The "approval" measure in measure no. 2 will apply to all applications for substitution or addition of firms to act in sales under the Consent Scheme.



(A. L. Robertson)
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To : All Solicitors

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