

11 May 1994

Legal Advisory and Conveyancing Office
Circular Memorandum No. 6

Mortgage or Charge of Flats under the
Home Ownership Scheme/the Private Sector Participation Scheme

Further to Legal Advisory & Conveyancing Office Circular Memorandum No. 5, I wish to remind solicitors of the restrictions on the mortgaging or charging of flats acquired under the Home Ownership Scheme (HOS) and the Private Sector Participation Scheme (PSPS).

HOS/PSPS Agreements for Sale and Purchase and Deeds of Assignment incorporate the Schedule to the Housing Ordinance (Cap.283) ("the Schedule"). Paragraph 1 of the Schedule prohibits (subject to the Schedule) the mortgaging or charging by an HOS/PSPS flat purchaser of his flat prior to the expiry of a period of 10 years from the date of the assignment to him coupled with the payment of a premium calculated in accordance with the Schedule.

Under paragraph 4 of the Schedule, an HOS/PSPS flat purchaser is permitted to mortgage or charge his flat only with the prior approval of the Director of Housing ("the Director") and on such terms as are authorized by the Director in writing. Any mortgage or charge of a flat which has not been approved by the Director or does not comply with the terms on which the Director has signified his approval is to be regarded as unauthorized and in breach of the Schedule.

Any breach of the Schedule will necessarily be a breach of the terms and conditions of the HOS/PSPS agreement for sale and purchase and deed of assignment, for breach of which action may be taken against the HOS/PSPS flat purchaser.

It is important to ensure, when dealing with mortgages or charges of flats under the HOS/PSPS, that they are first approved or authorized by the Director and comply strictly with all the terms imposed by him.

HOS/PSPS mortgages or charges are authorized by the Director under and by virtue of Deeds of Guarantee entered into between the Hong Kong Housing Authority and participating lending institutions and therefore must not differ from the prescribed form.

If any variation from the prescribed form is required to meet the circumstances of a particular case the approval of the Director to the variation must first be obtained. If this approval is not obtained, the mortgage or charge will not have the benefit of the relevant Deed of Guarantee. HOS/PSPS mortgages or charges authorized by the Director otherwise than by the Deeds of Guarantee, should be first approved by the Director.

(T. E. Berry)
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To : All Solicitors

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