

LACO/HQ/127 II

20/F, North Point Govt. Offices
333 Java Road
North Point, Hong Kong

8 October 1998

Legal Advisory and Conveyancing Office
Circular Memorandum No. 36

Breaches of Lands Department Consent
Preliminary Agreements

It has come to my attention recently that in the current difficult market circumstances, some developers are considering various sales techniques and practices which are, or could be interpreted strictly as being, in breach of the conditions of LACO's consent letter, or at the very least, would stretch the interpretation of those conditions beyond what might be considered a reasonable understanding.

2. In particular, it appears that because preliminary agreements (PA) are not approved by LACO, nor, usually, by solicitors, there are clauses in PA's which do not strictly comply with the terms of the consent letters. For example, the usual form of consent letter is quite clear as to payment of "reservation fees" or preliminary deposits, personal attendance for registration by the original purchaser and also provides that an additional person or persons may be added in at the time of registration prior to the ballot on production of photocopies of identity documents and without the need for the additional persons(s) to be personally present at the registration time. I note from a recent selection of PA's for various developments, that most developers also provide that an additional person may be permitted to join in (subject to the necessary adequate proof of a close family connection) to sign either the PA or the formal Agreement for Sale and Purchase (ASP) after the ballot, even though they were not registered at the time. Some developers also allow the original purchaser to submit his name for registration by a representative (e.g. staff member etc.).

3. These practices are not considered to form any part of speculative activity in the market, so long as the original purchaser who registered for the ballot remains a party to the contract up to and including execution of the assignment in favour of the original party, together with any additional personal persons (being a close family member). There is, in principle, no Government objection to this practice. Therefore, with immediate effect, approval is given to PA's and any formal ASP's that have been entered into where (i) the original name registered for the ballot was submitted by an authorized representative or (ii) an additional person or persons has been added in, who is a close family member but was not registered with the developer for the original ballot. The

wording of the relevant conditions of future consent letters will be appropriately amended to reflect this more precisely.

5. Solicitors and their developer clients are reminded, that while legal advice may not always be obtained in relation to the contents of the PA's used by developers' sales staff, PA's are equally subject to the conditions of the consent letter and any unauthorized variations to the approved terms in the PA will be strictly dealt with and may result in the immediate withdrawal or suspension of the consent. The consent would only be reinstated subject to strict conditions which may include a requirement, for example, that all purchasers under such PA's or formal ASPs following on from them in breach of any consent conditions should be given the opportunity to rescind the agreement at no cost to the purchasers and on full refund of any payments made by them (with interest) and subject to any other conditions which might be imposed by the Director.

6. To make the responsibility clear for ensuring that all the conditions of consent are complied with, future consent letters will include a condition that the solicitors firm acting in the sale and purchase of units will ensure that their vendor client is fully aware of the conditions on which the consent is given relating to all aspects of the conduct of sale of units including the terms of the preliminary agreement. In particular, the firm will check that the terms of any PA does not breach the consent before it prepares any formal ASP. If any breach is identified, the firm will not act for either party in the sale of that unit and will immediately notify LACO of the breach. In respect of any breach, LACO reserves the right to suspend with retrospective effect the consent and no further sales of units on the lot shall be permitted until LACO has confirmed in writing whether the consent is reinstated and, if so, subject to any additional conditions. A declaration to the effect of this paragraph will also be required to be included in the Statutory Declaration made by a partner of the firm in reliance upon which the consent is issued."

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

(T E Berry)
Deputy Director/Legal
for Director of Lands

To: All Solicitors