

28 December 1993

Legal Advisory and Conveyancing Office
Circular Memorandum No. 5

Alienation of flats acquired under the
Home Ownership and
Private Sector Participation Schemes

The purpose of this Memorandum is to remind Solicitors of the provisions of sections 17B and 27A of the Housing Ordinance (Cap. 283) relating to the alienation of flats acquired under the Home Ownership Scheme (HOS) and the Private Sector Participation Scheme (PSPS) and the obligation to pay premium prior to alienation, because the ten-year restriction on alienation for the first HOS/PSPS developments has recently expired. It is important therefore to keep these provisions in mind when dealing with transactions involving flats under either the HOS or the PSPS.

2. Section 17B provides, in effect, that any alienation, agreement to alienate, etc. : -
 - (a) by a flat purchaser under the HOS or the PSPS in breach of any term or condition of his/her Agreement for Sale and Purchase or covenant in his/her Deed of Assignment; or
 - (b) by a mortgagee in breach of any of the terms on which the mortgage was authorized by the Director of Housing shall be void.
3. Section 27A makes it an offense for any person, other than a mortgagee under a mortgage guaranteed by the Housing Authority, to alienate a flat in the circumstances mentioned in section 17B and provides for a fine of \$200,000 and imprisonment for one year for so doing.
4. HOS and PSPS Agreement for Sale and Purchase and Deed of Assignment incorporate the Schedule to the Housing Ordinance. The Schedule contains, inter alia, restrictions on the alienation of HOS/PSPS flats or any agreement so to do unless: -
 - (a) ten years has elapsed since the assignment to the purchaser; or
 - (b) before that ten-year period has elapsed, the Authority or its nominee has declined to accept an assignment of the flat offered by the purchaser to the Authority;

AND premium as assessed by the Authority has been paid.

5. Notwithstanding that the payment of premium referred to in paragraph 4 above has not been paid, HOS/PSPS purchasers may: -

- (a) mortgage or charge the flat with the prior approval of and upon terms authorized in writing by the Director of Housing; or
- (b) enter into an Agreement for Sale and Purchase in respect of the flat providing the premium as assessed by the Director of Housing is paid to the Authority within such period as specified by the Director and, in any event, prior to assignment. Such Agreements may be entered into only if the ten-year period in paragraph 4(a) above has elapsed or the Authority has declined to accept an assignment as stated in paragraph 4(b) above. To ensure that premium can be assessed prior to the completion of the assignment, the HOS/PSPS purchaser (as vendor) should have the assessment done prior to entering into the Agreement, or, alternatively ensure that the Agreement itself provides for the fact that the assessment has yet to be completed. The Authority cannot undertake to complete such assessment within any particular time to comply with a completion date specified by the HOS/PSPS purchaser.

(T. E. Berry)
Principal Solicitor
for Director of Lands

To : All Solicitors

c.c. LACO 14/700/91 II

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