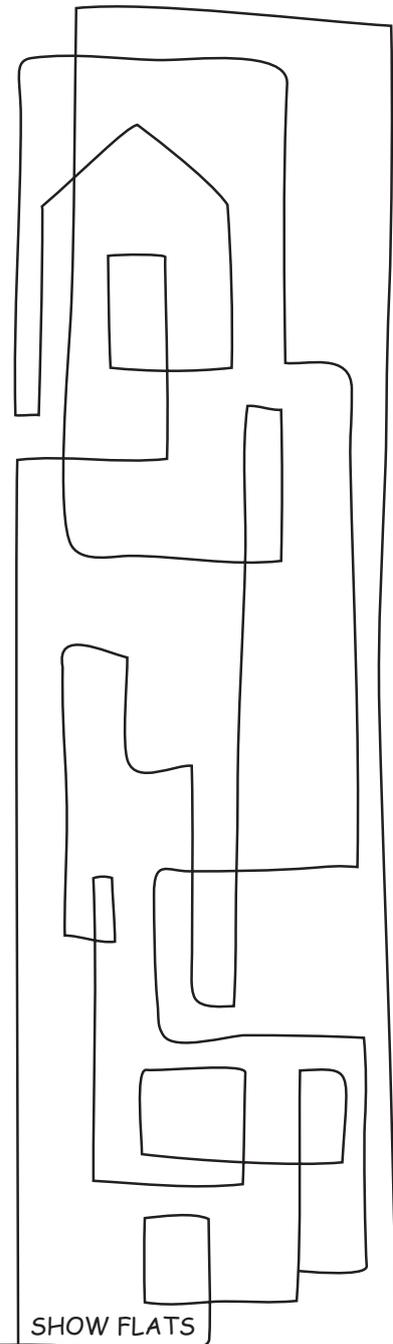


# Study on the Sales of First-hand Residential Properties

A Review of the Regulatory Regime and  
Recommendations on the Way Forward

Executive Summary



SALES BROCHURES

SALES ARRANGEMENTS

SHOW FLATS

PRICE LISTS

ADVERTISEMENTS

DISCLOSURE OF TRANSACTIONS

## EXECUTIVE SUMMARY

1. Pressure to make quick sales, a limited number of units for selection, and units released in small batches with price increases, these are some of the endemic problems that have characterized the sales of first-hand residential properties in Hong Kong. One and a half years after the Residential Properties (First-hand Sales) Ordinance (the Ordinance) came into place in April 2013, the Consumer Council (the Council) conducted survey, focus group meetings, field visits and research to ascertain whether the new law has put an end to these problematic issues.
2. The Ordinance aims to ensure information transparency and that adequate information is provided to prospective purchasers of first-hand residential properties for a rational and informed choice. The intention of the law is to promote the accuracy of market information and impose a discipline on the behavior of persons involved in selling the properties; while still ensuring that there is not an overregulation of sales practices that might stifle legitimate business.
3. Legislation is a good start in ensuring a fair marketplace. However, the findings of this study showed, it is not yet a panacea for resolving the range of problems that can arise, and which have been identified by the Council.
4. The study is comprised of two parts. Part one is consumer research comprising a survey of 602 respondents from across Hong Kong, during April and May 2014 and three focus group meetings in late May 2014. Part two of the study comprised field visits carried out by the Council, during June and July 2014, involving 17 residential development projects of different scales of development by different property developers. In addition to field visits, compliance checks were conducted on these 17 developments. The Council's study commenced in April 2014 and was completed in September 2014.
5. In this report, the results of consumer survey and focus group meetings conducted by the Council indicate how consumers assess this Ordinance and what they want to improve. Field visits on selected residential property developments indicate how in practice consumers are being treated during the sales process. Compliance checks undertaken by the Council staff on sales materials distributed at sales offices, documents available on the developments' websites and advertisements indicate how the trade has been performing under the relevant obligations imposed under the Ordinance. The Council had also made an attempt to identify any market practices not being regulated could affect consumer interests.

6. Key findings of the study are as follows:

*Confusing voluminous information and dubious sales practices*

7. Sales brochures, price lists and register of transactions that should provide accurate and useful information are not always user-friendly to prospective purchasers. About 43.6% of the survey respondents said “average” when asked on the extent of adequacy of sales brochures in providing property information and 44.5% of the respondents considered the price lists available to the public at least 3 days prior to the commencement of sale was insufficient. For sales brochures, some were of odd sizes and weights (as heavy as 3.4kg), and key information such as management fee was not mandatorily required. For price lists, there were frequent revisions on the prices. For register of transactions, the information was not readily available at the time of sale.
8. Information on price lists can be confusing if not misleading in that units included in the price lists might not be for sale. This would be inconsistent with the legislative intent that the prescribed number of units should be made available for sale to the public. Seven out of the 17 developments with properties listed in the price lists were not fully available for sale in the corresponding sales arrangements, creating confusion over the information in these price lists for prospective purchasers.
9. Unofficial promotional materials are being made available to prospective purchasers. This defeats the purpose of the legislative requirements on setting out required information in sales brochures and price lists. Among the 15 field visits with estate agents, unofficial and abbreviated promotional materials such as mini-catalogs and self-prepared price lists claiming to replace the developers’ sales brochures and price lists were being made available in 13 field visits by sales persons to prospective purchasers.
10. Alleged misleading sales practices persist, in particular to falsely representing the extent of actual market demand.
11. The Council studied the reported number of registration of intent and the actual sales situation on the first date of sale of 8 developments and observed that inflated numbers of registration of intent were in existence – by as large as 20 times.
12. There is a hazardous quick sales culture through aggressive tactics by sales persons to pressurize purchasers for a quick decision. Furthermore a high forfeiture amount of 5% of the purchase price and a short ‘cooling-off period’ of 5 working days also places purchasers at a distinct disadvantageous position.

13. From the Council's field visits and compliance checks, the amount of time given to prospective purchasers to make the purchase decision can be instant after being informed of the ballot drawing results. In one case, prospective purchasers were required to make a purchase decision within 3 minutes during their turn of selection.
14. There are also consumer views that the defects liability period should be extended to enhance the protection of home buyers as many defects might not be immediately known.
15. To assess the sales practices and compliance of developers or estate agents in the sales of first-hand residential properties to prospective purchasers, the Council conducted field visits of 17 residential development projects in total.
16. An example of the hazardous quick sales culture can be found in the Council's study concerning ballot sales of first-hand residential properties. Council fieldworkers visited sales offices posing as potential participants in ballot sales and encountered a number of practices of concern.

#### *Lending to prospective purchasers*

17. In many of the developments under study, each registrant was entitled to a maximum of two balloting rights. Therefore, in order to increase the chance of buying a property, estate agents would typically try and persuade Council fieldworkers (posing as potential participants) to submit at least two registrations of intent to maximize their chance of success. Estate agency companies would offer cashier orders prepared in advance for lending to the fieldworkers. The fieldworkers could then undertake to pay the estate agency company by credit card or by cheque. Furthermore, to entice the fieldworkers who were still considering to register, the estate agents offered to arrange extra cashier orders with credit card guarantee. To the Council's understanding, making loans to prospective purchasers when promoting first-hand residential properties would constitute a breach of the Estate Agents Authority's (EAA) guidelines.

#### *Aggressive on-site selling*

18. It is a basic right of consumers to be informed adequately and accurately. Prospective purchasers should have the time to collect and verify information from the estate agents before making purchase. However, fieldworkers were lobbied aggressively by most estate agents encountered at the field visits to make an instant decision on the spot. One case study experienced by a fieldworker who participated in the balloting sales process clearly illustrates the intense pressure prospective purchasers are under to make a decision. The whole selection process would typically only take a few minutes, from being shown the units available for sale to deciding on a

purchase. The Council wonders under such aggressive sales tactics how many home buyers are rushed into making abrupt and ill-informed decisions as a result.

19. As a whole, the Council has categorized the problems of sales of the first-hand residential properties into the following:
  - Regulatory gaps requiring improvement on the Ordinance; and
  - Adverse effect arising from questionable sales practices.
20. Having regard to the findings from consumer research, field visits and compliance checks, and in order to promote desirable trade practices and enhance consumer welfare, the Council puts forward eight recommendations for serious considerations by the Government, the regulators and the trade.

**Recommendation 1: Ensure all units in price list available for sale concurrently**

21. As indicated from the Council's compliance checks, there were 7 out of the 17 developments under study where some property units listed in price lists were not fully available for sale in the corresponding sales arrangements.
22. The Council considers that information on "not for sale" units in a price list is confusing to prospective purchasers and therefore should be excluded. Despite the requirement that when developers sell units they have to follow the prices stated on the price lists, any adjustments considered necessary to the prices could be made through issuing revised price lists. Thus the units concerned could be put back for sale 3 days subsequent to the issue of revised price lists.
23. The Council is of the view that requiring developers to publish a price list without requiring them to offer all the units on the price list for sale, thereby allowing them to adjust the prices for the remaining units 3 days later, creates confusion for prospective purchasers, legitimizes the practice of "releasing units in small batches", and opens up for market speculation.
24. The Council considers that a price list is an offer to prospective purchasers, and once a price list is published the developers should honour the commitment and sell all the units at the prices as specified in the price list, and that the availability of price lists should be prolonged to 7 days prior to the date of sale as suggested by the majority of respondents in the survey, to minimize confusion and uncertainty to prospective purchasers. This would also be consistent with the legislative intent that the prescribed number of units should be made available for sale to the public, thereby satisfying the government intention to ensure adequate supply of units in the market.

## Recommendation 2: Review the ‘Cooling-off period’ and forfeiture amount

25. At present, if a purchaser does not execute an agreement for sale and purchase (ASP) within 5 working days after entering into the preliminary agreement for sale and purchase (PASP), the PASP is terminated and the preliminary deposit i.e. 5% of the purchase price will be forfeited.
26. In Hong Kong, many people who purchase a home need to apply for mortgage loan to finance the payment. Based on feedback received by the Council, there were situations where consumers who signed a provisional agreement and paid a deposit, later found that their application for a mortgage was refused, or the amount that could be borrowed was insufficient to complete the transaction. Field visit experience also shows that prospective purchasers often have to sign a PASP hastily in a short period of time without due consideration of the implications if their application for mortgage financing runs into problem. Accordingly, there is a need to improve consumer safeguards against this issue.
27. The Council’s survey and focus group discussions also indicated that the 5 working day ‘cooling-off period’ is considered too short and the forfeiture amount of 5% of the purchase price may be too high in view of rising property prices e.g. 5% of a \$10 million property amounts to \$500,000. This criticism is justified when compared against the situation with cooling off periods for insurance contracts (as an example) and requirements from other jurisdictions.
28. The Council has compared the ‘cooling-off period’ and amount of forfeiture of different jurisdictions as follows:

Jurisdiction	Cooling-off period	Amount of forfeiture
Hong Kong	<ul style="list-style-type: none"> <li>• 5 working days</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of the purchase price</li> </ul>
British Columbia, Canada	<ul style="list-style-type: none"> <li>• 7 days</li> </ul>	<ul style="list-style-type: none"> <li>• Nil</li> </ul>
Melbourne, Australia	<ul style="list-style-type: none"> <li>• Within 3 clear business days</li> </ul>	<ul style="list-style-type: none"> <li>• AUD\$100 or 0.2% of the purchase price (whichever is the greater)</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>• 3 weeks which purchaser could consider to proceed with the transaction or not</li> </ul>	<ul style="list-style-type: none"> <li>• 25% of booking fee (i.e. 1.25% of the purchase price)</li> </ul>
United Kingdom (voluntary code)	<ul style="list-style-type: none"> <li>• A reservation period between 10 and 14 days</li> </ul>	<ul style="list-style-type: none"> <li>• Administration fee as set out in the agreement</li> </ul>

29. Though Melbourne, Australia has a ‘cooling-off period’ of 3 clear business days, the forfeiture amount is only AUD\$100 or 0.2% of the purchase price whichever is greater. In Singapore, a purchaser has 3 weeks to consider to

proceed with the transaction and the forfeiture amount is 1.25% of the purchase price.

30. While the application of 'subject to mortgage' clauses which are adopted in overseas (Australia, Canada and Taipei) and local (Home Ownership Scheme) might be an alternative which the Government could further explore, the Council considers that the 'cooling-off period' should be lengthened to ensure prospective purchasers to have sufficient time to check for mortgage availability. Furthermore, the amount of forfeiture should be reduced in view of the high property prices, and that a review should be carried out by the Government to collect public views in setting the appropriate time period and amount.
31. According to feedback from the Council's survey, the respondents suggested the 'cooling-off period' be lengthened to 7 – 14 days and the forfeiture amount be 1% to 3% of the purchase price. There are also views that a home purchase is one of the biggest, if not the biggest investment of one's life, a 'cooling-off period' for the purchase of property should not be too short for a hasty decision but be reasonably long enough for purchasers to take care of all matters concerned.

### **Recommendation 3: Lengthen defects liability period**

32. The Hong Kong residential property market is typified by prospective purchasers who buy a flat before it is completed. Purchasers of uncompleted properties take the risk that they will not be able to inspect the flat until completion of the purchase and vacant possession be given to purchaser.
33. Complaints by purchasers about defects are very common, and the defects liability period is very short. According to the sales brochures of the 17 property developments visited, the defects liability period is in general within 6 months after the date of completion of the sale and purchase of the residential property, regardless of whether the property is a house or a flat. This is in compliance with the existing requirement that the sales brochure must state the duration of the period (i.e. after receipt of a written notice served by the purchaser within 6 months after the date of completion of the sale and purchase) during which the vendor is liable to make good any defect in the specified residential property, as provided in the ASP.
34. The duration of the defects liability period is of great importance to purchasers. In Singapore, vendors (developers) are required to offer a 12 months defects liability period, while in British Columbia, Canada, the minimum requirement of home warranty insurance covers 2 years on labour and materials, 5 years on the building envelope, including water penetration, and 10 years on the structure. In Hong Kong, the Housing Authority (HA)

generally offers a 12-month defects liability period and a 10-year Structural Safety Guarantee for flats under the Home Ownership Scheme and the Private Sector Participation Scheme to maintain the overall structural stability and integrity of the building. The Council has no reason to believe that the building standards among Hong Kong developers in the private sector, HA's developers and overseas developers vary substantially and justify for Hong Kong to have a much shorter warranty period.

35. As some defects such as leakage might not surface within a short period of time, the Council suggests, based on overseas and local experiences, that the defects liability period should be lengthened to any period between 12 to 24 months for labour and materials. Moreover, warranty information on the building ceiling and structure should also be provided in sales brochures and ASPs to enhance information transparency.

#### **Recommendation 4: Strengthen compliance checks and penalty**

36. In the case of property developments which allow submission of 2 registrations of intent by individual registrant, a couple of prospective purchasers can submit a total of 6 registrations of intent (i.e. two under the name of the husband, two under that of the wife, and two under their joint account) for the development, but at the end purchase only one property or not at all. The Council has reviewed press reports on the number of registrations of intent and the actual sales situation on the first date of sale of 8 property developments and has concluded that the reliability of the number of registration of intent to reflect genuine demand is questionable.
37. The Council is concerned that offering extra cashier orders to prospective purchasers encourages speculative activities and drives prospective purchasers into making rush purchasing decisions. Given that there is no mechanism available to verify the accuracy of information in making purchase decisions, the outcome is that it could create possibly misleading and confusing signals to the market about the number of prospective purchasers with intent to buy a particular development.
38. While the EAA's guidelines prohibit estate agents from making loans to prospective purchasers when promoting a first-hand residential property, observations and findings from the Council's field visits indicated that such practices are common and well organized, as evident in the existence of estate agency company cashier order loan forms.
39. The Council noticed that both the Sale of First-hand Residential Properties Authority (SRPA) and the EAA conduct on-site inspection of sales offices and show flats. Given that unsatisfactory sales practices, as mentioned above, are still prevalent, the Council proposes that the two regulatory authorities

increase the inspection frequency, in particular, the availability of mystery form so as to ensure trade compliance and professionalism.

40. It is further suggested that the penalty for making loans to prospective purchasers should be reviewed and substantially strengthened by EAA, such as revoking a license and increasing the existing fine amount, at both the individual estate agent and estate agency company levels, to provide greater deterrence.
41. If the problem of making loans to prospective purchasers continues and seriously disrupts market order, the Council considers that the Government should step in to study the feasibility of requiring the developers to bank in the cashier orders from prospective purchasers so as to prevent estate agents from making loans and to offer the prospective purchasers an opportunity for making a rational choice as direct cost is involved.

#### **Recommendation 5: Increase scrutiny of property advertisements**

42. Often advertising involves creativity. However, to ensure that prospective purchasers will not be misled, the Council is of the firm opinion that representational information in advertisements such as property location, building materials and equipment, building surroundings, views and landscape should not be different from the reality. The appearance, design, and layout of the property depicted in artists' impressions in advertisements should always promote the factual reality of the development and less emphasis should be placed on images or wordings that over-beautify the development and create unrealistic emotions and expectations in the mind of prospective purchasers.
43. The Council suggests that to counter the problem of market exuberance arising through overly creative representations in advertisements and enthusiastic information on sales trends, the SRPA should further strengthen its scrutiny on property advertisements and publicity activities, and develop more detailed guidelines on the release of sensitive information such as sales related figures.

#### **Recommendation 6: Improve transparency of sales arrangements**

44. The Council conducted field visits and participated in the ballot sales arrangements to assess the transparency of different sales arrangements. It was observed that some balloting took place right after the close of registration of intent, and some on the first date of sale. As illustrated in the field visit study, once a ballot result was known, fieldworker had to proceed to the sales area immediately to select a property for purchase. However, despite that the fieldworker was in the sales area of the sales office, awaiting

his or her turn for selection, the fieldworker was still in the dark as to which units on which floors at which blocks of what sizes were sold or yet available for sale. If comprehensive property information was available, the fieldworker could be in a better position to make an informed choice.

45. The Council is of the view that irrespective of different balloting arrangements, sufficient time must be allowed for prospective purchasers to make an appropriate purchase decision. As there has been an increased tendency in using balloting in property sales, prospective purchasers will find it helpful if developers could schedule the sessions on balloting and property selection on different days, and post up the balloting results and attending time slots for registrants at the sales offices and on the property websites.
46. Regardless of the different characteristics of different sales arrangements, the Council is of the view that in order to ensure consumer interests are protected, any sales arrangement should observe these basic principles in that:
  - The sales method must be fair;
  - The sales arrangements must be transparent; and
  - The sales system must be subject to scrutiny.

#### **Recommendation 7: Promote informed purchasing decisions**

##### *Consolidated information*

47. Prospective purchasers currently rely on information distributed through price lists, sales arrangements and registers of transactions for information on pricing, units availability and the market situation.
48. Comprehensive, accurate and up-to-date information is crucial for making a wise purchase decision, especially when pressure is being exerted by developers and estate agents at the sales offices to close the transaction. The Council therefore recommends that developers be required to produce a “consolidated” information list, including pricing and discounts, units for sale and transaction records, both on the developers’ websites and at the sales offices for ease of reference by prospective purchasers. Unofficial information is often provided by sales persons, their accuracy and reliability are subject to verification. The Council considers that requiring developers to prepare this information and have it available at the sales office might help address the concerns with inaccurate price and transaction information resulting from changes, for example, in price/discount.

### *Sales brochures*

49. According to the Council's questionnaire survey, 97.9% of respondents considered that sales brochures are extremely important or important information items at property sales offices.
50. Nevertheless, feedback from the Council's focus group discussions and detailed examination of sales brochures (and revisions) of the 17 property developments visited, suggested the following deficiencies in sale brochures and how they can be remedied:
  - Sales brochures commonly have a number of revisions over the course of a project and a summary of revisions would facilitate a better understanding of the technical changes that have been made.
  - Details on fees (such as management fees) and services (such as periods of availability) should be provided. Other factors such as responsibilities and compensation on late property delivery upon completion of sale and vacant possession should also be clearly specified.

### *Sales offices*

51. Notwithstanding the convenience of having sales offices in areas such as business districts and shopping malls, the Council requests that developers consider that sales offices and show flats be located at or near the property development site to provide a better picture for prospective purchasers on the environmental surroundings of the property. Ideally, a property sale should begin at a later or final building stage of a development so that sales offices or show flats can be made available at the development site and prospective purchasers can view the actual location and surroundings of the developments.

### *Show flats*

52. Both the focus groups and field visits revealed that only a limited number of show flats were available for viewing. The Council recommends that better use could be made of scale models and electronic means to provide prospective purchasers with a more enhanced virtual viewing of show flats to, amongst others, cater for the many variances that might arise in comparison to the physical show flat on display. In light of technological advancements, virtual tours might be created, particularly for large-scale developments, so that prospective purchasers are able to view and experience the property and its surrounding environment as a whole.

## **Recommendation 8: Enhance awareness and functions of SRPA**

53. Both the Council's survey and focus group results showed a fair level of awareness of the existence of the SRPA. However, for those who were actually aware of the SRPA, they had little idea about its functions and usage of the Sales of First-hand Residential Properties Electronic Platform (SRPE) was low. In view of the SRPA's significant role, it is suggested that more publicity and promotion on the SRPA and its services will be necessary to increase public awareness and service engagement.
54. For example, advertisements for the sale of first-hand residential properties and websites of first-hand residential property development projects could set out the website of the SRPA; more announcements of public interest of the SRPA on television and radio; and more publicity activities or education programmes by the SRPA explaining its services. Focus group participants also considered that the SRPA should extend its monitoring roles in sales practices from pre-sales activities to after-sales services because problems such as breach of obligations, avoidable delays and poor or incompetent services were observed.
55. The Council also suggests that the SRPA should set up counters at the sales offices of property developments especially the large-scale ones to monitor the sales process and to support prospective purchasers' enquiries. The SRPA should educate the public more on the content of the Ordinance; technical terms used in sales brochures and matters relating to the sales of first-hand residential properties.
56. The Council is pleased to note that since its establishment, the SRPE has been enhanced with improvements in information display and retrieval. These are welcome initiatives. However, for further improvement, apart from enhancing user-friendliness, more details of developments (e.g. the name of the developer, the sales arrangements, issuance of occupation permit, and the proposed consolidated information lists) should also be made available on the SRPE to assist consumers in searching for accurate information.

## **Conclusion**

57. The introduction of the Residential Properties (First-hand Sales) Ordinance in April 2013 was a key milestone in the market for first-hand sales of residential properties. Its existence came about after many years of strenuous effort by the Council to address endemic and damaging practices that placed prospective purchasers at a distinct disadvantage in the market.

58. The Government is to be commended in its efforts at bringing this legislation into being. It has brought about benefits to consumers. However, it is apparent from the Council's survey, focus group meetings, field visits and research that the new law has not yet delivered its full value that plagued the market in the past. The legislation as it stands is still not entirely sufficient to cover the range of problems that exist.
59. The Council will play its part in promoting the benefits that the Ordinance has brought to the marketplace, and inform consumers on how to make the best of the information that is currently available. However, greater effort and vigilance is required by the Government, the regulators and the trade to further govern and comply with the law which is designed to protect prospective purchasers and to ensure they are fairly treated in the market.
60. The Council has undertaken this study as an indication of its ongoing commitment to making the marketplace a safer environment for consumers. It is hoped that all parties involved, would give the Council's recommendations their most careful considerations and to put into implementation the needed improvements on the way forward.