

BASIC KNOWLEDGE OF LAND OWNERSHIP IN HONG KONG I. BASIC KNOWLEDGE OF LAND OWNERSHIP IN HONG KONG The People's Republic of China owns all the land in Hong Kong , except the land on which St John's Cathedral stands. The Chief Executive of Hong Kong, acting on behalf of the Government of the Hong Kong Special Administrative, has the powers to lease and grant state land to the public for ownership for a limited period of time (legally defined as "leasehold" land). The Chief Executive can do so by: i) granting Government leases for a certain period, or ii) granting licences for individuals or corporations to occupy Government land for special purposes for a certain period (usually shorter than a government lease). In other words, a "land owner" actually leases the land from the Government but the relevant lease period can be very long (e.g. 50 years or more).

THE ESTATE AGENTS' SERVICES (WITH AN OVERVIEW OF THE SALE AND PURCHASE PROCEDURES) II. THE ESTATE AGENTS' SERVICES (WITH AN OVERVIEW OF THE SALE AND PURCHASE PROCEDURES) Although the vendor (seller) and the purchaser can directly deal with each other, they usually have to go through the following steps with the assistance of estate agents: An overview of the procedures for sale and purchase of property (i) A vendor finds an estate agent(s) to sell the property, and/or a purchaser finds an estate agent(s) to search for appropriate properties to buy; (ii) The purchaser inspects the property and negotiates the price with the agent or the vendor; (iii) Vendor and purchaser sign a provisional (or preliminary) agreement for sale and purchase of the selected property (the provisional agreement is usually provided by the estate agent). The purchaser then pays the initial deposit; (iv) Vendor and purchaser each appoint their own solicitors to negotiate and sign a formal agreement for sale and purchase (the formal agreement is drafted by the vendor's solicitor and is reviewed by the purchaser's solicitor). The purchaser then pays the further deposit. The purchaser's solicitor reviews the title deeds of the property provided by the vendor's solicitor to ensure the title of the property is in order; (v) Vendor hands over the property to the purchaser. Purchaser pays the balance of purchase price. Both parties sign an assignment which is drafted by the purchaser's solicitor and is reviewed by the vendor's solicitor. No matter whether you are a vendor or a purchaser, the first party that you have to deal with is normally the estate agent. Therefore, it is worth knowing more about the services provided by estate agents.

PROVISIONAL SALE AND PURCHASE AGREEMENT III. PROVISIONAL SALE AND PURCHASE AGREEMENT Under section 3 of the Conveyancing and Property Ordinance (Cap. 219 of the Laws of Hong Kong), no legal action concerning any contract for sale of land (including house/flat/building) will be enforced by the courts unless the contract is made in writing. In other words, you will lose the protection from the courts if you sell or buy a flat through an oral agreement. Despite bearing the word "provisional", a duly signed provisional sale and purchase agreement is a legally binding contract that must be fully honoured by the parties involved. If the formal sale and purchase agreement (which is intended to replace the provisional agreement) cannot be signed, the parties can rely on the provisional agreement to proceed with the deal or to sue for compensation.

FORMAL SALE AND PURCHASE AGREEMENT IV. FORMAL SALE AND PURCHASE AGREEMENT Although a provisional sale and purchase agreement is a legally binding contract, it only contains basic terms and therefore the protection provisions for the contracting parties (especially the purchaser) are limited. A formal sale and purchase agreement should be drafted by a solicitor based on the provisional agreement. A formal agreement contains terms that are more detailed and is intended to replace the provisional agreement. In case the parties fail to sign the formal agreement (e.g. they cannot agree on all the terms of the formal agreement), they are still bound by the provisional agreement.

CONSEQUENCES OF BREACHING THE SALE AND PURCHASE AGREEMENT V. CONSEQUENCES OF BREACHING THE SALE AND PURCHASE AGREEMENT The consequences of breaching the terms of the sale and purchase agreement will depend on the type of breach and the terms written on the agreement. It is impossible to mention all the scenarios here. However, due to some financial factors (e.g. fluctuation of the real estate market or loss of job), the vendor or the purchaser may fail to complete the sale and purchase after signing the agreement. The following table highlights the possible consequences of such breach of contract: The agreement that is breached Who breaches the agreement, and how it is breached. Responsibility or legal consequences

Remarks 1. Provisional Sale and

Purchase Agreement Vendor refuses to sell. Vendor pays the purchaser a sum equivalent to twice the amount of the initial deposit if such has been expressly written on the provisional agreement. Agreement terminated.

2. Provisional Sale and Purchase Agreement Purchaser refuses to buy. Purchaser loses the initial deposit to the vendor if such has been expressly written on the provisional agreement. Agreement terminated. Vendor is free to sell the property to another person.

3.\* Formal Sale and Purchase Agreement Vendor refuses to sell. i) Refund the initial and further deposits to the purchaser. ii) Be sued by the purchaser for compensation. Agreement terminated. The amount of compensation depends on the actual loss suffered by the purchaser in purchasing a similar flat elsewhere (e.g. rise on market price of the flat after vendor's back out).

4.\* Formal sale and Purchase Agreement Purchaser refuses to buy. i) Purchaser may lose all the initial and further deposits. ii) Be sued by the vendor for further compensation. Agreement terminated. The amount of compensation depends on the actual loss suffered by the vendor (e.g. price reduction arising from the resale of that flat). In usual case, vendor may not be able to claim all the deposits as forfeiture if they exceed 10% of the purchase price, unless the actual loss has justified such forfeiture.

\* In both cases where there has been a breach of the formal agreement, either the vendor or the purchaser may apply to the Court for "specific performance", which compels either the purchaser or the vendor to complete the sale and purchase instead of terminating the agreement. The Court will consider whether the vendor or the purchaser is still willing, able and ready to complete the sale and purchase after the breach. You should also note that the final outcome of the breach is always dependent on the terms of the sale and purchase agreement, the circumstances and the decision of the Court.

### COMPLETING THE SALE AND PURCHASE TRANSACTION VI. COMPLETING THE SALE AND PURCHASE TRANSACTION

Steps in completing the sale and purchase of a property:

1. Drafts the assignment (\*note a). Purchaser's solicitor
2. Approves the assignment. Vendor's solicitor
3. Vendor arranges for the Purchaser to make a final inspection of the flat. Vendor & Purchaser
4. Signs the assignment (and the mortgage, if any). Purchaser
5. Gives a cheque for the balance of the purchase price to the Purchaser's solicitor. (If the Purchaser has been granted a mortgage loan, the bank sends the loan money to the Purchaser's solicitor.) Purchaser
6. Signs the assignment and gives the keys of the property to the Vendor's solicitor. Vendor
7. Gives the cheque(s) for the balance of purchase price to the Vendor's solicitor. This is usually done not later than 5 p.m. (weekday) or 1 p.m. (Saturday) on the completion day (\*note b). Purchaser's solicitor
8. Gives the assignment and keys to the Purchaser's solicitor. This is usually done not later than 5 p.m. (weekday) or 1 p.m. (Saturday) on the completion day. Vendor's solicitor
9. Undertakes to ascertain that all mortgages are paid off within a certain number of days (if Vendor has taken out a mortgage on the property). Vendor's solicitor
10. Gives the keys to the Purchaser and stamps the assignment at the Stamp Office (\*note c). Purchaser's solicitor
11. Arranges for the Vendor to pay off all mortgages (if any) on the property. If no mortgage to be discharged, the balance of purchase price (less legal costs) will be paid to the Vendor. Skip steps 12 and 13 below. Vendor's solicitor
12. Issue a discharge of the mortgage, which shows that the Vendor's mortgage loan has been paid off. Bank (Vendor's mortgagee)
13. Collects and sends the discharge to the Purchaser's solicitor. Vendor's solicitor
14. Registers the assignment with the Land Registry (\*note d) (If there is a discharge and a new mortgage, the Purchaser's solicitor should also register them with the Land Registry.) Purchaser's solicitor
15. Gives the registered assignment and all other title deeds to the Purchaser (or gives them to the bank if the Purchaser has been granted a mortgage loan). Purchaser's solicitor

\*Notes: a) An assignment is a document transferring the legal title (i.e. property ownership) from the vendor to the purchaser. It will be signed on the completion day. b) The property will be transferred from the vendor to the purchaser on the completion day. Keys will be delivered to the purchaser and the balance of purchase price will be paid to the vendor within this day (which represents the completion of the sale and purchase). c) The current stamp duty for an assignment for residential property is \$100 (if the preceding agreement for sale and purchase has been stamped). d) The current registration fee for an assignment is \$230 (property price not exceeding

\$750,000) or \$450 (property price exceeds \$750,000). For details, please go to the Land Registry's website. SALE AND PURCHASE OF HOME OWNERSHIP SCHEME (HOS) FLATS VII. SALE AND PURCHASE OF HOME OWNERSHIP SCHEME (HOS) FLATS The Home Ownership Scheme (HOS) is a government subsidized sale of public housing flats managed by the Hong Kong Housing Authority (HA) to eligible public housing tenants and to low income residents at a price below the market value of the flats. There are restrictions on the resale of the HOS flats mainly to other families qualified under the HOS or in the open market subject to payment of premium to HA. The HOS becomes a regular part of the government's housing policy. The Hong Kong Housing Authority is responsible for working out the implementation details. Please go to the Hong Kong Housing Authority website for further information. SALE AND PURCHASE OF PROPERTY UNDER CONSTRUCTION VIII. SALE AND PURCHASE OF PROPERTY UNDER CONSTRUCTION The term "property under construction" in this section covers both i) uncompleted buildings/development, or ii) buildings which have been erected but the developer has not yet obtained the occupation permit or a certificate of compliance from the Government. Sale and purchase of this kind of property is regulated by the Consent Scheme and the Non-Consent Scheme. People in Hong Kong often purchase flats before the buildings in which the flats are located have been constructed. The above two schemes exist to protect purchasers in case the developer becomes bankrupt before the property is constructed. In addition, the sale and purchase of a new first-hand residential property is further governed by the Residential Properties (First-hand Sales) Ordinance (Cap. 621) which came into operation in 2013. The Ordinance sets out detailed requirements in relation to sales brochures, price lists, show flats, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for the Preliminary Agreement for Sale and Purchase and Agreement for Sale and Purchase for the sales of first-hand residential properties. From a purchaser's perspective, the legal formalities for buying a new (first-hand) residential property are similar to that for buying a second-hand property. You need to sign a provisional sale and purchase agreement with the developer, followed by a formal sale and purchase agreement and an assignment upon the completion/ hand over day. The main difference is that the provisional agreement of a first-hand residential property does not bind the purchaser to buy the flat and sign the formal agreement. The developer/vendor's remedies if the purchaser does not sign the formal agreement after signing the provisional agreement for a first-hand residential agreement is only to claim the forfeiture of the 5% deposit paid on the signing of the provisional agreement. For a first-hand residential property under the Consent Scheme, the standard form of the formal agreement for sale and purchase prescribed by the Lands Department provides that the property can only be transferred to the original buyer. Hence the property cannot be sub-sold by way of confirmor sale and the property cannot be resold before the assignment of the property by the developer to the purchaser. Depending on the circumstances (i.e. whether it is a Consent scheme or Non-Consent Scheme), the formal agreement may contain an estimated material date which generally means the estimated date on which new development is completed in compliance with the approved building plans or the conditions of the land grant of the new development are complied with. There may be provision in the agreement requiring the developer/vendor to apply for an occupation document/a certificate of compliance/consent to assign within 14 days after the estimated material date and the developer/vendor is to notify the purchaser in writing that the vendor is in a position to assign the property within a certain period after the issue of the occupation document/a certificate of compliance/consent. Normally, the completion date/handover of the new flat is within 14 days of the above notification from the developer/vendor to the purchaser. Before you buy or invest in a property under construction, you may find it useful to study carefully the Outline Zoning Plan ("OZP") of the area in the vicinity. OZP is a statutory plan published by the Town Planning Board under the Town Planning Ordinance (Cap.131 of the Laws of Hong Kong). Once you have located the OZP of the area on which the property situates, you will be able to see the existing and/or proposed land-uses and major road systems in its surrounding areas. You can access the websites of the Planning Department or the Town Planning Board for further information. If you have any difficulties in reading the OZP,

please consult an architect or other relevant professionals. DEED OF MUTUAL COVENANT AND OWNERS' CORPORATION IX. DEED OF MUTUAL COVENANT AND OWNERS' CORPORATION A Deed of Mutual Covenant ( "DMC" ) is a document containing terms that are binding on all flat owners of a multi-unit or multi-storey building. Once a DMC is signed by the owner of a flat and the developer, it binds all the subsequent owners. It basically sets out rules for the management and regulation of the building, in particular, the common areas of the building (e.g. entrance and lift lobbies, corridors, staircases and lifts etc.), which their use is shared by all the flat owners of the building. A detailed DMC can run to over a hundred pages. Terms in a DMC may include, for example: user restrictions i.e. residential flats cannot be used for commercial activities; definition of the common areas of the building; restrictions on the flat owners (e.g. no keeping of cats and dogs); how to appoint a building manager (or building management company); how to set up an Owners' Corporation; how to make resolutions on matters concerning maintenance or renovation; who should specify the management fees, and how. No matter how a DMC is drafted, no provision may contravene the Building Management Ordinance (Cap. 344 of the Laws of Hong Kong).

CASE ILLUSTRATION X. CASE ILLUSTRATION Scenario Mr. A (the vendor) wants to sell his residential flat and Ms. B (the purchaser) wants to buy it .They have appointed separate estate agents to handle the deal. A provisional agreement for sale and purchase will be signed soon. Question 1: Before signing the provisional agreement, Mr. A wants to see if there is any other purchaser who can pay more. He also wants to find a second agent to help him. Must he sign another agency agreement?Answer 1 Question 2: Besides the information provided by the agent, Ms. B wants to know more about the flat before signing the provisional agreement. Where can she get more information?Answer 2 Question 3: Ms. B doesn't know Mr. A's full name but she needs to issue a cheque for the initial deposit in advance. Can she pay the money directly to her agent and ask him to pass the money to Mr. A? How will her agent handle the deposit money? Answer 3 Question 4: Is the provisional sale and purchase agreement a legal document which both parties must obey?Answer 4 Question 5: What will Mr. A and Ms. B need to do when signing the formal sale and purchase agreement?Answer 5 Question 6: Can Ms. B re-sell the flat to another person after signing the formal agreement?Answer 6 Question 7: What are the things that both parties should be aware of when the completion day/property handover day is approaching?Answer 7 Answer 1: Yes, he must. Mr. A should not state in the agreement that the agent is the exclusive agent since he intends to appoint more than one agent to help him. For more details about estate agency agreement for vendor, please [click here](#). Answer 2: Ms. B can ask her agent for a copy of the land search carried out in respect of the flat. Alternatively, she can conduct a land search herself at the Land Registry. A land search computer print-out will contain information about the flat such as: the present owner of the flat and all the previous owners of the flat; details of the flat (e.g. the address and government lease term of the relevant land lot); whether there is any government order in respect of the flat that has not yet obeyed (e.g. a repairing order or an order to demolish an unauthorized structure); whether there is any mortgage over the flat which has not yet been discharged; whether there is any lawsuit concerning the flat (e.g. a bank suing the owner for some outstanding mortgage repayments). If there is any item on the land search record that Ms. B does not understand, she should ask her agent or her solicitor immediately. For more information about land search, please visit the Land Registry's webpage. Answer 3: Yes. The agent should give Ms. B an official receipt in respect of her initial deposit. He should then deposit the money into an independent bank account opened by his estate agency company (not his personal account). The agent can only withdraw the money and arrange payment to the vendor with Ms. B's prior written instruction. If the agent fails to observe this procedure, he will have breached the Estate Agents Ordinance and the Practice Regulations imposed by the Estate Agents Authority. The relevant penalty may be a suspension of his estate agent licence, a fine or even an imprisonment. To be safer, however, it is recommended that Ms. B should ascertain Mr. A's identity and then issue a cheque in favour of him directly. Answer 4: Yes, although it is a provisional agreement, Mr. A and Ms. B must obey it, or bear the legal consequences if they don't. Answer 5: Please refer to relevant Q&A.; Answer 6: Yes, but Ms. B should check whether such is

allowed in the formal sale and purchase agreement before doing so. She will act as a "Confirmor" and the new purchaser will act as a "Sub-Purchaser" in the transaction. Since it will involve an additional party, special attention must be paid to the timing of payments, the discharge of the existing mortgage, and the handing over of the flat. Additional stamp duty may also be incurred. Answer 7: In respect of Mr. A (the vendor), he must make sure that vacant possession of the flat can be delivered to the purchaser on the completion day (unless otherwise stated on the sale and purchase agreement e.g. the flat is sold with an existing tenancy). He can either send the keys to his solicitor or to his agent for arranging the handover. Prior notice must be given to all the relevant parties. For Ms. B (the purchaser), she must either transfer the balance of purchase price to her solicitor before the completion day, or prepare the relevant cashier's order (bank draft) in favour of the vendor. She must also carry out a final inspection of the flat. For other details about completing the sale and purchase of property, please refer to section VI.

1. AM I HOLDING A GOVERNMENT LEASE WHILE OWNING A FLAT IN A MULTI-STOREY BUILDING? 1. AM I HOLDING A GOVERNMENT LEASE WHILE OWNING A FLAT IN A MULTI-STOREY BUILDING? Yes. As an owner of an individual unit (flat) in a multi-storey building, you and all other owners of the same building hold the Government lease of the land on which the building has been constructed. In other words, you are a co-owner of the Government lease and you are holding a portion of shares in the land. You have the exclusive right of possession of your individual unit and share the common parts of the building with other co-owners.

2. WHAT ARE THE DIFFERENT WAYS OF OWNING A PROPERTY? WHAT IS SOLE OWNERSHIP AND WHAT ARE JOINT TENANTS AND TENANTS-IN-COMMON? 2. WHAT ARE THE DIFFERENT WAYS OF OWNING A PROPERTY? WHAT IS SOLE OWNERSHIP AND WHAT ARE JOINT TENANTS AND TENANTS-IN-COMMON? The different ways of owning a property in Hong Kong are sole ownership and joint ownership. Ask your solicitor for more information about joint ownership if you plan to buy a flat with other persons.

a. Sole ownership Sole ownership refers to a property owned by one person only and that person is the sole owner of the property.

b. Joint ownership If a couple who are either married or living together purchase a property in which they intend to live, they usually intend to share the ownership of the property. The most common types of joint ownership are "joint tenancy" and "tenancy-in-common".

i. Joint tenancy For a joint tenancy, all the joint tenants are treated as one sole owner. When one of the joint tenants dies, his/her interest in the property will automatically pass to the surviving joint tenant(s) who will own the whole property.

ii. Tenancy-in-common For tenancy-in-common, the interests of all the tenants-in-common are normally proportional to their respective contributions to the purchase price of the property. In a tenancy-in-common with 2 owners, for example, the owner who contributed 25% of the purchase price would hold 1/4 share of ownership. The other owner, who contributed 75% of the purchase price, would hold 3/4 share of ownership. When one of the tenants-in-common dies, his/her interest will form part of his/her estate (i.e. property left after a person's death), and will be passed on according to the terms of his/her will or the law of intestacy if there is no will.

4. I AM NOT THE "REGISTERED OWNER" OF A FLAT ALTHOUGH I HAVE PAID PART OR ALL OF THE MONEY TO PURCHASE THE FLAT. DO I HAVE A SAY IN MATTERS CONCERNING THE PROPERTY? CAN I STOP THE "REGISTERED OWNER" FROM SELLING THE PROPERTY? 4. I AM NOT THE "REGISTERED OWNER" (MY NAME IS NOT WRITTEN ON THE TITLE DEED OF THE FLAT WHICH HAS BEEN REGISTERED IN THE LAND REGISTRY) BUT I HAVE PAID PART OR ALL OF THE PURCHASE MONEY OF THE FLAT. DO I HAVE A SAY IN MATTERS CONCERNING THE PROPERTY? FOR EXAMPLE, CAN I PREVENT THE "REGISTERED OWNER" FROM SELLING THE PROPERTY? Although you are not the "registered owner", if whole or part of the purchase money comes from you, you may be the "beneficial owner" of the property. That is to say, the property may be held by the registered owner in trust either wholly or partly on your behalf. If you and the registered owner have respectively contributed half of the purchase money, your half share may be held by the registered owner on your behalf. You should immediately notify any intending purchaser and his solicitor of your beneficial interest. This could effectively stop the sale. Alternatively, you could claim against the registered owner for your share of the proceeds if the property is sold. However, if you intended to buy the property and give it to the registered owner as a gift (in which you had clearly

expressed that when you paid the money), your beneficial interest in relation to that property is arguable. That means you may not be able to stop the sale or claim for your share. The above matters involve complex legal arguments in which legal advice must be sought.

1. I WANT TO SELL MY FLAT. WHAT SERVICES CAN I EXPECT FROM AN ESTATE AGENT? 1. I WANT TO SELL MY FLAT. WHAT SERVICES CAN I EXPECT FROM AN ESTATE AGENT? The agent should: Get information about your flat from you; Market your flat to potential purchasers. Your agent should not advertise your flat by whatever means (e.g. newspaper advertisement, posters or brochures, etc.) without your prior approval; Arrange for potential purchasers to inspect your flat; Arrange for negotiations with potential purchasers; Tell you about all offers in relation to your flat. If any potential purchaser has shown interest in buying your flat and has quoted a price for the flat, the agent must inform you immediately; Help you negotiate and sign the provisional agreement with the purchaser. It is very important that the agent is honest with you and the agent should always act in your best interest.

2. AS A VENDOR, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO HELP ME SELL MY FLAT? 2. AS A VENDOR, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO HELP ME SELL MY FLAT? In accordance with section 45 of the Estate Agents Ordinance (Cap. 511 of the Laws of Hong Kong), you and your agent must sign an agency agreement before you engage your agent to perform agency work to sell a residential property. Otherwise, the agent cannot serve you. The Estate Agency Agreement for Sale of Residential Properties in Hong Kong (Form 3) is designed for Vendors. This agreement is provided by the Estate Agents Authority in accordance with the Estate Agents Ordinance. It must be duly signed by you and your estate agent. The items contained in this agency agreement include: the duties of the agent, the commission payable by the vendor and the validity period of that agreement, etc. You can use the services of more than one agent in respect of the same flat if you want to. However, you are reminded NOT to state that the agent is your exclusive agent in any agency agreement if you want 2 or more agents to help you. Otherwise, you will also have to pay the exclusive agent a commission even if you sell your flat through another agent (i.e. you would have to pay commission to both agents). You can download "Form 3" from the Estate Agents Authority's webpage. You should read this agreement carefully before you sign it. If you do not understand any part of it, ask the agent or your solicitor. You should ask your agent to give you a copy of the agreement you have signed. You should also keep the agreement in a safe place for future reference if needed. In addition to the estate agency agreement, you and your agent must also sign a Property Information Form, or "Form 1" which contains details of your property (e.g. current ownership, floor area, encumbrances (e.g. any existing mortgage or repairing order issued by government authorities), any existing tenancy, year of completion, use restriction (e.g. residential, industrial or other use), any previous additions or alteration work done by the vendor, the lease term (lease period) of the relevant government lease/grant, repairs or improvement works and costs for such works required or proposed for the flat or the building where the flat forms part etc.). You should, to the best of your knowledge, give correct information to your agent. Your agent should also endeavour to check the accuracy of any information regarding your property. If false information has been provided to a purchaser which resulted in any loss to him, you and/or your agent will be liable to be sued by the purchaser for compensation. The estate agency agreement aims to provide protection to residential property owners who are mostly persons without much legal knowledge of property transactions. If you want to sell a non-residential property (such as commercial or industrial property) through an agent without signing an estate agency agreement, you still have protection from the statute laws of Hong Kong (e.g. the Estate Agents Ordinance), the regulations imposed by the Estate Agents Authority (e.g. the Code of Ethics), and Common Law. Nevertheless, your agent may ask you to sign an estate agency agreement. Since the Estate Agents Authority does not provide any recommended agreement form for non-residential property, you should read the agreement carefully before you sign it. If you have any questions, ask the agent or your solicitor.

3. CAN THE SAME AGENT SERVE BOTH THE VENDOR AND THE PURCHASER? 3. CAN THE SAME AGENT SERVE BOTH THE VENDOR AND THE PURCHASER? Yes, if both parties know and agree to it. You should mark clearly in your estate agency agreement

that the respective agent is a "dual agency" (the agent acts for both the vendor and the purchaser), or "potentially dual agency" (the agent acts for the vendor only but may also act for the purchaser at a later stage).

4. DO I PAY LESS COMMISSION IF THE SAME AGENT SERVES BOTH THE PURCHASER AND ME (THE VENDOR)? 4. DO I PAY LESS COMMISSION IF THE SAME AGENT SERVES BOTH THE PURCHASER AND ME (THE VENDOR)? The amount of commission you pay depends on what you agree to in your estate agency agreement (Form 3). It doesn't matter whether the agent serves you only or both the purchaser and you.

5. I WANT TO BUY A FLAT. WHAT SERVICES CAN I EXPECT AND WHAT INFORMATION CAN I OBTAIN FROM THE AGENT WHO SHOWS ME A FLAT? 5. I WANT TO BUY A FLAT. WHAT SERVICES CAN I EXPECT AND WHAT INFORMATION CAN I OBTAIN FROM THE AGENT WHO SHOWS ME A FLAT? The agent should: Provide you with the necessary information about the flat (see below); Arrange for you to inspect the flat; Arrange for negotiations with the vendor; Pass on all your offers to the vendor (see below); Help you negotiate and sign the provisional agreement with the vendor. With regard to point (a) above, the necessary information includes: current ownership, floor area, encumbrances (e.g. any existing mortgage or repairing order), any existing tenancy, year of completion, use restriction (e.g. residential, industrial or other use), any previous additions or alteration work done by the vendor, the lease term (lease period) of the relevant government lease/grant, repairs or improvement works and costs for such works required or proposed for the flat or the building where the flat forms part etc. Further to point (d) above, in case your agent hears about or receives a higher offer from another potential purchaser, your agent must inform you about such offer immediately (since you may wish to make a higher revised offer). If your agent fails to do so, you may sue him/her for compensation. You can also obtain the details of your target flat from the Property Information Form (also called "Form 1"). For the information contained in Form 1, please go back to question 2. The Property Information Form is to be completed by the vendor and the vendor's agent. Note 4 of Form 1 has stipulated, "A licensed estate agent is required to provide to a purchaser the original or copy of the completed Form unless the purchaser specifically waives his right to receive the same". For more information about this Form, please go back to question 2. It is very important that the agent is honest with you and the agent should always act in your best interest.

6. AS A PURCHASER, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO SHOW ME A FLAT? 6. AS A PURCHASER, MUST I SIGN AN ESTATE AGENCY AGREEMENT WHEN I ASK AN AGENT TO SHOW ME A FLAT? With reference to section 45 of the Estate Agents Ordinance, you and your agent must sign an agency agreement before you engage an agent to perform agency services to purchase (or inspect) a residential property. Otherwise, the agent cannot serve you. The Estate Agency Agreement for Purchase of Residential Properties in Hong Kong (Form 4) is designed for Purchasers. This agreement is provided by the Estate Agents Authority in accordance with the Estate Agents Ordinance. It must be duly signed by you and your agent. The items contained in this agency agreement include: the duties of the agent, the commission payable by the purchaser and the validity period of that agreement, etc. You can download "Form 4" at Estate Agents Authority's webpage. You should read this agreement carefully before you sign it. If you do not understand any part of it, ask the agent or your solicitor. You should ask your agent to give you a copy of the agreement you have signed. You should also keep the agreement in a safe place for future reference if needed. The estate agency agreement aims to provide protection to purchasers of residential properties who are mostly persons without much legal knowledge about property transactions. If you wish to purchase a non-residential property (such as commercial or industrial property) through an agent without signing an estate agency agreement, you still have protection from the statute laws of Hong Kong (e.g. the Estate Agents Ordinance), the regulations imposed by the Estate Agents Authority (e.g. the Code of Ethics), and Common Law. Nevertheless, your agent may ask you to sign an estate agency agreement. Since the Estate Agents Authority does not provide any recommended agreement form for non-residential property, you should read the agreement carefully before you sign it. If you have any questions, ask the agent or your solicitor.

7. DO I PAY LESS COMMISSION IF THE SAME AGENT SERVES BOTH THE VENDOR AND ME (THE PURCHASER)? 7. DO I PAY LESS COMMISSION IF THE SAME AGENT SERVES BOTH THE VENDOR AND ME (THE PURCHASER)? The amount

of commission you pay depends on what you agree to in your estate agency agreement ("Form 4"). It doesn't matter whether the agent serves only you or both you and the vendor. 8. WHAT IF I SIGN A 'FORM 4' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, I BUY THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE VENDOR? 8. WHAT IF I SIGN A 'FORM 4' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, I BUY THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE VENDOR? In that case, you must also pay a commission to the first agent. See Schedule 3 - Commission to be paid by Purchaser in your estate agency agreement ("Form 4"). If you anticipate possible dealing with the vendor directly or another agent, then you can shorten the validity period in your agency contract so that you can appoint another agent afterwards. 9. WHAT IF I SIGN A 'FORM 4' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, SOMEONE RELATED TO ME (E.G. MY SPOUSE) BUYS THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE VENDOR? 9. WHAT IF I SIGN A 'FORM 4' WITH AN AGENT WHO SHOWS ME A FLAT, AND LATER, SOMEONE RELATED TO ME (E.G. MY SPOUSE) BUYS THE FLAT THROUGH ANOTHER AGENT OR DIRECTLY FROM THE VENDOR? You may still have to pay the first agent commission. See Schedule 3 - Commission to be paid by Purchaser in your estate agency agreement ("Form 4"). If you are not sure, ask your solicitor. 10. WHERE CAN I GO TO MAKE A COMPLAINT IF I AM NOT SATISFIED WITH MY AGENT? 10. WHERE CAN I GO TO MAKE A COMPLAINT IF I AM NOT SATISFIED WITH MY AGENT? You can call the Estate Agents Authority's complaints hotline: 2111 2777 . You can also visit the Estate Agents Authority's website to obtain more information about procedures for making complaints. 11. BEFORE I BUY THE FLAT, I FIND OUT THAT MY AGENT GAVE ME FALSE INFORMATION OR HE FORGOT TO TELL ME SOME IMPORTANT INFORMATION ABOUT THE FLAT. CAN I TERMINATE THE PROVISIONAL AGREEMENT AND SUE MY AGENT (AND HIS EMPLOYER) FOR COMPENSATION? 11. BEFORE I BUY THE FLAT, I FIND OUT THAT MY AGENT GAVE ME FALSE INFORMATION OR HE FORGOT TO TELL ME SOME IMPORTANT INFORMATION ABOUT THE FLAT. CAN I TERMINATE THE PROVISIONAL AGREEMENT AND SUE MY AGENT (AND HIS EMPLOYER) FOR COMPENSATION? A client's interests are NOT ONLY protected by the estate agency agreement. In addition to the terms as set out in the agency agreement, your interests (no matter whether you are the vendor or the purchaser) are always protected by statute laws as well as the Common Law. These laws tackle some kinds of misconduct that might be committed by estate agents e.g. misrepresentation and negligence. Misrepresentation (Misleading Information) A person who had made a false statement of fact which induced another person to enter into a contract would be guilty of making a misrepresentation. The three pre-requisites for misrepresentation are: i) someone has given a statement of fact, ii) that statement is wrong, and iii) that false statement induced (i.e. persuaded) the victim to enter into a contract. Note that a "statement of fact" is different from a "statement of opinion". For example, an agent would only have given a statement of opinion if he told you that the bedroom may accommodate a piano and a bed, and asked you to take some measurements of your own afterwards. However, he would have made a statement of fact if he told you that the size of the bedroom is 150 sq. feet. The agent would be liable for misrepresentation if you signed the provisional agreement after hearing his statement, but subsequently discovered that the actual size of the bedroom is only 100 sq. feet. Negligence In order to incur liability for negligence, 3 conditions must be satisfied: i) one party owes a "duty of care" to the other party, ii) the former has breached the duty, and iii) the latter has suffered loss due to such breach of duty. The concept of duty of care comes from a well-known British case (Donoghue v Stevenson) which states that everyone should take reasonable care to avoid acts or omissions which are likely to injure his neighbour. The word "neighbour" does not simply include the person living next door to your home. It generally covers any persons who are likely to be affected by your activities. In the context of property transactions, your agent would certainly owe you a duty of care because his conduct in handling your deal would affect your interests. Your agent would be negligent if, for example, he failed to carry out a proper inspection of the property and failed to inform you of the existence of a tenancy before you signed the provisional sale and purchase agreement. Remedies You are entitled to sue your estate agent and his employer for compensation if it can be proved that your agent has committed misrepresentation or negligence. However, you may or may not be able to terminate the provisional sale and purchase agreement (or the formal agreement). This



depends on the actual circumstances. The following examples may help make the position clearer: Example 1: The estate agent acts for both the vendor and you, and the vendor gives the estate agent false information which he passes on to you. Answer: You can terminate the provisional sale and purchase agreement and get a refund of the deposit. You can also sue the vendor for compensation. Example 2: The estate agent acts for both the vendor and you, and he passes on false information to you other than on the instruction of the vendor. Answer: Even if the vendor does not know what the agent has said, that agent is also acting on behalf of him and you have relied on the agent's information in signing the agreement. Besides suing the estate agent for compensation, you may terminate the provisional sale and purchase agreement and get a refund of the deposit. Example 3: The estate agent only acts for you but not the vendor, and makes a false statement to you about the property. Answer: Unless you are prepared to give up the deposit, you cannot unilaterally terminate the provisional sale and purchase agreement since the vendor is not responsible for what the estate agent said. You should sue your estate agent directly for compensation.

1. I WANT TO PURCHASE A FLAT. WHAT SHOULD I DO BEFORE I SIGN THE PROVISIONAL SALE AND PURCHASE AGREEMENT AND PAY THE INITIAL DEPOSIT?

1. I WANT TO PURCHASE A FLAT. WHAT SHOULD I DO BEFORE I SIGN THE PROVISIONAL SALE AND PURCHASE AGREEMENT AND PAY THE INITIAL DEPOSIT? Ask your agent or the vendor whether there is anything that may affect or lower the value of the flat, or better still, try to obtain a copy of the land search record about the flat. What is a land search? A land search is a search of a property maintained by the Land Registry of the HKSAR Government, which records the transactions relating to the history of the flat and other relevant information. For example, it will show you things like: the present owner of the flat and all the previous owners of the flat; details of the flat (e.g. the address and government lease term of the relevant land lot); whether there is any government order in respect of the flat that has not yet been complied with (e.g. a repairing order, or an order to demolish an unauthorized structure); whether there is any mortgage not yet discharged; whether there is any lawsuit concerning the flat (e.g. a bank suing the owner for some outstanding mortgage repayments). Note: The land search record only shows you general information plus an outline of any encumbrances (see below) about a property. It would be helpful if you can obtain the record before you sign the provisional agreement. However, you cannot rely on such record to complete the whole transaction without the assistance of a solicitor. Encumbrance is a charge or liability which the flat is subject to or anything that can (i) reduce the value of a flat or (ii) obstruct the owner from selling a flat. Examples of encumbrances are: mortgages, a covenant (a formal agreement or promise) restricting the use of the flat, or charging orders imposed by the government or by an individual. Your solicitor must inform you (in any event not later than completion date for the sale and purchase) about any encumbrances found in the land search record or the title deeds. For more information about land searches, please visit the Land Registry's webpage.

2. WHEN THE PROPERTY IS SOLD WITH AN EXISTING TENANCY, WHAT SHOULD THE PURCHASER AND THE VENDOR BE AWARE OF?

2. WHEN THE PROPERTY IS SOLD WITH AN EXISTING TENANCY, WHAT SHOULD THE PURCHASER AND THE VENDOR BE AWARE OF? The purchaser should be aware of the rental amount, the deposit paid by the tenant(s), the terms of tenancy and whether the tenant pays the rent on time. Please note that a tenancy agreement may not appear on the land search record since a tenancy lasting not more than three years is not required to be registered at the Land Registry. Before the purchaser signs the provisional agreement for sale and purchase, the purchaser should ask about, and the vendor must disclose, any existing tenancy. On the other hand, the vendor should carefully deal with any rental deposit in order to avoid future liability for it. The vendor can either refund the deposit to the tenant or transfer it to the purchaser (the new landlord) and make a proper written record of it. For more details on this issue, please go to another topic - Landlord and Tenant.

3. WHAT ARE THE USUAL TERMS THAT WOULD BE CONTAINED IN THE PROVISIONAL SALE AND PURCHASE AGREEMENT?

3. WHAT ARE THE USUAL TERMS THAT WOULD BE CONTAINED IN THE PROVISIONAL SALE AND PURCHASE AGREEMENT? The provisional agreement is often provided by an estate agent and must, at least, include the following: The address of the flat; The price of the flat; The personal details of the vendor and the purchaser

(If a party to the agreement is a limited company, the full name and the business registration number of the company must be stated); The amount of the initial deposit (\*usually 1% to 3% of the total purchase price is paid by the purchaser when he/she signs the provisional agreement); The amount of the further deposit (\*usually 10% of the total purchase price, inclusive of the initial deposit, to be paid by the purchaser when he/she signs the formal agreement); When to sign the formal agreement to be prepared by the vendor's solicitor; The completion day (i.e. the day when the vendor hands over the property to the purchaser) ; The balance of the purchase price to be paid by the purchaser on the completion day; Who is paying which kind of taxes and legal expenses (e.g. the stamp duty, the costs of the solicitors of the vendor, purchaser and any mortgagee); What the purchaser should be responsible for if he/she doesn't adhere to the provisional agreement; What the vendor must pay if he/she doesn't want to sell the flat after signing the provisional agreement; and How much commission should the purchaser and/or the vendor pay the estate agent. Also as pointed out in a Court of Appeal case (See To Keung & Another v Sunny Way Limited), there would be an "escape clause" in most of the provisional sale and purchase agreements. An "escape clause" is a clause allowing a party who wishes to withdraw from the transaction (i.e. to cancel the deal) within a short period of time after signing the provisional agreement or to "buy his way out". In the case of a vendor who wants to withdraw, he agrees to return the initial deposit to the purchaser, doubled by a sum of equal amount which he must pay the purchaser (to pay the "double deposit" ). In the case of a purchaser who wants to back out, he forgoes the initial deposit. Where either party seeks to rely on the escape clause, that party must do so in strict compliance within the time allowed by the provisional agreement. The judgment of the above case also revealed that if the provisional agreement contains such clause as "upon signing the formal sale and purchase agreement, a further deposit of \$X shall be paid", then the purchaser may not be obliged to pay the further deposit if the subsequent formal agreement is not signed. To avoid any disputes on when to pay the further deposit, the parties may specify the exact date for the payment of further deposit in the provisional agreement. However, all these terms are subject to the actual construction of the agreement that is made between the parties in each individual case. A purchaser or a vendor should check any actual agreement carefully with your agent or solicitor and make sure you understand every term in the provisional agreement before signing it .

4. SHOULD THE PROVISIONAL SALE AND PURCHASE AGREEMENT BE STAMPED AND REGISTERED? 4. SHOULD THE PROVISIONAL SALE AND PURCHASE AGREEMENT BE STAMPED AND REGISTERED? It depends on when the parties will sign the provisional agreement and the formal agreement. For the sale and purchase of a residential property, the purchaser or the representing solicitor must arrange to stamp: the provisional agreement and formal agreement (if the formal agreement is signed more than 14 days after the signing of provisional agreement); OR the formal agreement only (if it is signed within 14 days from the date of the provisional agreement). The provisional agreement may be registered at the Land Registry (after stamping). It must be registered if the parties fail to sign the formal agreement on the specified date. In a normal case, the purchaser's solicitor would arrange to register the formal agreement.

5. WHAT SHOULD A PURCHASER BE AWARE OF IF THERE IS AN EXISTING MORTGAGE ON THE FLAT BEFORE HE/SHE SIGNS THE PROVISIONAL SALE AND PURCHASE AGREEMENT? 5. WHAT SHOULD A PURCHASER BE AWARE OF IF THERE IS AN EXISTING MORTGAGE ON THE FLAT BEFORE HE/SHE SIGNS THE PROVISIONAL SALE AND PURCHASE AGREEMENT? The provisional agreement and the formal agreement should provide that the flat is to be sold to the purchaser free from all encumbrances including the existing mortgage. The purchaser's solicitor will ask the vendor's solicitor to undertake to make sure that: the vendor pays off any existing mortgage; and the vendor's solicitor will give the discharge documents (bank documents showing that all mortgages have been paid off) to the purchaser's solicitor within a certain number of days after completion of the purchase (i.e. after payment of the purchase price by the purchaser).

6. IF A PURCHASER INTENDS TO BUY A FLAT OVER WHICH THERE IS A NEGATIVE EQUITY (THE PURCHASE PRICE TO BE PAID CANNOT FULLY OFFSET THE OUTSTANDING MORTGAGE LOAN), HOW CAN THE PURCHASER DEAL WITH THE RISK? 6. IF A PURCHASER INTENDS TO BUY A FLAT OVER WHICH THERE IS A NEGATIVE EQUITY (THE PURCHASE PRICE TO BE PAID CANNOT FULLY OFFSET THE OUTSTANDING MORTGAGE LOAN), HOW

CAN THE PURCHASER DEAL WITH THE RISK? Due to the downturn of the property market after 1997, the purchaser must ask the estate agent and the vendor whether or not the flat is subject to a negative equity. If the answer to the above is "yes", the purchaser should negotiate with the vendor for the inclusion of a term in the provisional sale and purchase agreement that the deposits should be kept by the vendor's solicitor as stakeholder until and unless the vendor can show that the outstanding mortgage loan is not greater than the balance of the purchase price (full purchase price minus the deposits). This term can minimize the purchaser's loss in case the vendor fails to discharge the existing mortgage before the completion of the sale of the flat. This term should be clearly stated on the provisional agreement otherwise it might not be inserted into the subsequent formal agreement. There was a High Court case in 1992 (Chu Wing Ning v Ngan Hing Cheung) in which it was explained that during the negotiation of terms for the formal agreement, a party is not obliged to accept a new term which goes "entirely beyond" what had been agreed in the previous provisional agreement. The situation will be different if the vendor refuses to insert such a term into the provisional agreement and/or the purchaser is willing to accept the risk. It is recommended that a purchaser facing a negative equity situation should seek legal advice on this matter.

7. WHAT SHOULD A PURCHASER DO IF A MORTGAGE IS NEEDED? 7. WHAT SHOULD A PURCHASER DO IF A MORTGAGE IS NEEDED? It is best to inquire at a bank(s) about the possibility of a mortgage on the flat in question before you sign the provisional sale and purchase agreement. Failing that, the purchaser should apply to a bank for a mortgage immediately after signing the provisional agreement. In August 2020, the Hong Kong Monetary Authority (HKMA) issued a new circular to banks requesting them to apply a maximum loan-to-value (LTV) ratio. For residential properties which are for self-use with a value at or above HK\$10 million, the maximum LTV ratio is 50%. For residential properties with a value less than HK\$10 million, the maximum LTV ratio is 60%, subject to a maximum loan amount of HK\$5 million. If the main income of the mortgage loan applicant is not derived from Hong Kong, the maximum LTV ratio will be lowered by 10% points and for residential properties which are for self-use with a value below HK\$10 million, the maximum loan amount will also be lowered to HK\$4 million. If the mortgage loan applicant or guarantor has borrowed or guaranteed other outstanding mortgage at the time of making the mortgage application, the maximum LTV ratio will be lowered by 10% points with also reduction to the maximum loan amount. Please see the applicable details on the HKMA circular. The Mortgage Insurance Program (MIP) provided by HKMC Insurance Limited, a wholly-owned subsidiary of the the Hong Kong Mortgage Corporation Limited can provide mortgage insurance to banks, which subject to meeting the relevant eligibility criteria (the maximum property value and the maximum loan amount, etc.), can in effect permit banks to provide a mortgage loan of up to 80% LTV ratio under the MIP. Please refer to the webpage of Mortgage Insurance Program under the Hong Kong Mortgage Corporation Limited for the maximum LTV ratio and eligibility criteria details. Also, the MIP is not available to applicants whose principal income is not derived from Hong Kong. What if the purchaser wants to acquire an additional and/or second mortgage? The purchaser needs to check whether the terms of the first mortgage allows an additional and/or second mortgage before applying to a bank for an additional or second mortgage.

8. CAN A PURCHASER RE-SELL THE PROPERTY AFTER SIGNING THE PROVISIONAL SALE AND PURCHASE AGREEMENT? 8. CAN A PURCHASER RE-SELL THE PROPERTY AFTER SIGNING THE PROVISIONAL SALE AND PURCHASE AGREEMENT? Yes, but check whether such action is allowed in the provisional sale and purchase agreement before doing so. The existing purchaser will act as a "Confirmor" and the new purchaser will act as a "Sub-Purchaser" in the transaction. Since it will involve an additional party, special attention must be paid to the timing of payments, the discharge of any existing mortgage, and the handing over of the flat. Additional stamp duty may also be incurred.

1. WHAT ARE THE USUAL STEPS FOR SIGNING THE FORMAL SALE AND PURCHASE AGREEMENT AND PAYING THE FURTHER DEPOSIT? 1. WHAT ARE THE USUAL STEPS FOR SIGNING THE FORMAL SALE AND PURCHASE AGREEMENT AND PAYING THE FURTHER DEPOSIT? Step 1 . The vendor and the purchaser each appoint an independent solicitor to represent them. Step 2 . The vendor's solicitor prepares the draft formal agreement . The vendor can include any special conditions he/she wants as long as the conditions do not violate

any relevant ordinances or contradict the terms of the provisional sale and purchase agreement. On the other hand, the purchaser can also propose special conditions. Both parties must fully agree to all these conditions before signing. Step 3 .The purchaser's solicitor then explains the terms and conditions of the formal agreement to the purchaser, who signs the agreement and its counterpart. Upon signing the formal agreement, the purchaser should also pay the further deposit either by a bank cashier's order (bank draft) or a cheque issued by a law firm. Usually the further deposit together with the initial deposit would be 10% of the purchase price. Step 4 .The purchaser's solicitor will arrange to deliver the formal agreement signed by the purchaser(in duplicate) together with the further deposit cheque to the vendor's solicitor. Step 5 .The vendor's solicitor explains the terms and conditions contained in the formal agreement to the vendor, who signs the agreement and its counterpart accordingly. Then, one agreement, signed by both the vendor and purchaser will be sent to the purchaser's solicitor and the vendor's solicitor will retain one agreement signed by both the vendor and the purchaser. Step 6 . The purchaser's solicitor will register the formal sale and purchase agreement with the Land Registry. Step 7 . The purchaser should consider buying insurance against any accidents (e.g. fire) which may result in loss or deterioration in the value of the flat after signing the provisional agreement or the formal agreement. The purchaser takes up the risk of the flat (e.g. any accident causing damage) once the provisional agreement or the formal agreement is signed. Step 8 . The vendor gives the title deeds (documents showing who owns the flat) to his/her solicitor, who will pass them onto the purchaser's solicitor for inspection. If the title deeds are kept by the mortgagee (usually a bank), the vendor's solicitor will arrange for the release of title deeds from the bank to the purchaser's solicitor. Step 9 . The purchaser's solicitor examines the title deeds, and asks the vendor's solicitor questions (legally called "requisitions") if he finds anything questionable. The vendor's solicitor must reply if the questions are reasonable. The purchaser's solicitor will let the client know if he/she is not satisfied with the answer(s) and if good title to the flat has been proved by the vendor. Step 10 . The vendor prepares to deliver vacant possession (deliver a vacant flat) to the purchaser on the completion date, unless this is not required in the formal agreement, for example, the flat is sold subject to a tenant who is occupying the flat.

2. I (AS A PURCHASER) SIGNED THE PROVISIONAL AGREEMENT BUT I WANT TO ADD MY SPOUSE'S NAME OR MY PARENTS' NAMES INTO THE SUBSEQUENT FORMAL AGREEMENT. CAN I DO THAT? 2. I (AS A PURCHASER) SIGNED THE PROVISIONAL AGREEMENT BUT I WANT TO ADD MY SPOUSE'S NAME OR MY PARENTS' NAMES INTO THE SUBSEQUENT FORMAL AGREEMENT. CAN I DO THAT? Yes, you can. Before signing the formal agreement, your solicitor will ask you and your spouse (or your parents) to sign an additional document, called Nomination, confirming that you were being nominated to sign the previous provisional agreement on behalf of the "new purchaser". The "new purchaser" includes you and your spouse (or your parents). This document, will not be subject to ad valorem stamp duty if the "new purchaser" is not a beneficial owner of any residential property in Hong Kong. (See section 29AB of the Stamp Duty Ordinance (Cap. 117)). The Nomination must be presented to the vendor's solicitor for preparing the formal agreement.

3. IF I WANT TO SELL OR TRANSFER MY FLAT TO A MEMBER OF MY FAMILY OR A RELATIVE, WHAT SHOULD I BE AWARE OF? 3. IF I WANT TO SELL OR TRANSFER MY FLAT TO A MEMBER OF MY FAMILY OR A RELATIVE, WHAT SHOULD I BE AWARE OF? You don't need an estate agent; You don't need to sign any provisional agreement; You still have to appoint a solicitor to handle the sale or transfer; If the person is a relative related to you by blood, marriage or adoption, one solicitor can represent both parties . Otherwise, you must appoint another solicitor to represent your relative; The stamp duty will be calculated according to the market price of the property if the purchase price is below the market price or if the property is transferred as a gift ( i.e. no purchase price is payable) . Please check with your solicitor or the Stamp Office for details of the calculation.

5. HOW MUCH STAMP DUTY IS PAYABLE FOR THE SALE AND PURCHASE AGREEMENT FOR A RESIDENTIAL PROPERTY? 5. HOW MUCH STAMP DUTY IS PAYABLE FOR THE SALE AND PURCHASE AGREEMENT FOR A RESIDENTIALPROPERTY? The formal agreement must be stamped either: i) within 30 days of the signing of the provisional agreement, or ii) within 30 days of the

formal agreement if it is to be signed within 14 days of the provisional agreement. The purchaser's solicitor will take care of this matter. On the basis that (1) the purchaser is a Hong Kong permanent resident who is purchasing the property on his/her own behalf; and (2) does not own any other residential property at the time of purchase, the rate of the ad valorem stamp duty payable varies in accordance with the price/value (whichever is higher) of the residential property as follows:

Property Price	Rate	Exceeds	Does not exceed
\$2,000,000	\$100	\$2,000,000	\$2,351,760
\$2,351,760	\$100 + 10% of excess over \$2,000,000		
\$3,000,000	1.5%	\$3,000,000	\$3,290,320
\$3,290,320	\$45,000 + 10% of excess over \$3,000,000		
\$4,000,000	2.25%	\$4,000,000	\$4,428,570
\$4,428,570	\$90,000 + 10% of excess over \$4,000,000		
\$6,000,000	3%	\$6,000,000	\$6,720,000
\$6,720,000	\$180,000 + 10% of excess over \$6,000,000		
\$20,000,000	3.75%	\$20,000,000	\$21,739,120
\$21,739,120	\$750,000 + 10% of excess over \$20,000,000		

Example Suppose the purchase price of a residential flat is \$3,200,000, then the ad valorem stamp duty payable for the formal sale and purchase agreement is: \$45,000 + 10% of excess over \$3,000,000 = \$45,000 + 10% of \$200,000 = \$65,000

\*Note: (1) If the purchaser is a non-Hong Kong permanent resident or a corporation, such purchaser would have to pay additional Buyer's Stamp Duty in addition to the ad valorem duty. (2) If the purchaser already owns a residential property, the ad valorem stamp duty would be a flat rate of 15% of the purchaser price or the value of the residential property, whichever is the higher. For further details about stamp duty, you can go to the Inland Revenue Department's webpage.

6. IS THERE ANY DIFFERENCE BETWEEN 'RESIDENTIAL' AND 'COMMERCIAL' PROPERTIES AS FAR AS STAMP DUTY IS CONCERNED? 6. IS THERE ANY DIFFERENCE BETWEEN 'RESIDENTIAL' AND 'COMMERCIAL' PROPERTIES AS FAR AS STAMP DUTY IS CONCERNED? For residential properties, stamp duty is payable upon the signing of the provisional agreement and/or formal sale and purchase agreement. If a formal agreement is signed within 14 days from the date of the provisional agreement, only the formal agreement has to be stamped. For commercial or non-residential properties, ad valorem stamp duty at the rates under Scale 2 of Head 1(1A) of the First Schedule of the Stamp Duty Ordinance is payable on the sale and purchase agreement of a non-residential property. No Buyer's Stamp Duty is payable for non-residential property.

7. CAN THE PURCHASER APPLY FOR DEFERRING PAYMENT OF STAMP DUTY? 7. CAN THE PURCHASER APPLY FOR DEFERRING PAYMENT OF STAMP DUTY? All agreements for sale and purchase of residential property signed on or after 30 June 2011 will not be eligible for deferment of payment of stamp duty.

8. SHOULD THE SALE AND PURCHASE AGREEMENT FOR THE PROPERTY BE REGISTERED AT THE LAND REGISTRY? HOW MUCH IS THE REGISTRATION FEE? 8. SHOULD THE SALE AND PURCHASE AGREEMENT FOR THE PROPERTY BE REGISTERED AT THE LAND REGISTRY? HOW MUCH IS THE REGISTRATION FEE? The agreement must be registered at the Land Registry. This protects your interests as it provides an official record that you are buying the flat and gives notice of this purchase to everyone. Again, the purchaser's solicitor will handle the registration procedures. The current registration fee for a property sale and purchase agreement is \$210. For more details about document registration, please visit the Land Registry's website.

9. HOW MUCH WILL I HAVE TO PAY THE SOLICITOR FOR A PROPERTY TRANSACTION? IS THERE A FIXED SCALE? 9. HOW MUCH WILL I HAVE TO PAY THE SOLICITOR FOR A PROPERTY TRANSACTION? IS THERE A FIXED SCALE? There are no fixed scale fees. The fixed scale fees system has long been abolished. You can negotiate the fee with your solicitor.

1. IF ONE PARTY COMMITS OTHER WRONGFUL ACTS, E.G. THE VENDOR BROKE A SMALL WINDOW IN THE KITCHEN, CAN THE OTHER PARTY TERMINATE THE SALE AND PURCHASE AGREEMENT OR CLAIM FOR COMPENSATION? 1. IF ONE PARTY COMMITS OTHER WRONGFUL ACTS, E.G. THE VENDOR BROKE A SMALL WINDOW IN THE KITCHEN, CAN THE OTHER PARTY TERMINATE THE SALE AND PURCHASE AGREEMENT OR CLAIM FOR COMPENSATION? It all depends on whether the contract/agreement term being breached infringed is a "condition" (major term) or a "warranty" (minor term). For the breach of a condition, the innocent injured party is entitled to terminate the agreement and claim compensation. For breach of warranty, the innocent injured party is ONLY entitled to claim compensation. Whether a contractual term is a condition or a warranty should be considered using common sense and will depend on how serious the breach infringement is. If such a dispute is brought before the Court, then the judge will make the final decision. This principle also applies to property transactions. If the vendor only broke

a kitchen window (which can be considered as a breach of warranty/minor term), the purchaser can only claim the repairing cost, or ask the vendor to replace the window before the handover date. There is little likelihood of the purchaser being entitled to terminate the sale and purchase agreement and ask for a refund of deposits. Attention should also be drawn to any term like "time is of the essence of this agreement" or "time must be strictly adhered to in this agreement". This reminds the vendor and the purchaser that any late delivery of cheques or keys would constitute a breach of a condition/major term and entitle the innocent party to terminate the sale and purchase agreement.

1. IF THERE ARE SOME "NEW EXPENSES" (E.G. REPAIR COSTS FOR THE RELEVANT BUILDING) COME OUT AFTER THE PARTIES SIGNED THE FORMAL SALE AND PURCHASE AGREEMENT BUT BEFORE THE COMPLETION DAY, SHOULD THE VENDOR OR THE PURCHASER BEAR THESE EXPENSES? 1. IF THERE ARE SOME "NEW EXPENSES" (E.G. REPAIR COSTS FOR THE RELEVANT BUILDING) COME OUT AFTER THE PARTIES SIGNED THE FORMAL SALE AND PURCHASE AGREEMENT BUT BEFORE THE COMPLETION DAY, SHOULD THE VENDOR OR THE PURCHASER BEAR THESE EXPENSES? With reference to the judgment of a Court of Appeal case (Luk Stanley Ho Chang v Fook Man Finance Company Limited), whether contributions to the cost of such repair or renovation works are to be paid by the vendor or by the purchaser depends on the construction of the particular clause in the relevant sale and purchase agreement. In the subject case, a sale and purchase agreement dated 26 July 2005 was made between the plaintiff as purchaser and the defendant as vendor. The date of completion was to be on or before 25 August 2005. After the Agreement was entered into but prior to the completion day, the plaintiff discovered that the Incorporated Owners of the building had held a meeting on 4 July 2005 and had passed resolutions to carry out major repairs to the building and also to replace the lift. One of the clauses in the Agreement provides that if any such notice or resolutions (requiring the vendor as one of the co-owners of the building to effect repair or renovation to any common part or facilities of the said building) existed prior to the date of the Agreement, the vendor's share of the costs of such repair or renovation shall be borne and paid by the vendor. Since the resolutions were passed by the Incorporated Owners on 4 July 2005, which existed prior to the date of the Agreement, the Court of Appeal found in favour of the plaintiff (purchaser) and held that the repair costs must be paid by the defendant (vendor).

1. SALE AND PURCHASE OF PROPERTY UNDER CONSTRUCTION IS GOVERNED BY EITHER THE "CONSENT SCHEME" OR THE "NON-CONSENT SCHEME". WHAT ARE THE DIFFERENCES BETWEEN THESE TWO SCHEMES? 1. SALE AND PURCHASE OF PROPERTY UNDER CONSTRUCTION IS GOVERNED BY EITHER THE "CONSENT SCHEME" OR THE "NON-CONSENT SCHEME". WHAT ARE THE DIFFERENCES BETWEEN THESE TWO SCHEMES? Consent Scheme The Consent Scheme may be imposed by the terms of the Government Lease for the relevant land. This Scheme applies to buildings that are erected on a particular piece of land for development purposes. This Scheme allows the Director of Lands to ensure that the developer has complied with a set of requirements before he grants permission to the developer to sell the property under construction. The purchasers will be protected by this Scheme as a result. The relevant requirements cover: the financial standing of the developer and financing arrangements, the terms of the sale and purchase agreement, the terms of the deed of mutual covenant, contents of the sales brochure, and the way the pre-sale is to be carried out. The developer/vendor's solicitor is responsible for ensuring that the requirements are met. The solicitor will keep the money that the purchaser has paid, and then release the money to the vendor in the manner permitted under the Scheme. Under this Scheme, the purchaser and vendor may be represented by the same solicitor but this is not essential. The purchaser should be aware that the solicitor may be involved in a conflict of interest. You may obtain a sample of the formal sale and purchase agreement under the Consent Scheme from Appendix III to the Legal Advisory and Conveyancing Office Circular Memorandum No. 72 from the Land's Department website. Please note the sample agreement is only for reference purposes and you should check the agreement carefully with your agent or solicitor before signing the agreement. Non-Consent Scheme If the buildings are not erected on a piece of land granted by the Government for development purposes, the purchasers are protected by the 'Non-Consent Scheme'. An example of this kind of building is one built on a piece land obtained by the developer after demolishing the old buildings that were

on the land. This Scheme is regulated by the Law Society of Hong Kong by imposing professional obligations to be complied by solicitors. Although there is no requirement, this Scheme permits the same solicitor to act for both the vendor and purchaser, and this solicitor will undertake to ensure that the purchasers are protected in a way similar to that offered by the Consent Scheme. Failure to comply with this Scheme would result in professional misconduct on the part of the solicitor and liability to the purchasers for compensation.

2. IF THE DEVELOPER/VENDOR FAILS TO COMPLETE THE BUILDING AND HAND OVER THE FLATS TO THE PURCHASERS ON TIME, CAN THE PURCHASERS TERMINATE THE AGREEMENT AND SUE FOR COMPENSATION? 2. IF THE DEVELOPER/VENDOR FAILS TO COMPLETE THE BUILDING AND HAND OVER THE FLATS TO THE PURCHASERS ON TIME, CAN THE PURCHASERS TERMINATE THE AGREEMENT AND SUE FOR COMPENSATION? Generally speaking, the vendor will be entitled to an extension of time for completion of the building in the event that an Authorized Person grants an extension due to delays caused by strike or lock-out of workmen; riots or civil commotion; force majeure or Act of God; fire or other accident beyond the vendor's control; war or inclement weather. If the vendor fails to complete the building/flats on or before the specified date without any reasonable and legitimate reasons, the purchasers can choose to: terminate the sale and purchase agreement, ask for the refund of all amounts paid to the vendor, and claim for interest (usually at 2% per annum over prime rate) on the amount paid from the date the amount was paid to the date of refund; or wait for the completion of the flat and claim for interest (usually at 2% per annum over prime rate) on the amount paid from the date following due date of completion to the actual date of completion of the flat. Purchasers must also note that there is a time restriction on informing the vendor of the above decision. Independent legal advice should be sought if necessary.

1. WHAT ARE THE FUNCTIONS OF THE OWNERS' CORPORATION AND THE BUILDING MANAGER? 1. WHAT ARE THE FUNCTIONS OF THE OWNERS' CORPORATION AND THE BUILDING MANAGER? The building manager (or the building management company) is appointed by the developer or the Owners' Corporation to manage the building. Among the important functions of the manager are repairing and maintaining the common area of the building, maintaining cleanliness, arranging for security services, and monitoring the collection and payment of management fees. The Owners' Corporation is empowered by the Building Management Ordinance to monitor the services provided by the building manager and the budget to be spent on the management and maintenance work. All the decisions made by the Owners' Corporation must be supported by votes from certain percentage of the total number of flat owners in the building. It can terminate the appointment of the building manager. The manager becomes answerable to the Owners' Corporation when it is set up.

2. HOW TO SET UP AN OWNERS' CORPORATION? 2. HOW TO SET UP AN OWNERS' CORPORATION? It is not necessary to set up an Owners' Corporation in every multi-storey building. However, the presence of an Owners' Corporation can help monitor and co-ordinate the various parties concerned with building management matters. The following gives you a general idea of how to set up an Owners' Corporation: Stage 1 (4 options) A meeting of owners may be called for the purpose of appointing a management committee. A management committee will be appointed in accordance with the DMC, or by the resolution of owners with not less than 30% of owners' shares\* (see the "note" below) in aggregate in the building. Owners may vote personally or by proxy to make resolutions (section 3 of the Building Management Ordinance); If option (a) cannot be achieved, a group of owners who has not less than 20% of the owners' shares in the building can apply to the Secretary of Home Affairs to order that a meeting of owners shall be called. At the meeting, a management committee may be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy (section 3A of the Building Management Ordinance); If option (b) cannot be achieved, a group of owners who has owners' shares of not less than 10% in the building, or the Secretary of Home Affairs, can apply to the Lands Tribunal to order that a meeting of owners shall be called. At the meeting, a management committee may be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy (section 4 of the Building Management Ordinance); If option (c) cannot be achieved and there is risk of danger to the owners or occupiers due to the absence of management committee and no management of the building, the Secretary of Home Affairs

can apply to the Lands Tribunal to order that a meeting (with a quorum of not less than 10% of the owners) shall be called. At the meeting, a management committee may be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy (section 40C of the Building Management Ordinance). Stage 2 The management committee applies to the Land Registry within 28 days of its appointment for registration of an Owners' Corporation. Stage 3 Owners' Corporation is formed when the Land Registrar issues a certificate of registration of the Owners' Corporation. Note: \* The calculation of "owners' shares" (or "undivided shares") is usually set out in the DMC. Normally, the shares may be calculated according to the floor area of each flat, in which some flats (with larger area) may have more shares than the others. Sometimes shares are also allocated to the common area of the building. For example: If there are 50 flats of similar area inside a building, then each flat owner holds a 1/50 share of the building (i.e. each flat represents 2%). If you want to set up an Owners' Corporation, you are recommended to seek assistance from a professional management company. You can also obtain more information from the Land Registry's webpage.

10. WHAT HAPPENS IF THERE ARE DISCREPANCIES IN THE TERMS BETWEEN THE PROVISIONAL AGREEMENT AND THE FORMAL AGREEMENT? 10. WHAT HAPPENS IF THERE ARE DISCREPANCIES IN THE TERMS BETWEEN THE PROVISIONAL AGREEMENT AND THE FORMAL AGREEMENT? Usually there is a provision in the formal agreement that it will supersede any previous agreement between the parties, so the formal agreement prevails. Even if there is no such provision in the formal agreement, in the context of sale and purchase of real properties in Hong Kong, once a formal agreement is drawn up and signed it supersedes the provisional agreement.

11. IF THE VENDOR/PURCHASER ANTICIPATES THAT HE WILL BE OUT OF HONG KONG AND THEREFORE CANNOT SIGN THE FORMAL AGREEMENT, WHAT CAN HE DO? 11. IF THE VENDOR/PURCHASER ANTICIPATES THAT HE WILL BE OUT OF HONG KONG AND THEREFORE CANNOT SIGN THE FORMAL AGREEMENT, WHAT CAN HE DO? He can appoint an agent to act on his behalf by executing a legal document called the "Power of Attorney" pursuant to the Powers of Attorney Ordinance (Cap. 31) before he leaves Hong Kong. The powers granted under the Power of Attorney can be general or specific to a particular transaction.

3. CAN I SELL MY PROPERTY IF I AM ONE OF THE JOINT TENANTS/TENANTS IN COMMON? 3. CAN I SELL MY PROPERTY IF I AM ONE OF THE JOINT TENANTS/TENANTS IN COMMON? If you own property with another co-owner as tenant in common, you can always sell your share of the property to a purchaser without the consent and agreement of the other co-owner as a tenant in common owns a distinct share in the property. If you are a joint tenant of a property, you do not own a distinct share in the property and you need to sever the joint tenancy first so that the co-owners are holding the property as tenant in common before a joint tenant can sell his share of the property. The severance of joint tenancy requires specific procedures under section 8 of the Conveyancing and Property Ordinance (Cap. 219) and you should seek specific legal advice on the procedures.

4. SHOULD I ENTER INTO A SALE AND PURCHASE AGREEMENT OR EXECUTE A DEED OF GIFT IF I WANT TO GIVE MY PROPERTY TO MY HUSBAND/WIFE? 4. SHOULD I ENTER INTO A SALE AND PURCHASE AGREEMENT OR EXECUTE A DEED OF GIFT IF I WANT TO GIVE MY PROPERTY TO MY HUSBAND/WIFE? A deed of gift may create a potential defect in title. Under section 49 of the Bankruptcy Ordinance (Cap. 6), the Court may make an order to set aside a transaction made by a bankrupt within a period of 5 years before he was adjudicated bankrupt if the transaction is regarded as an undervalue transaction. A deed of gift is regarded as an undervalue transaction under section 49(3) of the Bankruptcy Ordinance (Cap. 6). Hence if a person transfers his/her property to his/her spouse by way of a deed of gift and then the transferee wants to sell the property to a purchaser within the 5 years period of the deed of gift, the purchaser can challenge that the title is defective as the deed of gift may be set aside by the Court under section 49(2) of the Bankruptcy Ordinance (Cap. 6).

9. CAN A PURCHASER REFUSE TO COMPLETE THE PURCHASE OF A STIGMATIZED PROPERTY AFTER SIGNING THE PROVISIONAL OR FORMAL SALE AND PURCHASE AGREEMENT? 9. CAN A PURCHASER REFUSE TO COMPLETE THE PURCHASE OF A STIGMATIZED PROPERTY AFTER SIGNING THE PROVISIONAL OR FORMAL SALE AND PURCHASE AGREEMENT? Unfortunately, a stigmatized property is not a defect in title of the property. There is no legal definition of what constitutes a stigmatized property e.g. does it mean a flat where a homicide or suicide has happened? Does it include a flat where a person died out of



natural cause such as heart attack? Therefore it would be difficult to make enquiry with vendor and agent on whether a flat is “stigmatized “or not. However, some banks may have a “black list” of properties where unfortunate events had happened in the flat and had been widely covered by media eg homicide cases. There is no legal defect in title in the property but banks may be unwilling to advance mortgage loan to these black listed stigmatized flat for fear that in the event the banks need to exercise their power of sale due to default in mortgage repayment, the stigmatized flat may be difficult to sell as buyers may be deterred from buying the property due to the previous unfortunate event associated with the property. As the title of a stigmatized property is not defective, a purchaser cannot refuse to complete the purchase of the flat because previously an unfortunate event has happened or associated with the flat. However the purchaser would have difficulty in getting bank finance if a flat is listed by the banks as stigmatized flat. The only practical solution for a purchaser is to seek pre-approval of mortgage loan before signing the sale and purchase agreement.