

GUIDE TO PURCHASING SECOND-HAND RESIDENTIAL PROPERTIES



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The information contained in this booklet is for use as a general reference only and should not be relied upon as legal advice. You should seek legal advice if necessary.

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1 *Inspection and Enquiries*

1. You, as a prospective purchaser, should visit the site of the property in person to learn about its actual environment, in particular, the traffic conditions, and to find out whether there is any noise or air pollution problem. If in doubt, make further enquiries before coming to any decision.
2. You should study information about the areas surrounding the property such as:
 - the Outline Zoning Plan (OZP) of those areas which shows the land uses and major road system proposed by the Town Planning Board;
 - the public facilities nearby, for example, railway stations, public transport interchanges, schools, parks, public car parks, hospitals, waste collection points, cemeteries, etc.
3. To obtain more detailed information about the planning and development of a district, you may visit the Planning Department's Planning Enquiry Counters (17/F, North Point Government Offices, 333 Java Road or 14/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin) and request for inspection of the OZP or the Development Permission Area Plans for the relevant district. You may also buy a copy of the OZP from the Lands Department for reference or visit the Statutory Planning Portal (www.ozp.tpb.gov.hk).



4. You should enquire if any financial contribution has to be made to the development's facilities, for example, whether charges have to be paid for use.
5. You should also carefully inspect the property before signing any sale and purchase agreement. The following should also be noted:
 - whether there is any person, other than the registered owner(s), residing in the property, and/or owning beneficial interest in the property;
 - whether there are any additions or alterations to the structure of the property;
 - whether the property is encroaching on any common area;
 - whether furniture, electrical appliances and decoration are included in the sale of property; if this is the case, specify the items in the agreement for sale and purchase and inspect the furniture, electrical appliances and decoration carefully.



2 *Property Usage*

1. Ask the estate agent or the owner about its permitted use and seek confirmation from:
 - the Government Lease (Land Grant) regarding user restrictions of the land;
 - the Occupation Permit (“OP”) and the Deed of Mutual Covenant (“DMC”) of the building regarding user restrictions of the flat.
2. The property must be used in compliance with the OP and the DMC of the building. For example, if the OP specifies the use of the property as non-domestic, the property cannot be used for domestic purposes; if the OP specifies the use of the property as domestic, the property cannot be used for non-domestic purposes.

3 *Property Area*

1. According to the Practice Circular on the provision of the floor area information of second-hand residential properties issued by the Estate Agents Authority, starting from 1 January 2013 onwards, estate agents are required to provide the saleable area of a second-hand residential property, where applicable, to their clients in advertisements and in provision of the floor area information of the property. Agents should obtain the property’s saleable area information from the Rating and

Valuation Department or the agreement for sale and purchase of the first assignment of the property registered in the Land Registry.

2. Meaning of “saleable area”

“Saleable area”, in brief, means the floor area of a residential property enclosed by walls, including the floor area of balcony, utility platform and verandah but excluding an air-conditioning plant room, bay window, cockloft, flat roof, garden, parking space, roof, stairhood, terrace and yard.

3. You should find out all types of area information (including the “saleable area”) from the estate agent or professionals. If necessary, you should ask for further details or inspect on site what is covered by the “saleable area” and other areas.
4. For enquiries on property information such as saleable area, age and permitted occupation purpose of residential properties (excluding village type houses), you may use the Property Information Online service provided by the Rating and Valuation Department (www.rvdpi.gov.hk).

4 *Building Materials and Facilities*



1. You should inspect the property in person. Pay particular attention to the ceiling, bay windows and walls to see if there is any water stain, and check if the flooring is loose to ascertain whether there have been water leakages.

2. You should also inspect electrical wiring, switches, water pipes, drains, bath-tubs, toilets and windows to see if they are working properly. If electrical wiring or water pipes are worn out, ask the vendor when they were last replaced or repaired.

5 *Maintenance*

1. A second-hand property is normally sold on an “as-is” basis without a maintenance period. If necessary, ask professionals to inspect and assess the property’s condition before making any decision to buy.
2. You should enquire whether the development or building has any plan or need for repairs and/or maintenance in the near future, for example, replacing electricity installations or lift cables, painting external walls, maintaining slopes, etc.
3. If repairs and/or maintenance are required, you should ask for an estimate of the cost apportioned to each household and negotiate with the vendor as to who will be responsible for these charges before and after delivery of possession of the property.

6 *Government Lease*

1. The term of the Government Lease (Land Grant) for the land on which the property stands may in the long run have

significant implications on a purchaser's financial obligation. You should find it out before buying.

2. Before signing any agreement for sale and purchase, you should ask your solicitor about the terms for renewing the Government Lease (Land Grant) (if any). Usually the renewal terms include:

- a renewable Government Lease may be renewed without payment of any additional premium, but the lessees have to pay a new yearly Government rent. The yearly Government rent is equivalent to 3% of the rateable value of the property in that current year.
- Government Leases expiring between the effective date of the Sino-British Joint Declaration (i.e. 27 May 1985) and 30 June 1997 with no right of renewal (i.e. most Government Leases in the New Territories) may all be extended for lease terms expiring no later than 30 June 2047. From the date of commencement of the extended term, the lessees have to pay the yearly Government rent equivalent to 3% of the rateable value of the property in that current year.



3. Since a current owner is liable to pay all Government rent, including accumulated arrears, you should enquire with your solicitor about matters relating to such payments (including the respective legal obligations of the purchaser and vendor

in relation to the amount payable, accumulated arrears or advance payment of Government rent) to ensure a full settlement of all or Government rent arrears. You can also check with the Lands Department or the Rating and Valuation Department on any outstanding amount.

7 *Deed of Mutual Covenant*

1. The Deed of Mutual Covenant (“DMC”) of a building is a legally binding document. It regulates the rights and obligations of property owners who share the ownership of a building or development.
2. You should take special note of user restrictions in the DMC in relation to common areas and facilities, such as the clubhouse, external walls, lift lobbies, corridors, roofs and parking spaces of the building, etc.
3. Also, you should find out details on property management, including:
 - ownership of management rights;
 - management fees and criteria for determining the fees;
 - composition of the management organisation (e.g. the owners’ committee);
 - appointment, dismissal and remuneration of the property manager.

4. You should ascertain whether pet raising is permitted in the building or the development.

8 *Vendor's Title and Encumbrances*

1. You should
 - i. ascertain from the vendor:
 - whether he/she is selling the property as beneficial owner or in any other capacity;
 - whether any mortgage, charge, court order, building order, tenancy agreement, litigation, or other instruments have been registered as encumbrances against the property.
 - ii. obtain a written warranty from the vendor that neither the property has any illegal structure nor has it been altered, and that the vendor has not received any notice from the Government, the Incorporated Owners, or the development's management company in relation to any illegal structure or alteration.
 - iii. ensure that the vendor is able to repay all outstanding liabilities before the property is sold, for example, the amount necessary for the discharge of the mortgage, management fees, Government rent, rates and other creditors' charges on the property, etc.



2. To learn about the vendor's encumbrances in more details, you should ask the vendor, the estate agent and the development's management company whether:
- the relevant property has any illegal structure or encroaches on any common area;
 - the management company has issued any demolition order or received any complaint about the property;
 - there are management fees in arrears;
 - management fee deposits, water and electricity deposits, reserve fund, etc., are transferable, and the amount of the same;
 - the Incorporated Owners of the building or all the co-owners have to settle any substantial claim, litigation or judgment;
 - the Incorporated Owners have taken out third-party insurance for the common areas;
 - there is any deficit in the management account and the amount payable by the vendor;
 - there is any owner's obligation to repair and/or maintain structures or facilities (e.g. facilities for public use or slopes) within or outside the building or the development.



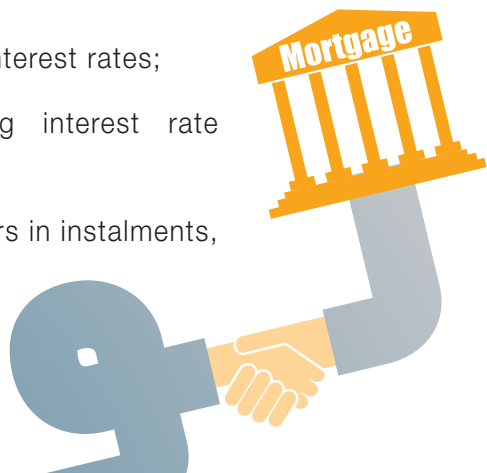
9 *Signing an Agreement for Sale and Purchase*

1. Usually, you first sign a Provisional Agreement for Sale and Purchase (“PASP”) before signing a formal one. You should read carefully every clause of the PASP and take note of the fees payable. Also, you should ask the estate agent to clearly explain the same to them. You should not sign the PASP if any information has yet to be filled in.
2. Before signing a PASP, you should ensure the estate agent provides the latest information on the title. If there is any doubt about the owner’s ability to repay the loan for the redemption of the property, you should make it a requirement that deposits are paid to solicitors as stakeholders lest the vendor misappropriates them when he/she is unable to complete the transaction.
3. The PASP is a valid and legally binding contract and you should seek legal advice before signing one. Generally speaking, both the vendor and purchaser have to engage their own legal representatives. However, they may engage the same solicitor if they are associated parties; or if the purchase price does not exceed \$1 million and there will be no conflict of interest arising from joint representation. Nevertheless, in all cases, it is always advisable for the vendor and purchaser to instruct their own solicitors to protect their interests and to avoid conflicts of interest arising from joint representation.

4. Conveyancing fees charged by solicitors vary. You should compare the price and services provided by different solicitors before making a decision.

10 Mortgages

1. Before deciding to buy a property, you should ascertain your own financial positions, loan repayment ability and the necessary financial arrangement. You should also pay attention to the latest policies on mortgage loans issued by relevant organisations. For example, the Hong Kong Monetary Authority may issue guidelines on the granting of mortgage loans for properties by banks from time to time. The debt servicing ratio (debt-to-income ratio) and loan-to-value ratio may also vary with the guidelines.
2. When choosing a bank or financial institution for loans, you should consider the following:
 - the property valuation and mortgage amount offered;
 - the term for repayment, number of instalments and amount of each instalment;
 - the criteria for determining interest rates;
 - the date for implementing interest rate adjustments;
 - the issues arising from arrears in instalments, for example, interest rates;



- the early redemption penalties and the notice period;
 - mortgage handling fees, legal fees, insurance fees and charges for the valuation report, etc.
3. During the instalment period, you should ask the bank or financial institution for a schedule of repayment, setting out:
- the outstanding amount of the loan;
 - the amount of each instalment;
 - the number of outstanding instalments;
 - the respective amounts of principal and interest.



11 *Date for Delivery of Possession*

1. You should note that the PASP should specify the date of completion of the sale and purchase of the property and whether vacant possession of the property shall be delivered on completion.
2. On or before the scheduled date of completion, you should make an appointment with the vendor for a final inspection of the property to verify whether vacant possession will be delivered.

12 *Alienation Restrictions*

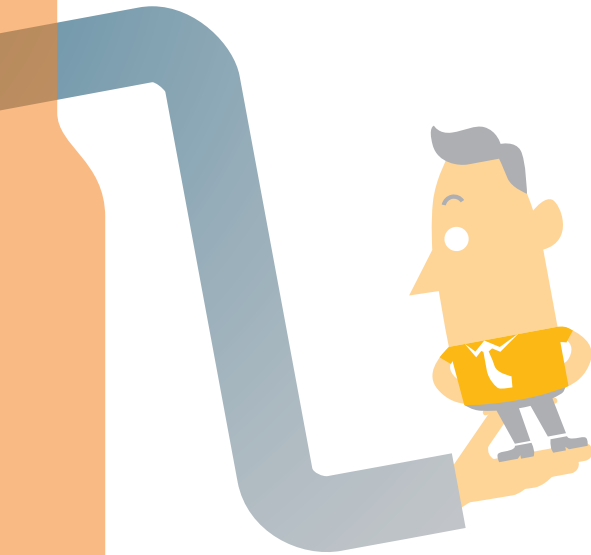
1. Some properties are subject to certain alienation restrictions. Owners are restricted from selling these properties. Generally speaking, a premium is payable to the Government before the restriction is removed. In some cases, special procedures have to be followed and special forms have to be used.
2. Properties that are subject to alienation restrictions include:
 - Flats under the Housing Authority's Home Ownership Scheme, Private Sector Participation Scheme and Tenant Purchase Scheme;
 - Flats under the Hong Kong Housing Society's Sandwich Class Housing Scheme and Flat-For-Sale Scheme;
 - Indigenous villagers' properties;
 - Ex-Co-operative Building Societies flats.
3. If interested in purchasing such properties, you should take note of the relevant restrictions and the procedures and forms required. If in doubt, obtain legal advice before entering into any sale and purchase agreement.



13 *Appointing an Estate Agent*

1. Only licensed estate agents can accept appointment.
2. You should sign an estate agency agreement with the estate agent to protect both parties' interests.
3. The agreement should specify:
 - the period during which the agreement is valid;
 - the estate agent's duties;
 - the commission as agreed between the purchaser and the estate agent, and when the commission is to be paid;
 - whether the appointment is "single agency" (i.e. the estate agent represents only the purchaser) or "dual agency" (i.e. the estate agent represents both the vendor and the purchaser);
 - in the case of dual agency, the amount or rate of commission that the estate agent will receive from both sides.
4. The estate agent should provide you with specific information about the relevant property, including the area, age, user restrictions, owner, encumbrances, Government Lease term, and information supplied by the owner in relation to alterations and management fees.

5. You should ask the estate agent for photocopies of all the documents you have signed with the agency.
6. You should give precise and clear instructions to the estate agent, especially when making offers or counter-offers to the owner during negotiation.
7. You should ask the estate agent to give you a receipt upon paying a fee.
8. If the transaction falls through, you should ask the estate agent for immediate return of any money held on your behalf.
9. The estate agent should explain to you all the terms of the estate agency agreement.



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Estate Agents Authority

48/F, Hopewell Centre,
183 Queen's Road East,
Wanchai, Hong Kong
Hotline: 2111 2777

Consumer Council

22/F, K. Wah Centre,
191, Java Road,
North Point, Hong Kong
Hotline: 2856 3113