



銷售香港境外未建成物業 需準備的重要文件

Important documents to be prepared when selling uncompleted properties outside Hong Kong

由於有興趣購買境外物業的香港居民愈來愈多，參與這類物業銷售的地產代理從業員也日漸增多。

不幸的是，我們經常從媒體報導中得知，有不少人在投資境外物業時遇到很差的經歷，當中以未建成物業為甚。正因為處理境外物業銷售非常複雜，尤其是未建成物業，故持牌人必須遵守監管局所發出的相關指引，以向公眾展示，持牌人在銷售香港境外未建成物業時是具有專業的水平。

監管局發出的指引

任何持牌人參與境外未建成物業的銷售時，都必須遵守監管局所發出有關銷售香港境外未建成物業的執業通告（編號17-03(CR)）。

As there is an increasing number of Hong Kong residents interested in purchasing non-local properties, more estate agency practitioners are now participating in the sale of such properties.

Unfortunately, as commonly reported in the media, many people have encountered bad experiences when investing in non-local properties, particularly those related to uncompleted properties situated outside Hong Kong (“UPOH”). As transactions involving non-local properties are very complicated, especially uncompleted ones, licensees must follow the relevant guidelines issued by the EAA when they are involved in the sale of these properties so that they can demonstrate their professionalism to the public when selling UPOH.

Guidelines issued by the EAA

Any licensee who participates in the sale of UPOH must comply with the practice circular on sale of uncompleted properties situated outside Hong Kong (No. 17-03(CR)) issued by the EAA.

根據這份通告，持牌人必須在買方就購買境外未建成物業訂立任何協議或支付任何款項（以較早者為準）之前，向買方提供**四項重要文件**。該些文件和資料詳列如下：

1. 有關賣方及物業的盡職審查報告

為充分了解賣方的背景及境外未建成物業，持牌人必須取得由專業人士、金融機構及/或政府當局發出的盡職審查報告，以確認賣方確實存在，並在法律上有權發展及出售該物業。同時，該報告須確認賣方為完成興建該境外物業的資金來源/財務安排。

此外，該報告須提供該境外物業所屬發展項目的關鍵資料，如位置、批租期、當時的擁有權、當時有效的產權負擔等。

2. 提供由境外未建成物業所在地的執業律師所發出書面法律意見

持牌人需提供根據物業所在地的法律和法規，對境外買家購買、轉售、出租或按揭該等物業是否有任何形式的限制；及如有的話，該等限制的性質的書面法律意見。

上述法律意見必須以中文或英文發出及提供予買方。如該意見以其他語言發出，則須附上中文或英文譯本。

3. 書面警告聲明

持牌人須向買方提供獨立的書面警告聲明，以確認買方了解，他們應：

- 自行就賣方及境外未建成物業進行盡職審查並仔細閱讀所有銷售文件
- 留意購買境外未建成物業存在風險及考慮聘用獨立的律師，以保障其在購買物業每個階段的權益，並在訂立任何協議前尋求其協助，解釋有關文件的條款及條件
- 考慮就適用於其作為境外買家因購買、轉售、出租或持有該等物業而可能需要繳納的稅項或徵費的類別及數額尋求獨立專業意見

According to this circular, licensees must provide **four important sales documents** to purchasers before they enter into any agreement or make any payment in relation to the purchase of the UPOH (whichever is the earlier). Such documents and information are listed as below:

1. Due diligence report(s) regarding the vendor and the property

In order to have a sufficient understanding of the background of the vendor and the property concerned, licensees are required to obtain a due diligence report(s) issued by a professional person, financial institution and/or government authority confirming that the vendor is in existence and legally entitled to develop and sell the property. Also, the report(s) should confirm the vendor's source of funds or financial arrangement in regard to the completion of the property.

In addition, the report(s) should provide key information of the development of which the property form part such as the location, tenure, current ownership, subsisting encumbrances etc.

2. Written legal opinion issued by a lawyer practising in the place where the UPOH are situated

Licensees must obtain a written legal opinion to ascertain whether there are restrictions on foreign purchasers to purchase, resell, lease or mortgage such properties according to the laws and regulations of the place where the properties are situated, and if so, state the nature of such restrictions.

The above legal opinion must be issued and provided to the purchasers in either Chinese or English. If the legal opinion is issued in other languages, a translation in either Chinese or English must be provided.

3. Written warning statement

Licensees are required to provide the purchasers with a separate written warning statement so as to remind and make sure the purchasers understand that they should:

- conduct due diligence on the vendor and the UPOH themselves and review all the sales documents carefully
- pay attention that risks are involved in purchasing UPOH and consider appointing an independent lawyer to protect their interests at all stages of the purchase and seek his assistance to explain the terms and conditions of any agreement in connection with the purchase
- consider seeking independent professional advice on the types and amounts of taxes or levies that they may be liable to pay as foreign purchasers in relation to the purchase, resale, lease or holding of the properties

4. 銷售資料單張

- 持牌人須向買方提供由賣方擬備或獲賣方批准的銷售資料單張。該單張應載有以下資料：發展項目的基本資料、有關物業詳情、付款、冷靜期、保養責任期、財務優惠、法律及翻譯服務、適用的法律及解決爭議的地點的資料、同時附夾相關文件（即就賣方及境外未建成物業發出的盡職審查報告、重要資料的法律意見及上述提及的書面警告聲明）。

除了要提供上述文件予客人外，持牌人必須在發出境外未建成物業的廣告及宣傳物品前，取得賣方就廣告及宣傳物品所載資料的準確性及完整性的明確書面批署。

此外，持牌人在推廣境外未建成物業時必須確保廣告或宣傳物品中清楚述明以下事項：

- 發展許可證或批文編號，以及發出該許可證或批文的有關當局的名稱；
- 買方是否將取得土地權益、建於該土地上的樓宇的權益及/或使用和佔用樓宇內的物業的權利；及
- 有關購買境外未建成物業是複雜及有風險的，以及作出購買決定前尋求獨立專業意見的顯眼聲明。

持牌人要留意，他們不得使用令人認為購買境外未建成物業是「安全」、「低風險」或「無風險」，或能夠在極少或零風險的情況下獲得「高」收益或回報等印象的字眼。

總結

持牌人必須熟悉相關法例及指引以提供準確資料予其客戶。同時，持牌人並應建議買家就其擬定購買的境外未建成物業尋求獨立法律及專業意見，並在作出任何購買決定前，先前往物業所在地進行視察。

4. Sales information sheet for purchasers

- Licensees must provide the purchasers with a sales information sheet related to the UPOH prepared or approved by the vendor. The sales information sheet on UPOH should contain the following information: basic information on the development, information on property details, payments, cooling-off period, defect liability warranty period, financial incentives, legal and interpretation service, governing law and dispute resolution venue as well as the relevant attachments (i.e. the due diligence report(s) on the vendor and the UPOH, legal opinion on the material information, and written warning statement as mentioned above).

Apart from the abovementioned documents to be provided to clients, licensees must obtain the vendor's express endorsement in writing on the accuracy and completeness of the information contained before issuing advertisements or promotional materials to promote the UPOH.

Moreover, when promoting UPOH, licensees must ensure that the following is clearly stated in the advertisements or promotional materials:

- the development permit or approval numbers, and name of the relevant authority which issued the permit or approval;
- whether or not the purchasers are acquiring an interest in the land, the building to be erected thereon, and/or a right to use and occupy the properties in the building; and
- a prominent statement reminding the purchaser that purchasing UPOH is complicated and contains risk, and they should seek independent professional advice before making a purchase decision.

Licensees should note that they must not use words which give the impression that purchasing UPOH is "safe", "low-risk" or "risk-free", or able to obtain "high" yields or returns with little or no risk.

Conclusion

Licensees must familiarise themselves with all the relevant laws and regulations beforehand in order to provide accurate information to their clients. They should also advise purchasers to obtain independent legal and professional advice in relation to their intended purchase of the UPOH, and suggest them conduct site visits of the properties before making any purchase decision.