

Circular

Circular No. 07-04 (CR)

- **In respect of HOS flats sold from 2007 onwards, the Hong Kong Housing Authority will:**
 - **not accept any buyback offer; and**
 - **process premium application within the entire 5-year alienation restriction period**

New Premium Payment Arrangement for Home Ownership Scheme Flats

The Hong Kong Housing Authority (the Housing Authority) has recently announced a new premium payment arrangement for Home Ownership Scheme (HOS) flats sold by the Housing Authority from 2007 onwards. The Housing Authority will not accept any buyback offer in respect of such HOS flats. The Housing Authority will process premium application for such flats within the entire 5-year alienation restriction period.

The Housing Authority will process premium application for such HOS flats within the 5-year alienation restriction period only upon owners' submission of an offer to assign the property to the Housing Authority and after the Housing Authority has declined to accept such offer. Accordingly, the owner should first submit an application for premium assessment using the form applicable to such HOS flats within the 5-year alienation restriction period which incorporates an offer to assign the flat to the Housing Authority. The owner can only enter into an agreement for sale and purchase (including provisional or formal agreement) in respect of such HOS flat with a purchaser in the open market after he has received the written confirmation from the Housing Authority that his offer to assign such HOS flat to the Housing Authority was declined. The agreement for sale and purchase, if entered into before the premium is assessed by and paid to the Housing Authority, must contain a condition that the premium as assessed by the Director of Housing (the Director) be paid to the Housing Authority prior to the assignment and within 28 days of the date of the agreement for sale and purchase or within such period as may be otherwise stipulated by the Director.

If an owner of a HOS/Tenants Purchase Scheme (TPS) flat enters into an agreement for sale and purchase with a purchaser within the 5-year alienation restriction period in the open market before he offers to assign the flat to the Housing Authority and the Housing Authority declines such offer, such act of entering into the agreement for sale and purchase will be in breach of the Schedule to and section 27A of the Housing Ordinance. Furthermore, if

an agreement for sale and purchase entered into with a purchaser in the open market (be it a flat within or after the 5-year period) before the assessed premium is paid to the Housing Authority does not contain a condition providing for the payment of such premium to the Housing Authority prior to the assignment and within 28 days of the date of the agreement for sale and purchase or within such period as may be otherwise stipulated by the Director, such failure will also constitute a breach of the Schedule to and section 27A of the Housing Ordinance. In both cases, the agreement for sale and purchase entered into will be void. Any person who commits an offence under section 27A of the Housing Ordinance is liable to a fine of \$500,000 and to imprisonment for one year. A practitioner who aids or abets the commission of the offence under section 27A of the Housing Ordinance may be guilty of the same offence.

The premium assessment procedures and the application forms for HOS/TPS flats within the 5-year alienation restriction period and for HOS/TPS flats which have expired the 5-year alienation restriction period are available at the Housing Authority's website www.housingauthority.gov.hk.

The processing of premium application for flats within the first two years of the alienation restriction period only applies to HOS flats sold from 2007 onwards. The Housing Authority will not process premium application in respect of those TPS flats within the first two years of the alienation restriction period as the Housing Authority will continue to accept buyback offers of TPS flats made within the first two years of the alienation restriction period.

For practitioners' ease of reference, Appendixes I and II give brief summaries of the current arrangements under which HOS and TPS flats owners may alienate their flats sold by the Housing Authority before or after 2007.

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Alienation Arrangements of HOS Flats

HOS flat owners may alienate their flats under the following arrangements:

- (1) (For HOS flats sold by the Housing Authority before 2007, i.e. under or before Phase 24A¹) Within the third to fifth years from the date of first assignment
 - sell back to the Housing Authority at market value assessed by the Director of Housing at the time of the owner's offer to assign less the original purchase discount; or
 - upon the Housing Authority's declination of the owners' offer to assign their flats to the Housing Authority², owners can sell, let or assign their flats in the open market after payment of a premium to the Housing Authority³; or
 - sell to eligible purchasers under the HOS Secondary Market Scheme⁴ at a freely negotiated price without payment of a premium.
- (2) (For all HOS flats sold by the Housing Authority in 2007 and thereafter) Within five years from the date of first assignment
 - upon the Housing Authority's declination of the owners' offer to assign their flats to the Housing Authority², owners can sell, let or assign their flats in the open market after payment of a premium to the Housing Authority³; or
 - upon expiry of a period of two years from the date of the first assignment, sell to eligible purchasers under the HOS Secondary Market Scheme⁴ at a freely negotiated price without payment of a premium.
- (3) (For all HOS flats sold by the Housing Authority) Upon expiry of five years from the date of first assignment⁵
 - sell, let or assign their flats in the open market after payment of a premium to the Housing Authority³; or
 - sell to eligible purchasers under the HOS Secondary Market Scheme⁴ at a freely negotiated price without payment of a premium.

¹ HOS flats under Phase 24A or before have all expired the first two years from the date of first assignment. Hence, there is no need to make arrangements for alienation of such flats within the first two years from the date of first assignment.

² The owners must first submit their application for premium assessment and wait until they receive the rejection of offer by the Housing Authority before they can enter into an agreement for sale and purchase (including provisional or formal agreement).

³ Where an agreement for sale and purchase (including provisional and formal agreement) is to be entered into before the premium as assessed by the Director of Housing (the Director) is paid to the Housing Authority, such agreement must contain a condition providing for the premium as assessed by the Director to be paid to the Housing Authority prior to the assignment and within 28 days of the date of the agreement for sale and purchase or within such period as may be otherwise stipulated by the Director.

⁴ Under this Scheme, the purchaser and the vendor are required to produce to each other a valid "Certificate of Eligibility to Purchase" and a "Certificate of Availability for Sale" respectively from the Housing Authority before entering into a Provisional Agreement for Sale and Purchase in the prescribed form. The purchaser will assume the liability to pay the premium to the Housing Authority upon future alienation of the flat in the open market.

⁵ The owners may enter into an agreement for sale and purchase (including provisional or formal agreement) before they submit their application for premium assessment.

Alienation Arrangements of TPS Flats

TPS flat owners may alienate their flats under the following arrangements:

- (1) Within the first two years from the date of first assignment
 - sell back to the Housing Authority at the list price specified in the deed of assignment¹.
- (2) Within the third to fifth years from the date of first assignment
 - sell back to the Housing Authority at market value assessed by the Director of Housing at the time of the owner's offer to assign less the original purchase discount¹; or
 - upon the Housing Authority's declination of the owners' offer to assign their flats to the Housing Authority², owners can sell, let or assign their flats in the open market after payment of a premium to the Housing Authority³; or
 - sell to eligible purchasers under the HOS Secondary Market Scheme⁴ at a freely negotiated price without payment of a premium.
- (3) Upon expiry of five years from the date of first assignment⁵
 - sell, let or assign their flats in the open market after payment of a premium to the Housing Authority³; or
 - sell to eligible purchasers under the HOS Secondary Market Scheme⁴ at a freely negotiated price without payment of a premium.

¹ The actual amount of the special credit granted at the time of purchase must also be returned to the Housing Authority.

² The owners must first submit their application for premium assessment and wait until they receive the rejection of offer by the Housing Authority before they can enter into an agreement for sale and purchase (including provisional or formal agreement).

³ Where an agreement for sale and purchase (including provisional and formal agreement) is to be entered into before the premium as assessed by the Director of Housing (the Director) is paid to the Housing Authority, such agreement must contain a condition providing for the premium as assessed by the Director to be paid to the Housing Authority prior to the assignment and within 28 days of the date of the agreement or within such period as may be otherwise stipulated by the Director.

⁴ Under this Scheme, the purchaser and the vendor are required to produce to each other a valid "Certificate of Eligibility to Purchase" and a "Certificate of Availability for Sale" respectively from the Housing Authority before entering into a Provisional Agreement for Sale and Purchase in the prescribed form. The purchaser will assume the liability to pay the premium to the Housing Authority upon future alienation of the flat in the open market.

⁵ The owners may enter into an agreement for sale and purchase (including provisional or formal agreement) before they submit their application for premium assessment.