

Circular

Circular No. 07-05 (CR)

- **Practitioners should remind clients of the risks involved in the sale and purchase of properties with unauthorised building works and the need to seek legal advice**

Unauthorised Building Works

The Estate Agents Authority has received complaints that some practitioners have failed to remind their clients of the risks involved in the sale and purchase of properties with unauthorised building works (UBW).

Additions or alterations to buildings made without the prior approval of the Building Authority may constitute UBW under the Buildings Ordinance. Under Section 24 of the Buildings Ordinance, an owner of a property with UBW may be ordered by the Building Authority to remove the UBW within a specified period. If an owner fails to comply with an order issued under Section 24 of the Buildings Ordinance, the Building Authority has the right to carry out the necessary demolition/alteration works and claim costs from the owner. The order will also be registered at the Land Registry against the property concerned creating a first charge on the property entitling the Building Authority to sell the property.

In view of the fact that UBW may affect the safety of a property and may render the title defective, practitioners should do the following to protect their clients' interests when dealing with properties:

Land search

- Practitioners should carry out land searches against the properties concerned and the land search records should be carefully checked to see if any order issued by the Building Authority requiring demolition/alteration of UBW has been registered and, if so, whether the order has been complied with. Practitioners should also specify the particulars of such an order in Part 1 of the Property Information Form (Form 1) used in the sale and purchase of residential properties in Hong Kong. Clients, vendors and purchasers alike, should be informed of the results of the land search accordingly.

Vendor's statement in Form 1

- The vendor's statement (Form 1, Part 2) makes provision for the vendor of a residential property to supply particulars of any structural additions or alterations to the property. As a first step to ascertain whether a property contains any UBW, practitioners should try their best to urge their vendor clients to provide the information requested in Form 1, Part 2.

Remind clients of risks involved

- If a practitioner has actual knowledge of the existence of UBW in a property to be sold and purchased by his client, the practitioner should remind his client of the risks involved in the purchase of such property. Such risks would include the risk of the Government exercising its right of re-entry hence rendering the title of the property defective; the risk of the Government issuing an order requiring the owner to remove the UBW within a specified period and, on the owner's failure to do so, carrying out the demolition/alteration works required and forcing a sale of the property to recover the cost of works; and the risk of not being able to obtain any or sufficient bank mortgage loan to complete the purchase of the property.
- On the other hand, the practitioner should remind his vendor client that unless otherwise agreed in the agreement for sale and purchase of the property, the purchaser is entitled to rescind the purchase and claim damages for breach of contract on the ground that UBW may render the title defective.
- In view of the risks involved, practitioners should remind their vendor and purchaser clients to seek legal advice before proceeding with the transaction to sign the Provisional Agreement for Sale and Purchase (PASP).

If, despite the existence of UBW in the property and after being reminded by a practitioner as stated above, the client still insists on proceeding with the transaction and signing the PASP (with or without obtaining legal advice), it would be desirable for the practitioner to protect his own interests by obtaining a written acknowledgement from his client

that states (i) that his client has been fully advised by him of the risks involved in the sale or purchase of property with UBW and of the need to seek legal advice; and (ii) that his client is aware of the UBW and the risks involved (and (if applicable) that no legal advice has been obtained), but his client has nevertheless decided to proceed with the transaction to sign the PASP.

Failure to comply with the above guidelines to remind clients of the risks involved in the sale and purchase of properties with UBW may give rise to disciplinary action by the Authority.

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