

Housing Development (Control and Licensing) (Amendment) Regulations 2015

- Salient amendments to the principal Regulations 1989

The legislation governing housing development, namely, the *Development (Control & Licensing) Act 1966* [“principal Act”] has been in existence for about 50 years (1966 - 2015) since its inception. It has been amended from time to time. The latest amendment to the principal Act is known as the *Housing Development (Control & Licensing) (Amendment) Act 2012* [*HDA 2012*], though gazetted in the year 2012, it did not come into force until 4 years later, i.e. on **1 June 2015**.

Most probably, the reason for the delay in the implementation of *HDA 2012* was, that the relevant authorities were not in a position to prepare and give finishing touches to the new housing developers’ regulations known as *Housing Development (Control and Licensing) (Amendment) Regulations 2015* [“*HDR 2015*”]. These new regulations can be found in P.U. (A) 106, Gazetted on 1 June 2015.

The new Regulations *HDR 2015* amended the *Housing Developers’ (Control and Licensing) Regulations 1989* [“*principal Regulations*”]. The standard sale and purchase agreements (Schedules G, H, I and J) have been amended by the new Regulations *HDR 2015*, which came into force last year, on **1 July 2015**, exactly one month after the commencement of the *principal Act*.

The new Regulations “*HDR 2015*” are the latest piece of subsidiary legislation introduced to amend the *principal Regulations*. The *principal Regulations* were implemented some 26 years ago. They underwent piecemeal amendments from time to time.

But this time round, substantial amendments have been made to the *principal Regulations*, particularly in respect of the clauses in the ‘standard’ or prescribed sale and purchase agreements [Schedule G and Schedule H, etc.]

The Minister responsible for introducing these Regulations is the “Minister of Urban Wellbeing, Housing and Local Government”, previously known as the “Minister of Housing and Local Government.”

Salient amendments to the principal Regulations

Apart from the amendments to the clauses in the standard sale and purchase agreements (for example, Schedules G and H), the other amendments relate to the developer’s licence, advertisements and collection of booking fees, etc. Those amendments that warrant attention are as follows:

1. Time limit to renew developer's licence shortened [regulation 4 amended]

The time limit for the renewal of a developer's licence has been shortened. After the amendment made by *HDR 2015*, a developer must renew his licence at least **14 days before the date of expiry** of its licence. Whereas under the old law, the licence must be renewed at least 60 days before the date of expiry.

Under the *principal Regulations*, the application for renewal of the licence "*may be made not later than sixty (60) days before the date of expiry*". These words have been replaced by the words "*shall be made not later than fourteen (14) days before the date of expiry*".

In addition, the licence must be renewed and remain valid until CCC [Certificate of Completion and Compliance] for every housing accommodation is granted: **Regulation 4(1A)**.

2. Restrictions imposed on advertising by housing developers [new regulation 8(1A) added]

Housing developers are fond of making statements in their advertisements to the effect that they offer free legal fees; how much rental income their property can fetch; how scenic the panoramic view is, how short the distance is from the housing project concerned to the nearby supermarkets, etc., and also what other benefits were available in their housing projects.

After the recent amendment, restrictions are imposed on the contents of any advertisement put up by the developer. Under a new regulation **8(1A)**, a housing developer's advertisement must **not** contain the following:

- (a) offer of free legal fees;*
- (b) projected monetary gains and rental income;*
- (c) claim of panoramic view;*
- (d) travelling time from housing projects to popular destinations;*
- (e) any particulars to which a housing developer cannot genuinely lay proper claim.*

3. Stakeholders prohibited from collecting booking fee, etc. [Regulation 11(2) amended]

After an amendment made by the *HDR 2015*, apart from housing developers, stakeholders are also prohibited from collecting from the purchaser any payment by whatever name called (such as "booking fee", "earnest money", etc.) **before** the signing

of any sale and purchase agreement. Such amendment is meant for the protection of the purchasers from unscrupulous developers.

“No person including ... stakeholders shall collect any payment by whatever name called except as prescribed by the contract of sale.” [regulation 11(2)].

Under the previous law, only **developers** were prohibited from collecting any such payment (‘booking fees’, etc.) **before** the signing of any sale and purchase agreement. Now the stakeholders are also bound by this regulation.

4. Standard sale and purchase agreements [Schedules G, H, I and J amended]

Under **HDR 2015**, all standard sale and purchase agreements [Schedules G, H, I and J] under the *principal Regulations* have been amended.

Numerous clauses in these standard sale and purchase agreements have been amended. But the amended sale and purchase agreements only apply to those housing projects under new developers’ licences issued **on or after 1 July 2015**.

Schedule G (land and building) is for landed property, for example, residential houses. **Schedule H (building or land intended for subdivision into parcels)** is for condominiums, apartments or flats, with or without strata titles.

Clauses in **Schedule I (land and building)** and **Schedule J (building or land intended for subdivision into parcels)** have also been amended.

5. Savings clause: old projects are to use previous SPAs

For the **existing or old housing projects**, the previous standard sale and purchase agreements [e.g. Schedule G and Schedule H] must be used by the developer issued with a licence **before 1 July 2015**.

“... any licensed housing developer who, before the coming into force of these Regulations, was carrying on the business of housing development, may continue to carry on such business for such period ... as may be specified in the licence.” (regulation 13)

But under the new **HDR 2015**, a housing developer must use the amended sale and purchase agreements (e.g. Schedule G and Schedule H) for new housing projects if he has been issued with a licence and an advertising permit **on or after 1 July 2015**.

Yang Pei Keng