

# Revision Workshop

## Agency Practice

- The starting point is the instruction from the clients.
- It is then for the professional agent to define the scope of work and confirm the instructions (including the payment of fees)
- In the case of a development property or one which may require renovation or alterations, a detailed work schedule may be needed. Why? To be considered.

# Preparation Works

- Do we need site inspection prior to the submission of the marketing proposal?
- What can be identified on site?
- The existing state of the property;
- Features of the surrounding areas;
- The existence of rights and liabilities that can only be identified during on-site inspection, etc.
-

# The Importance of Land Search

- What information can be revealed in the land search?
- The titles - ?
- The ownership -? The owners vs. occupiers
- The encumbrances - ? DMC, Enforcement Orders, Agreement for S & P, Agreement for Tenancy, etc.

# **Who may be a Landlord ?**

- A landlord may be:
- An individual;
- A company with property investment as core business;
- A company with property investment as side business;
- That company may be a listed company in HK or in other stock exchange (e.g. London);

# **Landlord**

- A developer may hold the development property as long term investment
- It may also be a private or an institutional fund.
- A fund often has its objectives in relation to a targeted market, a specified return, an exit provision after a period.

# **Landlord**

- The booming markets in Asia have attracted funds from local investors and elsewhere.
- A trend going towards treating property as an asset in the capital market.
- An investor makes an investment with a purpose. Knowing the purpose behind is important to draft an agency instruction.

# An instruction from Clients

- Why must a client's instruction be stated clearly?
- An instruction is part of the contract of work. It defines the scope of work that a professional has to carry out. The professional in this regard is in the position of an agent who is to perform his part in order to earn his fee. Upon performance, the professional is entitled to issue the billing and request payment.

# Client's Instruction

- Defining the scope of work also helps defining the liability on the part of the professional. In practice, an instruction may be given orally. It is good practice to confirm the instruction in writing or to state clearly in the written report the terms of reference so as to avoid any misunderstanding or subsequent disputes.

# **Property – the Subject Matter**

- Property in existence [the Property Portfolio]
- The development property
- The property as a long-term investment
- Other schemes going side by side with the agency work.

# The Subject Matter

- The subject matter under construction/renovation
- The subject matter cannot be leased out before the issuance of an occupation permit. One may, however, make a 'forward contract' with the prospective tenant. A binding contract to be adopted is 'Agreement for Tenancy'.

# Agreement for Tenancy

- How does the 'agreement for tenancy' work?
- 1. A schedule to be followed – time is of the essence [What is the common law position?]
- 2. A standard tenancy agreement to be enclosed with the agreement for tenancy
- 3. A deposit is to be made upon the signing of the agreement for tenancy
- 4. One should take note of how the area of the premises is defined
- 5. One should avoid any commitment of the layout, the common areas, and facilities
- 6. One should avoid any commitment during oral presentation – which may turn out to be misrepresentation
- 7. One may ask: Is an agreement for lease is as good as a lease?

# A Tenancy

- It is a contract and may be created orally or in writing.
- A lease is an interest in land.
- There is a requirement for a legal interest in land.

# Section 3 of the CPO

- The legal requirement: CPO (Cap 219)s. 3:
- (1) Subject to section 6(2), no action shall be brought upon any contract for the sale or other disposition of land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person lawfully authorized by him for that purpose.

# Section 3(2) of the CPO

- (2) This section applies to contracts or other dispositions whenever made and does not affect the law relating to part performance or sales by the court.

# Lease and Licence

- The distinction between lease and licence
- The case of *Street v. Mountford*:
- It was a unanimous decision that restates the hallmarks of a lease of exclusive possession, a periodic term and period payments

# Some Important Express Terms

- Option to renew – A clear mechanism must be provided in the clause itself
- Time is of the essence – Why?
- Reference to independent valuation or arbitration
- Rent review - Similar requirements
- One should appreciate the importance of the use of option to renew / rent review clause as a strategy in asset management

# Break / Redevelopment Clause

- Break clause
- Whoever has the right of an early termination, this party has the flexibility; the other party will have difficulty in planning for its own business.
- In practical terms, a break clause has to be exercised with an agreed mechanism of service of notice and strict compliance is required.
- Redevelopment clause – sufficient notice? Any compensation?

# Implementation of Agency Work

- The information passed to prospective purchasers or tenants.
- Information from reliable source?
- Caution with the possibility of misrepresentation

# Good Practice

- Why do we need to make a site-inspection?
- How do we make sure we have identified the legal and/or equitable interests in land?
- Land search? Written documents? Site inspection?

# **The Practice of Agency**

- The End