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Title glitch could wreck dreams

Danny Chung

Friday, February 23, 2007

When buying property in Hong Kong, most purchasers - like those in other countries - consider location, convenience, supporting facilities, price and whether their jobs are secure enough to support a mortgage.

Problems with the title of the property are possibly fairly low on the list of priorities.

But that dream house or flat may, in fact, turn out to be an expensive nightmare because of a title glitch.

The government has been doing something about this - but it is not enough and should be more active, according to specialist insurer First American Title Insurance.

Hong Kong uses a deed registration system to record the transaction history of property, whether it be a chunk of land or a building.

The statute that established this system is the oldest piece of legislation in Hong Kong.

However, the registration of a deed is insufficient evidence of a vendor's title, nor does it confer legal title over the property. Marketing manager Lillian Wang at First American said it is up to a solicitor to establish whether a title is good or has defects.

The Hong Kong Law Society has stated that "instances of properties with absolutely good title are rare, if not unknown."

The Land Titles Ordinance, passed by Legco in 2004, sought to improve on this by setting up a new title-registration system, to be administered by the Land Registry, that will establish who has title over what and will be much easier to check.

However, this is also considered insufficient.

First American chief executive for Hong Kong Alison Cooke said when the ordinance comes into effect, it will apply first to only primary market sales, with the secondary market having to wait another 12 years for legal succor.

"We're stuck in this imperfect system, an imperfect system, for another 12 years," Cooke said.

She added fraud is still possible, but the ordinance has allowed for this possibility by requiring the government to set up an indemnity fund to compensate victims.

But compensation only runs up to HK\$30 million. That would cover most of the residential market, but not other property sectors which often feature transactions involving far greater sums of money.

"For commercial property, it would not go anywhere near covering that," Cooke said.

Banks are also not adequately protected by the ordinance with regard to mortgages on property.

Adding to the uncertainty, the start date of the ordinance has not been fixed yet. In 2004, it was thought the ordinance would go into effect this year.

"But at the moment, from some reliable sources we have, I can pretty much tell you it is not going to happen. The earliest we are probably looking at is next year," Wang said.

Defects in title are certainly not isolated.

According to figures from the annual report of the legal profession's indemnity scheme, in



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2003 to 2004, during a rising market for property, 63 percent of all claims by total value against solicitors was conveyancing related, of which 53 percent was connected to failure to identify title defects.

By comparison, from 1998 to 1999, when the bottom fell out of the property market, 90 percent of all claims related to conveyancing.

Cooke said the only legitimate way a buyer could get out of a deal was to claim title defects.

At least Hong Kong buyers can take some comfort in the fact that all solicitors in the SAR must have professional indemnity insurance. "In some other countries in Asia, lawyers are not required to have it, especially in China," Wang said.

Cooke said the aggravation of a problem with a title could be alleviated by taking out insurance for a small premium that compensates policyholders in the event of title defects. But she said public awareness of such insurance is low in Hong Kong.

Large international and local companies will have heard of it, as will people who have lived in the United States.

"In the United States, you can't actually get a mortgage if you don't have title insurance," Cooke said.

In international business, title insurance is a must, with Cooke citing organizations such as the Hong Kong Monetary Authority, which takes out title insurance to cover its very large mortgage portfolios.

It also helped credit ratings, she added.

A Housing, Planning and Lands Bureau spokesman said it is reviewing various provisions of the Land Titles bill at Legco's request and studying several related issues, including the possibility of amendments.

"We will introduce the Land Titles (Amendment) Bill and related regulations into Legco as soon as practicable after discussion with stakeholders and revisions to the legislation are complete," the spokesman said.

"The titles registration system will come into effect after this further legislative work has been completed."



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