

Note: *General Amendment to the Housing (Control and Licensing of Developers) Enactment 1978 – the words “Project Account” wherever they appear are substituted with the words “Housing Development Account” [En. 4/05].*

Where, on or after the appointed date, a reference is made in any written law to the “Housing (Control and Licensing of Developers) Enactment 1978”, such reference shall be construed as a reference to the “Housing Development (Control and Licensing) Enactment 1978” [En. 4/05]

HOUSING (CONTROL AND LICENSING OF DEVELOPERS) ENACTMENT, 1978 (No. 24 of 1978)

HOUSING (CONTROL AND LICENSING OF DEVELOPERS) RULES 1980 (G.N.S 17 of 1980)

In exercise of the powers conferred by section 26 of the Housing (Control and Licensing of Developers) Enactment 1978 [En. No. 24 of 1978], the Minister of Local Government and Housing hereby makes the following rules:

Citation.

1. These Rules may be cited as the Housing (Control and Licensing of Developers) Rules 1980.

Interpretation.

2. In these Rules, unless the context otherwise requires —

“advertisement” means any notification or intimation of housing development —

- (a) published in any newspaper, journal or magazine or in the form of a brochure or in any other form; or
- (b) displayed on any hoarding, boarding, roof, wall, paling, fence, frame, signboard, plate, cloth, bar, pillar, post, wire-casting or other erection, structure or contrivance; or
- (c) conveyed by means of films within the meaning of the Films (Censorship) Act 1952 [Act 35] or by means of broadcast sound receivers or television receivers within the meaning of the Telecommunications (Television Receivers) Regulations 1964 [L.N. 69/64]; or
- (d) conveyed by any other means oral, or written, whether of the same kind or not as set out in paragraphs (a) to (c);

“Appropriate Authority” means any authority for the time being authorised under any written law in force in Sabah to approve building plans and to enforce building by-laws or regulations;

“charge” means charge as defined in section 4 of the Ordinance;

“contract of sale” means a contract between a licensed housing developer and a purchaser for the sale and purchase of housing accommodation including the lands appurtenant to such housing accommodation;

“Director” means the Director of Lands and Surveys appointed under section 47 (1) of the Ordinance, and includes a Deputy Director of Lands and Surveys appointed thereunder;

“land” means the land on which a housing developer proposes to erect housing accommodation or on which he is erecting housing accommodation including the lands appurtenant to the housing accommodation;

“Ordinance” means the Land Ordinance [*Cap. 68*];

“portion” means a subdivisional portion of any land comprised in any document of title made under section 40 of the Ordinance;

“proprietor” means any person or body for the time being registered as the proprietor of any alienated land;

“subdivided building” means a subdivided building as defined in section 2 of the Land (Subsidiary Titles) Enactment 1972 [*En. No. 9 of 1972*].

Application for a licence under section 5 (1) of the Enactment.

3. (1) The applicant for a licence under the provisions of subsection (1) of section 5 of the Enactment shall —

- (a) submit his application in the form prescribed in Schedule A to these Rules together with such documents as specified in section 5 (3) of the Enactment; and
- (b) supply such information as may be required by the Controller.

Any misrepresentation of any particulars in subparagraph (a) or (b) of this paragraph shall be an offence under these Rules.

(2) The Controller may, in his discretion, grant a licence with or without attaching any condition or conditions thereto or refuse to grant a licence.

(3) The fee payable for a licence under this rule shall be one hundred ringgit per annum.

Permit for advertisement required.

4. (1) No advertisement shall be made without a permit in writing having been first obtained from the Controller.

(2) An applicant for a permit shall —

- (a) make the application in the form prescribed in Schedule B to these Rules;

- (b) supply such particulars or information as may be required by the Controller; and
- (c) supply two copies of the advertisement in respect of which the permit is sought.

Any misrepresentation of any particulars in subparagraph (a), (b) or (c) of this paragraph shall be an offence under these Rules.

(3) The Controller may, in his discretion, grant a permit for an advertisement with or without attaching any condition or conditions thereto or refuses to grant a permit.

(4) A permit granted by the Controller shall be in respect of one housing development but any subsequent advertisement in relation to the same development, which differs from that for which the permit was first granted may be made subject to such deviation being submitted for the prior approval of the Controller.

(5) The fee payable for a permit under this rule shall be fifty ringgit.

Conditions for the granting of permit.

5. (1) No permit for advertisement as provided in rule 4 of these Rules shall be issued nor shall any advertisement be made for any housing development in respect of which —

- (a) the licensed housing developer is not the proprietor of the land upon which the housing development is proposed to be carried out:

Provided that this provision shall not apply if the proprietor of such land has executed an agreement with the licensed housing developer to the effect that —

- (i) the proprietor agrees to the sale of the land for the purposes of the housing development concerned; and
 - (ii) the proprietor agrees to abide by the provisions of rule 11 of these Rules;
- (b) the land upon which the housing development is proposed to be carried out is charged for an amount exceeding fifty per centum including annual interest of the market value of the land and such charge is to any person, body of persons, company, firm or society other than a bank which is in possession of a licence issued under the provisions of section 3 of the Banking Act 1973 [Act 102];^{*}
 - (c) the licensed housing developer has not obtained the written approval of the Appropriate Authority in regard to the lay-out plans for the proposed housing development; and
 - (d) the licensed housing developer has not applied in writing to the Director or Collector of Land Revenue under section 40 subsection (1) of the Ordinance for the subdivision of the land upon which the housing development is proposed to be carried out.

(2) This rule shall not apply to subdivided buildings.

Particulars to be included in advertisement.

6. Any advertisement (other than that conveyed by means of broadcast sound receivers or through television receivers) made by a licensed housing developer shall include the following particulars —

- (a) the licence number of the licensed housing developer;
- (b) the permit number of the advertisement;
- (c) the name and address of the licensed housing developer or his authorised agents (if any) as approved by the Controller;
- (d) the tenure of the land and encumbrances, if any, to which the land is subject; and
- (e) the expected date of completion of the proposed housing development:

Provided that in the case of classified or semi-classified advertisements in newspapers it shall not be necessary to include the licence number and the advertisement permit number.

Name appearing in advertisement.

7. An advertisement shall not contain the name of any person, body of persons, society or company except that of the licensed housing developer or his authorised agent as approved by the Controller.

Use of name or emblem for site.

8. (1) Every licensed housing developer shall, before using any name or emblem for any site forming part of a housing development, obtain the written permission of the Controller for such use.

(2) The Controller may, in his discretion grant permission for such use, with or without attaching any condition or conditions thereto or refuse to grant permission for such use.

Advertisement shall not contain certain descriptions.

9. (1) Any name in any language by which any site forming part of a housing development is proposed to be called or any emblem used in connection therewith shall not contain anything which suggests or is calculated to suggest —

- (a) the patronage of the Yang di-Pertuan Agong or of any of the members of his family;
- (b) any patronage of the Heads of State of any of the States of Malaysia or any of the members of their families;
- (c) any connection with the Government, Government of any States in Malaysia, any Municipality, Town Board, District Council, or society or body established and incorporated by statute, or public building or place;

- (d) any connection with the Government of any part of the Commonwealth or any foreign country or the United Nations; and
- (e) any attribute to which the licensed housing developer cannot genuinely lay proper claim.

(2) This rule shall be in addition to and shall not be in derogation from the provisions of the Emblems and Names (Prevention of Improper Use) Act 1989 [Act 414] and any similar State legislation.

Payment of booking fee.

10. (1) A purchaser of housing accommodation including the land shall not be required to pay a booking fee of a sum exceeding 2.5 per centum of the purchase price of such housing accommodation including the land.

(2) Notwithstanding paragraph (1) of this rule, no purchaser of a housing accommodation including the land shall be required to pay a booking fee of a sum exceeding one thousand ringgit.

(3) For purposes of this rule, the term “booking fee” shall include any payment by whatever name called which payment gives the purchaser an option or right to purchase the housing accommodation including the land.

Proprietor to be a party to a contract of sale.

11. (1) No licensed housing developer who is not the proprietor of the land upon which a housing development is carried out shall enter into any contract of sale of any housing accommodation in that housing development unless the proprietor of the land is also a party to such contract of sale and agrees to the sale of the land for purposes specified in such contract of sale.

(2) For the purpose of the preceding paragraph (1), such provisions in rule 12 as applied to a licensed housing developer in his capacity as a proprietor of the land shall be applicable to a proprietor entering into a contract of sale as prescribed under the provisions of the preceding paragraph (1).

Contract of sale.

12. (1) Every contract of sale shall be in writing and shall contain within its terms and conditions provisions to the following effect, namely —

- (a) provisions binding on the licensed housing developer that the land sold to the purchaser together with the housing accommodation to be erected thereon is free from —
 - (i) any agricultural or industrial condition expressed or implied; and
 - (ii) any restriction against the construction of such housing accommodation;
- (b) provisions binding on the licensed housing developer that immediately after a contract of sale has been signed the licensed housing developer shall not subject the land sold to the purchaser to any encumbrance without the prior approval of the

- purchaser;
- (c) provisions binding on the licensed housing developer to ensure that the land sold to the purchaser shall be free from any encumbrance immediately prior to the handing over of vacant possession of the housing accommodation to the purchaser;
 - (d) provisions specifying a statement relating to the purchase price of the land sold to the purchaser together with the housing accommodation to be erected thereon;
 - (e) provisions setting out the scheme of payments of the purchase price by instalments as prescribed in Schedule C to these Rules;
 - (f) provisions describing the layout plan particularly specifying the measurements, boundaries and areas of the land sold to the purchaser upon which the housing accommodation is to be erected and also specifying the position of such land in relation to the housing development area;
 - (g) provisions stating that in the event of the measurements, boundaries and areas of the land sold to the purchaser as described in the layout plan in the contract of sale being different from the measurements, boundaries and areas of such land as shown in the subsequent issue of the new document of title to such land the purchase price shall be adjusted equitably. The price of such land for purpose of adjustment shall be calculated as the same price per square foot as was used to calculate the purchase price stated in the contract of sale and any payment resulting from the adjustment and requiring to be paid by the party concerned shall be so paid within seven days of the issue of the new document of title;
 - (h) provisions binding on the licensed housing developer that the layout plan of the housing development area including the land upon which the housing accommodation is to be erected for the purchaser has been duly approved by the Appropriate Authority and no alteration to the approved layout plan shall be made or carried out except as may be required by the Appropriate Authority or as may be certified to be expedient or necessary by the architect of the licensed housing developer. Such alteration shall not annul the contract of sale or be subject of any claim for damages or compensation by or against any party to the contract of sale;
 - (i) provisions binding on the licensed housing developer that the housing accommodation to be erected for the purchaser shall be constructed in good and workmanlike manner in accordance with the specifications and plans described in the contract of sale which specifications and plans have been approved by the Appropriate Authority and agreed to by and between the purchaser and the licensed housing developer. No charges thereto or deviation therefrom shall be made without the consent of the purchaser except such as may be required by the Appropriate Authority or certified by the architect of the licensed housing developer to be expedient or necessary. The cost of such changes or deviations shall be borne by the licensed housing developer and no claim whatsoever may be made against the purchaser;
 - (j) provisions binding on the licensed housing developer that he shall in relation to the

housing accommodation to be erected for the purchaser conform with all the written laws for the time being in force affecting such housing accommodation and shall keep the purchaser indemnified against all fines and penalties or losses incurred by reason of any breach of the provision of any written law;

- (k) provisions binding on the licensed housing developer that he shall at his own costs and expenses construct or cause to be constructed in accordance with the requirements and standards of the Appropriate Authority or other public authorities the roads, driveways, drains, culverts, water mains and septic tanks or sewerage mains or sewerage plants serving the housing accommodation erected for the purchaser;
- (l) provisions binding on the licensed housing developer that he shall at his own costs and expenses cause the connection of electricity, water and sewerage mains of the Appropriate Authority or public authority with the internal electricity, water and sewerage mains of the housing accommodation erected for the purchaser;
- (m) provisions binding on the licensed housing developer that he shall at his own costs and expenses have applied and shall obtain the approval for the subdivision of the land sold to the purchaser as provided for under the Ordinance;
- (n) provisions binding on the licensed housing developer that he shall do all acts and things necessary to procure the issue of the relevant Certificate of Fitness for Occupation from the Appropriate Authority in respect of the housing accommodation erected for the purchaser and shall at his own costs and expenses comply with all the requirements of the Appropriate Authority in the procurement of such Certificate and shall undertake to produce such Certificate to the purchaser when issued;
- (o) provisions specifying the date of delivery of the vacant possession of the housing accommodation to the purchaser which date shall not be later than 24 months after the date of signing of the contract of sale;
- (p) provisions binding on the licensed housing developer that he shall upon the signing of the contract of sale forthwith use his best endeavour and take all necessary steps to obtain a separate issue of the document of title to the land upon which the housing accommodation is erected for the purchaser and shall upon the issue of the document of title and provided that the purchaser has paid all moneys due under the contract of sale and has performed and observed the terms and conditions of the contract of sale, forthwith execute a valid and registrable transfer of such land together with the housing accommodation to the purchaser, his heir or nominee or lawful assignee as the case may be;
- (q) provisions binding on the licensed housing developer that he shall undertake to remedy any defect, shrinkage or other fault in the housing accommodation erected for the purchaser which defect, shrinkage or other fault may become apparent within a period of six calendar months after the date of delivery of vacant possession to the purchaser by the licensed housing developer;
- (r) provisions binding on the licensed housing developer that he shall indemnify the

purchaser for any delay in the delivery of the vacant possession of the housing accommodation. The amount of indemnity shall be calculated from day to day at the rate of not less than eight per centum per annum of the purchase price commencing immediately after the date of delivery of vacant possession as specified in the contract of sale;

- (s) provisions stating the party responsible for the payment of all outgoings including quit rents and assessments and the manner of making such payments;
- (t) provisions specifying the penalties to be levied against the purchaser in the event of his committing any breach of the terms and conditions of the contract of sale and the manner of levying such penalties;
- (u) provisions binding on the licensed housing developer that the purchaser of the land and his heir, personal representative, assignee and his or their servants, agents, licensees and invitees shall have free rights and liberties to use such land and to use in common with all other persons having similar rights and liberties, all roads serving such land or other lands in the housing development and to make all necessary connections and thereafter to use in a proper manner the drains, pipes, cables and wire laid or constructed by the licensed housing developer under or over such roads for the purpose of the supply of water, electricity and telephone services to and for drainage of water from the land sold to the purchaser. Such rights and liberties shall continue to apply notwithstanding the completion of the contract of sale;
- (v) provisions binding that a licensed housing developer shall not charge extra amount to the purchase resultant on the increase cost of materials;
- (w) provisions specifying that in the event of a licensed housing developer fails to remedy any defect, shrinkage or other fault in the housing accommodation created for the purchaser within the six months period, the Controller reserved the right to utilise the deposit money to make good the reported defect on the housing accommodation.

(2) Notwithstanding the provisions of paragraph (1) of this rule, where the Controller is satisfied that owing to special circumstances the compliance with any provisions of this rule is impracticable or unnecessary he may by a certificate in writing waive or modify such provisions in respect of any contract of sale.

(3) The provisions of this rule shall not apply to an agreement for sale in respect of subdivided buildings.

Previous contract of sale.

13. (1) A licensed housing developer may within a period of three months of the date of the coming into force of these Rules apply to the Controller to waive any of the requirements of rules 10, 11 and 12 in respect of any contract of sale signed prior to the date of the coming into force of these Rules but notice of the application shall be given to the purchaser concerned to enable him to make representations to the Controller relating to the application.

(2) The Minister may by notification in the *Gazette* extend the period referred to in the preceding paragraph (1) for such further period or periods as he may deem fit provided that the period or periods so extended shall not in the aggregate exceed one year from the date of the coming into force of these Rules.

(3) In determining the application made pursuant to this rule, the Controller may exercise the power conferred upon him under rule 12 and he shall have absolute discretion to approve such application with or without condition or refuse to approve such application.

Power to waive requirements relating to advertisement.

14. The Controller may, in his discretion, on the application of a licensed housing developer who has been licensed before the coming into operation of these Rules, and within a period of three months after the coming into operation of these Rules, waive any of the requirements of these Rules in respect of an existing advertisement.

Appeal.

15. Notwithstanding anything to the contrary in these Rules, any person aggrieved by the decision of the Controller in the exercise of his power under rules 3 (2), 4 (3), 8 (2), 12 (2), 13 (3) and 14 may within fourteen days after having been notified of the decision of the Controller appeal against such decision to the Minister, and the decision of the Minister made thereon shall be final and shall not be questioned in any court.

Previously licensed housing developer to carry on business.

16. Notwithstanding the provisions of these Rules, any licensed housing developer which before the coming into force of these Rules was carrying on the business of housing development may continue to carry on such business for such period and on such conditions as may be specified in the licence.

Penalties.

17. Any licensed housing developer who contravenes any of the provisions of these Rules shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three thousand ringgit, and for a second or subsequent offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

SCHEDULE A

HOUSING (CONTROL AND LICENSING OF DEVELOPERS) RULES 1980

(Rule 3)

APPLICATION FOR A LICENCE

*I/We, the undersigned, hereby apply for a licence, pursuant to the provisions of the Housing (Control and Licensing of Developers) Enactment 1978 and the Housing (Control and Licensing of Developers) Rules 1980 and for that purpose supply the following particulars:

Name of Housing Developer
(In block capitals)

Business address
(In block capitals)

Telephone No.

State constitution of undertaking (e.g., "Company" "Firm", "Society", Partnership", etc.)

Authorised capital (if any) RM

Issued capital (if any) RM

Paid up capital (if any) RM

Date of commencement of business (To be supported by documentary evidence)

Particulars of all persons of standing in the undertaking. (See note 4 overleaf)

Status	Full Name (Underline surname)	Address	N.R.I.C No.	Occupation
.....				

.....

Previous Licence No. and date of issue (if any)

The following licence issued to me has since been revoked

*I/We declare that to the best of *my/our knowledge and belief, the particulars given above are true.

Date

.....
*Applicant's signature or
 Common Seal of Company*

PLEASE READ CAREFULLY THE NOTES

*Delete whichever not applicable.

NOTES

1. When completed, this form should be presented to:

THE CONTROLLER OF HOUSING,
 MINISTRY OF LOCAL GOVERNMENT AND HOUSING,
 KOTA KINABALU.

2. The following documents should be attached in accordance with section 5 (3) of the Enactment:

<i>Applicant</i>		<i>Documents to be submitted</i>	<i>Document to be verified by Statutory Declaration by</i>
Person	1.	A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken	That person himself

		by that person	
Body of persons	1.	A copy of an agreement between or amongst persons forming that body	Any of the persons forming that body
	2.	A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken by that body of persons	
Company	1.	A copy of memorandum of association	A director, managing director, general manager, secretary or any senior officer of the company
	2.	A copy of articles of association	
	3.	A copy of the latest audited balance sheet	
Firm	1.	A copy of the partnership agreement	A partner
	2.	A copy of the latest audited balance sheet	
Society	1.	A copy of the rules or by-laws of the society	President or Secretary
	2.	A copy of the latest audited balance sheet	

3. The Statutory Declaration verifying the above documents must also contain clauses to the effect that the provisions of section 6 (1) (c) or 6 (1) (d) of the Housing (Control and Licensing of Developers) Enactment 1978, as the case may be, have not been contravened and that the provisions of section 15 of the said Enactment will be complied with.

4. Particulars of all persons of standing in the undertaking should include in the case of:

- (i) a company, the name of the director/directors, manager or secretary;
- (ii) a society, the name of the president, secretary, treasurer or such other person in a position analogous to that of president, secretary or treasurer;

- (iii) a partnership, the names of all the partners; and
- (iv) a person or group of person, the name of the person or the names of all persons within the group.

SCHEDULE B

HOUSING (CONTROL AND LICENSING OF DEVELOPERS) RILES 1980

(Rule 4)

APPLICATION FOR AN ADVERTISEMENT PERMIT

*I/We, the undersigned, hereby apply for a permit pursuant to the provisions of the Housing (Control and Licensing of Developers) Enactment 1978 and the Housing (Control and Licensing of Developers) Rules 1980 and for that purpose supply the following particulars:

A. PARTICULARS OF THE HOUSING DEVELOPER

Name of Housing Developer
(In block capitals)

Business address
(In block capitals)

Telephone No.

Housing Developer's Licence No. and date of issue

B. PARTICULARS OF THE HOUSING DEVELOPMENT INTENDED TO BE ADVERTISED

Name or designation of proposed housing development

Location of proposed housing development. State Lot No., Mukim, District, name of road and acreage

Tenure of the land, e.g., 99-years lease, 999-years lease, etc.

Encumbrances and restrictions in interest, if any, to which the land is subject

Quote reference, with date, of the written approval of the Appropriate Authority for the lay-out and the Director of Lands and Surveys for the subdivision (if any)

Expected date of completion of the housing development

No. of units and types of housing accommodation to be constructed

Attached 2 copies of the proposed advertisement or text of the proposed advertisement if advertisement is through radio

*I/We declare that to the best of *my/our knowledge and belief, the particulars given above are true.

Date

.....
*Applicant's signature or
Common Seal of Company*

SCHEDULE C

HOUSING (CONTROL AND LICENSING OF DEVELOPERS) RULES 1980

(Rule 12 (1) (e))

PAYMENT OF INSTALMENTS

1. The purchase price shall be paid by the purchaser to the licensed housing developer by instalments and at the times and manner following, that is to say —

- (a) immediately upon the signing of the contract of sale a sum equivalent to 10 per cent of the purchaser price such sum to include the booking fee if any paid;
- (b) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the foundation work of the housing accommodation has been completed a sum equivalent to 10 per cent of the purchase price;
- (c) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the reinforced concrete framework of the housing accommodation has been completed a sum equivalent to 15 per cent of the purchase price;
- (d) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the brick walls of the housing accommodation with door and window frames in position have been completed a sum equivalent to 15 per cent of the purchase price;
- (e) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the roofing and internal plastering of the housing accommodation have been completed a sum equivalent to 15 per cent of the purchase price;
- (f) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the electrical wiring and plumbing (without fittings) to the housing accommodation have been completed a sum equivalent to 10 per cent of the purchase price;
- (g) within fourteen days after receipt by the purchaser of the licensed housing developer's notice in writing that the developer's architect has certified that the roads and drains serving the housing accommodation have been completed a sum equivalent to 15 per cent of the purchase price;
- (h) on delivery to the purchaser of vacant possession of the housing accommodation and the land as provided in rule 12 (1) (o) or on completion of the transfer of the property as provided in rule 12 (1) (p)

whichever shall first happen the balance of 10 per cent of the purchase price, 5 per cent of which shall forthwith be paid to the licensed housing developer and the remaining 5 per cent shall be paid to the licensed housing developer's solicitors or to such other person as may be approved by the Controller as stake holders to be paid to the licensed housing developer only on production of the Certificate of Fitness for Occupation of the Appropriate Authority in respect of the housing accommodation.

Every such notice shall be supported by the requisite certificate of the licensed housing developer's architect and shall be accepted as good notice of the fact that works therein referred to have been completed.

2. If any of the instalments referred to in paragraph (1) above shall remain unpaid by the purchaser at the expiration of the said period of fourteen days (and in this respect time shall be of the essence), interest on such unpaid instalment or instalments shall commence to run immediately thereafter and be payable by the purchaser such interest to be calculated from day to day at the rate of ten per centum per annum.

August 2008

*
– Banking Act 1973 has been repealed by Banking and Financial Institutions Act 1989 (Act 372).