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ESTATE AGENTS AUTHORITY

Dear Licensees,

Re: Explaining to clients about the stakeholding of deposits

The new Practice Circular (No. 16-03 (CR)) on “Verifying the Identity of Vendors” issued by the Estate Agents Authority (“EAA”) has come into effect since 1 December 2016. The EAA would like to remind all licensees to follow the guidelines set out in the Circular and pay extra attention when advising clients and explaining to them about the stakeholding of deposits at a firm of solicitors.

The EAA has recently received complaints from property vendors alleging that certain licensees have assured them, when explaining to them about the term of stakeholding of deposits in the Provisional Agreement for Sale and Purchase (“PASP”), that they could receive the deposits from the firm of solicitors very soon, or within a certain period of time. However, it turned out that they were unable to receive the deposits within the period of time advised by the licensee.

Licensees should note that the time of releasing deposits from the firm of solicitors could be affected by various factors such as the terms of the PASP and the instructions from the existing mortgagee bank. Hence, licensees should not make any representation or promise to vendors that the deposits will be released on a particular date or within a certain period of time after the PASP has been signed. Instead, when advising the parties to stakehold all the deposits with a firm of solicitors, licensees should explain to the parties the implications of the stakeholding arrangement and the conditions to be fulfilled before the release of the deposits by stakeholders.

According to section 13(1)(a) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, a licensee shall, before a client of the licensee who is not legally represented enters into an agreement for sale and purchase of a residential property, explain to the client the meaning of each clause of the agreement and draw to his attention the meaning of any essential terms and provisions thereof. A deposit



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stakeholding provision contained in a PASP is an essential term. Thus, if a licensee fails to explain to the client (who is not legally represented) the meaning of any deposit stakeholding provision in the PASP before entering into the PASP, the licensee may be in breach of the aforesaid regulation.

Estate Agents Authority

22 December 2016