

Paragraph 3.7.3 of the *Code of Ethics*

Estate agents and salespersons should adhere to the principles of fair competition and refrain from restrictive business practices.

Illustration (1)

Refusal to Return a “Certificate of Availability for Sale”

A licensee entered into a non-exclusive estate agency agreement with a vendor who intended to sell his property under the Home Ownerships Scheme (“HOS”) Secondary Market Scheme. The agreement contains a clause which required the vendor to deposit with the licensee his “Certificate of Availability for Sale” for a period of six months. During the said period, another licensee introduced a purchaser to the vendor with a view to purchasing his HOS property. The vendor is required to produce to the other licensee the “Certificate of Availability for Sale” before he could enter into a provisional agreement for sale and purchase. He demanded the return of the “Certificate of Availability for Sale” but the licensee refused to hand it over to him.

Commentary and Suggestion:

In this case, the licensee refused to hand over the “Certificate of Availability for Sale” to the vendor, so that no other licensee could act for the vendor, notwithstanding that the vendor had not appointed him as an exclusive agent. The act amounted to a breach of the principle of fair competition. The licensee thus failed to comply with paragraph 3.7.3 of the *Code of Ethics*.

Good and fair business practices would increase consumers’ confidence and a favourable environment for business would promote economic development.

Licensees should adhere to the principles of fair competition and refrain from restrictive business practices.

Illustration (2)

Copying Listings Information without Permission

Two licensees copied listings information from the computers of an agency without their employer's permission. They were allegedly engaged in the transfer of clientele or listings without their employer's permission.

Commentary and Suggestion:

Some licensees have transferred clients or listings belonging to their employer to another estate agency without their employer's permission. In most cases, these licensees obtain higher rates of commission or other benefits from the other estate agency while their employer suffers a loss of commission as a result of the transfer.

The conduct of the licensees in the case above had not only damaged the trust between their employer and them, but also restricted open and fair competition among members of the trade, thus failing to comply with paragraph 3.7.3 of the *Code of Ethics*.

An employee owes a duty of loyalty and fidelity to his employer under common law and may be sued for damages by his employer for breach of these duties. A licensee may also commit a criminal offence of "access to computer with criminal or dishonest intent" under the Crimes Ordinance in transferring clients or listings belonging to his employer to another estate agency (whether or not owned by him) without his employer's

permission. The employee licensee may also commit an offence under the Prevention of Bribery Ordinance depending on the circumstances of the case. If the employee licensee obtains an “advantage” in relation to his employer’s affairs or business and without the permission of his employer, he may commit an offence under section 9(1) of the Prevention of Bribery Ordinance. Those offering such an advantage to the employee licensee may commit an offence under section 9(2) of the Prevention of Bribery Ordinance.

Information about clients and listings is regarded as an asset of estate agency firms. Without their employer’s permission, licensees should not copy such information for use other than in the course of business. If they do, they may breach the *Code of Ethics* and be subject to disciplinary sanctions.

Moreover, under the Personal Data (Privacy) Ordinance, it is an offence for a person to disclose any personal data of a data subject obtained from a data user without the latter’s consent and with an intent to obtain gain or cause loss to the data subject. It is also an offence if the unauthorised disclosure, irrespective of its intent, causes psychological harm to the data subject. The maximum penalty for these two new offences is a fine of \$1,000,000 and imprisonment for five years.

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