



Circular

Circular No. 01-09 (CR)

Tenancy Matters for Residential Properties

Bank Consent

The mortgage deed executed by the owner of a property usually contains a covenant that prohibits leasing unless with the prior written consent of the mortgagee. In the event of an owner failing to repay the mortgage loan and the mortgagee taking possession of the property, the tenant will not be able to continue to occupy the property and loss and inconvenience may result.

If the relevant property is a mortgaged property, practitioners should suggest to the prospective tenant to request the landlord to obtain the required bank consent and to explain the risks involved in renting a property without bank consent for the prospective tenant's consideration.

Subletting

A subletting situation refers to one where, after the owner of a property ("the principal landlord") has let the property to a tenant ("the principal tenant"), the principal tenant further lets part or all of the property to a third person ("the sub-tenant").

Estate agents handling subletting properties should pay attention to the following:

1. Review the tenancy agreement between the principal landlord and the principal tenant to see if there is any restriction on subletting and whether prior consent for subletting has to be obtained from the principal landlord;

2. The terms of the sub-tenancy agreement between the principal tenant and the sub-tenant shall be subject to the terms of the tenancy agreement between the principal landlord and the principal tenant. The tenancy period under the sub-tenancy agreement shall not exceed that under the original tenancy agreement;
3. In Part C of the Leasing Information Form (Form 2), enter the details of the original tenancy agreement including the parties thereto, the rental period and any other information the sub-tenant should know such as the area for subletting; and
4. Comply with section 9 of the Practice Regulation when issuing advertisements for subletting properties including:
 - (a) Not to advertise at a rental or on terms different from those instructed by the principal tenant;
 - (b) To state expressly in the advertisement that the property is to be sublet; and
 - (c) To remove all advertisements as soon as is practicable after the property is no longer available for subletting, or when the relevant estate agency agreement is terminated (whichever is earlier).

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This Circular should be made available for the information of all staff engaged in estate agency work