

Circular

Circular No. 06-01 (CR)

- **Completion of Form 1/Form 2 attached with land search copy**
- **Providing Form 1/Form 2 to Clients**
- **Carrying out land search before agreement**
- **Supplying land search copy to Clients**

Land Search

The Estate Agents Ordinance (the Ordinance) and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation) have been in force for more than six years. In February 2005, the Land Registry introduced the Integrated Registration Information System (IRIS), with service hours from 8:30am to 11:30pm every day (including Sundays and public holidays), to enable the public to conduct land searches through the internet. However, the Estate Agents Authority continues to receive many complaints about licensees' failure to carry out and/or provide land searches to clients in compliance with the Ordinance and/or the Practice Regulation.

According to section 36(1)(a)(i) of the Ordinance, if a licensed estate agent acts for the vendor and has entered into an estate agency agreement with him, he is required to have in his possession or control certain prescribed property information. In addition, pursuant to sections 3(2) and (3) of the Practice Regulation, a licensed estate agent is required to obtain the prescribed information of the property concerned from the prescribed sources and complete the Property Information Form (Form 1) with such information and attach thereto a copy of the land search from the Land Registry in respect of the property.

Section 13(4) of the Practice Regulation provides that a licensee acting for the vendor of a residential property shall, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and

supply a copy of the land search to the purchaser of the property.

According to Clause 5 of the Estate Agency Agreement for Sale of Residential Properties in Hong Kong (Form 3), a licensed estate agent shall provide to the vendor the Property Information Form (Form 1) duly completed and signed by the licensed estate agent. Furthermore, according to Clause 4 of the Estate Agency Agreement for Purchase of Residential Properties in Hong Kong (Form 4), a licensed estate agent shall provide to the purchaser the Property Information Form (Form 1) obtained from the vendor's licensed estate agent in the case of single agency, or a duly completed and signed Property Information Form (Form 1) by the licensed estate agent in the case of dual agency or where a vendor is not represented by a licensed estate agent, unless the purchaser expressly waives his right to receive the same.

Practitioners are reminded to protect and promote the interests of their clients when engaging and accepting an appointment as an agent. It is necessary to carry out a land search of the property so as to ascertain the ownership of and existing encumbrances affecting the property. Specifically, where section 36(1)(a)(i) of the Ordinance, sections 3(2) and (3) and/or section 13(4) of the Practice Regulation apply(ies) to the case, a licensee is under a statutory duty to conduct and/or supply the land search to the vendor/purchaser. Failure to do so may cause serious loss and damage to clients and may amount to a breach of the Ordinance and/or the Practice Regulation and/or paragraph 3.4.1 of the Code of Ethics.

Stating that no land search could be carried out because the provisional agreement for sale and purchase was signed outside the service hours for conducting a land search is unacceptable to the Authority.

The above shall apply mutatis mutandis to any leasing transaction.

Practitioners must comply with the aforesaid sections of the Ordinance, the Practice Regulation and the Code of Ethics. Non-compliance of the same will result in disciplinary action.

March 2006