



Circular

Circular No. 06-02 (CR)

- **Power of Attorney required for agency appointment in sale and purchase**
- **Power of Attorney to be duly executed and attested**
- **Owner's authority to sell required before agent releases deposit to representative**

Proper Authorisation by Absent Contracting Party

The Estate Agents Authority has received complaints in relation to problems arising out of the lack of proper authorisation by parties concerned in the sale/purchase of properties by persons claiming to be the party's authorised representative.

In many of these cases, the usual cause of complaint is that the practitioner failed to obtain a proper written authorisation signed by the absent contracting party authorising his representative (irrespective of whether the representative himself is a co-owner of the property or not) to enter into the transaction on his behalf, as a result of which the absent contracting party disclaims liability afterwards. Due to the lack of proper written authorisation, disputes often arise as to whether the person claiming to be the representative of the absent contracting party has been conferred the necessary power to perform the acts in question so as to bind the absent contracting party.

To protect a client's interest, it is imperative that before the practitioner accepts any appointment of agency and/or deals with any person claiming to be the authorised representative of the absent contracting party ("the representative") in a sale or purchase transaction, the representative must be able to produce a Power of Attorney duly executed by the absent contracting party authorising the representative to enter into the transaction concerned and to execute the relevant document, including but not limited to the estate agency agreement, for and on his behalf. The Power of Attorney should be in a proper form and executed and

attested* in a proper manner. It is insufficient and highly risky simply to request the representative (whether a co-owner or otherwise) to sign a declaration to the effect that he has or will have proper authorisation from the absent contracting party and that he will be personally responsible for all consequences.

Practitioners are further reminded that under section 12(7)(b) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, a licensed estate agent shall ensure that the identity of the vendor and of the owner of the residential property concerned are the same or, if they are different, that the vendor has authority to sell the property before releasing any deposit money to the vendor.

Failure to comply with the above guidelines and regulation may give rise to disciplinary action by the Authority.

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* There is no legal requirement for a Power of Attorney to be attested. However, in order to avoid unnecessary disputes, the Authority recommends that a Power of Attorney should be attested by a solicitor.