

Circular

Circular No. 07-06 (CR)

- Practitioners should not cause danger or nuisance to other people when promoting first-sale residential properties

Order During First Sales of Residential Properties

The Estate Agents Authority has received complaints alleging that practitioners have disturbed passers-by and created disorder when promoting first-sale residential properties. The Authority reminds practitioners to maintain good personal conduct and comply with the relevant laws, rules and regulations when conducting sales activities.

1. *Disturbing passengers at railway stations*

By soliciting business or distributing leaflets without authorisation at railway premises, including station exits and ticket barrier areas, practitioners disturb passengers and block the flow of human traffic. Blocked exits are also potentially dangerous.

Any person who contravenes the following provision(s) of the Mass Transit Railway (“MTR”) By-laws, or Mass Transit Railway (North-west Railway) (“NWR”) Bylaw commits an offence and is liable to the following penalties:

Section	By-law	Brief description of the relevant provision(s)	Penalty
25	MTR	No person shall conduct himself in any part of railway premises (except NWR premises) so as to cause a nuisance or annoyance to other passengers	\$5,000 fine
30	MTR	No person, unless authorised in writing by the MTR Corporation Limited, shall offer for sale any services in or upon any railway premises (except NWR premises)	\$5,000 fine and six months imprisonment

Section	By-law	Brief description of the relevant provision(s)	Penalty
32	MTR	No person, unless authorised in writing by the MTR Corporation Limited, shall distribute any book, leaflet or other printed matter on any part of railway premises (except NWR premises)	\$5,000 fine and three months imprisonment
22(1)(d)	NWR	No person shall at any time while upon NWR premises molest or wilfully interfere with the comfort or convenience of any person	\$5,000 fine
26	NWR	No person on any part of NWR premises shall, except with the written authority of the MTR Corporation Limited, distribute any book, leaflet or other printed matter; or solicit custom	\$5,000 fine
27	NWR	No person, unless authorised in writing by the MTR Corporation Limited, shall offer for sale any services in or upon any NWR premises	\$5,000 fine and six months imprisonment

2. *Disturbing passers-by at shopping malls and housing estates*

By intercepting passers-by at the entrances of shopping malls or housing estates, soliciting business and distributing leaflets without the permission of the respective management office, practitioners obstruct passers-by and cause inconvenience to shop tenants, customers and residents.

According to Section 6A of the Summary Offences Ordinance, any person who in a public place, to the annoyance of any other person, importunes such person to give his custom to any business, shall be guilty of an offence and shall be liable to a maximum fine of \$2,000 and to imprisonment for six months.

3. *Intercepting and striking vehicles*

By intercepting vehicles and soliciting business on roads near first-sale sites, practitioners cause inconvenience or endanger drivers, passengers and other road-users.

According to Section 48 of the Road Traffic Ordinance, a pedestrian who in using any road negligently endangers his own safety or that of any other person commits an offence and is liable to a fine of \$500.

By intercepting and striking vehicles heading for first-sale sites, practitioners may also cause damage to property belonging to others.

According to Section 60 of the Crimes Ordinance, any person who without lawful excuse damages property belonging to another, intending to damage any such property or being reckless as to whether any such property would be damaged, shall be guilty of an offence and liable on conviction upon indictment to imprisonment for ten years.

4. *Placing advertising hoardings and banners in public places*

Practitioners who put folding tables and chairs, sun shades, banners and advertising hoardings in public areas (including pedestrian-only streets) may obstruct road-users' vision, pedestrian-only streets, and adversely affect cleanliness.

According to Section 4A of the Summary Offences Ordinance, any person who without lawful authority or excuse sets out or leaves any thing which may obstruct, inconvenience or endanger any person or vehicle in a public place shall be liable to a fine of \$5,000 or to imprisonment for three months.

According to Section 4(5) of the Summary Offences Ordinance, any person who without lawful authority or excuse causes any annoyance or obstruction in any public place by exposing any thing for sale in any street shall be liable to a fine of \$500 or to imprisonment for three months.

5. *Verbal disputes and physical clashes between rival practitioners*

In the past, certain practitioners have come into conflict with other members of the trade when soliciting customers, with verbal disputes turning into fights. Such behaviour may be in breach of Section 39 “Assault Occasioning Actual Bodily Harm” or Section 40 “Common Assault” of the Offences Against the Person Ordinance.

According to Section 39 of the Offences Against the Person Ordinance, any person who is convicted of an assault occasioning actual bodily harm shall be guilty of an offence triable upon indictment and shall be liable to imprisonment for three years. Under Section 40 of the same ordinance, any person who is convicted of a common assault shall be guilty of an offence triable either summarily or upon indictment and shall be liable to imprisonment for one year.

6. *Verbal conflict and assaults involving passers-by*

Practitioners may engage in over-aggressive sales promotion, for example, sticking an agency label on a potential client without his approval.

When promoting in public places, practitioners may exhibit a poor attitude towards passers-by who refuse to give them custom and may end up in verbal conflict or physical clashes.

According to Section 40 of the Offences Against the Person Ordinance, any person who is convicted of a common assault shall be guilty of an offence triable either summarily or upon indictment and shall be liable to imprisonment for one year.

7. *Violating the developer’s rules and regulations for maintaining order*

If the developer of a first-sale site has rules and regulations for maintaining order, practitioners should comply with them.

8. *Violating the maximum number of estate agents specified by the developer*

If the developer has specified the maximum number of estate agents who may be stationed at a first-sale site by an estate agency at a particular time, estate agency management should comply with it.

The Estate Agents Authority also reminds practitioners that, pursuant to paragraph 3.1.1 of the Code of Ethics, estate agents and salespersons shall refrain from activities when practising their business which may infringe the law. Also, pursuant to paragraph 3.7.2 of the Code of Ethics, estate agents and salespersons should avoid any practice which may bring disrepute to the estate agency trade. In addition to criminal liabilities, the Authority may take disciplinary action against practitioners who infringe the relevant laws.

Furthermore, under Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation), the employer and management of an estate agency must establish proper procedures or systems to supervise and manage estate agency work. If a frontline practitioner commits a breach of conduct in respect of the matters abovementioned, the employer and estate agency management may be seen as not having established a proper system to manage their business. They would therefore be in breach of Section 15 of the Practice Regulation and the Authority may take disciplinary action against them.

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