

## **Circular**

Circular No. 09-05 (CR)

- **Online advertisements by practitioners must comply with the relevant requirements in the Estate Agents Ordinance, Licensing Regulation and the Practice Regulation.**
- **The vendor's written consent must be obtained prior to the issue of online advertisements relating to residential properties.**
- **Online advertisements relating to residential properties must be removed when the property concerned is no longer available for sale or lease, or in the event of the termination of the estate agency agreement concerned.**
- **The number of the estate agent's licence or Statement of Particulars of Business and the business name must be stated clearly and conspicuously in advertisements.**
- **It is advisable to date the online advertisements and any photographs exhibited therein should be accurate.**
- **Sufficient IT security measures should be in place to prevent leakage of clients' personal data on the Internet.**

### **Online Advertising**

When issuing online advertisements, estate agency practitioners should comply with the relevant requirements in the Estate Agents Ordinance (EAO), Estate Agents (Licensing) Regulation (Licensing Regulation) and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation). In particular, they should pay attention to the following:

#### *1. Licence required*

Anyone who engages in estate agency business or carries out estate agency work, regardless of the medium through which such estate agency business or work is conducted, is required to observe and comply with the EAO and its subsidiary legislation. Hence, first and foremost, any individual or company practising estate agency work in the course of business or in the course of employment in Hong Kong, whether through the Internet or

otherwise, must hold a valid estate agent's or salesperson's licence. Failure to do so is an offence.

2. *Estate agency agreement*

Section 6(1) of the Practice Regulation requires a licensed estate agent acting for a vendor/owner (among others) to enter into an estate agency agreement with the vendor/owner prior to advertising the residential property for sale or lease. Hence, before issuing an online advertisement of residential listings for a vendor/owner, a licensed estate agent should have entered into an estate agency agreement with the vendor/owner.

3. *Possession of property information*

Section 36(1)(a)(i) of the EAO requires a licensed estate agent to possess information prescribed in respect of a residential property to which he has entered into an estate agency agreement. A licensed estate agent is thus required to complete the Property Information Form (Form 1) or Leasing Information Form (Form 2) and obtain the information required to be included therein by carrying out such searches at the relevant authorities designated as prescribed sources as appropriate before issuing any online advertisement of residential properties.

4. *Compliance with advertising provisions*

(a) All online advertisements relating to Hong Kong residential properties issued by estate agency practitioners shall comply with section 9 of the Practice Regulation, which includes the following:

- (i) An agent shall not issue an advertisement having any statement or particular that is false or misleading in a material particular.
- (ii) An agent shall obtain the vendor's written consent prior to the issue of an advertisement in respect of the vendor's property.

- (iii) If an agent acts in respect of a property, he shall not advertise the property at a price or term different from that instructed by the client.
  - (iv) If the residential property is to be sublet, the advertisement shall state that the property is to be sublet.
  - (v) All advertisements shall be removed as soon as is practicable after the residential property concerned is no longer available for sale or leasing, or the termination of the estate agency agreement concerned (whichever is the earlier).
- (b) As a matter of good practice and in order to promote clients' interest, estate agency practitioners issuing online advertisements relating to non-residential properties are advised to observe the same requirements for advertising as stated above.

#### 5. *Compliance with Licensing Regulation*

Under section 14(1)(c) of the Licensing Regulation, an estate agent must state clearly and conspicuously in all advertisements (pamphlets and brochures excepted) the number of his licence or Statement of Particulars of Business (SPOB) and the business name as stated in the SPOB. This requirement also applies to online advertisements.

#### 6. *Misuse of photographs*

- (a) Occasionally complaints have been received by the Authority that photographs of property A have been posted on the Internet to advertise property B. This may happen when advertising typical units in sizable developments. Estate agency practitioners are reminded that due care and diligence must be exercised in ascertaining the accuracy of the photographs exhibited in the advertisements.

- (b) While posting a photograph belonging to another property in an advertisement might be regarded as having a false or misleading material particular in the advertisement, which, in turn, might amount to a breach of section 9(1) of the Practice Regulation, it is also unethical and may infringe the law on copyright to reproduce photographs from the website of others without obtaining the proprietors' consent.

7. *Date of advertisement*

To enhance the reliability of online advertisements and to exercise due care and due diligence in promoting the properties, estate agency practitioners are advised to update the information in their advertisements from time to time. It would also be advisable to include the date of issuance/update of the advertisement to enable browsers to ascertain whether the information has become outdated or not.

8. *Contract with website service providers*

- (a) When engaging the service of a website service provider, an estate agency practitioner should take all practicable steps to ensure that only necessary, adequate and accurate property information is provided for uploading and that the website service provider is clearly instructed:
- (i) to state the number of the licence or SPOB and the business name, as stated in the SPOB, clearly and conspicuously in the advertisements;
  - (ii) to include the date of issuance/update of the advertisement;
  - (iii) to update and/or remove the advertisements from the Internet as soon as practicable after receiving instructions from the practitioner; and
  - (iv) to have in place sufficient IT security measures to prevent unauthorised or accidental leakage of information, in particular, clients' personal data.

- (b) Practitioners should instruct the website service providers to remove the advertisements from the Internet as soon as practicable after the residential property concerned is no longer available for sale or leasing, or the termination of the estate agency agreement concerned (whichever is the earlier).
- (c) Practitioners are also reminded that the above guidelines are in addition and without prejudice to their duty to observe and comply with the Personal Data (Privacy) Ordinance, in particular, those requirements concerning the use and security of personal data.

The management of an estate agency should establish proper procedures or systems to supervise and manage its estate agency business to ensure that its staff comply with the above guidelines when issuing advertisements. Practitioners who fail to comply with the above guidelines may be subject to disciplinary action by the Authority.

This circular supersedes Circular No. 00-06 (CR).

July 2009

Holders of Statements of Particulars of Business  
 should bring this Circular to the attention of all staff  
 engaged in estate agency work