



Circular

Circular No. 09-08 (CR)

- **Matters to be complied with when verifying the identity of vendors:**
 - **Enter into an estate agency agreement with the vendor; record therein the number of the vendor's identity or travel document.**
 - **Ascertain the ownership of the property by carrying out a land search.**
 - **Obtain a copy of the vendor's identity card/identification document.**
 - **Ensure the identity of the vendor and owner are the same.**
- **If necessary, inspect additional proofs of identity and ownership, such as rates demand notes and public utilities (such as water, electricity and gas) bills.**
- **Where practitioners are unable to verify the identity of the vendor, they should:**
 - **Arrange for the stakeholding of the deposit; and**
 - **Advise the purchaser of the risks involved and of the need to engage legal service.**
- **Where practitioners suspect that the vendor is a fraudster, they should:**
 - **Cease to act for the parties; and**
 - **Report the case to the Police.**

Verifying the Identity of Vendors

The recent news report of a man being jailed for impersonating a flat owner and swindling two buyers out of a deposit of more than a million dollars has raised community concern about the duty of estate agents to verify the identity of vendors.

Practitioners are reminded that, pursuant to Paragraph 3.4.1 of the Code of Ethics, they should protect and promote the interests of their clients. To protect the interests of their clients, practitioners should verify the identity of vendors and in doing so, comply with the following: -

1. Enter into an estate agency agreement (Form 3) with the vendor pursuant to Section 6(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation).

- Practitioners should not rely only upon the vendor's verbal instruction to list the property for sale.
 - Practitioners should check and record the name of the vendor and the number of his Hong Kong identity card in the estate agency agreement.
 - Indeed, as a measure to help prevent money laundering, the Authority has asked practitioners to verify client identity by checking and recording on the estate agency agreement or property viewing form the name of the client, and the type and number of the client's identity or travel documents, such as Hong Kong identity card, passport or two-way permit for Mainland residents.
2. Ascertain the ownership of the property by carrying out a land search of the property.
- According to Section 36(1)(a)(i) of the Estate Agents Ordinance (EAO), if a licensed estate agent acts for the vendor of a residential property and has entered into an estate agency agreement with him, he is required to have in his possession or control certain prescribed property information, amongst which is the name(s) of owner(s). In addition, pursuant to Section 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.
3. Before arranging for clients to sign a provisional agreement for sale and purchase, ensure that the name of the vendor is correct by obtaining a copy of the vendor's identity card or other identification document.
- Section 13(3) of the Practice Regulation requires that a licensee shall, for the purpose of avoiding the fraudulent misrepresentation of identity in an agreement for sale and purchase or a lease of a residential property, take all practicable steps to ensure that the name of the vendor is correct, and if the vendor is an individual, the licensee may collect a copy of the vendor's identity card or

other identification document.

(Note: Practitioners are reminded to observe the Data Protection Principles in the Personal Data (Privacy) Ordinance when collecting a copy of the vendor's identity card or other identification document. The vendor should be advised of the purpose of collection and practitioners should take all practicable steps to ensure that the copy of the vendor's identity card or other identification document is kept securely and that it is destroyed after the fulfilment of the purpose (e.g. upon completion of the sale and purchase).)

- Pursuant to Paragraph 3.5.1 of the Code of Ethics, licensees shall, in fulfilling their duties, exercise due care and due diligence. Hence, licensees should check carefully the name of the vendor on the identity card or identification document against the name of the owner as recorded in the land search.
4. Ensure that the identity of the vendor and of the owner are the same or that the vendor has the authority to sell before releasing any deposit money to the vendor.
- Under Section 12(7)(b) of the Practice 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.

Practitioners are advised that, in the case of difficulties, they may consider taking the following additional steps to verify the identity of vendors and their ownership of the property:-

- Practitioners may inspect additional proofs of identity and ownership, such as the rates demand notes, public utilities (such as water, electricity and gas) bills and receipts of public utilities and management fee deposits of the property.
- If the property is not subject to any mortgage, practitioners may ask the vendor to produce the title deeds to show that they are in the vendor's possession and that they have not been deposited

elsewhere.

- Practitioners may also compare the signature of the vendor in the title deeds with his present signature and the means of identification as recorded in the title deeds with that presently produced by the vendor to see if there is any discrepancy.
- If the property has been let before, practitioners may ask the vendor to produce the tenancy agreement(s) or evidence of receipts of payment of rent.
- Vendors are generally expected to know their own properties. Practitioners may, where appropriate, pose general questions to the vendors about the property (such as the amount of management fee and the specific view(s) from the living room) and examine their answers for any irregularities.

Where practitioners, when acting for the purchaser, are unable to verify the identity of the vendor to their satisfaction, they should advise the purchaser to arrange for the stakeholding of the deposit¹ by a firm of solicitors, and also advise the purchaser of the risks involved and of the need to engage the service of a lawyer before proceeding with the transaction.

Where practitioners have reason to suspect that the vendor is a fraudster, they should cease to act for the parties and report the case to the Police.

Practitioners must observe the aforesaid sections of the EAO, Practice Regulation and Code of Ethics. Non-compliance of the same may result in disciplinary action.

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

¹ For more detailed guidelines on stakeholding of deposits in relation to properties with undischarged mortgages, please refer to Circular No. 05-07 (CR).