



Circular

Circular No. 11-01 (CR)

Practitioners must:

- obtain the prescribed property information;
- complete Form 1/Form 2 and provide it to clients;
- carry out a land search immediately before entering into an agreement for sale and purchase or a tenancy agreement; and
- supply a land search copy to their clients before entering into an agreement for sale and purchase or a tenancy agreement.

Property Information and Land Search

Foreword

The provision of accurate and up-to-date property information to the client is an important duty of estate agents. In order to protect and promote the interests of their clients, practitioners must fully comply with the relevant statutory duties in the Estate Agents Ordinance (“Ordinance”) and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”), as well as the relevant provisions in the estate agency agreements.

Possession of Property Information

Under section 6(1) of the Practice Regulation, a licensed estate agent acting for a vendor must enter into an Estate Agency Agreement (Form 3) (“Form 3”) with the vendor, and a licensed estate agent acting for a landlord must enter into an Estate Agency Agreement (Form 5) (“Form 5”) with the landlord.

Under section 36(1)(a)(i) of the Ordinance (“EAO 36(1)(a)(i)”), every licensed estate agent who acts for the vendor (or landlord) is

required, for as long as he so acts, to have in his possession or control certain prescribed information as regards every property in relation to which he has entered into an estate agency agreement. The prescribed information that is required is:

- (a) in the case of a sale and purchase of a residential property in Hong Kong, the prescribed property information to be included in Part B of Part 1 of the Property Information Form (Form 1); and
- (b) in the case of a lease of a residential property in Hong Kong, the prescribed property information to be included in Part B of the Leasing Information Form (Form 2).

Practitioners who act for the vendor (or landlord) must have in their possession or control the prescribed information during the full period when they so act, commencing from the date the relevant estate agency agreement is entered into.

In order to comply with the requirement under EAO 36(1)(a)(i), practitioners should:

- (a) carry out a land search of the property on the day the estate agency agreement is entered into; and
- (b) conduct a search on the online service of the Rating and Valuation Department on the day the estate agency agreement is entered into or obtain the relevant prescribed information from other prescribed sources.

In addition, practitioners should also keep in safe custody a copy each of the respective search records.

Property Information Form/Leasing Information Form

The procurement of the prescribed property information and completion of the requisite information forms are governed by sections 3(2) and (3) of the Practice Regulation. Pursuant to these provisions, practitioners must:

- (a) obtain the prescribed information of the property concerned from the prescribed sources;
- (b) complete the Property Information Form (Form 1) (“Form 1”) in the case of a sale and purchase, or the Leasing Information Form (Form 2) (“Form 2”) in the case of a lease, in accordance with the directions and instructions specified in the forms;
- (c) attach to the Form 1 a copy of the land search in respect of the property;
- (d) provide to the vendor (or landlord) the original or a copy of the completed Form 1 (or Form 2) either before entering into a Form 3 (or Form 5) with the vendor (or landlord) or before entering into an agreement for sale and purchase (or a tenancy agreement) between the vendor (or landlord) and a purchaser (or tenant) in respect of the property at the option of the vendor (or landlord); and
- (e) provide to the purchaser (or tenant) the original or a copy of the completed Form 1 (or Form 2) unless the purchaser (or tenant) specifically waives his right to receive the same.

Vendor’s statement in Form 1

Under the vendor’s statement in Part 2 of Form 1, a vendor may provide additional information about the property such as structural

additions, alterations, repairs or improvements to the property. Practitioners should use their best efforts to urge the vendor to provide the relevant information in Part 2 of Form 1.

Land Search

Under section 13(4) of the Practice Regulation (“PR 13(4)”), the licensee who acts for the vendor (or landlord) of a residential property must, immediately before an agreement for sale and purchase (or a tenancy agreement) of the property is entered into, carry out a land search of the property and provide a copy of the land search to the purchaser (or tenant).

Some practitioners are still not fully conversant with the requirements of PR 13(4) and have certain misconceived notions, including the following:

- It is permissible to defer carrying out a land search and supplying a copy of it to the purchaser (or tenant) on the following day in cases when the provisional agreement for sale and purchase (or provisional tenancy agreement) is entered into late at night.
- It is not necessary for the licensee acting for the vendor to carry out a land search and supply a copy of it to the purchaser (or tenant) in cases where the purchaser (or tenant) has his own estate agent to act for him in the transaction.
- It is not necessary to carry out a land search and supply a copy of it to the tenant in the case of leasing a room.

The correct position is that in each of the above cases, the requirements of PR 13(4) still apply. Practitioners should take note of the

following:

- (a) The requirement is to carry out the land search and supply a copy of it to the purchaser (or tenant) immediately before an agreement for sale and purchase (or a tenancy agreement) is entered into in every case. Carrying out the land search and supplying a copy of it only on the following day does not meet this requirement.
- (b) Any purported explanation that no land search could be carried out because the provisional agreement for sale and purchase (or tenancy agreement) was entered into outside the service hours of the Integrated Registration Information System (IRIS) of the Land Registry is not acceptable to the Estate Agents Authority.

[N.B. With effect from 21 August 2010, the operation hours of IRIS Online Services have been extended to 20 hours a day (including Saturday, Sunday and public holidays) running from 07:30 a.m. to 03:30 a.m. (with last order cut-off at 2:30 a.m.) the next day.]

- (c) The duty of the licensee acting for the vendor (or landlord) to carry out a land search applies in all cases, irrespective of whether or not the purchaser (or tenant) has his own estate agent acting for him in the transaction. Furthermore, this duty applies equally to cases where the licensee concerned acts only for the vendor (or landlord) and in cases where he acts for both the vendor (or landlord) and purchaser (or tenant).
- (d) The duty of the licensee acting for the landlord to carry out a land search and supply a copy of it to the tenant applies to all cases of leasing a residential property, including cases of leasing a room in a residential flat. In the latter case, the licensee must carry out a land search of the flat in which the room is situated.

- (e) It is good proof of compliance with PR 13(4) if the licensee concerned can produce a written acknowledgement by the purchaser (or tenant) of receipt of the land search.
- (f) In order to protect his client's interests, a licensee who acts only for the purchaser (or tenant) should also conduct a land search and explain its content to his client immediately before an agreement for sale and purchase (or a tenancy agreement) is entered into.

Practitioners who fail to comply with the relevant provisions concerning property information and land search requirements may be in breach of the Ordinance and/or the Practice Regulation and/or the Code of Ethics, and may be subject to disciplinary action.

This Circular supercedes Circular No. 06-01 (CR).

January 2011

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