



## Circular

Circular No. 15-01 (CR)

- **Licensed estate agents shall establish proper procedures and systems to ensure that employees or persons under their control comply with the EAO.**
- **Section 15 of the Practice Regulation applies to all licensed estate agents (e.g. managers appointed under and for the purpose of the EAO) who are responsible for establishing and/or maintaining the procedures or systems to supervise and manage the work of employees or persons under their control.**
- **An effective system, which includes the following integral parts, should be in place to ensure staff compliance or prevention of breach of the EAO and its subsidiary legislation, the Code of Ethics, practice circulars and guidelines issued from time to time by the EAA:**
  - (A) Establishment of an Effective System**
    - **Establish proper procedures and clear guidelines for staff to follow**
    - **Provide and allocate sufficient resources for staff to carry out estate agency work**
  - (B) Training**
    - **Provide proper and adequate training to staff to ensure that they are familiar with the relevant statutory and regulatory requirements**
  - (C) Monitoring**
    - **Monitor staff conduct continuously and effectively**
  - (D) Sanctioning Measures**
    - **Set up sanctioning measures to sanction non-compliant staff to prevent and deter non-compliance or misconduct**

### **Duties of Licensed Estate Agents in Ensuring Effective Control of Estate Agency Business**

Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”)

provides that a licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Estate Agents Ordinance (“EAO”). The Estate Agents Authority (“EAA”) has noticed that in certain cases, the misconduct or breaches of the EAO or its subsidiary legislation by licensees was or might have been attributed to the failure of their employers or the management of the employers to establish or maintain proper procedures or systems, adequate supervision or control of its staff to prevent and detect the misconduct or breaches.

(2) Licensees are reminded that section 15 of the Practice Regulation (“PR 15”) imposes a duty on licensed estate agents to organise their businesses in such a way as to ensure that their employees or persons under their control comply with the provisions of the EAO.

### **Persons Liable**

(3) The PR 15 requirement is not restricted to owners and directors of an estate agency business. It extends to licensed estate agents (e.g. managers appointed for the effective and separate control of the business of an office of the estate agency company in compliance with the EAO<sup>1</sup>, and their supervisors on the reporting line to the senior management) employed or appointed by an estate agent, who are responsible for establishing and/or maintaining the procedures or systems to supervise and manage the work of employees or persons under their control.

(4) The more senior the post within the business, the greater responsibility will there be. Licensed estate agents who fail to observe PR 15, whether as owners, directors or employees, may be liable to be disciplined by the EAA.

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<sup>1</sup> Section 38(1)(a) of the EAO provides that a licensed estate agent shall ensure that his business at his principal or only office, and every one of his other offices, if any (whether such other offices are referred to as branch offices, sub-offices or otherwise), is under the effective and separate control of a manager appointed by him, and a person appointed under this subsection shall be an individual and the licensed estate agent concerned shall also ensure that such a person is the holder of an estate agent’s licence.

## Requirements of PR 15

(5) In considering whether a licensed estate agent is in breach of PR 15 when the employee(s) has/have failed to comply with the EAO or a misconduct has occurred, the EAA will look into whether there is an effective system in place to ensure compliance or prevention of the breach by his staff. In other words, the EAA will consider whether the licensed estate agent has done all that he should have done to prevent the non-compliance or breach.

(6) An effective system, i.e. one that complies with PR 15, is one that includes the following:

(A) Establishment of an Effective System

*Proper Procedures and Clear Guidelines*

(i) The licensed estate agent should establish proper procedures and clear guidelines (e.g. work manuals, checklists or advisory documents) regarding various aspects of estate agency work for the staff to follow so as to ensure their compliance with the EAO and its subsidiary legislation, the Code of Ethics (“Code”), practice circulars and guidelines issued by the EAA. The procedures and guidelines should be reviewed regularly to ensure that they are up-to-date, having regard to the relevant statutory requirements and guidelines (e.g. practice circulars) issued by the EAA from time to time.

*Provision of Resources*

(ii) The licensed estate agent should provide and allocate sufficient resources (e.g. installation of computers and filing cabinets; opening of trust account; keeping good stock of estate agency agreements and receipts etc.) so that staff would be able to carry out their estate agency work in compliance with the relevant statutory and regulatory requirements.

(B) Training

The licensed estate agent should provide proper and adequate training to staff to ensure that they are familiar with and understand the importance of observing the EAO and its subsidiary legislation, the Code, practice circulars and guidelines issued from time to time by the EAA which are relevant to their estate agency work.

(C) Monitoring

The licensed estate agent should continuously and effectively monitor staff conduct. It is essential that monitoring must be “actual” and not merely “nominal”. There should be a hierarchy of staff monitoring in place in the system. Supervisors should monitor the conduct of subordinates (e.g. by conducting internal audits, random compliance checks and “mystery customers” reports etc.) to ensure that the procedures and guidelines have been duly followed, and any irregularities or matters which warrant attention are reported to a higher level of the hierarchy regularly and timely.

(D) Sanctioning Measures

The licensed estate agent should have sanctioning measures in place to sanction those non-compliant staff. Sanctioning measures should sufficiently be taken to prevent and deter non-compliance or misconduct; and policies and procedures should be set up in respect of breaches or misconduct warranting disciplinary actions. Generally speaking, there should be a range of sanctions (e.g. verbal warning, written warning, demotion, dismissal etc.) that may be applied by a licensed estate agent to sanction staff, having regard to the severity of the non-compliance or breach.

A failure to include and maintain any of above arrangements in the system may be a breach of PR 15.

**Illustrative Examples**

(7) The EAA has noticed that very often breaches of the EAO, the

Practice Regulation, the Estate Agents (Licensing) Regulation and/or the Code by estate agency employees, whether in respect of first-hand sales or second-hand properties, might have been attributed to a lack of effective control by licensed estate agents.

(8) As regards first-hand sales, typical examples of breaches of PR 15 include unruly behavior of frontline staff at first-sale sites (e.g. fighting and intercepting vehicles); unauthorised use of client's credit cards; making loans to prospective purchasers; and failure to set out offer of incentives to prospective purchasers in writing.

(9) As for second-hand properties, they include allowing unlicensed persons to carry out estate agency work<sup>2</sup>; failure to carry out and/or supply a land search pursuant to section 13(4) of the Practice Regulation; duplicating keys/passing of keys to third parties without client's consent; failure to maintain an up-to-date opt-out list in direct marketing activities and allowing issuance of misleading or false advertisements by individual staff members etc.

Licensees are strongly advised to refer to the Questions and Answers for PR 15 available at the EAA website for more details, examples and illustrations on how to comply with PR 15.

Licensees who fail to comply with PR 15 may be subject to disciplinary action by the EAA.

This Circular shall take effect on 1 September 2015. Circular No. 06-03 (CR) will be superseded on the same date.

March 2015

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

<sup>2</sup> Under the EAO, a licensed estate agent commits an offence if he employs or continues to employ as a salesperson any person who for the time being is not the holder of a licence. See sections 39(1) and 55(2)(b) of the EAO.