



Practice Circular on Duties of Licensed Estate Agents in Ensuring Effective Control of Estate Agency Business

Questions and Answers (Q&As)

Notes:

1. All references to:
 - a. “EAA” shall mean the Estate Agents Authority.
 - b. “EAO” shall mean the Estate Agents Ordinance.
 - c. “Practice Circular” shall mean Circular No. 15-01 (CR) issued by the EAA on Duties of Licensed Estate Agents in Ensuring Effective Control of Estate Agency Business.
 - d. “Practice Regulation” shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
 - e. “PR 15” shall mean section 15 of the Practice Regulation.

2. These Q&As are for general reference only. The answers/solutions suggested in the Q&As are not exhaustive and they do not constitute legal or professional advice. In considering whether a licensed estate agent has breached PR 15, the EAA will consider each case on its own merits. You should seek legal or professional advice as and when necessary, especially on the interpretation of legal provisions and specific advice on any individual case. The EAA makes no warranty as to the completeness of the information set out in these Q&As, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.



Q&As

First-Hand Sales

Unruly behavior of frontline staff at first-sale sites

Q1. What will the EAA look into when it considers whether a licensed estate agent¹ (such as the owner of an estate agency business; controller appointed to oversee his/their staff deployed to first-sale site; managers and directors on the reporting line) will be liable for a breach of PR 15 if there is any unruly behavior of frontline staff at first-sale sites, such as fighting and intercepting vehicles etc.?

Answer: The EAA will consider whether the licensed estate agent and/or controller appointed to oversee his/their staff deployed to first-sale sites and their conduct in promotional activities and/or their managers and directors on the reporting line has/have established and maintained a proper system for exercising effective control of their conduct at the first-sale site .

Q2. In the scenario mentioned in Q1 above, will the licensed estate agent likely breach PR 15 if he does not have a policy in place on staff deployment to first-sale sites?

Answer: Yes.

¹ For the purposes of these Q&As, a “licensed estate agent” means a person who is a holder of an estate agent’s licence and has a duty, under PR 15, to organize his business in such a way as to ensure that his employees or persons under his control comply with the provisions of the EAO. Please refer to paragraphs 3 and 4 of Circular No. 15-01 (CR) for persons who may be liable to be disciplined by the EAA for failing to comply with PR 15.



The EAA will consider whether the unruly behavior of the frontline staff at the first-sale site in question could be attributed to the lack of a proper system, procedures, supervision or control of the staff to prevent or detect the breach. In this regard, the EAA will look into (amongst other things) whether the number of staff deployed to the first-sale site of the development is commensurate with the licensed estate agent's ability to effectively manage the staff so deployed; and whether there is a policy in place on staff deployment to handle different situations (for example, apart from the controller, whether the licensed estate agent would appoint "functional supervisors" if necessary, to help out with the work of the controller, such that each functional supervisor would be assigned specific duties like one will be responsible for sales arrangement and order, and another for arrangement of cashier orders for prospective purchasers etc. The reporting line of the controller and functional supervisors should also be clearly stated in the policy).

Q3. If the frontline staff engaging in promotional activities are found to have breached the requirements in Circular No. 10-02 (CR) by repeatedly placing folding tables and chairs, sun shades and advertising hoardings on pavements and other public places, will the licensed estate agent be liable for a breach of PR 15 if he has already arranged pre-sale briefing(s) for them to prevent the breach?

Answer: In such a case, the EAA will not just consider whether any pre-sale briefing(s) has been arranged by the licensed estate agent. It will also look into whether sufficient measures have been taken by the licensed estate agent to ensure that each frontline staff has attended in person a pre-sale briefing(s) prior to his/her conducting any promotional



activities for the development (e.g. whether frontline staff are mandatorily required to attend the pre-sale briefings); and records of the briefings including the dates, time, attendance have been properly kept; and whether sufficient information about the guidelines set out in the related circulars issued by the EAA concerning the conduct at first-sales has been covered in the briefing(s).

Samples of “Record of Pre-sale Briefing for First Sale of Residential Properties” and “Staff Attendance Record of Pre-sale Briefing for First Sale of Residential Properties and List of Staff to be Deployed” are attached for reference.

Q4. Will the controller likely breach PR 15 if the frontline staff are found to have intercepted vehicles and distracted drivers on a road near the first-sale site and that he has only verbally reminded them to comply with the guidelines issued by the EAA?

Answer: Yes.

The EAA will look into (amongst other factors) whether the controller has taken proactive steps (such as carrying out regular on-site compliance checks) to monitor the conduct of frontline staff to ensure that their behavior and conduct are in compliance with the relevant laws and guidelines, as their conduct must not endanger their own safety and the safety of drivers and other road users. Merely reminding frontline staff to comply with the relevant laws and guidelines issued by the EAA is not sufficient.

Unauthorized use of client's credit cards

Q5. Regarding unauthorized use of client's credit cards at



first-sales, what should a licensed estate agent do in order to observe PR 15 and to prevent staff from not complying with the relevant guidelines in Circular No. 13-04 (CR)²?

Answer: The licensed estate agent should establish an effective system to ensure that his staff would handle credit cards collected from clients with care, and no amount would be debited against those credit cards without a client's written authorization.

Q6. Referring to the scenario in Q5 above and in order to comply with PR 15, what are the arrangements that should be included in the system of the licensed estate agent?

Answer: In order to comply with PR 15, the licensed estate agent should consider including the following arrangements in the system:

- (i) setting up of proper procedures and clear guidelines for staff to follow, such as the circumstances under which staff are allowed to collect credit cards from clients; and who may collect or handle clients' credit cards etc.;
- (ii) provision of pro-forma documents for staff to adopt for the purpose of obtaining client's written authorization before their credit cards are debited; and clear guidelines are given to staff on how to complete them; and
- (iii) putting in place sufficient measures to ensure that the established procedures and guidelines would be followed by staff, such as a supervisor's

² See paragraphs 45 to 50 of Circular No. 13-04 (CR) for guidelines on payment-related matters.



counter-verification of a client's written authorization should be obtained before the staff is allowed to debit any amount from the client's credit card; random compliance checks by the management etc.

Making loans to prospective purchasers

Q7. Under what circumstances will a licensed estate agent be liable for failing to comply with PR 15 in respect of staff making loans to prospective purchasers in first-sales?

Answer: According to Circular No. 13-04 (CR), licensees must not offer or make loans to a prospective purchaser during the sale of first-hand residential properties for any purpose.

The EAA will look into whether there is an effective system in place and the licensed estate agent has done all that he should have done to prevent the breach/non-compliance. The licensed estate agent will likely breach PR 15 if he fails to include and maintain any of the following arrangements in the system:

- (i) issuance of clear guidelines for staff on prohibition of making loans to prospective purchasers in first-sales;
- (ii) inclusion of EAA's requirements set out in the related circulars on prohibition of loans to prospective purchasers in the pre-sale briefing(s);
- (iii) monitoring measures to monitor and govern the release of cashier orders to frontline staff to ensure that no loan is made to prospective purchasers; and
- (iv) appropriate measures to detect non-compliance by staff, such as verifying suspicious cases where the deposit cheque is issued by a staff member on behalf of a prospective purchaser.



Q8. When a prospective purchaser says that he does not have a cashier order to participate in the lot drawing for purchasing the first-hand property and request the licensee to offer him a cashier order and he would repay the same amount of money to him by credit card, can the licensee express to the prospective purchaser that his credit card will not be debited before a successful lot is drawn?

Answer: No.

The licensee should advise the prospective purchaser that he must pay the same amount of money to him by credit card before he releases the cashier order to the prospective purchaser. Licensees should debit the prospective purchaser's credit card as soon as possible and in any event no later than the same day after accepting the credit card payment. Otherwise it may be construed as a loan to a prospective purchaser and violate the EAA's guidelines.

Q9. Referring to the scenario in Q8 above, what if the prospective purchaser chooses to pay the same amount of money by cheque in return for the cashier order?

Answer: Similarly, licensees must not express to the prospective purchaser that his cheque will not be cashed. Licensees should receive the prospective purchaser's cheque for the entire amount before providing the cashier order and they must deposit the cheque with a bank on the same day or the next banking day.



Failure to set out offer of incentives in writing

Q10. To comply with PR 15, what arrangements should a licensed estate agent include in his system to prevent misconduct of staff from failing to set out the offer of incentives (e.g. cash rebate) in writing to the prospective purchasers?

Answer: The licensed estate agent should include the following arrangements in his system:

- (i) issuance of clear guidelines for staff on whether the company would offer incentives to prospective purchasers, and if so, the requirements and necessary procedures to be followed by the staff;
- (ii) provision of pro-forma documents for staff to use for the purpose of setting out the terms and format of the incentives so offered;
- (iii) a continuous monitoring system to ensure that the incentives offered by the company through individual licensees can be fulfilled; and
- (iv) appropriate sanctioning measures to prevent and deter non-compliance by staff.

Q11. Referring to the scenario in Q10 above, is it necessary for the licensed estate agent to issue guidelines to staff if he does not allow them to offer their own incentives to prospective purchasers?

Answer: Yes.

The licensed estate agent should issue clear guidelines to expressly inform staff that they are not allowed to offer their own incentives to prospective purchasers.



Q12. Referring to the answer in Q11 above, is it sufficient for the licensed estate agent to issue guidelines to staff only? If not, what other arrangements should the licensed estate agent implement in order to comply with PR 15?

Answer: No.

Merely issuing guidelines to staff is not sufficient. To comply with PR 15, the licensed estate agent should put in place a monitoring system to ensure that staff observe the guidelines of the company in this respect (e.g. regular compliance checks by supervisors and random checking by the management, customers' satisfaction reports etc.). There should also be sanctioning measures to discipline non-compliant staff.

Second-Hand Properties

Unlicensed estate agency work

Q13. Will a licensed estate agent be liable for a breach of PR 15 in relation to conducting estate agency work by unlicensed persons? Please give an example.

Answer: Yes.

Under the EAO, engaging in estate agency work without a licence and employing unlicensed persons to carry out such work constitute criminal offences³.

A licensed estate agent who fails to establish and maintain an effective system to ensure that persons without

³ Please refer to sections 15(1), 16(1) and 39(1) of the EAO.



licences or those whose licences have expired without renewal do not carry out estate agency work, may be liable for a breach of PR 15.

Q14. Will the EAA consider whether PR 15 has been breached if the licensed estate agent is not charged for an offence for a breach of section 39(1) on prohibition on certain employment?

Answer: Yes.

The EAA will consider whether PR 15 has been breached even if the licensed estate agent is not charged for an offence for a breach of section 39(1) of the EAO.

Q15. Referring to the scenario in Q13 above and in order to comply with PR 15, what are the arrangements that should be included in the system of the licensed estate agent?

Answer: In order to comply with PR 15, the licensed estate agent should consider establishing a system which includes the following arrangements:

- (i) the work that non-licensed employees (e.g. agent trainees) can and cannot undertake is clearly set out for staff, and only licensees would be assigned to perform estate agency work;
- (ii) managers hiring estate agents are required to check that a person to be employed for conducting estate agency work possesses a valid estate agent's or salesperson's licence;
- (iii) the licence details of the licensees are properly recorded;



- (iv) a tracking system is in place to alert all licensees to the expiry of their licences;
- (v) reminders for licence renewal would be sent to the licensee concerned until his licence has been renewed and the same is reported;
- (vi) staff are reminded of the risks and consequences of conducting estate agency work without a valid licence from time to time;
- (vii) follow up actions on the expiration/suspension/revocation of a staff licensee; and
- (viii) staff will be disciplined in the event of non-compliance.

Q16. Referring to items (v) and (vi) of the answer to Q15 above, should the licensed estate agent remind the staff of the need to possess a valid licence for conducting estate agency work verbally or in writing?

Answer: For the purpose of proper records and to avoid future disputes, the licensed estate agent is strongly advised to remind staff of the risks and consequences of conducting estate agency work without a valid licence in writing (e.g. by email or text messages) from time to time, instead of just giving verbal reminders.

Q17. Referring to item (vii) of the answer to Q15 above, what are the follow up actions that could be taken by the licensed estate agent on the expiration/suspension/revocation of a staff licensee?

Answer: When the licence of a staff licensee has expired, or is suspended or revoked, the licensed estate agent should immediately forbid the use of the name cards by the staff



member concerned such as by keeping his name cards under lock until the suspension period is over or by destroying the obsolete name cards and denying the access right of the staff member concerned to clients' database etc, so as to ensure that the staff member concerned is not performing any estate agency work.

PR13(4)

Q18. Please give an example to illustrate that a licensed estate agent could be liable for breach of PR 15 for failing to establish proper procedures or systems to ensure that employee licensees comply with section 13(4) of the Practice Regulation (PR 13(4)).

Answer: When an employee licensee is in breach of PR 13(4), the licensed estate agent would likely breach PR 15 if he fails to provide sufficient resources for staff to enable them to carry out a land search to comply with PR 13(4), such as installation of computers to facilitate the conducting of land searches on the internet or making available a means for staff to obtain land searches from the Land Registry.

Q19. Will the licensed estate agent likely breach PR 15 if he does not lay down procedures and/or guidelines for staff in their handling of sale and purchase/lease of residential properties with reference to PR 13(4)?

Answer: Yes.

The licensed estate agent will likely breach PR 15 if he fails to lay down proper procedures and/or clear guidelines for staff in their handling of sale and purchase/lease of residential properties with reference to



the requirements of PR 13(4), such as failing to keep proper records of the land searches as backup.

Q20. To comply with PR 15, is it sufficient for the licensed estate agent to only draw up the procedures for staff on carrying out land searches to comply with PR 13(4)?

Answer: No.

Merely drawing up the procedures on carrying out land search is not sufficient. To comply with PR 15, there should be:

- (i) training for staff on how to conduct a land search;
- (ii) requirement on supervisors to monitor staff compliance (e.g. conducting regular spot checks on the file records of the transactions to see whether licensees have carried out land searches to comply with PR13(4)); and
- (iii) proper filing of the land searches obtained.

Safekeeping and handling of keys

Q21. For the purpose of complying with PR 15, what should a licensed estate agent do to ensure that his staff would not duplicate property keys/pass the keys to third parties without a client's consent?

Answer: In considering whether the licensed estate agent has complied with PR 15, the EAA will look into whether there is an effective system in place regarding the safekeeping and handling of keys to properties to prevent the breach.



In order to comply with PR 15, the licensed estate agent should consider including the following arrangements in the system:

- (i) establish procedures for staff to follow regarding safe-keeping of keys;
- (ii) issue guidelines for staff to observe on proper handling/use of keys;
- (iii) maintain a written record of receipt/return of keys from/to clients and when the keys are required to be passed to another person (e.g. a colleague);
- (iv) put in place a monitoring system (e.g. random checks by supervisors and/or the management) to ensure staff compliance; and
- (v) put in place sanctioning measures to discipline non-compliant staff.

Q22. Referring to item (i) of the answer to Q21 above, please give examples on the matters which the licensed estate agent could establish procedures for his staff.

Answer: Regarding safe-keeping of keys, the licensed estate agent could establish procedures for his staff on the following matters:

- (i) receipt and return of keys: pro-forma receipts are provided for staff to acknowledge receipt of keys from clients and for clients to acknowledge the return of keys (including duplicate keys) to them; and in each case, the number of keys received by the relevant party would be specified in the receipt; and the receipts would be properly kept;
- (ii) coding of keys: keys provided by clients would be coded; and



- (iii) keeping of keys: keys are kept in a place where they can only be accessed by authorized staff; and the name(s) and position(s) of the staff who is/are responsible for safe-keeping are clearly set out.

Q23. Referring to item (ii) of the answer to Q22 above, please give examples on the guidelines that could be issued to staff for proper handling/use of keys.

Answer: The licensed estate agent could issue guidelines requiring staff:

- (i) to refrain from duplicating keys or passing the same to another company without client's written consent;
- (ii) to refrain from using the keys for purposes other than arranging for property inspection by prospective purchasers or tenants without client's written consent;
- (iii) to return to client/destroy all the keys (including duplicate keys) as soon as possible after the sale or lease of the property or upon expiration of the appointment period or upon request by the client, whichever is the earliest; and
- (iv) not to replace any locks at the property or install additional locks without client's written authorization.

Failure to maintain/update the opt-out list

Q24. What will the EAA look into when it considers whether a licensed estate agent will be liable for failing to comply with PR 15 when his staff fails to maintain/update the opt-out list in direct marketing activities?



Answer: The EAA has issued a practice circular on protection of personal data (Circular No. 13-05 (CR)). When using a client's personal data in direct marketing, licensees must observe the relevant guidelines set out therein. If a licensee is found to have breached the Personal Data (Privacy) Ordinance (PDPO), he may also have breached the Code of Ethics issued by the EAA for failing to refrain from activities which may infringe the law.

In considering whether the licensed estate agent has complied with PR 15, the EAA will look into whether the licensed estate agent has established and maintained proper procedures or systems to ensure that his staff would comply with the guidelines set out in the above circular regarding the maintenance/updating of the opt-out list.

Q25. In the case mentioned in Q24 above, please give examples to illustrate that a licensed estate agent would likely breach PR 15.

Answer: In such a case, the licensed estate agent would likely breach PR 15 in each of the following scenarios:

- (i) he does not provide adequate/clear guidelines for staff to follow on how to comply with the requirements of the PDPO and guidelines issued by the EAA on direct marketing;
- (ii) there is no requirement on how and when staff are required to check the opt-out list before approaching clients for direct marketing, process clients' opt-out requests or update the opt-out list, and if there is more than one branch office, no arrangement is made for consolidating/updating the opt-out list of



- all branches and regular distribution of the same to staff who would undertake direct marketing activities;
- (iii) there is no proper and adequate training to staff regarding the requirements of the PDPO and the EAA in relation to direct marketing and maintaining/updating the opt-out list; and
 - (iv) there is no monitoring system for supervisors and/or the licensed estate agent to ensure staff compliance.

Issuance of advertisements

Q26. In what circumstances would a licensed estate agent be liable for failing to comply with PR 15 when misleading or false advertisements are issued by staff?

Answer: In considering whether the licensed estate agent has complied with PR 15, the EAA will look into whether the licensed estate agent has put in place an effective system to prevent the breach when the misconduct regarding the issuance of misleading or false advertisements by staff has occurred.

In other words, the EAA will consider whether the licensed estate agent has done all that they should have done to prevent the breach in question.

Q27. Referring to Q26 above and in order to comply with PR 15, what are the arrangements that should be included in the system of the licensed estate agent?

Answer: In order to comply with PR 15, the licensed estate agent should consider including the following arrangements in the system:



- (i) clear guidelines are issued to staff regarding the relevant requirements of the EAA (e.g. practice circulars) concerning issuance of advertisements (e.g. no individual licensee should issue any advertisement relating to sales of first-hand properties on the internet, whether on the licensed estate agent's website or otherwise);
- (ii) appropriate policies and procedures are laid down for staff to follow to ensure that the contents of the advertisements have been checked, and are accurate and not false/misleading;
- (iii) adequate training is provided to staff on matters related to (i) and (ii) above;
- (iv) there is a monitoring system to ensure staff compliance; and
- (v) sanctioning measures are put in place to sanction non-compliant staff.

Q28. Referring to item (iv) of the answer in Q27 above, please give an example on how the licensed estate should monitor the staff to ensure that that they do not issue false/misleading advertisements?

Answer: To ensure staff compliance, the licensed estate agent may consider requiring the management personnel/senior staff to verify the accuracy of the content and related information before issuing any advertisement or other promotional materials.

Others

Q29. According to paragraph 6(A) of the Practice Circular, a licensed estate agent is required to establish proper



procedures and clear guidelines (e.g. work manuals, checklists or advisory documents) regarding various aspects of estate agency work for staff to follow. If the licensed estate agent is only a small enterprise (e.g. family business with only a husband and wife engaging in the business), is it necessary for him to establish and set out all the procedures and guidelines in writing?

Answer: While the EAA will take into account the size/operation of the licensed estate agent into account in considering whether the licensed estate agent has an effective system in place to ensure compliance or prevention of the breach by its staff in question, licensed estate agents (even though they are running a small business) are strongly advised to establish and set out the relevant procedures and guidelines in writing for the sake of clarity and proper records, and to avoid future disputes.

Q30. According to paragraph 6(D) of the Practice Circular, a licensed estate agent should have sanctioning measures in place to sanction those non-compliant staff. Is it sufficient for the licensed estate agent to give only verbal warnings to discipline non-compliant staff?

Answer: Merely giving verbal warnings may not be sufficient. Licensed estate agents should lay down and inform all staff of the 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 the licensed estate agent to sanction staff, having regard to the severity of the non-compliance or breach and frequency of non-compliance by a staff member. Moreover, licensed



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estate agents should maintain proper records of disciplinary actions taken (including verbal warnings).

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