

Circular

Circular No. 15-02 (CR)

- **Power of attorney required for appointing an authorised representative in sale and purchase and leasing transactions.**
- **Power of attorney to be duly executed and attested.**
- **Owner’s authority for the representative to receive deposit required before releasing deposit to representative.**

Proper Authorisation by Absent Contracting Party

The Estate Agents Authority (“EAA”) has continued to receive complaints in relation to problems arising out of the lack of proper authorisation by parties concerned in the sale/purchase/leasing of properties by persons claiming to be the party’s authorised representative.

(2) In many of these cases, the usual cause of complaint is that the licensee concerned failed to obtain a proper written authorisation signed by the absent contracting party authorising his representative (irrespective of whether the representative himself is a co-owner of the property or not) to enter into the transaction on his behalf, as a result of which the absent contracting party disclaims liability afterwards. Due to the lack of proper written authorisation, disputes often arise as to whether the person claiming to be the representative of the absent contracting party has been conferred the necessary power to perform the acts in question so as to bind the absent contracting party.

Power of Attorney Required

(3) To protect a client’s interest, it is imperative that before a licensee accepts any appointment of authorised representative and/or deals with any person claiming to be the authorised representative of the absent contracting party (“representative”) in a sale and purchase or leasing transaction, the representative must be able to produce a power of

attorney duly executed by the absent contracting party authorising the representative to enter into the transaction concerned and to execute the relevant document(s) such as the estate agency agreement and/or the provisional agreement for sale and purchase/provisional tenancy agreement, for and on his behalf.

(4) The power of attorney should be properly executed and attested¹. Licensees should ensure that the name of the absent contracting party and (where applicable) the property described in the power of attorney and its address correspond with those as shown in the land search record of the property concerned. If there is any discrepancy or doubt as to whether the representative has the authority to enter into the transaction concerned, the licensee should advise his client(s) to seek legal advice before arranging for the parties to enter into the provisional agreement for sale and purchase or provisional tenancy agreement.

(5) It is not sufficient and is highly risky simply to request the representative (whether a co-owner or otherwise) to sign a declaration to the effect that he has or will have proper authorisation from the absent contracting party and that he will be personally responsible for all consequences. Such a declaration could not bind the absent contracting party to enter into the transaction concerned and could not alleviate the licensees from their duty of obtaining a proper authorisation by the absent contracting party before arranging for the representative to enter into the transaction in order to protect their clients' interest. By doing so regardless, licensees might be considered as having disregarded the proper procedure in property transactions, and may cause their clients to suffer damage. Licensees must abstain from such practice.

Release of Deposit to Representative

(6) To protect the interests of the contracting parties and to avoid future disputes on the power of the representative to receive the deposit

¹ There is no legal requirement for a power of attorney to be attested. However, in order to avoid unnecessary disputes, the EAA recommends that a power of attorney should be attested by a solicitor.

on behalf of the owner of the property concerned, licensees should advise the purchaser(s) (or tenant(s)) not to pay the deposit to the representative personally (whether by drawing a cheque or otherwise) but to the owner(s) or the owner(s)' solicitors (as the case may be). However, if the deposit is to be paid to the representative instead, then licensees must ensure that the representative has authority to receive the money for the owner(s) before releasing any deposit to him.

Licensees who fail to comply with the above guidelines may be subject to disciplinary action by the EAA.

This Circular supersedes Circular Nos. 01-12 (CR) and 06-02 (CR).

June 2015

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