

## **Circular**

Circular No. 15-03 (CR)

### ***Individual Licensees***

- **Notify the estate agency companies for which they work no later than the same day after submitting the registrations of intent or before the closing time for the submission of registrations of intent (whichever is the earlier) of the following information:**
  - (a) **that they have submitted for themselves the registrations of intent in the development;**
  - (b) **the number of registrations of intent that they have submitted; and**
  - (c) **the number of cashier orders which they have submitted together with the registrations of intent.**

### ***Estate Agency Companies***

- **Make declaration on a daily basis on the following information:**
  - (a) **the total number of licensees (including the estate agency companies themselves and members of their staff who are licensees) who have submitted registrations of intent for themselves up to the closing time for submission of registrations of intent in the development;**
  - (b) **the total number of registrations of intent which have been submitted by these licensees; and**
  - (c) **the total number of cashier orders which have been submitted by these licensees.**

## **Declaration of Submission of Registrations of Intent in the Sales of First-Hand Residential Properties**

This circular sets out guidelines for estate agency companies<sup>1</sup> which are involved in the sale and/or purchase of first-hand residential

---

<sup>1</sup> For the purpose of this Circular, “estate agency companies” refers to (a) licensed estate agents set out in the price list as estate agents or sub-agents of the vendor from time to time in the sale of first-hand residential properties in a development (development); and (b) licensed estate agents who act for purchasers only in the purchase of unit(s) in a development.

properties and individual licensees who work for them to follow when they or members of their staff who are licensees (as the case may be) submit for themselves<sup>2</sup> registrations of intent in that sale. The guidelines are issued in light of the recent public concern that there may be a potential conflict of interest if licensees who are involved in the sale and/or purchase of first-hand residential properties and who at the same time submit for themselves<sup>2</sup> registrations of intent in the sale and/or purchase of such properties.

### **General**

(2) Under common law, an agent owes a fiduciary duty to his client. Since the agency relationship is one of trust and confidence, the agent must not allow any personal interest to conflict with his duties to the client. Where any potential conflict arises, the agent should make a full disclosure to the client of all relevant facts, so as to give the latter an opportunity to decide whether to continue with the proposed transaction or with the appointment of the agent. Otherwise, he will be in breach of his fiduciary duty and is liable to account for any profit that he has made from the transaction in addition to other remedies available to the client for the agent's breach of duty.

(3) Generally, a licensee may not purchase or lease property from his client, and he may not sell or let his own property to his client unless he has made a full disclosure of all the relevant facts to his client before entering into any agreement with his client and has obtained his client's consent to such transaction.

(4) As licensees are under a duty to avoid conflict of interest and in order to promote the professionalism of the estate agency trade and

---

<sup>2</sup> "for themselves" means -

- (a) in the case of an individual licensee, the individual licensee submits, through the estate agency company he works for, the registration(s) of intent using (i) his name solely or together with other individual(s) and/or company(ies) jointly; or (ii) the name of a company of which the individual licensee is a shareholder and/or director, as registrant(s); and
- (b) in the case of a company licensee, the company licensee, through itself, submits the registration(s) of intent using (i) its name solely or together with other individual(s) and/or company(ies) jointly; or (ii) the name of a company of which the company licensee is a shareholder and/or director, as registrant(s).

enhance the transparency of the sales, estate agency companies involved in the sale and/or purchase of a development should make the necessary declaration regarding information on submission for themselves<sup>2</sup> of registrations of intent in that development by them and members of their staff who are licensees.

## **Declaration of Submission of Registrations of Intent**

### *Individual Licensees*

(5) Individual licensees who work for estate agency companies which are involved in the sale and/or purchase of a development and who at the same time submit for themselves<sup>2</sup> registrations of intent in that development must notify the estate agency companies for which they work **no later than the same day** after submitting the registrations of intent or before the closing time<sup>3</sup> for the submission of registrations of intent (whichever is the earlier) of the following information:

- (a) that they have submitted for themselves<sup>2</sup> the registrations of intent in that development;
- (b) the number of such registrations of intent that they have submitted; and
- (c) the number of cashier orders<sup>4</sup> that they have submitted together with the registrations of intent referred to in sub-paragraph (a) above.

(6) To prove compliance and for proper records, individual licensees are required to notify the estate agency companies for which they work of the information referred to in paragraph (5) above in writing.

---

<sup>3</sup> As specified in the relevant sales arrangement issued by the vendor.

<sup>4</sup> Cashier order means one cashier order in the specified amount as required by the vendor in its sales arrangement for each property that the registrant wishes to express an interest to purchase. If a licensee uses more than one cashier order to make up the specified amount as required by the vendor in its sales arrangement for each property that the registrant wishes to express an interest to purchase, then for the purpose of this circular, the several cashier orders as aforesaid shall be treated as one cashier order.

*Estate Agency Companies*

(7) Estate agency companies involved in the sale and/or purchase of a development must declare **within the period of time** as specified in paragraph (8) below and in the manner specified in paragraph (9) below the following information:

- (a) the **total** number of licensees<sup>5</sup> who have submitted registrations of intent for themselves<sup>2</sup> up to the closing time<sup>3</sup> for submission of registrations of intent in a development;
- (b) the **total** number of registrations of intent which have been submitted by the licensees referred to in sub-paragraph (a) above; and
- (c) the **total** number of cashier orders<sup>4</sup> which have been submitted by the licensees referred to in sub-paragraph (a) above.

(8) The period of time referred to in paragraph (7) above is as follows:

- (a) the information referred to in paragraph (7) above and collected on a day must be publicised **before noon on the following day** (except the closing date<sup>3</sup> for submission of the registrations of intent); and
- (b) on the closing date<sup>3</sup> for submission of registrations of intent, the information referred to in paragraph (7) above and collected up to the closing time<sup>3</sup> for such submission must be

---

<sup>5</sup> “Licensees” includes (where applicable) the following:

- (a) the estate agency companies themselves;
- (b) members (whether described as “members”, “chartered members”, “associate members” or by similar names) of an estate agency company which is an estate agency association;
- (c) franchisees of an estate agency company; and
- (d) members of staff who are licensees of any of the estate agency companies mentioned in (a), (b) and (c) above.

publicised **within two hours** therefrom.

(9) The manner of declaration referred to in paragraph (7) above is as follows:

- (a) for licensed estate agents whose names are set out in the price list of a development -

The declaration on the information referred to in paragraph (7) above shall be made available on their company website (if any) in writing or shown at a conspicuous place at their shop(s). The vendor and prospective purchasers should be advised in writing to refer to their company website or to visit/contact their shops (as the case may be) for such information.

- (b) for licensed estate agents which are franchisees of an estate agency company mentioned in the price list of a development -

The declaration on the information referred to in paragraph (7) above shall be made available on the website (if any) in writing or shown at a conspicuous place at the registered address of the estate agency company which is the franchisor. The vendor and prospective purchasers should be advised in writing to refer to the website of or to visit/contact (as the case may be) the estate agency company which is the franchisor for such information.

- (c) for licensed estate agents who are members<sup>6</sup> of an estate agency association mentioned in the price list of a development -

The declaration on the information referred to in paragraph (7) above shall be made available on the website (if any) in

---

<sup>6</sup> Whether described as “members”, “chartered members”, “associate members” or by similar names.

writing or shown at a conspicuous place at the registered address of the estate agency association to which the licensed estate agent belongs. The vendor and prospective purchasers should be advised in writing to refer to the website of or to visit/contact (as the case may be) the estate agency association concerned for such information.

- (d) for licensed estate agents who act for purchasers only in the purchase of unit(s) in a development -

The declaration on the information referred to in paragraph (7) above shall be made to their purchaser clients in writing.

### *Others*

(10) To comply with the above requirements, estate agency companies should take proper steps to ensure that members of their staff who are licensees comply with the requirements of this circular (e.g. including the requirements of this Circular in the pre-sale briefings for their staff members<sup>7</sup>, their internal circulars and staff handbooks) and make appropriate arrangements for collecting information referred to in paragraph (5) above which has been submitted by members of their staff who are licensees and (where applicable) for consolidating such information which has been submitted by them from all branch offices (if any).

(11) Estate agency companies are also required to keep proper records of the information referred to in paragraphs (5) and (7) above which have been submitted by members of their staff who are licensees and of the information referred to in paragraph (7) above which they have declared in compliance with the above requirements for each development, and supply such records to the EAA upon request.

Licensees who fail to comply with the above guidelines may be

---

<sup>7</sup> See paragraphs 4 to 6 of Circular No. 13-04 (CR).

subject to disciplinary action by the EAA. Estate agency companies and their management may also be disciplined for failing to establish a proper system to manage their businesses<sup>8</sup>.

This Circular will come into operation on 1 September 2015.

June 2015

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

---

<sup>8</sup> As per section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.