



Circular

Circular No. 15-04 (CR)

Guidelines on completion of a tenancy agreement:

- **Do not arrange for clients to sign a tenancy agreement with the spaces providing for the essential terms of the tenancy left blank.**
- **Obtain consent before making any amendment to a signed tenancy agreement.**
- **Ensure that all information in a tenancy agreement is true and accurate.**
- **State correctly the use of the property in a tenancy agreement.**
- **Do not release the keys of the property to the tenant without obtaining the landlord's consent or arrange for the landlord to confirm receipt of any rental deposit in advance.**
- **List in the tenancy agreement any items of furniture and/or appliances etc. to be included in the tenancy.**
- **State clearly which version shall prevail if a tenancy agreement is written in both English and Chinese.**
- **Supply a copy of the tenancy agreement to the party after signing.**
- **Return the formal tenancy agreement and its counterpart to the parties for retention after stamping and registration (if applicable).**

Completion of Provisional Tenancy Agreement and Tenancy Agreement

The leasing of second-hand properties in Hong Kong is often conducted through estate agents who assist the parties to first enter into a provisional tenancy agreement (“PTA”). In most cases, the PTA is prepared by the handling estate agent and in some cases the estate agent concerned will also prepare the formal tenancy agreement (“TA”) and arrange for the parties to enter into it. A PTA or a TA which is not completed properly may easily give rise to complaints and/or disputes.

This Circular sets out certain matters to which licensees must pay attention to when preparing a PTA and a TA (the PTA and TA are hereinafter, where applicable, collectively called “tenancy agreements” and where the context permits, the term “tenancy agreement” refers to the PTA or TA individually).

Uncompleted Agreements

(2) Licensees must not arrange for their clients to sign a tenancy agreement unless all blank spaces in the tenancy agreement for providing the property description, names of the parties to the agreement, term of the tenancy and its commencement date, amount of rent and all other essential terms of the tenancy have been filled in.

(3) The total amount of commission payable by the tenant in the event of his default should be specified in the PTA before arranging for the tenant to sign the same. Likewise, the total amount of commission payable by the landlord in the event of his default should also be specified in the PTA before he signs the same.

(4) Any explanation that arranging for a party to sign a PTA with essential terms not filled in might facilitate the licensee to negotiate the terms more flexibly with the other party, and that the relevant party also consents to such an arrangement, would not be regarded as a reasonable explanation as such an arrangement would put the relevant party at risk.

(5) The addition or variation of a term in an executed tenancy agreement may have significant impact on the rights and liabilities of the parties. If a party wishes to amend the terms of the tenancy agreement after it is signed by the other party, licensees must first obtain the consent of the other party, and should seek their written consent to the change or arrange for them to initial against the amendment as confirmation. On the other hand, licensees must not arrange for their clients to put their initials in advance in the tenancy agreement with a view to facilitating the subsequent addition, deletion or amendment of any of the terms in the agreement.

(6) A tenancy agreement should constitute the full and entire understanding and agreement between the parties at the time when it was entered into by the parties. In other words, licensees should expressly set out all the terms and conditions agreed by the parties with regard to the transaction in one document only and not in separate documents with a view to concealing the true terms and conditions of the tenancy. If clients instruct that certain term(s) of the tenancy should be stated in a separate document and not in the tenancy agreement, the licensee concerned should advise their clients to seek legal advice on the implications and risks of such arrangement before proceeding to arrange for the parties to enter into any tenancy agreement.

(7) Tenancy agreements are usually signed in duplicate. Licensees must ensure that the contents of the tenancy agreement and its counterpart are identical when arranging for the parties to enter into the tenancy agreement.

Parties

(8) The name and the number of the identification document (e.g. HKID Card number or Passport number) of the parties, which are essential in correctly identifying the parties, must be clearly stated, and their addresses should also be provided in a tenancy agreement. If the tenant of the transaction does not provide an address to be inserted in the PTA, the licensee should before arranging for the parties to enter into the PTA inform the landlord about it accordingly and advise him of the risk of being unable to locate the whereabouts of the tenant in the event of any subsequent dispute. On the other hand, if the landlord does not provide an address to be inserted in the TA or only provides the address of the property concerned as his address in the TA, the licensee should before arranging for the parties to enter into the TA inform the tenant about it and advise him of the risk of being unable to serve a notice on the landlord or contact him in writing, if necessary, during the term of the tenancy.

(9) Licensees must properly verify the identity of the parties by carefully checking the name of the party on the identity card or

identification document before arranging for them to sign a tenancy agreement. Licensees are reminded that under section 13(3) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”), a licensee shall, for the purpose of avoiding the fraudulent misrepresentation of identity in a lease of a residential property, take all practicable steps to ensure that the name of the landlord is correct when the agreement is entered into and if the landlord is an individual, the licensee should take a copy of the landlord’s Hong Kong identity card or other identification document.

(10) Generally speaking, the name of the landlord in a tenancy agreement should follow that as shown in the land search record of the property. If the property is owned by more than one person, all the co-owners of the property should enter into the tenancy agreement. Moreover, the parties entering into the PTA and the TA should be the same. If the tenant wishes to make any changes to the name of the party who will sign as tenant in the TA after the PTA has been signed by the landlord, licensees must first obtain the consent of the landlord, and should seek his written consent to the change or arrange for them to initial against the amendment on the PTA as confirmation.

(11) Licensees must ensure that the person claiming to be the authorised representative of an absent contracting party in a leasing transaction is duly authorised to enter into the transaction concerned and to execute the tenancy agreement¹. A person claiming to be the surviving joint-tenant of a jointly-owned property must produce the death certificate of the deceased joint-tenant as proof, and a person claiming to be the personal representative of a deceased sole owner must produce documentary evidence (such as Probate or Letters of Administration issued by the High Court²) proving that he/she has the authority to administer the estate of the deceased owner.

¹ For guidelines issued by the EAA on “Proper Authorisation by Absent Contracting Party” and “Signing of Provisional Agreement for Sale and Purchase/Provisional Tenancy Agreement by a Limited Company”, licensees should refer to Circular Nos. 15-02(CR) and 09-06(CR) respectively.

² Probate is a court order authorising one or more persons to administer the deceased’s estate according to the directions in the Will whereas Letters of Administration is a court order authorising one or more persons to administer the deceased’s estate in accordance with the law.

Property Description

(12) The property must be accurately described in a tenancy agreement and its address should follow that as shown in the land search record of the property. Any car parking space, roof, flat roof, garden or other parts forming part of the property, if included, must be clearly stated.

Term of Tenancy

(13) Licensees must ensure that all the information provided in a tenancy agreement is true and accurate and the following terms regarding the term of a tenancy are clearly stipulated in the tenancy agreement:

- (a) the period of tenancy;
- (b) the commencement and the expiry dates of the tenancy;
- (c) duration of rent-free period (if any);
- (d) option to renew³ the existing tenancy (if any); and
- (e) break clause⁴ (if any).

User Clause

(14) Licensees must correctly state the use of the property in a tenancy agreement, such as whether the property is for residential, office or industrial use, etc.

Acknowledgement of Receipt of Keys or Deposit Money

(15) Licensees must not release any keys of the property concerned to the tenant without obtaining the landlord's consent. Moreover, licensees must not arrange for the tenant to acknowledge the receipt of any keys in a tenancy agreement by signing the receipt clause thereof before the tenant has received them.

³ An option to renew confers on the tenant a right to continue to rent the property after the expiry of the current term i.e. to renew the existing tenancy, on such terms as the parties shall agree.

⁴ A break clause confers rights to a party to prematurely terminate a tenancy after a certain period has elapsed or upon the occurrence of certain events i.e. a party is allowed to *break* the agreement before the expiry of the original term.

(16) Likewise, licensees must not arrange for the landlord to confirm the receipt of any rental deposit or payment of rent in advance (if any) in a tenancy agreement by signing the receipt clause thereof before the landlord has received the cheque or money for the payment of rental deposit or rent in advance (if any).

Inventory

(17) If any items (e.g. furniture, electrical appliances) are included in the tenancy, licensees should set them out in the tenancy agreement. Licensees are reminded that under section 10(c) of the Practice Regulation, they are required to establish what is to be included in a tenancy agreement of the property and prepare a written inventory thereof before the signing of the tenancy agreement. Where applicable, licensees should also specify in the tenancy agreement which party will be responsible for the costs of repair of such items and whether any replacement will be provided by the landlord during the term of the tenancy.

Language

(18) If a tenancy agreement is written in both English and Chinese, licensees must make it clear in the document which version shall prevail in case of conflict or inconsistency.

Explanation

(19) To comply with section 13(1) of the Practice Regulation, licensees are reminded that they must not arrange for a client (unless he is legally represented when entering into a tenancy agreement) to enter into the tenancy agreement if they have not already explained the meaning of each clause of the tenancy agreement and drawn their client's attention to the meaning of the essential terms and provisions thereof; and recommended that the client seek legal advice if the client does not understand any part of the tenancy agreement.

Supply of a Copy of the Tenancy Agreement

(20) Licensees should supply a copy of the tenancy agreement to the party as soon as that party has signed the agreement. If any of the terms of the tenancy agreement have been varied by making amendment(s) on the tenancy agreement itself, licensees should supply a copy of the amended version of the tenancy agreement to the parties and seek a written receipt thereof from the party concerned as soon as practicable.

(21) Licensees should return the TA and its counterpart to the landlord and the tenant respectively for their retention as soon as the same have been duly stamped and registered (if applicable).

Licensees are reminded that under paragraph 3.4.1 of the Code of Ethics issued by the EAA, they should protect and promote the interests of their clients. Moreover, pursuant to paragraph 3.5.1 of the Code of Ethics, they shall, in fulfilling their duties, exercise due care and due diligence.

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

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