



## Circular

Circular No. 15-05 (CR)

- **Enter into Form 3/Form 5 with the vendor/landlord and Form 4/Form 6 with the purchaser/tenant if the transaction involves the sale and purchase/leasing of both a car parking space and a residential property.**
- **Make arrangements for the purchaser/tenant to inspect and view both the residential property and car parking space and accompany the purchaser/tenant for such inspection and viewing (unless otherwise instructed by the purchaser/tenant).**
- **When dealing with the sale and purchase or leasing of a car parking space alone, licensees should do the following before arranging for the parties to enter into any agreement for sale and purchase or tenancy agreement:**
  - (a) **ascertain whether there is any restriction on the use of the car parking space(s) concerned that they can only be used for the parking of vehicles belonging to the residents or occupiers of the building (“Restriction on Use”);**
  - (b) **make enquiries in writing with the management company or the incorporated owners of the building (if any) and/or the vendor/landlord to ascertain whether there is such Restriction on Use;**
  - (c) **inform the purchaser/tenant if there is Restriction on Use; and**
  - (d) **advise the purchaser/tenant to seek legal advice on whether there is such Restriction on Use if it cannot be ascertained whether there is any Restriction on Use after making enquiries, or if the information that there is no Restriction on Use is only given by the vendor/landlord.**

### Sale and Purchase or Leasing of Car Parking Spaces

This Circular sets out guidelines on the proper practice and measures to be adopted when handling the sale and purchase or leasing of car parking spaces. The guidelines are issued in light of an increasing number of car parking space transactions in Hong Kong and the fact that

there are at times restrictions on the use of car parking spaces.

## **General**

(2) Licensees are reminded that when they handle the sale and purchase or leasing of car parking spaces, they are required to observe and comply with the relevant provisions in the Estate Agents Ordinance and its subsidiary legislation (notably the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation) (“Practice Regulation”), the Code of Ethics and all relevant guidelines issued by the Estate Agents Authority (“EAA”).

## **Practice Regulation**

### *Section 3(4)(a)*

(3) If the transaction involves the sale and purchase or leasing of both a car parking space and a residential property, the licensed estate agent who acts for the vendor is required to enter into an estate agency agreement (Form 3) with the vendor, or an estate agency agreement (Form 5) with the landlord. Likewise, a licensed estate agent who acts for the purchaser is required to enter into an estate agency agreement (Form 4) with the purchaser, or an estate agency agreement (Form 6) with the tenant<sup>1</sup>.

(4) However, if the transaction involves only the sale and purchase or leasing of a car parking space, then there is no need to enter into an estate agency agreement because under section 3(4)(a) of the Practice Regulation, the relevant forms specified in the Schedule thereto are not prescribed for such purposes.

### *Section 10(a)*

(5) Under section 10(a) of the Practice Regulation, a licensee shall assist in making arrangements for the inspection and viewing by a purchaser (or tenant) of a residential property (including a car parking space if such is included in the sale (or leasing), and common areas if

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<sup>1</sup> Pursuant to section 6 of the Practice Regulation.

applicable) and accompany the purchaser (or tenant) for such inspection and viewing unless otherwise instructed by the purchaser (or tenant).

(6) To comply with section 10(a), where the transaction involves a sale and purchase or leasing of a car parking space together with a residential property, the licensee who acts for the purchaser (or tenant) shall, unless the purchaser (or tenant) instructs otherwise, make arrangement for the purchaser (or tenant) to inspect and view both the residential property and car parking space, and he shall accompany the purchaser (or tenant) for such inspection and viewing.

(7) If the purchaser (or tenant) agrees not to inspect the residential property and/or the car parking space which is included in the sale (or leasing), the licensee concerned should specify such information in column 2 of Schedule 1 to Form 4 (or Form 6) and request the purchaser (or tenant) to acknowledge the same by signing at the corresponding last column of Schedule 1.

### **Restrictions on Use of Car Parking Spaces**

(8) Licensees should note that, the Government Grant of the land of which the building forms part and/or the Deed of Mutual Covenant<sup>2</sup> (“DMC”) of the building concerned may contain provisions restricting the use of the car parking spaces in a building or the estate/development of which the building forms part (hereinafter called “building”).

(9) For example, the Government Grant and/or the DMC may stipulate that the car parking spaces of the building may only be used for the parking of vehicles belonging to the residents or occupiers<sup>3</sup> of the building. In such a case, a purchaser or tenant who is not a resident or occupier of the building but intends to purchase or lease a car parking space of the building for self-use will not be able to use the car parking

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<sup>2</sup> “Deed of Mutual Covenant” includes any document (whether described as “deed of mutual covenant”, “deed of covenant”, “deed of mutual covenant and management agreement” or by similar names) which sets out the rights, interests and obligations of the owners, occupiers, tenants and property management agents in respect of the control, administration, maintenance and management of the building.

<sup>3</sup> “Occupier” means in the case of non-domestic buildings, a person carrying on an occupation full-time in such building.

space. The purchaser in such a case may only let the car parking space to a resident or an occupier of the building for the resident's or occupier's use. To do otherwise might be in breach of the Government Grant and/or DMC<sup>4</sup>.

(10) In view of the above and in order to protect the interests of the purchaser (or tenant) client in the transaction, licensees should, when dealing with the sale and purchase or leasing of a car parking space **alone**, do the following before arranging for the parties to enter into any agreement for sale and purchase or tenancy agreement:

- (a) Ascertain whether there is any restriction on the use of the car parking space(s) concerned that they can only be used for the parking of vehicles belonging to the residents or occupiers of the building (“Restriction on Use”);
- (b) Unless licensees are reasonably satisfied as regards the accuracy of information they possess that there is no Restriction on Use regarding the car parking space(s) concerned, licensees should make enquiries in writing with the management company or the incorporated owners of the building (if any) and/or the vendor (or landlord) to ascertain whether there is such Restriction on Use;
- (c) If there is Restriction on Use regarding the car parking space(s) concerned, licensees should inform the purchaser (or tenant) client of the same; and
- (d) If, despite the licensees' efforts to make enquiries as mentioned in sub-paragraph (b) above, it cannot be ascertained whether there is any Restriction on Use regarding the car parking space(s) concerned, or if the information that there is no Restriction on Use is only given by the vendor (or landlord), licensees should advise the purchaser (or tenant) to seek legal advice on whether there is such Restriction on Use.

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<sup>4</sup> The use of the car parking space in breach of the Government Grant and/or DMC may carry with it a continuing risk of enforcement action by the Government and/or other parties to the DMC.

(11) If, despite the advice of the licensee concerned as mentioned in paragraphs (10)(c) above that there is such Restriction on Use, or in paragraph (10)(d) above that no information is available on whether there is any Restriction on Use, or that the information that there is no Restriction on Use is only given by the vendor (or landlord), the purchaser (or tenant) client nonetheless decides to proceed with the purchase or leasing of the car parking space(s) concerned (with or without obtaining legal advice by himself), the licensee concerned, in order to protect his own interests in case of dispute, is advised to obtain a written acknowledgement from the purchaser (or tenant) client stating that:

- (a) he is aware of the Restriction on Use, or that no information is available on whether there is such Restriction on Use; and
- (b) (if no information regarding the Restriction on Use is available or if the information that there is no Restriction on Use is only given by the vendor (or landlord)), he has been advised to seek legal advice on whether there is such Restriction on Use.

Licensees are reminded that under paragraph 3.3.1 of the Code of Ethics issued by the EAA, they shall, in the course of business, provide service to their clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions. Moreover, under paragraph 3.2.2 of the Code of Ethics, they should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market relating to their practice, and under paragraph 3.4.1, they should protect and promote the interests of their clients.

Licensees who fail to observe the guidelines set out in this Circular 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.