



Circular

Circular No. 16-02 (CR)

Guidelines on maintaining good order at first sale sites:

- **Appoint a controller to oversee staff deployed to first sale sites.**
- **Compile a list of all staff deployed and keep a daily register.**
- **Properly supervise the activities of non-licensed staff (e.g. trainees), if any, at the first-sale sites.**
- **Wear Estate Agent card and/or staff card and/or name tags.**
- **Do not solicit business at railway stations.**
- **Do not solicit business at shopping malls or housing estates without the requisite permission.**
- **Do not intercept vehicles or distract drivers.**
- **Do not obstruct public places with advertising hoardings, banners, etc.**
- **Do not be over-aggressive: e.g. stalking or persistent solicitation.**
- **Do not quarrel or fight with others.**

First Sale of Residential Properties

Order at First-sale Sites

It is of paramount importance that good order is maintained in the conduct of promotional activities in relation to the first sale of residential properties. This Circular sets out the guidelines of the Estate Agents Authority (“EAA”) on the subject, and shall take effect on 1 September 2016. Circular No. 10-02 (CR) will be superseded on the same date.

General

- (1) It is the responsibility of the management of estate agency companies¹ to establish proper procedures and systems in order to

¹ The term “estate agency company” or “estate agency companies” refers to those firms or companies which are licensed estate agents under the Estate Agents Ordinance.

maintain effective control of their staff deployed to locations for the promotion of the first sale of units in a residential development, including the site of the development, and the sales office and its vicinity (hereinafter collectively referred to as “first-sale sites”).

- (2) Estate agency companies must ensure that, of the staff deployed to the first-sale sites, only those who are holders of estate agent’s or salesperson’s licence may carry out estate agency work.
- (3) Estate agency companies must handle complaints promptly and co-operate with the officers of the EAA in the maintenance of order at the first-sale sites.
- (4) Licensees must act professionally and avoid any practice which may bring discredit and/or disrepute to the estate agency trade.
- (5) No licensees other than those of the estate agency companies who are appointed by the developer may solicit business in connection with the development at the first-sale sites.
- (6) Each estate agency company must assign an employee who is the holder of an estate agent’s licence (individual) (“controller”) to oversee all the staff deployed to the first-sale sites and their conduct in promotional activities. The estate agency company must provide the name and licence number of the controller to the EAA as soon as possible after the controller has been so assigned.

No Estate Agency Work by Non-Licensed Staff at First-sale Sites

- (7) Estate agency companies and/or the controller should be aware that deploying non-licensed staff² to first-sale sites for promotional activities is a **risky** arrangement. This is because in certain cases, their work and/or conduct (e.g. distributing leaflets and at the same time providing property information to prospective purchasers and/or accompanying them to inspect show flats with a view to soliciting business) may amount to unlicensed estate agency work, which is **strictly prohibited** under the Estate Agents Ordinance (“EAO”).

² Whether described as “trainee”, “sales trainee”, “property consultant”, “mortgage broker”, “property assistant” or by any other titles.

- (8) Under sections 15 and 16 of the EAO, a person shall not engage in estate agency work without holding a valid licence granted by the EAA, otherwise he may commit an offence³. Moreover, under section 39, a licensed estate agent who employs or continues to employ as a salesperson, any person who for the time being is not the holder of an estate agent's or salesperson's licence, may also commit an offence⁴, and under section 42, the director or other officer concerned in the management of the licensed estate agent may also be guilty of the same offence if it is proved that the offence was committed with the consent or connivance of such director or officer.
- (9) In the event that non-licensed staff are deployed to first-sale sites notwithstanding the risks mentioned in paragraph (7) above, estate agency companies must, for each development, take appropriate measures to ensure that no estate agency work would be carried out by their non-licensed staff, including but not limited to taking the following actions:
- (a) set out clear guidelines for non-licensed staff the type of work that they can (e.g. clerical work) and cannot undertake (e.g. providing property information other than mere distribution of leaflets containing property information to prospective purchasers; answering their enquiries related to the development; or accompanying prospective purchasers to inspect show flats with a view to soliciting business etc.) prior to their deployment to the first-sale sites;
 - (b) remind non-licensed staff not to engage in activities at the first-sale sites which may involve estate agency work and the consequences thereof;
 - (c) implement appropriate measures to ensure that members of the public may reasonably be able to differentiate between their non-licensed staff and their licensed staff at the first-sale sites. For this purpose, a non-licensed staff member should wear a name tag prepared by the estate agency employer

³ The maximum penalty is a fine of \$500,000 and two years' imprisonment (section 55(3)(a) and (b) of the EAO).

⁴ The maximum penalty is a fine at level 6 (i.e. \$100,000) and six months' imprisonment (section 55(4)(b) of the EAO).

showing on it:

- (i) the photograph of the non-licensed staff member;
 - (ii) prominently the words “non-licensed staff”;
 - (iii) the name of the non-licensed staff member; and
 - (iv) the name of his estate agency employer.
- (d) assign one or more than one licensed staff (“mentors”), who must be holders of (i) an estate agent’s licence (individual) or (ii) a salesperson’s licence with at least two years’ estate agency experience, to supervise and monitor the conduct and performance of the non-licensed staff when the latter carry out work at the first-sale sites (“mentor arrangement”) and ensure that the number of mentors so assigned is commensurate with their ability to effectively supervise and monitor the conduct and performance of non-licensed staff at the first sale sites.
- (10) Estate agency companies should also issue clear guidelines to expressly inform their licensed staff members that they must not delegate their estate agency work (e.g. soliciting business from prospective purchasers) to any person who is not a licensee.

Record of Staff Deployment

- (11) Estate agency companies and/or the controller must compile a list of all staff to be deployed to the first-sale sites and provide the EAA with a copy of it at least one day before the launch of the first-sale. The list must contain:
- (i) the full name and licence number of the controller;
 - (ii) the full names of the staff members (licensed and non-licensed);
 - (iii) the licence number (if he is a licensee) or staff number (if he is a non-licensee) of the staff member;
 - (iv) the name of the branch office the staff member belongs to;
 - (v) the full name of the supervisor(s) of the staff member at the first-sale site;

- (vi) if the staff member is a non-licensee, the full name of his/her designated mentor who is responsible for the supervision and monitoring of his/her conduct and performance at the first-sale site as mentioned in paragraph (9)(d) above;
 - (vii) the location to which the staff member is to be deployed (e.g. the sales office or the site of the development); and
 - (viii) the duration of the deployment.
- (12) Estate agency companies and the controller must keep a daily register of all staff (containing such information as required under paragraph (11) above for that day) who had reported for duty at the first-sale sites and must forthwith provide the EAA with a copy of the daily register upon request.

Relationship with Developer

- (13) Licensees must co-operate with and observe the guidelines issued by the developer for the maintenance of order at the first-sale sites.
- (14) Licensees must co-operate with and follow all lawful and reasonable instructions of the staff of the developer for the maintenance of order at the first-sale sites.
- (15) The number of staff deployed to the first-sale sites must not exceed the number as may be specified by the developer.

Estate Agent Cards/Staff Cards/Name Tags

- (16) For all licensed staff of estate agency companies deployed to the first-sale sites, they must wear an Estate Agent card and/or staff card, and for all non-licensed staff, the name tags as referred to in paragraph 9(c) above.
- (17) All staff of estate agency companies deployed to the first-sale sites must co-operate with the officers of the EAA. They must follow all reasonable instructions of the EAA officers and must produce their Estate Agent card/staff card/name tag for inspection upon request. [N.B. Licensees must note that under the EAO, any person who, without reasonable excuse, obstructs the EAA or any person in the

exercise or performance of any of its or his functions, commits an offence⁵.]

Soliciting Business at Railway Stations

- (18) Licensees must not conduct any business soliciting activities, intercept passengers or distribute leaflets at Mass Transit Railway stations, including station exits and ticket barrier areas.
- (19) Licensees must note that any person who contravenes the following provision(s) of the Mass Transit Railway (“MTR”) By-laws (Cap. 556B), or Mass Transit Railway (North-west Railway) (“NWR”) Bylaw (Cap. 556H) commits an offence and is liable to the following penalties:

Section	By-law	Brief description of the relevant provision(s)	Penalty
25	MTR	No person shall conduct himself in any part of railway premises (except NWR premises) so as to cause a nuisance or annoyance to other passengers.	\$5,000 fine
30	MTR	No person, unless authorised in writing by the MTR Corporation Limited, shall offer for sale any services in or upon any railway premises (except NWR premises).	\$5,000 fine and six months imprisonment
32	MTR	No person shall, unless authorised in writing by the MTR Corporation Limited, distribute any book, leaflet or other printed matter on any part of railway premises (except NWR premises).	\$5,000 fine and three months imprisonment
22(1)(d)	NWR	No person shall at any time while upon NWR premises molest or wilfully interfere with the comfort or convenience of any person.	\$5,000 fine

⁵ The maximum penalty is a fine at level 6 (i.e. \$100,000) and six months’ imprisonment (section 55(3)(b) of the EAO).



Section	By-law	Brief description of the relevant provision(s)	Penalty
26	NWR	No person on any part of NWR premises shall, except with the written authority of the MTR Corporation Limited, distribute any book, leaflet or other printed matter; or solicit custom.	\$5,000 fine
27	NWR	No person, unless authorised in writing by the MTR Corporation Limited, shall offer for sale any services in or upon any NWR premises.	\$5,000 fine and six months imprisonment

Soliciting Business at Shopping Malls and Housing Estates

- (20) Licensees must not conduct business-soliciting activities or distribute leaflets inside or at the entrances of shopping malls or housing estates, unless they have obtained the requisite permission from the management office of the shopping mall or housing estate.
- (21) Licensees must note that according to Section 6A of the Summary Offences Ordinance, any person who in a public place, to the annoyance of any other person, importunes such person to give his custom to any business, shall be guilty of an offence and shall be liable to a maximum fine of \$2,000 and to imprisonment for six months.

Intercepting Vehicles and Distracting Drivers

- (22) Licensees must not in the course of soliciting business or conducting promotional activities stand on the carriageway or intercept vehicles, as this may endanger their own safety and the safety of drivers and other road users.
- (23) Licensees must note that according to Section 48 of the Road Traffic Ordinance, a pedestrian who in using any road negligently endangers his own safety or that of any other person commits an offence and is liable to a fine of \$500.

- (24) Licensees must not strike or impede vehicles or conduct themselves in a manner which may distract drivers heading for or passing by the first-sale sites: for example, waving promotional leaflets to beckon the drivers of the vehicles.
- (25) Licensees must note that according to Section 60 of the Crimes Ordinance, any person who without lawful excuse damages property belonging to another, intending to damage any such property or being reckless as to whether any such property would be damaged, shall be guilty of an offence and liable on conviction upon indictment to imprisonment for ten years.

Obstruction of Public Places

- (26) Licensees must not place folding tables, chairs, sun shades, banners or advertising hoardings on pavements, pedestrian-only streets and other public places, as such items may obstruct, inconvenience, cause annoyance to or endanger pedestrians and other road users.
- (27) Licensees must note that according to Section 4A of the Summary Offences Ordinance, any person who without lawful authority or excuse sets out or leaves any thing which may obstruct, inconvenience or endanger any person or vehicle in a public place shall be liable to a fine of \$5,000 or to imprisonment for three months.
- (28) Licensees must also note that according to Section 4(5) of the Summary Offences Ordinance, any person who without lawful authority or excuse causes any annoyance or obstruction in any public place by exposing any thing for sale in any street shall be liable to a fine of \$500 or to imprisonment for three months.

Behaviour towards Passers-by

- (29) Licensees must not be over-aggressive when conducting promotional activities: for example, standing in the way of passers-by, stalking and persistent solicitation despite indication by the passers-by that they are not interested in making any purchase.
- (30) Licensees must act professionally and must not exhibit a poor attitude towards a passer-by who refuses to give them business.

Behaviour towards Other Estate Agents, Salespersons and Other Persons

- (31) Licensees must not quarrel or fight with other estate agents, salespersons or passers-by.
- (32) Licensees must note that according to Section 39 of the Offences Against the Person Ordinance, any person who is convicted of an assault occasioning actual bodily harm shall be guilty of an offence triable upon indictment and shall be liable to imprisonment for three years.
- (33) Licensees must also note that under Section 40 of the same ordinance, any person who is convicted of a common assault shall be guilty of an offence triable either summarily or upon indictment and shall be liable to imprisonment for one year.

Non-licensed Staff not to Contravene Guidelines

Estate agency companies should note that apart from licensed staff members, their non-licensed staff are also prohibited from engaging and should be reminded not to do or engage in such conduct which may contravene the above guidelines and/or constitute a criminal offence.

Offences / Disciplinary Action

Licensees who fail to comply with the above guidelines may be subject to disciplinary action by the EAA. Licensees should note that in cases where the conduct also constitutes a criminal offence, the offender may also be subject to disciplinary action by the EAA notwithstanding his criminal conviction.

Liability of Employer and Management of Estate Agency Company

Under Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”), the employer and management of an estate agency company must establish proper procedures or systems to supervise and manage estate agency work. If any staff member, whether licensed or non-licensed, commits a breach of conduct in respect of the matters abovementioned, the owner and management of the estate agency company and/or controller and/or

managers and directors on the reporting line (if applicable), may be seen as not having established a proper system to manage their business. They would therefore be in breach of Section 15 of the Practice Regulation.

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