

## **Circular**

Circular No. 16-03 (CR)

- **Matters to be complied with when verifying the identity of vendors:**
  - **Enter into an estate agency agreement with the vendor; record therein the name of the vendor and the number of his identity or travel document.**
  - **Ascertain the ownership of the property by carrying out a land search.**
  - **Obtain a copy of the vendor's identity card/identification document.**
  - **Ensure the identity of the vendor and owner are the same.**
- **Advise the parties to stakehold all the deposits with a firm of solicitors.**
- **If parties do not agree to the stakeholding of deposits, obtain a copy of the last assignment to ascertain whether the type and number of the identification document as presently presented by the vendor and that of the owner of the property recorded in the last assignment are the same.**
- **If there is any discrepancy on the type or number of identification document as recorded in the last assignment and that presently produced by the vendor; or where licensees are unable to verify or are not satisfied with the identity of the vendor (such as because the means of identification of the vendor is not recorded in the last assignment or the signature of the vendor in the last assignment appears materially different from his present signature or because there are suspicious circumstances with respect to the additional steps taken by them to verify the identity of the vendor), they are required to advise the purchaser of the risks involved and of the need to seek legal advice.**
- **Where licensees suspect that the vendor is a fraudster, they should:**
  - **Cease to act for the parties; and**
  - **Report the case to the Police.**

## Verifying the Identity of Vendors

The recent news report of a fraudster impersonating a flat owner and swindling a deposit of nearly three million dollars has raised grave community concern about the duty of estate agents to verify the identity of vendors.

(2) Licensees are reminded that, pursuant to Paragraph 3.4.1 of the Code of Ethics, they should protect and promote the interests of their clients. To protect the interests of their clients, licensees should verify the identity of vendors and in doing so, comply with the following:

- (a) Enter into an estate agency agreement (Form 3) with the vendor pursuant to Section 6(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation).
  - (i) Licensees should not rely only upon the vendor's verbal instruction to list the property for sale.
  - (ii) Licensees should ask the vendor to produce his Hong Kong identity card and record the name of the vendor and the number of his Hong Kong identity card in the estate agency agreement.
  - (iii) Indeed, as a measure to help prevent money laundering, the Estate Agents Authority (EAA) has asked licensees to record on the estate agency agreement or property viewing form the name of the client, and the type and number of the client's identity or travel documents, such as Hong Kong identity card, passport or two-way permit for Mainland residents<sup>1</sup>.
- (b) Ascertain the ownership of the property by carrying out a

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<sup>1</sup> Please refer to Circular No. 04-01 (CR) and 08-05 (CR) for guidelines issued by the EAA regarding preventive measures on money laundering.

land search of the property.

- (i) According to Section 36(1)(a)(i) of the Estate Agents Ordinance (EAO), if a licensed estate agent acts for the vendor of a residential property and has entered into an estate agency agreement with him, he is required to have in his possession or control certain prescribed property information, amongst which is the name(s) of owner(s). In addition, pursuant to Section 3 of the Practice Regulation, a licensed estate agent is required to obtain the prescribed information of the property concerned from the prescribed sources and complete the Property Information Form (Form 1) with such information and attach thereto a copy of the land search from the Land Registry in respect of the property.
- (c) Obtain a copy of the vendor's identity card or other identification document before arranging for clients to sign a provisional agreement for sale and purchase.
  - (i) Section 13(3) of the Practice Regulation requires that a licensee shall, for the purpose of avoiding the fraudulent misrepresentation of identity in an agreement for sale and purchase of a residential property, take all practicable steps to ensure that the name of the vendor is correct, and if the vendor is an individual, the licensee may collect a copy of the vendor's identity card or other identification document<sup>2</sup>.
  - (ii) Pursuant to Paragraph 3.5.1 of the Code of Ethics, licensees shall, in fulfilling their duties, exercise due

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<sup>2</sup> Licensees are reminded to observe and comply with the relevant provisions of the Personal Data (Privacy) Ordinance and the guidelines issued by the EAA on protection of personal data upon collection, use and handling of the copy of the vendor's identity card. Please refer to Circular No. 13-05 (CR) for more details.

care and due diligence. Hence, licensees should check carefully the name of the vendor on the identity card or identification document against the name of the owner as recorded in the land search.

- (iii) Licensees should also check carefully to see whether there are obvious irregularities<sup>3</sup> in the vendor's identity card or identification document.
- (d) Ensure that the identity of the vendor and of the owner are the same or that the vendor has the authority to sell before releasing **any** deposit money to the vendor.
  - (i) Under Section 12(7)(b) of the Practice Regulation, a licensed estate agent shall ensure that the identity of the vendor and of the owner of the residential property concerned are the same or, if they are different, that the vendor has authority to sell the property, before releasing **any** deposit money to the vendor.
  - (ii) To minimise the risk of fraudulent misrepresentation of the identity of the vendor in a property transaction and the disappearance of the vendor after receiving the deposit(s), a licensee (whether acting as a dual agent for both parties or as a single agent for the vendor or the purchaser only) is required to, before arranging for the parties to enter into the provisional agreement for sale and purchase of the property, advise his client(s) in writing to arrange for the **stakeholding** of all deposits (both the initial and further deposits) by a firm of solicitors<sup>4</sup>, and the risk of not doing so.

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<sup>3</sup> For example, Hong Kong identity cards are issued in the form of smart cards and contain a number of sophisticated security features (please refer to the website of the Immigration Department at [www.immd.gov.hk/eng/services/hkid/smartid.html](http://www.immd.gov.hk/eng/services/hkid/smartid.html) regarding the security features of a smart identity card). Licensees should examine whether the Hong Kong identity card produced by the vendor contains those features.

<sup>4</sup> Licensees are also required to comply with the guidelines on stakeholding of deposits in relation to properties with undischarged mortgages, if applicable. Please refer to Circular No. 05-07 (CR).

- (iii) If, despite the advice of the licensee(s), the parties nonetheless decide to proceed with the transaction without arranging for the stakeholding of the deposit, then the following steps shall be taken:

*Licensees Acting for Both Parties*

- (aa) Where the licensee is acting for both parties, he is required :
- (i) to obtain a written acknowledgement from the purchaser that the advice of arranging for stakeholding of the deposit, the risk of not doing so and the need to seek legal advice have been given;
  - (ii) before arranging for the parties to enter into the provisional agreement for sale and purchase, to obtain a copy of the last assignment of the property from the Land Registry to ascertain whether the type and number of the identification document as recorded in the last assignment and that presently produced by the vendor are the same;
  - (iii) if there is any discrepancy on the type or number of identification document as recorded in the last assignment and that presently produced by the vendor; or if he is unable to verify or is not satisfied that the identity of the vendor and of the owner are the same (such as because the means of identification of the vendor is not recorded in the last assignment of the property or the signature of the vendor in the last



assignment appears materially different from his present signature or because there are suspicious circumstances with respect to the additional steps taken by the licensee to verify the identity of the vendor mentioned in paragraph (3) of this Circular<sup>5</sup>), to draw to the attention of the purchaser such facts and the risks involved, and to advise the purchaser to seek legal advice before proceeding with the transaction; and

(iv) if, despite the aforesaid, the purchaser nonetheless insists on proceeding with the transaction and paying the deposit (or any part thereof) direct to the vendor, before proceeding with the transaction or releasing any deposit money to the vendor, to obtain another written acknowledgement from the purchaser acknowledging that he:

- is aware that there is a discrepancy in the type and/or number of the identification document between those as recorded in the last assignment and those presently produced by the vendor, or that the licensee is unable to verify or is not satisfied that the identity of the vendor and of the owner are the same whether due to the matters mentioned in sub-sub-paragraph (iii) above or otherwise;

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<sup>5</sup> For example, the vendor refuses/fails to (a) arrange for an inspection of the property when it is vacant or make arrangement with the tenant for an inspection of the property by the licensee when it is tenanted, where possible; (b) produce additional proofs of identity and ownership; (c) produce the original title deeds when the property is not subject to any mortgage; (d) produce the original tenancy agreement(s) or evidence of receipts of payment of rent if the property is being let; or (e) answer general questions about the property correctly (such as the amount of management fee, facilities in the building and the specific view(s) from the living room).



- is aware of the risks involved in not stakeholding the deposit and paying the same (or any part thereof) to the vendor direct;
- has been advised by the licensee to seek legal advice; and
- has nevertheless decided to proceed with the transaction and pay the deposit (or any part thereof) to the vendor direct in such circumstances.

*Licensees Acting for the Vendor Only*

(bb) Where the licensee is acting for the vendor only, he is required:

- (i) before arranging for his client to enter into the provisional agreement for sale and purchase, to obtain a copy of the last assignment of the property from the Land Registry to ascertain whether the type and number of the identification document as recorded in the last assignment and that presently produced by the vendor are the same;
- (ii) if there is any discrepancy on the type or number of identification document as recorded in the last assignment and that presently produced by the vendor; or if he is unable to verify or is not satisfied that the identity of the vendor and of the owner are the same (such as because the means of identification of the vendor is not recorded



in the last assignment of the property or the signature of the vendor in the last assignment appears materially different from his present signature or because there are suspicious circumstances with respect to the additional steps taken by the licensee to verify the identity of the vendor mentioned in paragraph (3) of this Circular<sup>5</sup>), to draw to the attention of the purchaser's estate agent such facts; and

- (iii) not to release any deposit to the vendor direct unless and until he has received written confirmation to do so from the purchaser's estate agent.

*Licensees Acting for the Purchaser Only*

- (cc) Where the licensee is acting for the purchaser only, he is required:

- (i) to obtain a written acknowledgement from the purchaser acknowledging that he:
- has been advised by the licensee to arrange for the stakeholding of the deposit;
  - is aware that the licensee is not in a position to ensure that the identity of the vendor (who is represented by another estate agent) and of the owner are the same;
  - is aware of the risks involved in not stakeholding the deposit and paying the





same (or any part thereof) to the vendor direct;

- has been advised by the licensee to seek legal advice; and
- has nevertheless decided to proceed with the transaction and pay the deposit (or any part thereof) to the vendor direct in such circumstances; and

(ii) where the licensee is notified by the vendor's estate agent of the facts mentioned in sub-paragraph (bb) (i) above, to draw to the attention of the purchaser such facts, the risks involved and the need to seek legal advice before proceeding with the transaction, and to further obtain from the purchaser, a written acknowledgement that he has been notified by the licensee of such facts and is aware that there is a discrepancy in the type and/or number of the identification document between those as recorded in the last assignment and those presently produced by the vendor, or that the vendor's estate agent is unable to verify or is not satisfied that the identity of the vendor and of the owner are the same because the means of identification of the vendor is not recorded in the last assignment of the property or the signature of the vendor in the last assignment appears materially different from his present signature or because there are suspicious circumstances with respect to the additional steps taken by the licensee to verify the



identity of the vendor mentioned in paragraph (3) of this Circular (as the case may be) or because there are any other reasons, the risks involved and the need to seek legal advice;

(iii) not to confirm with the vendor's estate agent that the deposit can be released to the vendor unless and until he has obtained the purchaser's written acknowledgment mentioned in sub-sub-paragraph (ii) above; and

(iv) upon obtaining the purchaser's written acknowledgement mentioned in sub-sub-paragraph (ii) above, confirm with the vendor's estate agent in writing that the deposit can be released to the vendor.

### (3) Additional Steps

Licenseses are advised to take the following additional steps to verify the identity of vendors and their ownership of the property (where appropriate):-

- (a) Licenseses may request for an inspection of the property or if the property concerned is tenanted, request the vendor to make arrangement with the tenant for an inspection of the property by the licensee, where possible;
- (b) Licenseses may inspect additional proofs of identity and ownership, such as originals of the rates demand notes, public utilities (such as water, electricity and gas) bills, receipts of public utilities, management fee deposits of the property and mortgage repayment letters, etc;

- (c) If the property is not subject to any mortgage, licensees may ask the vendor to produce the original title deeds to show that they are in the vendor's possession and that they have not been deposited elsewhere;
- (d) If the property is being let, licensees may ask the vendor to produce the original tenancy agreement(s) or evidence of receipts of payment of rent; and
- (e) Vendors are generally expected to know their own properties. Licensees may, where appropriate, pose general questions to the vendors about the property (such as the amount of management fee, facilities in the building and the specific view(s) from the living room) and examine their answers for any irregularities.

Where licensees have reason to suspect that the vendor is a fraudster, they should cease to act for the parties and report the case to the Police.

Licensees must observe the aforesaid sections of the EAO, Practice Regulation, Code of Ethics and the guidelines set out in this Circular. Non-compliance of the same may result in disciplinary action.

This Circular shall take effect on 1 December 2016 and Circular No.09-08(CR) will be superseded on the same date.

October 2016

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