

Estate Agents Authority

Circular

Circular No. 99-03 (CR)

30 March 1999

Using Debt Collection Companies

The use of illegal means by some debt collection companies to recover debts has been a cause of public concern. The Authority has received many complaints in this regard and would advise practitioners to take note of the following:-

1. If a client has not paid a practitioner in accordance with the agreed terms, the practitioner should try to use all other lawful means of collecting the amount due including resorting to legal proceedings.
2. Before instructing a debt collection company, a practitioner should make a final written demand to the defaulting client stipulating the deadline for payment and stating that debt collection company would be instructed if no payment is received after the deadline.
3. In instructing a debt collection company, a practitioner should enter into a written agreement with the debt collection company on terms including the following:-
 - (a) in collecting debt, the debt collection company must not use intimidation or violence, whether verbal or physical, against any person and must not harass the debtor (including humiliating him/her publicly) or appropriate or damage the debtor's properties;
 - (b) the debt collection company must not try to recover the debt directly or indirectly from a third party including the debtor's relatives, friends, or referees (practitioners should not pass information of such third parties to the debt collection company); and
 - (c) the debt collection company must not sub-contract the collection of debt to any other third party.
4. Practitioners should issue authorization document to the debt collection company so that it could be produced as proof of its appointment in the course of debt collection.
5. Practitioners should give clear instructions to the debt collection company. Practitioners should monitor the conduct of the debt collection company in its performance of the agreement and act promptly on receipt of any complaint against the debt collection company.
6. Upon the discovery of the use of any illegal means or the carrying on of any illegal conduct by the debt collection company in collecting the debt or the breach of any contractual terms between the practitioner and the debt collection company, practitioners should terminate the agreement and/or inform the police.

This Circular should be made available for the
information of all staff engaged in estate agency work.

PROCEDURAL GUIDELINES OF THE SECONDARY MARKET SCHEME*

Appendix

(*These procedural guidelines are extracted from the guidelines issued by the Housing Authority to the Law Society and are reproduced here with the permission of the Housing Authority. For details please consult the Housing Authority.)

1. Flat-owners who intend to dispose of their flats are required to apply to Housing Authority for a Certificate of Availability for Sale ("CA") after three years (note 1) from the date of first assignment by Housing Authority (in case of HOS flats) or by the developer (in case of PSPS flats).
2. Once the owners obtain the CA, they can put the flats on sale in the Secondary Market. This can be done through the estate agents or by private negotiation.
3. Persons interested in purchasing the flats in the Secondary Market are required to apply to Housing Authority for a Certificate of Eligibility to Purchase ("CE"). Certain categories of persons are eligible to apply, namely, the existing tenants of the public rental housing (PRH) estate of the Housing Authority and Housing Society; residents of the Temporary Housing Area, Interim Housing, and Cottage Areas of the Housing Authority; and prospective PRH tenants who are applicants for PRH and have passed all vetting procedures and are ready for flat allocation. Prospective PRH tenants include persons on the waiting list, persons affected by clearance and natural disaster and junior civil servants. The CE will be valid for six months from the date of its issuance. The eligible purchasers are required to enter into a Provisional Agreement for Sale and Purchase ("PASP") within the validity period.
4. The purchaser and the vendor either through the estate agent or by private negotiation will enter into a PASP which is in the prescribed form.
5. Under the PASP, the Purchaser is required to apply for a Letter of Nomination from the Housing Authority at least 5 working days (or otherwise as the Housing Authority shall specify) before the signing of the Formal Agreement for Sale and Purchase ("ASP") but in any event no later than one month from the date of signing of the PASP.
6. The solicitors acting for the purchaser is required to apply on behalf of the purchaser for a Letter of Nomination from the Support Unit of the Housing Authority. The solicitors are required to use a standard form of application letter accompanied by the originals of the CE and CA, a copy of the PASP, a Declaration signed by the purchaser and witnessed by the solicitor and a cashier order/solicitors' cheque for HK\$700 (subject to revision by the Housing Authority) being the application fee for the Letter of Nomination payable to Hong Kong Housing Authority.
7. Having checked the details, a Letter of Nomination will be issued to the requesting solicitors subject to the condition that the solicitors will undertake to inform the Support Unit of the progress of the sale and purchase, the date of signing of the ASP and the Assignment.
8. The purchaser's solicitors are advised to register the Letter of Nomination in the relevant Land Registry.
9. The vendor and the purchaser will sign the ASP (also in the prescribed form) on a date agreed between the parties. The solicitors acting for the parties should advise the parties of the premium liability and for this purpose should check the title documents carefully to identify the relevant last assignment of the flat by the Housing Authority or by the developer (as the case may be) and provide in the ASP the appropriate Initial Market Value and the Purchase Price as defined under paragraph 1 of the Schedule to the Housing Ordinance for such calculation.
10. Upon signing of the ASP, the solicitors acting for the purchaser shall notify the Support Unit of the Housing Authority of the date of the signing of the ASP and the scheduled completion date.
11. If there is any subsequent change of the scheduled completion date or if the sale and purchase falls through, the solicitors acting for the purchaser should forthwith notify the Support Unit.
12. Housing Authority has arranged with a number of financial institutions which will provide mortgage financing to the purchasers. Guarantee similar to the ones presently adopted for HOS/PSPS will be provided by Housing Authority to the financial institutions provided (inter alia) that a standard mortgage form is used.
13. Upon completion, the purchaser and the vendor will execute an assignment which is also in the prescribed form.

(Note 1: The period may be revised in accordance with the time stipulated under the Schedule to the Housing Ordinance.)