

February 2019 e-Quiz

Notes to candidates:

- 1. Most of the contents of this e-Quiz are adopted from February 2017 e-Quiz.*
- 2. Please read the scenario before attempting the questions. The subject matter and names of parties are fictitious.*
- 3. Clause 5.3 of the CPD Guidelines provides that, for the purpose of the award of the Certificate of Attainment, the following limitation applies in calculating CPD points: To encourage practitioners to diversify their modes of learning, certain modes may be capped. For example, the cap for EAA e-Quiz is four CPD points per a 12-month CPD period. Therefore, even if a participant completes more than four e-Quizzes (one CPD point each) during a 12-month CPD period, only four CPD points can be earned.*

Pass Mark: You will have 10 questions in this e-Quiz. You will earn one CPD point if you can score not less than 5 correct answers.

Remarks: In the following questions, the following words have the following corresponding meanings:

“the Authority” means the Estate Agents Authority;

“the Ordinance” means the Estate Agents Ordinance;

“the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;

“the Licensing Regulation” means the Estate Agents (Licensing) Regulation;

“the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and

“the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

Case Scenario No.1 (Questions 1-5)

Alan is one of the two directors of Deluxe Hill Agency Limited (“DH”), a limited company whose business includes estate agency work for the purchase and sale of properties in Hong Kong and Shanghai. Alan’s brother-in-law David works for DH part-time, and is mainly involved in referring clients to Hong Kong auctioneers.

Alan lists Property A (a residential flat he jointly owns with his wife) for sale at \$6.8 million

with DH and tells David to handle the deal.

Mr Fan (“Fan”) sees the advertisement for Property A and engages Ann, a salesperson of XYZ Agency, to negotiate with the vendor. Ann happens to be Alan’s sister, and although she does not work for DH, Alan promises that he will give her \$10,000 for successfully introducing a purchaser to Property A.

Ann and Fan sign an *estate agency agreement* and David shows them Property A. During the visit Fan discovers that there is only a glass panel separating the master bedroom and the en-suite bathroom. David says that from what he knows, the vendors bought Property A the way it is from the previous owner, and has had no trouble at all.

Immediately after viewing Property A, Fan asks Ann to arrange for the signing of a provisional agreement to purchase the property at the list price, and instructs Ann that his elderly father will be registered as the sole owner of Property A. When David tells Alan that a purchaser has been found, Alan asks David to sign the provisional agreement for him.

Against Ann’s advice, Fan insists on paying the 20% initial deposit in cash, saying that his father often handles a lot of cash for Mainland businesses.

Case Scenario No.2 (Questions 6-10)

Mr Tang (“Tang”) plans to retire to the Mainland in 4 years’ time when he becomes entitled to his pension. However, he may retire about 2 years early under an early retirement scheme. Tang wishes to rent a flat near his office and live there until his retirement without worrying about rent increases. He tells an estate agent, Mary, about his requirements when he engages her for the job.

Mary takes Tang to inspect a residential flat owned by Mr Lam (“Lam”), also a client of Mary’s. Tang likes the flat and decides to rent it. The land search shows that apart from an “all monies” mortgage, Lam’s flat is not subject to any other encumbrances. Lam owns the flat with a Chow May, whom he says is his wife, as joint tenants. Lam gives Mary a document signed by himself which says:

“I declare that I have obtained the authority of Chow May to sign all tenancy documents relating to our jointly-owned property on her behalf.

I warrant that I shall perform the terms of the tenancy documents and shall

indemnify you against all damages and costs for anything arising from my signing of such documents on her behalf.”

After some negotiation, both parties agree to a 4-year tenancy commencing 1 March 2017. Tang is not sure about his rights under such a long tenancy and reminds Mary that he may have to terminate the tenancy early.

Mary drafts the necessary tenancy document which begins with the following clause:

“This tenancy is created between Lam Tai-kit (“the Landlord”) of the one part and Tang Tai-lin (“the Tenant”) of the other part.”

It also has the following break clause:

“The Tenant can terminate the tenancy by serving the Landlord 3-months’ written notice not earlier than the end of 24 months.”

As both parties are uncertain about the liabilities for stamp duty, they just ask Mary to “do things the usual way”.

-End-

February 2019 e-Quiz

Answer Guide

Note:

1. This answer guide is prepared by the Professional Development Section of the Estate Agents Authority and provides the correct answers to the questions of the February 2019 e-Quiz.

2. In this answer guide, the following words have the following corresponding meanings:
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 - “the Ordinance” means the Estate Agents Ordinance;
 - “the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;
 - “the Licensing Regulation” means the Estate Agents (Licensing) Regulation;
 - “the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and
 - “the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

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Answer Guide

Please answer questions 1 to 5 with reference to Case Scenario No. 1:

1. To fulfill her statutory and common law duties, which of the following must Ann disclose to Fan?
 - (i) her brother (i.e. one of the vendors) will give her \$10,000 if she successfully introduces a purchaser
 - (ii) the vendors are her brother and sister-in-law
 - (iii) the vendors' relationship with Deluxe Hill
 - A. (i) only
 - B. (iii) only
 - C. (i) and (ii) only**
 - D. (i) and (iii) only
 - E. (i), (ii) and (iii)

Answer

Estate Agents Ordinance, Section 36(1)(a)(vi) & 36(3)(a):

Section 36(1)(a)(vi) provides that “subject to section 38(3), every licensed estate agent shall, as regards every property (whether situated in Hong Kong or elsewhere) in relation to which he has entered into an estate agency agreement-(vi) disclose to a client full particulars of any pecuniary or other beneficial interest which such agent has in the property concerned, together with particulars of any benefit, including any commission or any interest of any kind whatever in such property, whether monetary or otherwise, which will accrue to such agent should the property be disposed of.”

Section (36)(3)(a) provides that “subject to section 38(3), where a licensee who is not a licensed estate agent to which subsection (1) applies but who in the course of his employment or appointment as a salesperson by an estate agent does estate agency work in relation to a particular property, the following provisions shall apply-

(a) in so far as he does such work, the obligations imposed by subparagraphs (v), (vi) and (vii) of subsection (1)(a) are hereby imposed on him.”

Ann and Fan signed an estate agency agreement, therefore section 36(1)(a)(vi) applies

to Ann.

Practice Regulation Form 4, Clause 5(a), Note 5 & 7:

Form 4, Clause 5(a) provides that, “The person signing this Agreement on behalf of the Agent discloses that he or his specified relative⁽⁵⁾, or any nominee of his or of his specified relative, or the Agent or any employee/substantial shareholder⁽⁶⁾/ partner/ director of the Agent has a pecuniary or other beneficial interest⁽⁷⁾ in the Properties.”

Note 5 provides that,

“(5) Specified relative – this means the spouse, parent, child, brother or sister.”

Note 7 provides that,

“(7) Having a pecuniary or other beneficial interest includes:

- (c) being a party to any arrangement or agreement (whether enforceable or not) concerning the Properties.”

Monograph: Agency Law, Agent’s duties to principal under common law, paragraph 2b:

“The agent's duty to avoid conflict of interest applies equally to cases where the interest of the agent himself or that of his close relatives conflicts or potentially conflicts with his duties to the principal. However, if the agent fully discloses such interests to the principal and obtains the principal's consent, the agent may still act for the principal. Failure to make full disclosure to the principal is a breach of the agent's fiduciary duty and the agent is liable to account for any profit that the agent has made from such transaction in addition to other remedies available to the principal for the agent's breach of duty.”

For option (i), Ann should therefore disclose in the estate agency agreement under Clause 5 and Schedule 3 that her brother will give her \$10,000 if she successfully introduces a purchaser, or make such disclosure if it has not been so disclosed in the estate agency agreement.

For option (ii), Alan is the brother of Ann, being a specified relative, Ann should disclose in the estate agency agreement under Clause 5 and Schedule 3 that one of the vendors is her brother.

Options (i) and (ii) are correct. Answer is C.

2. Which of the following statements about whether or not David needs a licence to handle the sale of Property A is/are correct?
- (i) David does not need a licence as his main duty is to refer business to auctioneers
 - (ii) David can be exempted from licensing requirements as DH also deals in properties located outside Hong Kong
 - (iii) although an employee selling his employer's property is exempted from licensing requirements, David cannot be exempted as he is only an employee of DH, not Alan
- A. (i) only
 - B. (iii) only**
 - C. (i) and (ii) only
 - D. (i) and (iii) only
 - E. (ii) and (iii) only

Answer

Estate Agents Ordinance, Section 2(2)(e), (f), (h) & (i):

Section 2(2) provides that, “this Ordinance does not apply to anything done-
 (e) by any person as the vendor or purchaser, or where there is more than 1 vendor or purchaser, a vendor or purchaser of a property in connection with-
 (i) where the person is the vendor or a vendor of the property, the disposition of the property;
 (ii) where the person is the purchaser or a purchaser of the property, the acquisition of the property;
 (f) by any person in connection with a property pursuant to instructions received by him in the course of his employment, in so far as such thing would have been within the scope of paragraph (e) if done by his employer;”

Section 2(2)(h) and (i) provides that, “this Ordinance does not apply to anything done-
 (h) by any person in connection with a property pursuant to instructions received by him in the course of his employment, in so far as such thing would have been within the scope of paragraph (g) if done by his employer; or
 (i) by any person in relation to a present, prospective or former employee of his or of any person by whom he also is employed if the thing is done by reason of the employment (whether past, present or future).....”

“estate agency work” (地產代理工作), subject to subsection (3), means any work done in the course of business for a client-

- (a) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a property, or to the negotiation for the acquisition or disposition of a property by the client; or
- (b) being work done, after the introduction in the course of that business to the client of a third person who wishes to acquire or dispose of a property or the negotiation in the course of that business for the acquisition or disposition of a property by the client, in relation to the acquisition or disposition, as the case may be, of the property by the client.”

As long as David performs “estate agency work”, i.e. handling the sale of Property A, he needs a licence. Option (iii) is correct. Answer is B.

3. Which of the following documents is most likely to show the original layout of the en-suite master bedroom in Property A?
- A. The occupation permit
 - B. The agreement for sale and purchase signed by Alan and his wife on purchase of Property A
 - C. The first agreement for sale and purchase relating to Property A**
 - D. The Government lease
 - E. The Outline Zoning Plan

Answer

Conveyancing practice

Option A: Occupation permit has no plan attached

Option B: As Alan and his wife buy second-hand, their agreement for sale and purchase will not have plans attached

Option C: Plan of the first sale will be that of the original layout

Option D: Even if a plan is attached to the Government lease, it will not pertain to details such as layout of a flat

Option E: Outline Zoning Plan does not pertain to details such as layout of a flat

Answer is C.

4. Which of the following documents can confer authority on David to sign the provisional agreement for Alan and his wife?
- (i) a power of attorney from Alan and his wife authorising David to sign the provisional agreement
 - (ii) a letter from Alan authorising David to sign the provisional agreement together with a declaration that Alan will assume all responsibilities for the sale
 - (iii) DH board resolution authorising David to sign the provisional agreement
- A. (i) only
B. (iii) only
C. (i) or (ii) only
D. (i) or (iii) only
E. (ii) or (iii) only

Answer

EAA Practice Circular - Circular No. 15-02(CR)

To protect a client's interest, it is imperative that before the practitioner accepts any appointment of agency and/or deals with any person claiming to be the authorised representative of the absent contracting party ("the representative") in a sale or purchase transaction, the representative must be able to produce a Power of Attorney duly executed by the absent contracting party authorising the representative to enter into the transaction concerned and to execute the relevant document, including but not limited to the estate agency agreement, for and on his behalf. The Power of Attorney should be in a proper form and executed and attested* in a proper manner. It is insufficient and highly risky simply to request the representative (whether a co-owner or otherwise) to sign a declaration to the effect that he has or will have proper authorisation from the absent contracting party and that he will be personally responsible for all consequences.

* There is no legal requirement for a Power of Attorney to be attested. However, in order to avoid unnecessary disputes, the Authority recommends that a Power of Attorney should be attested by a solicitor.

Option (i) is correct. Answer is A.

5. According to the guidelines in the Practice Circular - Circular No. 18-01(CR) relating to the compliance of Anti-Money Laundering and Counter-Terrorist Financing requirements, which of the following steps should Ann take as a licensee with respect to the transaction of Property A for the purpose of complying with the requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”)?
- (i) the customer due diligence process must be completed before arranging Mr Fan to enter into a provisional agreement for sale and purchase
 - (ii) all relevant records should be kept throughout the continuance of the business relationship with Mr Fan and for a period of at least five years beginning on the date on which the business relationship ends
 - (iii) to report to the Joint Financial Intelligence Unit if it is a suspicious money laundering and/or terrorist financing transaction
 - (iv) to warn Alan of the background of Fan and his father
- A. (i), (ii) and (iii) only
 - B. (i), (ii) and (iv) only
 - C. (i), (iii) and (iv) only
 - D. (ii), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)

Answer

EAA Practice Circular - Circular No.18-01 (CR)

Chapter 4

A licensee must complete the CDD process before establishing any business relationship or before carrying out a specified occasional transaction. (4.11) (Section 3 of Schedule 2 to the AMLO refers.)

Chapter 6

Make an STR to the JFIU once a transaction is identified or suspected to be related to ML/TF activity. (6.1)

Failing to report knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. (6.4)

Chapter 8

Documents and records must be kept throughout the continuance of the business

relationship with the customer and for a period of at least five years beginning on the date on which the business relationship ends. (8.4) (Section 20 and 21 of Schedule 2 to the AMLO refers.)

Options (i), (ii) and (iii) are correct. Answer is A.

Please answer questions 6 to 10 with reference to Case Scenario No. 2:

6. Which of the following statements about the proposed tenancy between Lam and Tang is/are correct?
- (i) if the tenancy document is not registered in the Land Registry, Lam need not observe the rights it confers on Tang
 - (ii) the tenancy document must be in the form of a lease executed as a deed under seal
 - (iii) the tenancy document will have no effect unless its execution is witnessed by a solicitor
- A. (i) only
 - B. (ii) only**
 - C. (iii) only
 - D. (i) and (ii) only
 - E. (i) and (iii) only

Answer

Monograph: Hong Kong Domestic Tenancy:

Creation of a Tenancy

The creation of a domestic tenancy may be oral or by way of a tenancy agreement or a lease. Differences between a tenancy agreement and a lease include duration and formality in execution. When the duration of tenancy is not more than three years, a tenancy agreement is usually arranged. This will be in writing and involves a simpler method of execution. The tenancy agreement may or may not be registered. If the duration exceeds three years, a lease is required in accordance with Section 4(1) of the Conveyancing and Property Ordinance (Cap. 219). This has to be created by deed and must follow the formal procedure for a deed's execution. According to Section 3 of the Land Registration Ordinance (Cap. 128), a lease has to be registered at the Land Registry.

Conveyancing and Property Ordinance, Section 4:

“(1) A legal estate in land may be created, extinguished or disposed of only by deed.

(2) This section does not apply to-

(d) the grant, disposal or surrender of a lease taking effect in possession for a term not exceeding 3 years (whether or not the lessee is given power to extend the term) at the

best rent which can be reasonably obtained without a premium;”

Land Registration Ordinance, Section 3:

“(1) Subject to this Ordinance, all such deeds, conveyances, and other instruments in writing, and judgments, made, executed, or obtained, and registered in pursuance hereof, shall have priority one over the other according to the priority of their respective dates of registration, which dates shall be determined in accordance with regulations made under this Ordinance.

(2) All such deeds, conveyances, and other instruments in writing, and judgments, as last aforesaid, which are not registered shall, as against any subsequent bona fide purchaser or mortgagee for valuable consideration of the same parcels of ground, tenements, or premises, be absolutely null and void to all intents and purposes:

Provided that nothing herein contained shall extend to bona fide leases at rack rent for any term not exceeding 3 years.”

Option (i): Non-registration will not affect the rights between the parties to the lease. The consequence of non-registration is as set out in section 3(2) of the Land Registration Ordinance.

Option (ii) is correct.

Option (iii): There is no legal requirement for a lease to be executed in the presence of a solicitor.

Answer is B.

7. The implication(s) of the break clause is/are that:
- (i) the tenancy is no longer governed by the Landlord and Tenant (Consolidation) Ordinance
 - (ii) if Tang serves due notice, the tenancy can end on 1 March 2021
 - (iii) Tang's requirements will basically be met as he has a secured tenancy for 4 years and has the option to quit after 2 years
- A. (ii) only
B. (iii) only
C. (i) and (ii) only
D. (i) and (iii) only
E. (ii) and (iii) only

Answer

Merry, Hong Kong Tenancy Law

A break-right is the power to end the lease, by notice, before the end of the contractual term. If the tenant is given such a power, he has in effect a lease determinable at his discretion.”

Option (i): Landlord and Tenant (Consolidation) Ordinance does not differentiate between tenancies of various durations, so the tenancy is still governed by it.”

Option (ii): The break clause right can only be exercised on or after 1 March 2019 to end the tenancy on 31 May 2019 the earliest.

Option (iii) is correct.

Answer is B.

8. Mary should take which of the following steps to protect Tang's interests?
- (i) advise Tang that Lam should obtain the prior consent of his mortgagee to the tenancy
 - (ii) add Chow May as a co-landlord
 - (iii) ask Lam to produce a power of attorney from Chow May appointing him as her attorney to handle matters relating to the tenancy
 - (iv) report the tenancy to the Rating and Valuation Department within 3 months of the execution of the tenancy agreement
- A. (i), (ii) and (iii) only
B. (i), (ii) and (iv) only
C. (i), (iii) and (iv) only
D. (ii), (iii) and (iv) only
E. (i), (ii), (iii) and (iv)

Answer

EAA Practice Circular - Circular No. 01-09 (CR):

For option (i), the mortgage deed executed by the owner of a property usually contains a covenant that prohibits leasing unless with the prior written consent of the mortgagee. In the event of an owner failing to repay the mortgage loan and the mortgagee taking possession of the property, the tenant will not be able to continue to occupy the property and loss and inconvenience may result.

If the relevant property is a mortgaged property, practitioners should suggest to the prospective tenant to request the landlord to obtain the required bank consent and to explain the risks involved in renting a property without bank consent for the prospective tenant's consideration.

EAA Practice Circular - Circular No. 15-02 (CR):

For options (ii) and (iii), in the sale or lease of a jointly owned property, whether that property is held in the form of joint tenancy or tenancy in common, all the owners of the property must sign the agreement for sale and purchase or the tenancy agreement, in person or through properly appointed representatives.

A practitioner handling the transaction of a jointly owned property often finds that he is

negotiating with only one of the owners, especially in cases where the property is jointly held by a married couple. However, when a contract is being entered into, all owners must sign. If one of the owners is unable to do so, then this owner has to arrange for a Power of Attorney to be prepared beforehand. The attorney should produce the Power of Attorney at the time of signing.

For option (iv), Form CR109 has to be filed with the Rating and Valuation Department within one month of the execution of the tenancy agreement or lease. So option (iv) is incorrect.

Answer is A.

9. Assuming that Tang does not invoke the break clause, the tenancy may terminate:
- (i) at any time by mutual consent between Lam and Tang
 - (ii) on 28 February 2023 automatically
 - (iii) on 28 February 2023 if Lam serves Tang a Form CR101 between 1 November 2022 and 30 November 2022
- A. (i) only
 - B. (ii) only
 - C. (iii) only
 - D. (i) or (ii) only**
 - E. (i) or (iii) only

Answer

Rating and Valuation Department, “A Summary Guide on the Landlord and Tenant (Consolidation) Ordinance” p.2 para (a):

“(a) Domestic tenancies created on or after 9 July 2004

These tenancies may be terminated in accordance with the terms of the tenancy or as agreed between the parties. In the absence of a contractual notice requirement or mutual agreement, a fixed term tenancy will end upon expiry of the term and a periodic tenancy may be terminated by a notice to quit at the length of a full notice period in accordance with the common law.”

Option (i) or (ii) are correct.

For Option (iii), the serving of Form CR101 to terminate the tenancy was abolished under The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004.

Answer is D.

10. Which of the following statements about payment of stamp duty on the tenancy document is/are correct?
- (i) the Stamp Duty Ordinance does not specify that the parties to a tenancy are to share the stamp duty equally
 - (ii) as the tenancy is for a period of 4 years, the time limit for stamping is doubled
 - (iii) if stamp duty is not paid and Lam sues Tang for arrears of rent, the tenancy document cannot be received in evidence without the court's leave
- A. (i) only
 - B. (iii) only
 - C. (i) and (ii) only
 - D. (i) and (iii) only**
 - E. (ii) and (iii) only

Answer

Stamp Duty Ordinance, Section 9:

“(1) Except in the case of an instrument to which section 5(5) or 13(7)(a) applies, any instrument chargeable with stamp duty which is not stamped before or within the time for stamping such instrument shall not be stamped except by the Collector upon payment of the stamp duty and a penalty of whichever of the following amounts applies-

- (a) if the instrument is so stamped not later than 1 month after the time for stamping, the penalty shall be double the amount of the stamp duty;
- (b) if the instrument is so stamped later than 1 month but not later than 2 months after the time for stamping, the penalty shall be 4 times the amount of the stamp duty;
- (c) in any other case, the penalty shall be 10 times the amount of the stamp duty.”

(See also Schedule 1 to the Ordinance. Head 1(2) specifies that the time for stamping is 30 days after the execution)

Section 15(1A):

“(1A) Notwithstanding anything in subsection (1), an instrument which is not duly stamped may be received in evidence in civil proceedings before a court if-

- (a) the court so orders upon the personal undertaking of a solicitor to cause-

- (i) such instrument to be stamped in respect of the stamp duty chargeable thereon;
and
- (ii) any penalty payable under section 9 in respect thereof to be paid; or (b) the instrument is endorsed by the Collector under section 14(1C). ”

Therefore, options (i) and (iii) are correct. Answer is D.