

December 2010 e-Quiz

Notes to candidates:

- 1) Please read the scenario before attempting the questions. The subject matter and names of parties are fictitious.*
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Case Scenario No.1 (Questions No.1-5)

Mr Chan (“Chan”) owns a residential flat (“Property A”). He telephones his estate agent Alan on 15th September to list Property A for sale and asks Alan to recommend a list price. Alan tells him that Property B five floors below was sold for \$1.9 million three months ago. Alan tells Chan that he thinks the market has slowed down, and recommends Chan to list Property A at \$1.8 million. Chan tells Alan to list Property A at \$1.9 million and not to bother him with offers below \$1.8 million.

Alan advertises Property A for sale on 20th September at \$1.9 million.

The land search of Property A reveals that Chan is the sole owner, and that the property is mortgaged and subject to a memorandum for outstanding management fees.

Ms Mak (“Mak”) is a purchaser client who has entered into the *estate agency agreement* with the estate agency company which employs Alan. On 22nd September, Alan shows her Property A in Chan’s presence. During the visit, Chan says he has lived in the flat for many years. His girlfriend shares the flat and contributes to household expenses, and helped him out with repayment of the mortgage when Chan was unemployed two years ago.

The next day, Chan leaves for Europe for a one-week business trip and tells Alan not to bother him during the trip. On the same day the Government successfully sells certain land lots at four times the opening bid and the property market becomes very buoyant. The next day Alan advertises Property A for \$1.95 million in light of the optimistic market trend.

Mak makes an offer of \$1.9 million after Chan returns to Hong Kong. Chan accepts this offer and on 30th September enters into a provisional agreement with Mak. The formal agreement for sale and purchase is signed on 21st October.

Chan later learns that a similar flat two floors below Property A was sold for \$2.1 million on 1st July.

Question 1-10

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

"the Authority" means the *Estate Agents Authority*;

"the Code of Ethics" means the *Code of Ethics issued by the Authority*;

"the Ordinance" means the *Estate Agents Ordinance*;

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

"the Practice Directions" mean the *Practice Directions issued by the Authority*.

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

1. Under the *Practice Regulation*, which of the following is **THE LATEST DATE** by which the estate agency company which employs Alan shall enter into an *estate agency agreement* with Chan?
 - A. 15th September
 - B. 18th September
 - C. 20th September
 - D. 22nd September
 - E. 30th September

2. Under the *Practice Regulation*, as regards Alan's handling of the transaction of Property A, which of the following statements is/are **NOT CORRECT**?
 - (i) if Chan agrees, Alan can advertise Property A before Chan enters into an *estate agency agreement* with him
 - (ii) as Chan has instructed Alan to list Property A at \$1.9 million, Alan can accept any offer above \$1.9 million on Chan's behalf
 - (iii) Alan should not advertise Property A for \$1.95 million without Chan's written instructions
 - A. (ii) only
 - B. (i) and (ii) only
 - C. (i) and (iii) only
 - D. (ii) and (iii) only
 - E. All of the above

3. To protect Mak's interest, what advice should Alan have given her?
- (i) Chan's girlfriend should declare that she has no interest in Property A
 - (ii) Chan's girlfriend should agree to Mak's purchase of Property A
 - (iii) all deposit money should be stakeheld by Chan's solicitors
- A. (i) only
B. (iii) only
C. (i) and (ii) only
D. (i) and (iii) only
E. (ii) and (iii) only
4. From which of the following Government departments/bodies may Alan obtain a copy of the memorandum for outstanding management fees of Property A?
- A. Land Registry
B. Rating and Valuation Department
C. Lands Department
D. Housing Department
5. Under the *Practice Regulation*, as regards Alan's provision of the information on the comparable property, which of the following statements are **NOT CORRECT**?
- (i) in order to advise reasonable comparable prices he should refer to the prices of at least three properties
 - (ii) he can only quote the price shown in a land search of Property B
 - (iii) he must attach to the *Property Information Form* for Property A a copy of the land search of Property B
 - (iv) he must ensure that the information does not misrepresent the value of Property A
- A. (i) and (ii) only
B. (i) and (iii) only
C. (i), (ii) and (iii) only
D. (i), (iii) and (iv) only
E. (ii), (iii) and (iv) only

Case Scenario No.2 (Questions No. 6-10)

Mr Wong (“Wong”) is the owner of a residential flat in Tsim Sha Tsui with an advertising space on its external wall (“the Property”). On 1st February, he lists the Property for sale at \$3.8 million with Sam, a licensed estate agent of Success Estate Agency (“Success”). Wong instructs Sam that the sale is to include the advertising space on the external wall, which he claims belonging to him.

Wong enters into an *estate agency agreement* with Sam on 4th February and tells Sam he does not want to have the *Property Information Form* then. Wong agrees to Sam acting as dual agent and to pay commission at 1% of the transaction price to him if the Property is sold. Sam advertises the Property on 5th February. On the same day, a prospective purchaser Mr Chui (“Chui”) engages Sam and views the Property. Chui makes an offer of \$3.9 million for the Property, and instructs Sam that because of the surge in the property market he intends to sub-sell the Property and therefore needs a longer completion period. Sam forwards Chui’s offer to Wong for consideration.

On 12th February, another of Sam’s purchaser clients Mr Fung (“Fung”) offers \$4.1 million for the Property. Sam is too busy to tell anyone about Fung’s offer. Sam does not obtain consent from Fung nor from Chui about his acting for both of them. On 15th February, Wong accepts Chui’s offer of \$3.9 million and enters into a vendor-purchaser-estate agent tripartite provisional agreement (“the Provisional Agreement”). The formal agreement for sale and purchase is signed on 1st March, and completion is to take place on 10th May.

On 16th February, Sam tells Chui that his client, Fung, is willing to pay \$4.1 million for the Property. On 22nd February, Chui agrees to sub-sell the Property as confirmor to Fung for \$4.1 million, and they sign a sub-sale agreement which provides that it shall be cancelled if Chui is unable to complete the transaction with Wong.

Meanwhile, another purchaser is willing to pay \$4.4 million to Wong for the Property. Wong then cancels the sale to Chui on 23rd February. As a consequence, Fung cancels the transaction with Chui.

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

6. Under the *Practice Regulation*, which of the following is **THE LATEST DATE** by which Sam should provide Wong with the *Property Information Form* (Form 1) unless Wong specifically gives up his right to receive the same?
- A. 1st February
 - B. 4th February
 - C. 15th February
 - D. 18th February
 - E. 1st March
7. If the advertising space on the external wall of Wong's flat does belong to him, it will normally be indicated in which of the following documents of the building?
- (i) the deed of mutual covenant
 - (ii) the occupation permit
 - (iii) the Government lease
- A. (i) only
 - B. (ii) only
 - C. (i) and (ii) only
 - D. (i) and (iii) only
 - E. (ii) and (iii) only

8. Before Fung enters into the sub-sale agreement with Chui, for the purposes of protecting Fung's interests, Sam should:

- (i) check the land search of the Property to ensure that Chui has become the registered owner of the Property
- (ii) check the agreement between Wong and Chui for any restriction against sub-sale
- (iii) explain to Fung that the terms of the sub-sale agreement are subject to those of the agreement between Wong and Chui
- (iv) advise Fung that he should obtain an irrevocable power of attorney from Chui in his favour so that if Chui fails to complete, Fung may complete the transaction on behalf of Chui

- A. (ii) and (iv) only
- B. (i), (ii) and (iii) only
- C. (i), (iii) and (iv) only
- D. (ii), (iii) and (iv) only
- E. All of the above

9. On 15th February before the Provisional Agreement is signed, Sam may have breached the *Practice Regulation* and his duties as an agent by virtue of his:

- (i) acting as an agent for two purchasers bidding for the same property at the same time without the consent of both
- (ii) not telling Wong about Fung's offer as soon as practicable
- (iii) not telling Chui about Fung's offer as soon as practicable

- A. (i) only
- B. (ii) only
- C. (i) and (ii) only
- D. (i) and (iii) only
- E. All of the above

10. Which of the following statements is/are correct?

- (i) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum, Chui cannot claim for specific performance of the Provisional Agreement
- (ii) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum and thereafter the purchaser shall have no further claim against the defaulting vendor, Chui cannot claim for specific performance of the Provisional Agreement
- (iii) under the prescribed *estate agency agreement* that he entered into with Success, Fung is not required to pay Success any agency commission after cancelling the transaction with Chui

- A. (i) only
- B. (i) and (ii) only
- C. (i) and (iii) only
- D. (ii) and (iii) only
- E. All of the above

December 2010 e-Quiz

Answer guide

Note:

1. **This answer guide is prepared by the Estate Agents Authority and provides the correct answers to the questions of the December 2010 e-quiz.**

2. **In this answer guide: -
"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*.**

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

1. Under the *Practice Regulation*, which of the following is **THE LATEST DATE** by which the estate agency company which employs Alan shall enter into an *estate agency agreement* with Chan?
- A. 15th September
 - B. 18th September
 - C. **20th September**
 - D. 22nd September
 - E. 30th September

Answer to Question 1:

Section 6(1) of the Practice Regulation provides that: a licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor-

- (a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to signing an agreement for sale and purchase or a lease of the property, whichever is the earlier.”

Alan accepted Chan’s instructions to sell Property A on 15 September (within 7 working days would be 22 September).

He advertised Property A for sale on 20 September and the agreement for sale and purchase with Mak was signed on 30 September.

The event which happened earlier is the advertising of Property A on 20 September, so the answer is C.

2. Under the *Practice Regulation*, as regards Alan's handling of the transaction of Property A, which of the following statements is/are **NOT CORRECT**?

- (i) if Chan agrees, Alan can advertise Property A before Chan enters into an *estate agency agreement* with him
- (ii) as Chan has instructed Alan to list Property A at \$1.9 million, Alan can accept any offer above \$1.9 million on Chan's behalf
- (iii) Alan should not advertise Property A for \$1.95 million without Chan's written instructions

- A. (ii) only
- B. (i) and (ii) only**
- C. (i) and (iii) only
- D. (ii) and (iii) only
- E. All of the above

Answer to Question 2:

Section 9(2) of the *Practice Regulation* provides that a licensed estate agent shall obtain a vendor's written consent prior to the issue of an advertisement in respect of the vendor's residential property.

Without entering into an estate agency agreement with Chan (paragraph 8 of Form 3), Alan has not obtained the prior written consent from Chan to advertise Property A for sale, so (i) is incorrect. Alan cannot accept any offer on Chan's behalf, so (ii) is incorrect. The answer is B.

3. To protect Mak's interest, what advice should Alan have given her?
- (i) Chan's girlfriend should declare that she has no interest in Property A
 - (ii) Chan's girlfriend should agree to Mak's purchase of Property A
 - (iii) all deposit money should be stakeheld by Chan's solicitors
- A. (i) only
 - B. (iii) only
 - C. (i) and (ii) only
 - D. (i) and (iii) only**
 - E. (ii) and (iii) only

Answer to Question 3:

(i) is correct. EAA's Monograph on Encumbrances, paragraph 7c on p33 states that: "The lack of actual notice of unregistrable equitable interest of an occupier who has contributed to the purchase price of the property is not sufficient to protect a purchaser. A purchaser may be found to have constructive notice of the existence of the equitable interest. One is said to have constructive notice of an equitable interest if such interest would have been discovered had he carried out such enquiries as a prudent purchaser would have made. Actual notice of occupation by person(s) other than the registered owner (for example, the registered owner's spouse) should alert the purchaser to make enquiries as to the rights (if any) of such occupiers regarding the property (as in the case of Wong Chim Ying v Cheng Kam Wing (CACV000075/1990)).

The Law Society of Hong Kong has issued a practice direction directing that a purchaser should be advised to inspect property to ascertain the identity and interest of all adult occupants (other than the registered owner) in the property and to secure written confirmation that such adult occupants have no rights or claim in the property."

(iii) is correct. EAA's Monograph on Encumbrances, p18 paragraph (2)(d) provides that:

"Some encumbrances only incur financial liability (e.g. a charge to secure payment of outstanding management fees). In these cases, the vendor may be required to give an undertaking for their discharge on or before completion. To secure performance of the vendor's undertaking, an appropriate sum from the deposit may sometimes need to be stakeheld pending discharge of the encumbrances."

The answer is D.

4. From which of the following Government departments/bodies may Alan obtain a copy of the memorandum for outstanding management fees of Property A?
- A. **Land Registry**
 - B. Rating and Valuation Department
 - C. Lands Department
 - D. Housing Department

Answer to Question 4:

A copy of the memorandum for outstanding management fees of Property A may be obtained from a memorial search at the Land Registry. The answer is A.

5. Under the *Practice Regulation*, as regards Alan's provision of the information on the comparable property, which of the following statements are **NOT CORRECT**?
- (i) in order to advise reasonable comparable prices he should refer to the prices of at least three properties
 - (ii) he can only quote the price shown in a land search of Property B
 - (iii) he must attach to the *Property Information Form* for Property A a copy of the land search of Property B
 - (iv) he must ensure that the information does not misrepresent the value of Property A
- A. (i) and (ii) only
 - B. (i) and (iii) only
 - C. (i), (ii) and (iii) only**
 - D. (i), (iii) and (iv) only
 - E. (ii), (iii) and (iv) only

Answer to Question 5:

There is no requirement as to at least how many properties should an agent refer to in order to ascertain the comparable prices, so (i) is incorrect.

There is no requirement that only the price of one property could be quoted, so (ii) is incorrect.

Section 3(2) of the Practice Regulation provides that:

A form to be supplied under this Regulation shall be-

- (a) completed in accordance with such directions and instructions as are specified in the form;
- (b) accompanied by such documents as are specified in the form; and
- (c) if the completed form is required to be provided to a person, so provided in the manner, if any, specified in the form.

Property Information Form (Form 1):

Part I, Part B 1(f): other matters registered as encumbrances:

Note : Copy of land search from the Land Registry shall be attached.

Alan must attach the land search of Property A (not Property B) to the Property Information Form for Property A, so (iii) is incorrect.

Section 11 of the Practice Regulation provides that: “A licensee shall-

- (b) where information and comparables on residential property prices and rentals have been supplied to a client for reference or comparison, ensure that the information or comparables supplied do not misrepresent the value of the residential property concerned”, so (iv) is correct.

The answer is C.

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

6. Under the *Practice Regulation*, which of the following is **THE LATEST DATE** by which Sam should provide Wong with the *Property Information Form* (Form 1) unless Wong specifically gives up his right to receive the same?
- A. 1st February
 - B. 4th February
 - C. **15th February**
 - D. 18th February
 - E. 1st March

Answer to Question 6:

Estate Agency Agreement, Form 3 provides that:

“10 Acknowledgement by Vendor

The Vendor acknowledges he has-

- (a) read and understood the terms of this Agreement; and
- (b) received the Property Information Form including the Vendor's Statement required to be provided under clause 5 of this Agreement;
 agreed to receive the Property Information Form including the Vendor's Statement before entering into a binding agreement for sale and purchase between the Vendor and a purchaser.”

Note 3 of Form 1 (Property Information Form) provides that: A licensed estate agent is required to provide to the Vendor the original or a copy of the completed Form either before entering into an estate agency agreement with the Vendor or before entering into an agreement for sale and purchase between the Vendor and a purchaser in respect of the Property at the option of the Vendor.

As the estate agency agreement was entered into on 4 February and Wong said he did not want to have the Property Information Form then, Sam should provide the Form to Wong at the latest on 15 February (before entering into the Provisional Agreement). The answer is C.

7. If the advertising space on the external wall of Wong's flat does belong to him, it will normally be indicated in which of the following documents of the building?
- (i) the deed of mutual covenant
 - (ii) the occupation permit
 - (iii) the Government lease
- A. (i) only
- B. (ii) only
- C. (i) and (ii) only
- D. (i) and (iii) only
- E. (ii) and (iii) only

Answer to Question 7:

Old-style Deed of Mutual Covenant is likely to indicate if the external wall is a common part, or if it is reserved to the developer or some other party. Option (i) is correct.

Neither option (ii) nor (iii) have any indication as to the ownership of the external wall of the building. The answer is A.

8. Before Fung enters into the sub-sale agreement with Chui, for the purposes of protecting Fung's interests, Sam should:
- (i) check the land search of the Property to ensure that Chui has become the registered owner of the Property
 - (ii) check the agreement between Wong and Chui for any restriction against sub-sale
 - (iii) explain to Fung that the terms of the sub-sale agreement are subject to those of the agreement between Wong and Chui
 - (iv) advise Fung that he should obtain an irrevocable power of attorney from Chui in his favour so that if Chui fails to complete, Fung may complete the transaction on behalf of Chui
- A. (ii) and (iv) only
- B. (i), (ii) and (iii) only
- C. (i), (iii) and (iv) only
- D. (ii), (iii) and (iv) only**
- E. All of the above

Answer to Question 8:

EAA Circular 01-08 provides that:

2b. Practitioners should explain to the sub-purchaser that the terms of the subsale agreement are subject to those of the original agreement for sale and purchase. For example, if the confirmor has accepted any structural alteration in the original agreement, the sub-purchaser has to accept the same under the subsale agreement. Attention should be paid to whether the balance of purchase price payable by the sub-purchaser is sufficient to cover the balance of purchase price payable by the confirmor under the original agreement.

d. The sub-purchaser may request the confirmor to execute an irrevocable power of attorney so that in the event that the confirmor is unable to complete the sub-purchaser may complete the transaction as the attorney of the confirmor. The sub-purchaser should be advised to seek legal advice.

3. Ascertain Confirmor has Power to Sell

To ascertain whether the confirmor has power to sub-sell, an agent should carry out a land search of the relevant property before arranging for the confirmor and the sub-purchaser to enter into a subsale agreement. The agreement for sale and purchase entered into between the vendor and the confirmor should also be examined to determine the terms of the agreement, including but not limited to any restriction on subsale.

Options (ii), (iii) and (iv) are correct, the answer is D.

9. On 15th February before the Provisional Agreement is signed, Sam may have breached the *Practice Regulation* and his duties as an agent by virtue of his:
- (i) acting as an agent for two purchasers bidding for the same property at the same time without the consent of both
 - (ii) not telling Wong about Fung's offer as soon as practicable
 - (iii) not telling Chui about Fung's offer as soon as practicable
- A. (i) only
B. (ii) only
C. (i) and (ii) only
D. (i) and (iii) only
E. **All of the above**

Answer to Question 9:

Practice Regulation, Section 11(e) provides that:

A licensee shall-

(e) present an offer to a client for acceptance as soon as is practicable after receiving it.

Option (i) –there may be a breach of duty for the agent to act for more than one purchaser without the consent of both, as laid down in the case of Eric V Stansfield (1998).

Options (ii) and (iii) – Sam may have breached section 11 (e) of the *Practice Regulation* as stated above.

The answer is E.

10. Which of the following statements is/are correct?

- (i) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum, Chui cannot claim for specific performance of the Provisional Agreement
- (ii) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum and thereafter the purchaser shall have no further claim against the defaulting vendor, Chui cannot claim for specific performance of the Provisional Agreement
- (iii) under the prescribed *estate agency agreement* that he entered into with Success, Fung is not required to pay Success any agency commission after cancelling the transaction with Chui

- A. (i) only
- B. (i) and (ii) only
- C. (i) and (iii) only
- D. (ii) and (iii) only**
- E. All of the above

Answer to Question 10:

EAA's Monograph on Conveyancing, Part 2 paragraphs 12, 13 and 15 on "Provisional Agreement for Sale and Purchase" provides that:

12. Vendor's default

Should the vendor fail to complete pursuant to the agreement, the vendor shall refund the initial deposit to the purchaser and compensate him with a sum equivalent to the amount of the initial deposit and thereafter the purchaser shall have no further claim against the vendor. (Note, however, some agreements may provide the alternative that the purchaser shall be entitled to enforce specific performance, that is, compel the vendor in court to proceed with the sale of the property according to the terms of the agreement.)

As the Provisional Agreement does not expressly exclude the right for specific performance, option (i) is incorrect. Option (ii) is correct.

13. Estate agent's commission:

In consideration of the services provided by the estate agent in connection with the sale and purchase transaction, the estate agent is entitled to receive an agreed and specified commission from the vendor and the purchaser respectively. The amount and payment of the commission is subject to the respective estate agency agreements entered into by the estate agent with the vendor and the purchaser respectively. An estate agent who is agent for both the vendor and the purchaser in a transaction and is entitled to receive commission from both should disclose the fact to both the vendor and the purchaser.

15. Defaulting party to pay commission

If either party fails to complete the sale or purchase, he shall immediately compensate the estate agent the total amounts of the commission stated in the agreement. However, if the court finds that the amount payable by a defaulting party is in the nature of a penalty (as opposed to liquidated damages), the purpose of which is to punish the defaulting party rather than to compensate the reasonably foreseeable loss of the injured party, as where it far exceeds such loss of the injured party, this will not be recoverable.

Estate Agency Agreement, Form 4, Schedule 3 paragraph 2 and 3 provides that:

2. Subject to section 3 of this Schedule, the Purchaser shall have no obligation to pay any commission to the Agent if completion of the property transaction falls through without fault on the part of the Purchaser.....
3. The commission shall become payable to the Agent in the case of mutual cancellation of a binding agreement for sale and purchase of the property concerned not arising from any provisions of the agreement for sale and purchase.

As the transaction falls through without fault on the part of Fung and arising from mutual cancellation of the subsale agreement with Chui which provides that such agreement shall be cancelled if Chui is unable to complete the transaction with Wong, so Fung is not required to pay Success any agency commission. Option (iii) is correct.

The answer is D.

--End--