

The holding of licences by bankrupt individuals

1. This Paper sets out the Estate Agents Authority's current policy on the holding of estate agent's and salesperson's licences by those who are undischarged bankrupts.
2. The relevant legal requirement is contained in sections 19(2)(a) and 21(3)(a) of the Estate Agents Ordinance. These sections provide that, in considering whether a person is fit and proper for the purpose of holding an estate agent's or a salesperson's licence, the Estate Agents Authority shall have regard to, *inter alia*, the fact that the person is an undischarged bankrupt.
3. The Authority takes the above requirement seriously. While each case is considered on its own merits, generally speaking, the Authority is inclined to regard the fact that a person is an undischarged bankrupt as:
 - at the very least, indicative of his/her failure to manage personal finances properly;
 - in particular cases (e.g. those involving multiple borrowings), possibly indicative of irresponsible or even dishonest conduct.
4. In addition, the Authority attaches great importance to the fact that the services provided by estate agents are likely to be heavily relied on by their clients and may have potentially serious impact on clients' financial interests. Where a client knows that his/her estate agent is an undischarged bankrupt, such knowledge could, in some cases, affect the client's confidence in the estate agent (or perception of the estate agency trade as a whole).
5. The above considerations apply to cases involving current licensees who go bankrupt as well as bankrupt licence applicants. However, in the former case, the Authority's consideration of whether such a licensee remains a fit and proper person to continue to hold a licence is likely to be aided by other relevant information from his/her past record as a practitioner.

6. In contrast, no comparable information is likely to be available for the Authority's consideration in the case of a bankrupt licence applicant who has never worked as an estate agent before. With such an applicant, it would only be in very rare cases that the Authority might, in the light of exceptional circumstances, be satisfied that the applicant is in fact a fit and proper person to be granted a licence notwithstanding his/her bankrupt status.

7. Under the current Bankruptcy Ordinance, a bankrupt individual will in most cases be automatically discharged from bankruptcy after a lapse of four years. In the absence of special circumstances, the Authority will not regard an applicant's previous bankruptcy as a bar to being granted a licence.

Estate Agents Authority
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