

Circular

Circular No. 07-02 (CR)

- **It is unethical and unlawful for a practitioner to transfer clients or listings belonging to his employer to another estate agency without permission from his employer**

Unethical/Unlawful Transfer of Clientele or Listings

Some estate agency practitioners have transferred clients or listings belonging to their employer to another estate agency without their employer's permission. In most cases, these estate agency practitioners obtain higher rates of commission or other benefits from the other estate agency while their employer suffers a loss of commission as a result of the transfer.

The Authority would like to remind estate agency practitioners that an employee owes a duty of loyalty and fidelity to his employer under common law and may be sued for damages by his employer for breach of these duties.

An estate agency practitioner may also commit criminal offences under the Theft Ordinance in transferring clients or listings belonging to his employer to another estate agency (whether or not owned by him) without his employer's permission.

The employee practitioner may also commit an offence under the Prevention of Bribery Ordinance depending on the circumstances of the case. If the employee practitioner obtains an "advantage"¹ in relation to his employer's affairs or business and without the permission of his employer, he may commit an offence under Section 9(1) of the Prevention of Bribery Ordinance. Those offering such an advantage to the employee practitioner may commit an offence under Section 9(2) of the Prevention of Bribery Ordinance.

¹ "Advantage" has a very wide meaning under the Prevention of Bribery Ordinance and includes anything that is of value such as money, fee, commission, gift, employment, service or favour, etc., but does not include entertainment, which is defined as food or drink provided for immediate consumption on the occasion.

An instance of unlawful transfer of clientele by estate agency practitioners would be: –

- An employee practitioner acts for both a vendor and a purchaser. Without permission from his employer, the employee practitioner solicits and/or accepts from another estate agency a higher rate of commission as a reward for introducing the purchaser to the other estate agency. The employee practitioner then fraudulently claims there had been a co-operation agreement between the other estate agency and his employer and asks the purchaser to pay the commission to the other estate agency. As a result, his employer suffers a loss of commission.

In addition to civil liabilities and the serious consequences of committing criminal offences, practitioners may also be in breach of Paragraph 3.1.1 of the Estate Agents Authority's Code of Ethics (to refrain from activities during their practice which may infringe the law), and Paragraph 3.7.2 of the Code of Ethics (to avoid any practice which may bring discredit and/or disrepute to the estate agency trade). Practitioners who are convicted of offences involving dishonesty, corruption/bribery or fail to adhere to the Code of Ethics are liable to disciplinary action by the Estate Agents Authority.

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