

## **Circular**

Circular No. 10-01 (CR)

- **When handling lease transactions, practitioners should conduct land searches to check whether the properties have building orders for the demolition/alteration of unauthorised building works, and inform their clients accordingly.**
- **Practitioners should advise the owners of properties which have building orders for the demolition/alteration of unauthorised building works to comply with the orders, explain the consequences of non-compliance, and point out that it is the owners' duty to keep the structure of the properties in good repair and condition.**
- **Practitioners should advise prospective tenants of the existence of unauthorised building works and the risks of renting such properties.**
- **Practitioners should advise their clients to seek legal advice before proceeding with the lease of properties which have unauthorised building works.**

### **Unauthorised Building Works (2)**

The dangers posed by unauthorised building works (UBW) are a matter of serious concern of the community. When handling the sale and purchase or lease of properties, practitioners in the estate agency trade should be alert to the problems that may arise from the existence of UBW in a property and take appropriate steps to protect their clients' interests.

In respect of the sale and purchase of a property, practitioners should refer to the guidelines set out in Practice Circular No. 07-05 (CR).

In respect of the lease of a property, practitioners should take note of the following:

- (a) Under Section 24 of the Buildings Ordinance, the owner of a property

with UBW may be ordered by the Building Authority to demolish/alter the UBW within a specified period. In most cases, the order will be registered at the Land Registry against the property. The order remains in force unless it has been complied with. Where the order has been complied with, usually a letter of compliance/satisfaction will have been registered.

- (b) In every case of a listing for lease with an estate agency by an owner of a property, practitioners should carry out a land search of the property and carefully check the land-search record to see if there has been any order issued by the Building Authority requiring the demolition/alteration of UBW and, if so, whether the order has been complied with.
- (c) In every case where the land search record reveals that there is such an order and that the order has not been complied with, practitioners should advise their client(s) accordingly, that is, the owner, landlord and/or prospective tenant, as the case may be, that the property has such an order and that the order has not been complied with.
- (d) In every such case, practitioners should explain the position to the owner, strongly advise him to take steps to comply with the order and explain to him the consequence of non-compliance with the order (such as the risk of the Government's exercising its right of re-entry) and his general duty to keep the structure on the property in good repair and condition.
- (e) In every case where the property concerned is subject to an order requiring demolition/alteration of UBW, or where practitioners have actual knowledge of the existence of UBW even though no order has been registered at the Land Registry, practitioners should (i) inform their clients, that is, the owner, landlord and/or prospective tenant, of the existence of the UBW, and (ii) alert them to the risks involved (e.g. the Government's exercising its right of re-entry, safety problems in the property, and closure of the property).

- (f) In view of the risks involved, practitioners should remind their client(s), that is, the owner, landlord and/or prospective tenant, as the case may be, to seek legal advice before proceeding with the lease transaction.
- (g) If, despite the existence of UBW and being alerted to the inherent dangers, the prospective tenant client still decides to proceed with the lease, the practitioners (in order to protect their position in case of dispute) should obtain a written acknowledgement from the prospective tenant client stating that he (i) is aware of the UBW and the risks involved; (ii) has been advised by the practitioners to seek legal advice; and (iii) has nevertheless decided to proceed with the lease.

Practitioners who do not follow the guidelines set out in this Practice Circular may be subject to disciplinary action by the Estate Agents Authority.

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Holders of Statements of Particulars of Business  
 should bring this Circular to the attention of all staff  
 engaged in estate agency work.