



Circular

Circular No. 10-05 (CR)

When doing estate agency work in relation to the acquisition of old buildings, practitioners must

- **inform the vendors of the capacity in which they are acting;**
- **disclose any interests;**
- **provide accurate information;**
- **not use harassment or other improper tactics;**
- **explain all terms and conditions of the acquisition;**
- **prepare a proper provisional sale and purchase agreement;**
- **not put up banners on the building without the consent of the owners; and**
- **not engage persons who are not licensed estate agents or salespersons.**

Acquisition of Flats in Old Buildings

The Estate Agents Authority (EAA) has recently received complaints about malpractice in the activities of estate agents related to the acquisition of flats in old buildings for the purpose of re-development. This Circular sets out the EAA's guidelines on the proper practice and measures to adopt when practitioners are engaged in such activities.

General

- (1) Practitioners must observe and comply with the relevant provisions in the Estate Agents Ordinance and its subsidiary legislation (notably the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation), the Code of Ethics and all relevant guidelines issued by the EAA when they are engaged in activities pertaining to the acquisition of flats in old buildings.

- (2) Estate agency companies must establish proper and effective procedures and systems to ensure compliance by their employees or other persons under their control with the provisions of the Estate Agents Ordinance and its subsidiary legislation, the Code of Ethics and the guidelines issued by the EAA when such employees or other persons are engaged in activities pertaining to the acquisition of flats in old buildings.

Capacity in which to act

- (3) When a practitioner approaches the vendor of a flat in an old building in a bid to get the latter to sell his flat, he must clearly inform the vendor whether he is acting for a purchaser, and whether he would also like to represent the vendor.
- (4) Where the practitioner acts for the purchaser and the flat concerned is a residential flat, he must enter into the requisite Estate Agency Agreement (Form 4) with the purchaser.
- (5) Where the practitioner acts for the vendor and the flat concerned is a residential flat, he must enter into the requisite Estate Agency Agreement (Form 3) with the vendor.
- (6) Where the practitioner is or will be acting for both the purchaser and the vendor, he must at the earliest opportunity inform both parties of this.

Disclosure of interests

- (7) Where a practitioner or the estate agency company for which he works is or may be in a position of conflict of interest or potential conflict of interest in relation to the acquisition of the flat, he must make full disclosure of all relevant facts to the vendor. In particular, such disclosure must be made where the purchaser is:
 - (a) the practitioner or his nominee, irrespective of whether the purchase is made on his own account or on behalf of a principal;

- (b) the estate agency company for which the practitioner works, irrespective of whether the purchase is made on the estate agency company's own account or on behalf of a principal; or
 - (c) a company in which the practitioner or his nominee (or the estate agency company for which the practitioner works, or the directors or shareholders of the estate agency company) has a beneficial interest.
- (8) Practitioners must keep the vendor informed of any monetary or other beneficial interest which may accrue to them (or the estate agency company or the shareholders/directors of the estate agency company for whom they work) from any sub-sale of the flat.

Provision of information

- (9) Where a practitioner provides the vendor with any information in relation to the acquisition of the building such as:
- (a) the price of other units in the building;
 - (b) the position of the other vendors in relation to the acquisition;
 - (c) the progress of negotiation with the other vendors about the acquisition of their flats;
 - (d) the percentage of ownership in the building which has already been acquired by the purchaser; or
 - (e) government's public works projects or other developments in the vicinity which may affect the building,

he must ensure that all such information is accurate and up to date.

Conduct of negotiation

- (10) Practitioners must not exercise any undue influence on a vendor when soliciting the vendor to sell his flat or when negotiating with the vendor on the terms for the sale of his flat.

- (11) Practitioners must not conduct themselves in any way which may cause annoyance to the vendor: for example, persistent solicitation despite the vendor's express indication that he is not interested in selling his flat.
- (12) Practitioners must not harass the vendor or use any other improper tactics, such as pestering the vendor with persistent phone calls at unreasonable hours, to exert pressure on the vendor to sell.
- (13) Where the vendor is an elderly person, practitioners must advise the vendor that he should be accompanied by a family member or close relative when negotiating for the sale of his flat. Such advice must be recorded in writing.
- (14) Practitioners must not embark on any negotiation with an elderly vendor unless (a) they have given the vendor the above advice; and (b) the vendor has expressly stated that it is not necessary for the negotiation to be conducted in the presence of a family member or close relative.
- (15) Practitioners must clearly explain to the vendor all of the proposed terms and conditions for the sale and purchase of his flat.
- (16) Practitioners should not arrange for the vendor to give them or the prospective purchaser power of attorney to deal with the sale of the vendor's flat. Where the vendor indicates that he wants to appoint another person to handle the sale of his flat for him, practitioners should advise the vendor to seek legal advice.

Provisional sale and purchase agreement

- (17) Practitioners must not arrange for the vendor to sign a provisional agreement for sale and purchaser (PASP) or any other document in relation to the sale and purchase of the vendor's flat unless they have clearly explained to the vendor all the terms in the PASP or any other document and advised the vendor to seek independent legal advice.
- (18) Practitioners must not arrange for the vendor to sign a PASP unless (a) all blank spaces in the PASP listing the flat, the parties, the price and

all other terms of the sale and purchase have been filled in; and (b) the PASP has been signed by the purchaser.

- (19) Practitioners must not leave a PASP or any other agreement signed by the vendor in connection with the sale and purchase of his flat undated, and the date stated on the PASP and any other documents must be the same date it was signed by the vendor.
- (20) Practitioners must provide a copy of the signed PASP and any other documents in relation to the sale and purchase of the vendor's flat to the vendor as soon as is practicable after signing.
- (21) The purchase price should be the true consideration and there should be no inflation of the amount of other payments (e.g. removal allowance) in order to reduce the true consideration.

Putting up of banners

- (22) Practitioners must not, without the consent in writing of the vendor(s) and the other owners of the building, put up any banners, boards, posters or other materials on the building in relation to the acquisition of flats in the building.

Use of other persons in solicitation activities

- (23) Practitioners who engage persons other than their own staff in solicitation activities must ensure that such persons are licensees.
- (24) Practitioners who engage other persons in solicitation activities must enter into an engagement agreement in writing with those persons.
- (25) The engagement agreement referred to in (24) above must include the following terms:
 - (a) that the persons so engaged must not use harassment or other improper tactics;

- (b) that the persons so engaged must not make false or misleading representations to the vendor;
 - (c) that the persons so engaged will comply with the guidelines in this Circular;
 - (d) that the persons so engaged will not sub-contract solicitation activities to other persons; and
 - (e) that the persons so engaged will deploy only licensees who are their own staff to undertake solicitation activities.
- (26) Practitioners must closely monitor the conduct of all persons they have engaged to undertake solicitation activities to ensure due observance of the above terms in the engagement agreement.
- (27) Practitioners shall be held responsible for any misconduct of any persons engaged by them to undertake solicitation activities.
- (28) Practitioners should file a Police report if they suspect that any person whom they have engaged to undertake solicitation activities might have used illegal means in such activities.
- (29) Practitioners are reminded that if they assist, encourage or procure any person to commit a criminal offence in the course of solicitation activities, they may be criminally liable for the same offence as a secondary party.

Practitioners who fail to observe the guidelines set out in this Circular may be subject to disciplinary action by the EAA.

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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.