
香港地產代理從業員

執業手冊

Practice Guide

for Hong Kong estate agency practitioners



地產代理監管局
ESTATE AGENTS AUTHORITY

Table of Contents

Preamble.....	1
Part I – Core values.....	3
1. Knowing and complying with the law	
2. Honesty, prudence and safeguarding the best interests of clients	
3. Acting with fairness and integrity	
4. Transparency	
5. Avoidance of conflict of interest	
6. Provision of quality services with courtesy	
7. Encouragement of continuing education	
Part II – Code of practice for frontline practitioners.....	5
1. Carrying out estate agency work	
1.1 Estate agent card and staff card	
1.2 Cold-calling	
1.3 Estate agency agreements	
1.4 Prescribed property information	
1.5 Conflict of interests and declaration of interests	
1.6 Advertising	
1.7 Keys to properties	
1.8 Property inspection	
1.9 Statements concerning properties	
1.10 Offers	
1.11 Provisional sale and purchase / tenancy agreements	
1.12 Deposits	

- 1.13 Commission
- 1.14 Rebates / incentives
- 1.15 Handling subletting of properties
- 1.16 Prevention of money laundering
- 1.17 Equal opportunities
- 1.18 Fair competition

2. **First sales**

- 2.1 Appointment by developers
- 2.2 Appointment by purchasers
- 2.3 Advertisements
- 2.4 Price lists
- 2.5 Deposits
- 2.6 Representations by agents
- 2.7 Publicising sales information
- 2.8 Taking prospective purchasers' identity cards
- 2.9 Number of agents at sales sites
- 2.10 Maintaining order at sales sites
- 2.11 Compliance with laws, rules and regulations when conducting sales activities

3. **Others**

- 3.1 Confirmor sales
- 3.2 Sale and purchase of property by way of transfer of shares
- 3.3 Alienation restrictions
- 3.4 Takeover of tenancy / business
- 3.5 Unlawful transfer of clientele

1. **Staff recruitment**

2. **Statutory duties**
3. **Good governance**
4. **Declaration of interest / conflict of interests**
5. **Bribery and corruption**
6. **Keeping of company files / records / client information**
7. **Information security and privacy protection**
8. **Accounting records**
9. **Anti-money laundering**
10. **First sale of residential developments**

Part IV – Estate Agents Ordinance..... 69

1. **Licence**
 - 1.1 Unlicensed estate agency work
 - 1.2 Mode of operation
 - 1.3 Renewal of licence
 - 1.4 Other licence issues
2. **Carrying on estate agency business and engaging in estate agency work**
 - 2.1 Application for a “statement of particulars of business”
 - 2.2 Informing the EAA of personnel changes
 - 2.3 Identification
 - 2.4 Retention of listings and offer records
 - 2.5 Handling clients’ moneys
 - 2.6 Trust account
 - 2.7 Management and effective control
 - 2.8 Advertising
 - 2.9 Property information
 - 2.10 Estate agency agreements for residential properties

- 2.11 Seeking instructions from clients
- 2.12 Property inspection and viewing
- 2.13 Conduct of negotiation
- 2.14 Agreements for sale and purchase or leases
- 2.15 Commission
- 2.16 Assisting in an investigation by the EAA

Part V – Related legislation..... 95

- 1. **Personal Data (Privacy) Ordinance**
- 2. **Prevention of Bribery Ordinance**
- 3. **Theft Ordinance**
- 4. **Housing Ordinance**
- 5. **Organized and Serious Crimes Ordinance and Drug Trafficking (Recovery of Proceeds) Ordinance**
- 6. **Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance**
- 7. **Public Health and Municipal Services Ordinance and Fixed Penalty (Public Cleanliness Offences) Ordinance**
- 8. **Registration of Persons Ordinance**
- 9. **Road Traffic Ordinance**
- 10. **Offences Against the Person Ordinance**
- 11. **Mass Transit Railway By-laws, Mass Transit Railway (North-West Railway) Bylaw**
- 12. **Summary Offences Ordinance**
- 13. **Crimes Ordinance**

Preamble

As the holder of a Salesperson's Licence, Estate Agent's Licence (Individual) or Estate Agent's Licence (Company) granted by the Estate Agents Authority (EAA), a licensee must comply with the Estate Agents Ordinance, its subsidiary legislation, the Code of Ethics, and practice circulars issued by the EAA. In addition, in the discharge of duties, a licensee must comply with other related legislation. Apart from compliance with the law, estate agency practitioners must provide clients with quality and professional service. Management of estate agencies must also establish a proper management system and corporate culture.

Part I of this Practice Guide sets forth the core values and professional attitudes that a professional estate agency practitioner should have. Part II mainly discusses the issues that frontline practitioners should pay attention to when carrying out their day-to-day estate agency work, and provides practical guidance on those issues. Part III describes the responsibilities of estate agency management. Part IV summarises the Estate Agents Ordinance and its subsidiary legislation, with which licensees must comply in their practice. Part V is an overview of the provisions of other legislation that licensees must pay attention to in relation to their practice.

This Practice Guide aims to promote professionalism and quality service in estate agency practice and sets out ideal standards of practice for practitioners to follow. In cases of complaints involving suspected contraventions of the Estate Agents Ordinance and its subsidiary

legislation, the Code of Ethics or practice circulars issued by the EAA, whether or not the practitioner has followed the standards of practice described in this Practice Guide may be a reference in the consideration of the case.

PART I

Core values

1. Knowing and complying with the law

Estate agency companies (hereinafter referred to as “company” or “companies” (as the circumstances may require)), estate agents and salespersons (the latter two hereinafter collectively referred to as “agent” or “agents” (as the circumstances may require)) must be familiar and comply with all laws applicable to their business activities.

2. Honesty, prudence and safeguarding the best interests of clients

Companies and agents should exercise honesty, due care and prudence when providing services to clients. It is their responsibility to promote and protect the best interests of their clients. Personal interests should not prevail over those of the client.

3. Acting with fairness and integrity

Companies and agents should act in a just and impartial manner to all parties involved in a transaction and adhere to the principles of fair competition. They should not make gains at the expense of the reputation of the estate agency trade.

4. **Transparency**

Companies and agents should give clients a clear account of all information relating to the property concerned and relevant transactions without concealing any facts.

5. **Avoidance of conflict of interest**

Companies and agents should avoid any conflict of interests, protect the interests of their clients in the event of possible / potential conflict of interests and disclose any relevant interests to their clients as soon as possible.

6. **Provision of quality services with courtesy**

Agents should treat their clients with sincerity and politeness, and provide them with quality service.

7. **Encouragement of continuing education**

Companies should provide their staff with suitable training by investing resources to develop their professional knowledge and skills, and encourage them to equip themselves to continuously improve the quality of service.

PART II

Code of practice for frontline practitioners

1. Carrying out estate agency work

1.1 Estate agent card and staff card

1.1.1 Agents should apply for an estate agent card, carry the card with them when carrying out estate agency work, and, if necessary, show the card to their clients. Companies should urge their agents to apply for and carry the card.

1.1.2 Agents should have the licence number and information of the company that employs them printed on their name cards. They should also carry a staff card, if they have one.

1.2 Cold-calling

1.2.1 When making cold calls, agents should pay attention to, and comply with, the relevant requirements of the Personal Data (Privacy) Ordinance. A company should maintain an “Opt-out List” containing the names and telephone numbers of those who have

expressly indicated their wish not to receive any direct marketing calls. The list should be updated regularly and made available to marketing staff of all branches.

1.2.2 When making cold calls, agents should identify themselves and their company and inform the person answering the call of the option of not receiving any marketing calls from the company. If the call's recipient so indicates, they should stop the call and should add the telephone number to the Opt-out List.

1.2.3 Companies should set up a mechanism to ensure that their staff do not make any cold calls to those on the Opt-out List.

1.3 **Estate agency agreements**

1.3.1 For residential properties in Hong Kong, agents must use the relevant estate agency agreements prescribed by the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. To avoid having clients mistakenly think that any additional terms are part of the prescribed form, agents must not print any additional terms on the prescribed estate agency agreement. Nor should

agents print or fill in the “√” symbol beforehand in any of the option boxes to be chosen by the client.

1.3.2 Agents must not change any of the terms of the estate agency agreement on their own. They must obtain the consent of their client before making any amendment, deletion or addition to the terms. Such amendment, deletion or addition must be signed by the client to signify his acceptance.

1.3.3 For residential properties in Hong Kong, an agent must enter into the relevant prescribed estate agency agreement with a client within the period of time prescribed by the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. After the agreement is signed, a copy of it must be given to the client.

1.3.4 If an agent knows that a client (whether a vendor or landlord) has entered into an exclusive agency agreement with another estate agent, he must inform the client that he may be liable to pay an additional commission if he enters into another estate agency agreement in respect of the same property.

1.3.5 Agents must verify the identity of their clients, including requesting a client to produce his identity

card. The agent must keep the information in good custody. If someone else is signing on behalf of a client, the agent must request the representative to produce a duly executed power of attorney. If the contracting party is a limited company, the agent should request the company's representative to produce the certificate of incorporation, business registration certificate and authorisation documents of the limited company.

1.3.6 The validity period of an estate agency agreement is an important provision of the agreement. Therefore, the commencement and expiry dates of the validity period must be clearly set out in the estate agency agreement.

1.3.7 Before a client enters into an estate agency agreement, an agent must explain to the client the content, terms and meaning of the estate agency agreement in detail, including:

1.3.7.1 potential conflict of interests in the case of dual agency; and

1.3.7.2 the circumstances under which the client may be liable for an additional commission in the case of exclusive agency.

1.3.8 If the client does not understand any of the provisions of the agreement, the agent must advise him to seek legal advice.

1.3.9 Companies should set up a proper system to ensure that their employees follow the above guidelines and perform random compliance checks regularly.

1.4 **Prescribed property information**

1.4.1 When filling out Form 1 or Form 2 in accordance with the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, which is applicable to residential properties in Hong Kong, an agent must perform a land search and obtain the property information from prescribed sources (“the prescribed property information”). He must fill in the information carefully and double-check the information after completing the form. He should clearly explain to the client the information stated in the forms.

1.4.2 An agent should use his best endeavours to urge the vendor client to provide information on any structural alterations or additions to the property concerned, as prescribed in Part 2 of Form 1, in order to determine whether the property has any

unauthorised building works.

1.4.3 An agent must provide the vendor with the original or a copy of the completed Form 1. He must also provide the purchaser with the original or a copy of the completed Form 1, unless the purchaser expressly waives his right to receive it.

1.4.4 An agent must provide the landlord with the original or a copy of the completed Form 2. He must also provide the tenant with the original or a copy of the completed Form 2, unless the tenant expressly waives his right to receive it.

1.5 **Conflict of interests and declaration of interests**

1.5.1 An agent who solicits or accepts an advantage for providing incorrect information, intentionally concealing facts or defrauding a client may commit the offence of soliciting or accepting a bribe under section 9(1) of the Prevention of Bribery Ordinance. Please refer to Part V(2) for the relevant provisions of the Prevention of Bribery Ordinance.

1.5.2 When completing an estate agency agreement, an agent must disclose any pecuniary or other beneficial interests of the following parties in the

property:

- 1.5.2.1 the agent or his nominee;
- 1.5.2.2 relatives of the agent (meaning spouse, parents, children, brothers or sisters) or nominees of such relatives; and
- 1.5.2.3 the estate agency company which employs the agent, or any employee / major shareholder (meaning those persons entitled to exercise, or control the exercise of, 10% or more of the voting rights at any general meeting of the company) / partner / director of that estate agency company.

Any interest must be declared in detail in the relevant schedule of the estate agency agreement.

- 1.5.3 An agent should not purchase or rent a client's property, nor should he sell or let his own property to a client, unless the agent has fully disclosed all the relevant facts to the client before reaching any agreement with the client, and the transaction is carried out with the client's knowledge and consent.

1.6 **Advertising**

- 1.6.1 Companies should establish detailed guidelines to

ensure:

- 1.6.1.1 the written consent of a vendor / landlord has been obtained prior to the issuance of any form of advertisement (including online advertising and other promotional materials);
 - 1.6.1.2 the advertisement issued does not contain any false or misleading statement or price / rent / terms that are different from those instructed by the client (e.g., the agent should not on his own set a “may try” price and use it for promotional purposes);
 - 1.6.1.3 the content of the advertisement (including such claims as sales champion, exclusive agency, emigrating owner, mortgagee sale, etc.) must be based on facts;
 - 1.6.1.4 the advertisement contains the business name as stated in the statement of particulars of business, and the number of the licence or the number of the statement of particulars of business.
- 1.6.2 Companies should arrange for management personnel to verify the accuracy of the content of the advertisement and promotional materials before

issuing them.

1.6.3 When the property is no longer available for sale or lease, or the estate agency agreement in relation to the property has terminated, the company must as soon as possible withdraw the advertisement and cease the dissemination of photographs or information of the property to the media. It must also remove any advertisement on the Internet and shop window as soon as possible.

1.6.4 A company should clearly define the limits of the authority of different ranks of staff in regard to releasing information to the media, and should clearly identify the staff responsible for the release of information to avoid any confusion. It should arrange for management personnel to verify the information contained in any press release to ensure its accuracy.

1.6.5 A company should not place promotional materials (including posters, leaflets, publicity boards, etc.) on the pavement, railings, bus stops, lamp posts or any other place outside the shop area.

1.7 **Keys to properties**

- 1.7.1 Companies should remind their agents that when entering into an estate agency agreement with a client, the client should be asked whether he agrees to leave the keys to the property in the custody of the agent for arranging inspection of the property.
- 1.7.2 If a client gives the keys to an agent for the purpose of arranging for prospective purchasers or tenants to inspect the property, the agent should issue a receipt to the client. Before the keys are returned to the client, he must verify the client's identity.
- 1.7.3 Companies should put in place a suitable system to keep the keys to properties safely. Without the consent of the client, they should not allow an agent to make copies of the keys or use the property in any way that is inconsistent with the terms of the agency appointment. The agent should not pass the keys to another person without the consent of the client. When the keys are required to be passed to another person (such as a colleague), this should be recorded in writing and such records should be properly kept.
- 1.7.4 Companies must ensure that their agents will not use the keys for purposes other than arranging inspection of the property by prospective purchasers or tenants. Nor should an agent replace any locks at

the property or install additional locks without authorisation.

1.7.5 After the sale or lease of the property, or upon the expiration of the appointment period, companies should return the keys to the client as soon as possible.

1.8 **Property inspection**

1.8.1 Before arranging an inspection of a property by a prospective purchaser/tenant, an agent must obtain the consent of the vendor / landlord of the property.

1.8.2 An agent should comply with the rules, if any, laid down by the property's management office regarding entry to the housing estate / building by non-residents: for example, registration with the caretaker / security guard. If the caretaker / security guard asks to see the agent's estate agent card or staff card, the agent should co-operate.

1.8.3 An agent should clearly introduce the facilities, charges of the facilities and surrounding environment of the property to the prospective purchaser / tenant. If the agent does not have such information, he should so inform his client.

- 1.8.4 If the property is found to have damage / leakage or unauthorised building works, an agent should make inquiries with the vendor / landlord and suggest that the vendor / landlord disclose such details to the prospective purchaser / tenant, and that the vendor / landlord and the prospective purchaser / tenant should discuss between themselves as to who will be responsible for carrying out the repair works or removal of the unauthorised building works and paying such costs.
- 1.8.5 If the building is near a slope or located on a private road, an agent should make inquiries with the vendor / landlord and suggest that the vendor / landlord disclose in detail to the prospective purchaser / tenant the ownership of the slope or private road, and the maintenance responsibility (as the case may be).
- 1.8.6 Agents should pay attention to notices posted in the lobby of the building to see whether any notice has been issued regarding the maintenance of any public area of the building, slope maintenance orders, etc. If there are any such notices, they should disclose these matters in detail to the prospective purchaser / tenant.

- 1.8.7 If a property is sold or leased with furniture / electrical appliances, agents must give a detailed list of the furniture / electrical appliances to the prospective purchaser / tenant, and should arrange for the prospective purchaser / tenant to inspect them.
- 1.8.8 Unless the property is sold with a tenancy, an agent should encourage, and use his best endeavours to make arrangements for his client to inspect the property at different times (during the day and at night) in order for the client to have a clear view of the property and its vicinity.
- 1.8.9 Before a sale and purchase or tenancy agreement is entered into, an agent should as far as practicable arrange for the prospective purchaser / tenant to inspect the property once more.
- 1.8.10 When bringing clients to inspect a property, an agent should take appropriate measures to ensure his safety. Companies should also draw up procedures or devise a system to ensure their employees' safety at work.

1.9 **Statements concerning properties**

- 1.9.1 Any statements an agent makes about a property, including the following, must be accurate and based on facts:
- 1.9.1.1 recent transactions of similar properties;
 - 1.9.1.2 the number of listings and their prices;
 - 1.9.1.3 property valuation;
 - 1.9.1.4 developments in the vicinity of the property, and land use (e.g. developments to be constructed, size and height of the developments, and estimated completion dates);
 - 1.9.1.5 transport facilities (e.g. the frequency, routes and fares of estate shuttle buses);
and
 - 1.9.1.6 types of mortgage and instalment payment plans.
- 1.9.2 Companies should ensure that their agents do not release unconfirmed property transaction data. Transaction data should be based on the information in the Land Registry.
- 1.9.3 An agent should not make any assurance on the amount of mortgage loan which a purchaser may obtain. He should not make any projection or assumption regarding the potential for a property to

increase in value in the future.

1.9.4 If an agent does not have the information requested by a client, he should use his best endeavours to obtain the information before replying to the client. If he is unable to provide the relevant information, he should frankly tell the client so.

1.9.5 If the land search of the property shows the registration of a death certificate, an agent must make enquiries with the vendor / landlord and the building management company. He should make every possible effort to check carefully to ensure that all the information he provides to the client is accurate. Moreover, he should keep a proper record of the enquiry.

1.9.6 An agent should only make promises to a client which are within his capacity to fulfil: e.g. helping the purchaser or tenant open a new account for the supply of water, electricity or gas. Once he has made a promise, he must fulfil it. In order to enhance his client's confidence, he should put his promise in writing and give it to the client.

1.10 **Offers**

- 1.10.1 If an agent is acting for both parties in a sale and purchase or lease, he must, after receiving an offer from one party, relay it to the other party as soon as possible. If an agent acts only for one party, he must, after receiving an offer, relay it to the other party or his agent as soon as possible.
- 1.10.2 An agent must relay offers to his client truthfully and in accordance with the order of receipt of the offers.
- 1.10.3 Under no circumstances must an agent tell his client that there is an offer when in fact there is no such offer.
- 1.10.4 An agent must relay all offers made by either party (including those offers that are lower than the bottom price specified by the vendor / landlord or higher than the ceiling price specified by the prospective purchaser / tenant). He should not conceal certain offers due to differences in the rates or amounts of commission.
- 1.10.5 An agent should record all verbal or written offers (including the time and date of the offer) as soon as possible in order to avoid any dispute or confusion.

1.11 **Provisional sale and purchase / tenancy agreements**

- 1.11.1 Provisional sale and purchase / tenancy agreements are legally binding documents. An agent must exercise great care when drafting these documents for his client. He should follow the client's instructions when drafting the documents. In case of any doubt in the drafting process, he should seek legal advice.
- 1.11.2 An agent must, immediately before a purchaser / tenant signs a provisional sale and purchase / tenancy agreement, conduct an up-to-date land search at the Land Registry. He should not rely on any land search obtained earlier. He should explain clearly to the purchaser / tenant the information in the land search, such as the owner's particulars and encumbrances, and supply a copy of the land search to the purchaser / tenant. To avoid future disputes, he should ask the purchaser / tenant to sign a receipt for the land search and keep proper custody of the receipt.
- 1.11.3 An agent must exercise due care when completing a provisional sale and purchase / tenancy agreement. He should check the agreement repeatedly to avoid filling in the wrong information. The property

address stated in the agreement should be in accordance with that in the land search.

- 1.11.4 An agent must verify a client's identity, including requesting the client to produce his identity card or other proof of identity. He must properly keep such information. If a representative is signing on behalf of the client, the agent must ask the representative to produce a duly signed power of attorney and verify the identity of the representative.
- 1.11.5 An agent must note whether the signatory has attained the age of 18. If the signatory is a minor, the contract may be invalid.
- 1.11.6 If the contracting party is a limited company, an agent should verify that the signatory has been authorised by the said company to sign the document for and on its behalf.
- 1.11.7 An agent must ensure that all amendments to a provisional sale and purchase / tenancy agreement are made with the consent of both parties, and are endorsed and countersigned by both parties. He should explain to both parties the implications of the amendments.

- 1.11.8 An agent should not request the client to sign a provisional sale and purchase / tenancy agreement with important items left blank: e.g. purchase price, deposit or completion date.
- 1.11.9 If a property is sold / leased together with a garden, parking space or rooftop area, the additional part(s) must be clearly set out in the provisional sale and purchase / tenancy agreement, and are endorsed and countersigned by the parties to the agreement.
- 1.11.10 If a property is sold / leased together with furniture / electrical appliances, an agent must prepare a list of these items (together with photographs of the items if necessary), and have the list confirmed by both parties. The list should be attached to the provisional agreement for sale and purchase / provisional tenancy agreement.
- 1.11.11 If the property to be leased is a mortgaged property, an agent must advise the tenant to request that the landlord obtain written consent from the mortgagor prior to signing the provisional tenancy agreement. He should explain to the tenant the risks of entering into the tenancy without such a consent.
- 1.11.12 After an agreement for sale and purchase (whether

provisional or formal) has been entered into and before the completion or termination of the said agreement, the handling agent should not continue to market the property for sale for the vendor.

1.11.13 After a provisional tenancy agreement has been signed and before the signing of the formal tenancy agreement or termination of the provisional tenancy agreement, the handling agent should not continue to market the property for lease for the landlord.

1.11.14 After the signing of the provisional sale and purchase / tenancy agreement, the handling agent should not relay to the vendor / landlord any further offers unless requested by the vendor / landlord.

1.12 **Deposits**

1.12.1 An agent should not suggest or request that the prospective purchaser / tenant pay any “deposit” or “earnest money” prior to the prospective purchaser / tenant reaching an agreement with the vendor / landlord.

1.12.2 Before arranging for the parties to sign a provisional agreement for sale and purchase of a property which is subject to an undischarged mortgage, an agent

must explain to the purchaser the meaning of any deposit stakeholding provision pre-printed on the said provisional agreement, and the implications and risks of deleting the said provision (including the risks of paying deposits directly to the vendor). He should advise the purchaser to have the deposits (both the initial and further deposits) stakeheld by a firm of solicitors. He should also explain to both the vendor and the purchaser the implications of the stakeholding arrangement and the conditions for the release of the deposits by the stakeholder.

1.12.3 If there is no stakeholding of deposits in the sale and purchase of a property which is subject to an undischarged mortgage, an agent should obtain a written acknowledgement from the parties that they have been advised of the deposit stakeholding arrangement and the risks involved in not including such stakeholding arrangement in the provisional agreement for sale and purchase.

1.12.4 An agent must deposit all moneys received for a client into a trust account maintained at an authorized institution, and issue a receipt to the client. A company should establish detailed procedures on the transfer of deposit to the vendor / landlord and the return of deposit to the purchaser /

tenant. It should give a clear account to the client. Management should give clear instructions to staff so that moneys received on weekends or public holidays (which may not be deposited immediately into a trust account) are handled properly.

- 1.12.5 An agent should request a client to pay the deposit by cheque, and avoid accepting payment by cash.
- 1.12.6 To avoid disputes, an agent should not advance money to a client to assist him to pay a deposit to the vendor / landlord.
- 1.12.7 Before releasing deposit money to a vendor / landlord, an agent must ensure that the identity of the vendor / landlord and of the owner of the residential property concerned are the same or, if they are different, that the vendor / landlord has the authority to sell / lease the property.
- 1.12.8 Agents must not use moneys in a trust account for payment of the company's expenses or other purposes. They must also not deduct or withhold part or all of such moneys to set off any commission.

1.13 **Commission**

- 1.13.1 A company should remind its agents that when accepting an appointment by a client, the agent must enter into an estate agency agreement with the client and clearly explain to the client that there is no statutory stipulation on the amount or percentage of the commission. The agent should discuss with the client the amount or rate of commission and the payment date. He should clearly write them down in the estate agency agreement. He should also explain to the client the circumstances under which the commission is payable.
- 1.13.2 An agent who represents both parties in a sale and purchase or lease transaction must disclose to both parties the amount or rate of commission charged. If there is any change, he must obtain the prior approval of the company and the consent in writing of all parties to the transaction.
- 1.13.3 A company should remind its agents that before accepting any commission other than that specified in the agreement, or any benefit in the form of a gift, an agent must report the same to the company according to its prescribed procedures, and let the company decide how it is to be handled. If the agent acts for both the vendor and purchaser or the

landlord and tenant, he must obtain the consent of all parties to the transaction, prior to accepting any commission other than that specified in the agreement or other advantages in the course of handling the transaction; otherwise, he may be guilty of the offence of accepting an advantage under section 9(1) of the Prevention of Bribery Ordinance.

1.13.4 When representing both the vendor and purchaser or the landlord and tenant, an agent must not signify or suggest to the client that the client need to pay a commission other than that specified in the agreement or give any gifts in order for him to seek better terms from the other party; otherwise, the agent may be guilty of the offence of soliciting an advantage under section 9(1) of the Prevention of Bribery Ordinance.

1.13.5 A company should devise a proper and comprehensive system to handle commission payments by clients, including encouraging clients to pay by crossed cheques made payable to the company; and clearly instructing employees to immediately deposit commission monies into a designated account and issue a receipt to the client.

1.13.6 Companies should not use unlawful means to recover commission from clients. Before instructing a debt-collection company, a company should make a final written demand to the defaulting client stipulating the deadline for payment and that a debt-collection company will be engaged if no payment is received by the deadline. When instructing a debt-collection company, a company must enter into a written agreement with the debt-collection company and specify its requirements on the conduct of collection of the debt-collection company, including the requirement that the debt-collection company must not resort to verbal or physical intimidation or force against any person and must not harass the debtor or his family (including humiliating him publicly) or take away or damage any of the debtor's properties. A company should monitor the conduct of the debt-collection company in its performance of the agreement and act promptly on receipt of any complaint against the debt-collection company.

1.14 **Rebates / incentives**

1.14.1 Agents should set out in writing the offer of any gifts, discounts or incentives to clients, and to stipulate clearly the terms and form of the offer so as

to enhance transparency of the incentive scheme and prevent unnecessary disputes. The offer may be set out in the form of an extra term in the estate agency agreement, or as a separate agreement. If the offeree is an agent or an employee of a client, an agent must make sure that the offeree has obtained the approval of his principal prior to the provision of the advantage; otherwise, he may contravene section 9(2) of the Prevention of Bribery Ordinance. He must also note that any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant (whether in Hong Kong or elsewhere) to influence the public servant's conduct of business in relation to his government department/public body may contravene section 4(1) of the Prevention of Bribery Ordinance in offering bribes to a public servant.

- 1.14.2 The management of estate agencies should maintain close supervision in this respect and devise procedures and guidelines for their staff. In addition, if any gifts, discounts or incentives for clients will affect the commission split arrangement between the company and the staff members, this should be clearly stated to avoid any labour disputes.

1.15 **Handling subletting of properties**

- 1.15.1 When handling the subletting of properties, an agent should:
- 1.15.1.1 obtain and review the tenancy agreement between the principal landlord and the principal tenant to see if there is any restriction on subletting and whether prior consent for subletting has to be obtained from the principal landlord;
 - 1.15.1.2 note that the terms of the sub-tenancy agreement between the principal tenant and the sub-tenant should be subject to the terms of the tenancy agreement between the principal landlord and the principal tenant and that the period of the sub-tenancy must not exceed that of the principal tenancy;
 - 1.15.1.3 in Part C of the Leasing Information Form (Form 2) enter the details of the principal tenancy agreement including the parties, the tenancy period and any other information the sub-tenant needs to know, such as the area of the part to be sublet; and
 - 1.15.1.4 must state clearly in advertisements for the subletting that the property is to be sublet.

1.16 Prevention of money laundering

1.16.1 In order to assist the Government to counter money laundering, agents should do the following:

1.16.1.1 Client identification

Where an agent has successfully arranged the sale or purchase of a property by a client (whether the client is an individual or a company), upon the client's signing of the provisional agreement for sale and purchase, the agent should examine the executed estate agency agreement (or in the case of a non-residential property, the relevant "property viewing form" or similar document) to ensure that the following information has been properly recorded:

- the name of the client (if the client is an individual) or the name of the signatory for the client (if the client is a company);
- the type and number of the identity or travel document of the client if he is an individual (e.g., Hong Kong Identity Card, passport, two-way permit for Mainland residents); and

- the address of the client.

In addition, the agent should state on the agreement the following:

- the type and number of the identity or travel document of the signatory of the company client (e.g., Hong Kong Identity Card, passport, two-way permit for Mainland residents);
- the address of the property bought or sold;
- the price; and
- the date of signing of the provisional agreement for sale and purchase.

1.16.1.2 Retention of documents

Agents should retain estate agency agreements or “property viewing forms” or similar documents securely for at least five years from the date of signing of the relevant provisional agreement for sale and purchase. These documents should be provided to the relevant authorities when so required.

1.16.1.3 Agents should report to the Joint Financial Intelligence Unit, jointly run by the Hong Kong Police Force and the Customs and Excise Department, any

property that is suspected to directly or indirectly represent proceeds of a crime. A person commits an offence if he, knowing or having reasonable grounds to believe that any property directly or indirectly represents the proceeds of a crime, deals with that property.

1.17 Equal opportunities

1.17.1 In handling property transactions, an agent must avoid committing any discriminatory act or conducting himself in ways that may prejudice an individual's right to accommodation, and should remind his clients (e.g. a landlord) to avoid conduct which may involve discrimination.

1.18 Fair competition

1.18.1 In adhering to the principle of fair competition, an agent must not, for the purpose of bringing about the transaction, provide or promise to provide any commission or other advantage not specified in the agreement. Under section 9(2) of the Prevention of Bribery Ordinance, any person who, without lawful authority or reasonable excuse, offers an advantage to any agent in relation to his principal's affairs or

business commits an offence. Under section 4(1) of the Prevention of Bribery Ordinance, any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant (whether in Hong Kong or elsewhere) to influence the public servant's handling of business in relation to his government department/public body also commits an offence.

2. First sales

2.1 Appointment by developers

2.1.1 A company should enter into an appointment agreement with the developer to clearly spell out the rights and obligations of both parties.

2.1.2 A company must first obtain the developer's written consent and notification that it has obtained consent to sell or the approval of the Lands Department (if the property is a property under the Lands Department Consent Scheme) before launching any form of advertising or promotional activities.

2.1.3 When promoting a property, a company should state clearly and expressly to the purchaser (such as by posting a note at sales sites in a conspicuous

manner or through obtaining the purchaser's written confirmation) that the company is acting only for the developer and not acting for the purchaser (if that is the case), so that the purchaser may take appropriate steps to protect his own interests.

2.2 Appointment by purchasers

2.2.1 If a company intends to represent a purchaser, it should enter into an agreement with the purchaser to spell out the rights and obligations of both parties.

2.2.2 An agent representing both a developer and a purchaser must give an account to the purchaser of the commission / advantage received from the developer; otherwise, he may commit an offence under section 9(1) of the Prevention of Bribery Ordinance.

2.3 Advertisements

2.3.1 Any key features mentioned in an advertisement, such as the location plan, surrounding environment, floor area, floor plan, fittings and finishes, anticipated completion date, management and details of amenities / facilities, must be correct.

2.4 **Price lists**

- 2.4.1 Where an agent has been given a price list by the developer, he should provide the same to prospective purchasers without any charge, restriction, or conditions. He should not prepare price lists that contain prices other than those decided by the developer.
- 2.4.2 Agents who provide information to prospective purchasers concerning payment methods or mortgage plans must ensure that such information is accurate and that they have taken all reasonable steps and exercised all due diligence to verify such information.
- 2.4.3 When providing information on prices per square foot, an agent should remind the prospective purchaser to note how saleable and gross floor areas are calculated. He should provide the prospective purchasers with the price per square foot or metre or unit rate of the “Saleable Area” as contained in the price lists supplied by the developer. If the prospective purchaser has any questions, the agent should advise the prospective purchaser to consult a surveyor or lawyer, and to enquire with the developer.

2.5 Deposits

- 2.5.1 In cases where a company acts for the developer only, or for both the developer and the prospective purchaser, it must not accept any money, whether described as a deposit or not, from a prospective purchaser on behalf of the developer without the developer's authorisation.
- 2.5.2 If a company acts only for the prospective purchaser and does not act for the developer in receiving any money, it must clearly inform the prospective purchaser that it is not authorised by the developer to receive any money, and that the money so received cannot be treated as payment of a deposit. The company must also clearly inform the prospective purchaser that it may act for the developer upon appointment by the latter at a later stage.
- 2.5.3 In the case of sales under the Consent Scheme, if a company is authorised by a developer to receive a deposit, the amount so received should be the same as the provisional deposit payable to the developer as referred to in the Government's consent letter in respect of the development concerned.

2.6 **Representations by agents**

- 2.6.1 If authorised by a developer, an agent may, on behalf of the developer, make written and/or oral representations in respect of a development. However, he should restrict his representations to information contained in the sales brochure and documents supplied by the developer. He should take all reasonable steps and exercise all due diligence to verify the information (including the environment, projects which will be built in the vicinity of the development and the details of these projects, the view, the building height, clubhouse facilities and fees, etc.)
- 2.6.2 Agents should advise prospective purchasers to consult the provisions in the sales brochure and draft Deed of Mutual Covenant and the Government lease placed at the sales offices before the prospective purchasers enter into any provisional agreement for sale and purchase.
- 2.6.3 As there is a great variety of mortgage payment schemes, an agent should remind prospective purchasers to seek information directly from the bank or developer concerned if they have any

questions.

2.7 Publicising sales information

2.7.1 Agents should not publicise any sales figures or sales performance of a development for the developer, unless they have taken all reasonable steps and exercised all due diligence to verify the information.

2.8 Taking prospective purchasers' identity cards

2.8.1 An agent must not keep a prospective purchaser's identity card unless the prospective purchaser has authorised him to do so. He must, therefore, obtain the prospective purchaser's authorisation before keeping his identity card for the purpose of verifying his identity when the provisional agreement for sale and purchase between the developer and the prospective purchaser is being prepared. If the prospective purchaser would like to have his identity card returned, the agent must do so as soon as practicable.

2.8.2 Under sections 7A(1A) and 7A(2) of the Registration of Persons Ordinance, it is an offence for any person, without lawful authority or

reasonable excuse, to have in his custody or possession another person's identity card.

2.9 Number of agents at sales sites

2.9.1 If a developer has set a limit on the number of agents who may be deployed to the sales office during specified periods, a company must ensure that the number of agents so deployed does not exceed the limit.

2.10 Maintaining order at sales sites

2.10.1 Agents should observe the rules and regulations set by a developer for the maintenance of order at a sales site.

2.10.2 A company must keep a proper daily record of the number and identities of staff deployed to a sales site.

2.10.3 A company should assign suitable management personnel to monitor and manage the work of its agents deployed to sale sites so as to ensure the maintenance of good order and to forestall the eruption of disputes between its agents and those of other companies.

2.10.4 A company should ensure that its agents wear their estate agent cards and employee cards when working at first-sale sites and in the vicinity of the sales office, in order to facilitate identification by clients and EAA staff.

2.11 Compliance with laws, rules and regulations when conducting sales activities

2.11.1 Agents should comply with the law and must not obstruct and disturb other persons when conducting sales activities in the streets.

2.11.2 Agents should comply with the law, rules and regulations, such as the Road Traffic Ordinance, Mass Transit Railway By-laws and Mass Transit Railway (North-West Railway) Bylaw, when conducting sales activities in the vicinity of a sales site.

2.11.3 Agents must ensure that the display of publicity materials does not obstruct traffic or pose a safety hazard.

3. Others

3.1 **Confirmor sales**

3.1.1 Agents should remind a confirmor to examine the agreement for sale and purchase between the head vendor and the confirmor to see if there is any restriction on sub-sale. They should also advise the confirmor that in the event of the sub-purchaser's being unable to complete the sub-sale and purchase, the confirmor should be ready to complete the sale and purchase in accordance with the agreement for sale and purchase with the head vendor or else the confirmor will breach the said agreement with the head vendor.

3.1.2 Agents should note that an agent who, by himself or through a related person, fraudulently participates in a confirmor sale may have committed the offence of fraud under the Theft Ordinance, or other offences, in addition to putting himself in a serious conflict of interests.

3.1.3 Agents should note that on completion of the transaction, if the confirmor needs to pay over the balance of purchase price payable by the sub-purchaser to the head vendor, sufficient time should be allowed for making the said payment. They should advise the confirmor that the

completion time for the subsale agreement should precede that of the principal agreement for sale and purchase.

3.1.4 A sub-purchaser normally will not have had the opportunity to inspect the property before he enters into the subsale agreement. Agents should advise the sub-purchaser of the risks of not having an inspection and nevertheless try to arrange for an inspection before completion.

3.1.5 Agents should explain to the sub-purchaser that the subsale agreement normally provides that it is subject to the terms of the principal agreement for sale and purchase. Thus, for example, if the confirmor has accepted any structural alteration in the principal agreement, the sub-purchaser has to accept the same under the subsale agreement. Agents should note whether the balance of the purchase price payable by the sub-purchaser is sufficient to cover the balance of the purchase price payable by the confirmor to the head vendor under the principal agreement.

3.1.6 Agents should remind the sub-purchaser that if the confirmor is unable to complete the purchase, the transaction may be delayed or fall through. In such

an event, the sub-purchaser will not be able to purchase the property and may have to take legal actions to recover the deposits and claim damages. Agents should also remind the sub-purchaser that he may request the confirmor to execute an irrevocable power of attorney in favour of the sub-purchaser, so that in the event that the confirmor is unable to complete the purchase himself, the sub-purchaser may still complete the transaction as the attorney of the confirmor. In this regard, the sub-purchaser should also be advised to seek legal advice.

3.1.7 In order to ensure that the confirmor has the power to sub-sell the property, the agent must carry out a land search of the property before arranging for the confirmor and the sub-purchaser to enter into a subsale agreement. He should also check the agreement for sale and purchase between the head vendor and the confirmor to ascertain the terms of the agreement, including but not limited to any restriction on subsale.

3.1.8 If an agent acts for both the head vendor and the confirmor in the original sale and purchase, and also for both the confirmor and the sub-purchaser in the subsale, he has to disclose to all parties any commission receivable. This includes disclosing to

the head vendor any commission receivable from the confirmor and the sub-purchaser.

3.2 Sale and purchase of property by way of transfer of shares

3.2.1 As an agreement for the sale and purchase of shares is a complicated legal document, purchasers may unwittingly take over debts and liabilities of a limited company that are associated with a transfer of the shares and business undertaking of that limited company. This may lead to complications in the financing of the purchase. Therefore, an agent should not arrange for a share transfer without having obtained legal advice.

3.3 Alienation restrictions

3.3.1 Agents should be aware that certain properties are subject to alienation restrictions, whereby the vendor / landlord is not at liberty to alienate or lease his property. The sale and purchase / lease transactions of such properties may involve special procedures and / or forms.

3.3.2 The above properties include those under the Housing Authority's Home Ownership Scheme, Private Sector Participation Scheme and Tenant

Purchase Scheme; the Housing Society's Sandwich Class Housing Scheme and Flat-for-Sale Scheme; properties of indigenous villagers; and flats of Co-operative Building Societies.

3.3.3 Agents should exercise care and prudence when dealing with properties in the above categories, including not aiding or abetting the vendor / landlord in selling / letting the property in circumstances which may infringe the law. They should also keep abreast of the latest arrangements and requirements, and seek legal advice in case of doubt.

3.4 **Takeover of tenancy / business**

3.4.1 Agents must note that any takeover of a tenancy is potentially complicated. Comprehensive legal documentation is usually required to give adequate protection to the interests of the parties concerned. A standard tenancy agreement form normally will not suffice.

3.4.2 Except for the signing of a new tenancy, the work involved in the so-called "takeover of tenancy / business" arrangement may fall outside the normal scope of work of an agent. Therefore, when a client

indicates an intention to effect a takeover of tenancy / business, an agent should advise the client to seek legal advice before proceeding with such an arrangement in order to avoid legal risks.

3.5 Unlawful transfer of clientele

3.5.1 Under no circumstances should an agent transfer clients or listings belonging to his employer company to another estate agency without the consent or knowledge of his principals (i.e. his employer and the client he represents). Any agent who, with intent to deceive his principal, uses any receipt, account or other document which contains any statement which is false or erroneous or defective in any material particular is guilty of an offence under section 9(3) of the Prevention of Bribery Ordinance.

3.5.2 Any transfer of clients' personal data without the clients' consent may contravene the principle governing the use of personal data under the Personal Data (Privacy) Ordinance.

3.5.3 An employee owes a duty of loyalty and fidelity to his employer under common law. He may be sued for damages by his employer for breach of the duty.

An agent may also commit 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.

- 3.5.4 If an employee agent obtains an “advantage” in relation to the affairs or business of his principal (i.e., his employer and client) without the permission of his principal, as an inducement to, or reward for, the disclosure of any information of the principal, he may have committed an offence under Section 9(1) of the Prevention of Bribery Ordinance. The person offering the advantage may also have committed an offence under Section 9(2) of the Prevention of Bribery Ordinance.
- 3.5.5 In such cases, in addition to civil liabilities and the serious consequences of committing criminal offences, the agent may also breach the Code of Ethics issued by the EAA.
- 3.5.6 Agents should use any data stored in the company computers carefully and honestly so as not to commit the crime of the dishonest use of computers under section 161 of the Crimes Ordinance.

PART III

Management responsibilities

1. Staff recruitment

1.1 When recruiting agents, a company should establish a proper system to:

1.1.1 make sure the recruited person holds a valid salesperson's or estate agent's licence, and check whether the recruited person's licence has been revoked or suspended by the EAA;

1.1.2 ascertain whether there are conditions attached to the licence of the recruited person, and if there is any, whether the conditions are in conflict with his duties under the employment, and whether the person has complied with such conditions;

1.1.3 ascertain from the recruited person whether he has been disciplined by the EAA.

1.2 Companies should require a recruited person to provide the original of his licence for verification. In case of doubt, they should check the Register of Licensees at the EAA office or to

check the Licence List at the EAA's website www.eaa.org.hk/search.

- 1.3 Companies should establish clear guidelines to ensure that there is no discrimination against any job applicant based on the applicant's sex, race, marital status, pregnancy, disability or family status.
- 1.4 In addition to professional qualifications, knowledge and skills, companies should incorporate qualities such as "loyalty" and "honesty" into the required core competencies of their staff of all ranks and use them as criteria for recruitment. They should inform applicants of the relevant requirements.

2. Statutory duties

- 2.1 A company must have a valid business registration certificate.
- 2.2 Where there are several branches or business names, a valid statement of particulars of business must be obtained for each place of business operated under each business name.
- 2.3 For a limited company, it must ensure that the directors of the company who do not hold an Estate Agent's Licence are not engaged in its business as an estate agent.

- 2.4 For a limited company, it must ensure that at least one of its directors holds an Estate Agent's Licence. If the company has only one director who holds an Estate Agent's Licence, and that director will be leaving office shortly, the shareholders of the company should, before that director leaves office, appoint another holder of an Estate Agent's Licence to be a director.
- 2.5 Estate agency work refers to, among other things, work carried out in the course of business to introduce third parties to a client for the acquisition or disposal of property. Due to the broad definition of estate agency work, companies should clearly set out the work that non-licensees (such as "estate agent trainees") can and cannot undertake.
- 2.6 Each branch must have a manager who is a holder of an Estate Agent's Licence (Individual) and must be under that manager's effective and separate control. Before the said manager ceases employment or is transferred to another branch, another person who is a holder of an Estate Agent's Licence (Individual) must be appointed as the manager of the branch.
- 2.7 Companies should establish a proper system to ensure that the EAA is notified in writing within 31 days of any of the following:

- 2.7.1 employment or cessation of employment of a person as a salesperson (as defined in the Estate Agents Ordinance);
- 2.7.2 appointment or termination of appointment of any branch manager or director;
- 2.7.3 a licensed estate agent becoming a member of a partnership or ceasing to be one.

3. **Good governance**

- 3.1 Concerning the importance of “corporate ethics management” and the content of “supervisory accountability”, please refer to pages 50, 51, 52 and 63 of the *Integrity in Estate Agency Transactions – a Joint EAA and ICAC Publication for Estate Agency Practitioners*.
- 3.2 Companies should keep a copy of the licence of each agent, and proper records of information such as the name of the branch each agent is assigned to and the manager who is responsible for each branch. Companies should update the information from time to time.
- 3.3 Companies should establish a proper system to ensure that their agents renew their licences one to three months prior to the expiration of licence. Companies should remind their

agents that unlicensed practice is an offence, and should regularly check to see whether any unlicensed person does estate agency work.

- 3.4 If any agent fails to renew his licence in time, the company must prohibit him from doing estate agency work until he obtains a valid licence.
- 3.5 A company and each of its branch offices must display a valid statement of particulars of business at a conspicuous place for inspection by the EAA and the public. If a company loses a statement of particulars of business, it should apply to the EAA for a replacement as soon as practicable.
- 3.6 Companies should require any agent who is under the investigation of the EAA or other law enforcement agencies to notify the company, and to report to the company the progress and results of the investigation.
- 3.7 Companies should require any agent who has been disciplined by the EAA to notify the company as soon as possible of the details of the disciplinary sanctions in order for the company to make appropriate arrangements. If any agent has been disciplined by the EAA, the company should investigate the matter and take measures to prevent the agent from breaching the rules and regulations again.

- 3.7.1 If the agent's licence is suspended, the company must prohibit him from doing any estate agency work during the suspension period.
 - 3.7.2 If the agent's licence is revoked, the company must ensure that he no longer does any estate agency work from the effective date of the revocation.
 - 3.7.3 If the agent is fined, the company should advise him to pay the fine in time.
 - 3.7.4 If conditions are attached to the agent's licence, the company should advise the agent to comply with the relevant conditions, including, where applicable, acquiring the specified continuing professional development scheme points within the specified period of time. If the condition prohibits the agent from being the manager of an office, the company must stop his managerial duties. If the condition prohibits the agent from handling clients' money, the company should monitor him accordingly to ensure compliance.
- 3.8 Companies should regularly review the Government Gazette, the EAA's website and the Licence List of the EAA to ascertain whether any disciplinary sanctions have been imposed by the EAA on their agents or conditions attached to

the licence of any of their agents. If so, the company should take appropriate follow-up action.

- 3.9 Good service to clients is a key to success. Companies should establish proper and transparent procedures for handling clients' complaints fairly and impartially.
- 3.10 Companies should allocate resources to training courses. They should encourage their agents to participate in the EAA's continuing professional development activities or other training activities organised by the EAA in order to enhance the professional knowledge and skills of their agents.
- 3.11 Companies should establish a clear code of conduct for employees so that they fully understand the company's standards and requirements, and the consequences of any breach of the code.
- 3.12 Companies should establish channels to maintain communication with employees and procedures to deal fairly with employees' complaints.
- 3.13 Companies should establish corporate ethics management procedures covering the following four basic areas: (i) an employees' code of conduct for compliance by employees at all levels; (ii) training to enhance the ethics awareness of employees; (iii) strengthening system control to plug

loopholes for corruption and deception; and (iv) “zero tolerance” of any corruption or other crimes, and reporting to the Independent Commission Against Corruption or other relevant law enforcement agencies in cases of reasonable suspicion of illegal activities.

4. Declaration of interest / conflict of interests

- 4.1 A company should regularly (e.g. every three to six months) remind employees to declare any instances of possible conflict of interests. It should set up a mechanism to ensure that its employees do not handle any property transaction in respect of which they may have a conflict of interests or potential conflict of interests, including requiring its employees to declare to the company whether they have any pecuniary interest or other beneficial interest in a transaction. It should set up an internal monitoring system and conduct periodic random checks.
- 4.2 A company should require its employees to avoid any situations in which they may be or seen to be in a conflict of interests. If any conflict of interests arises, the employee should make a declaration in writing immediately.
- 4.3 Employees should be required to apply in writing for permission to do any outside work, whether it is a regular job or on consultancy basis, to avoid any conflict of interests.

5. Bribery and corruption

5.1 Companies must absolutely forbid all acts of bribery and corruption. All employees must not contravene the Prevention of Bribery Ordinance and the relevant policies of the company.

5.1.1 A company must forbid all employees from soliciting or accepting any advantage from any persons or organisations that have business dealings with the company (e.g., clients, developers, law firms, banks or decoration contractors). However, with the knowledge and approval of the principal (i.e. the company and the client he represents), the employee may accept (but must not solicit) the following gifts offered voluntarily by the offeror:

- publicity or promotional materials of token value; or
- presents in traditional festivals or on special occasions, as long as their value does not exceed the limit prescribed by the company.

5.1.2 A company should remind its employees not to offer any advantage to influence any person or company in the latter's business dealings, unless they have the

prior approval of the company and do not contravene section 9(2) of the Prevention of Bribery Ordinance. All employees must obtain the company's approval in writing before offering any advantage to a third party when handling the company's business. Employees must bear in mind that such a third party must first obtain the consent of his employer or principal to accept the advantage. Under such circumstances, the employee concerned must ensure that the offer of advantage is recorded in writing. For example, the third party should be asked to specify the advantage in the contract and issue a receipt for the advantage.

- 5.1.3 A company should require its employees to abstain from soliciting, and to refuse to accept, any exorbitant or frequent entertainment in Hong Kong or elsewhere from persons who have business dealings with the company (e.g., clients, law firms, banks or decoration contractors) in order to avoid owing any favour to such persons. Under the Prevention of Bribery Ordinance, "entertainment" means the provision of food or drink for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provision.

5.1.4 Free trips or other travel is not “entertainment” but an “advantage”. Without the prior approval of the principal (the company and the client he represents), an employee must not under any circumstances accept this kind of advantage.

5.1.5 A company should advise its employees to avoid gambling (including playing mahjong) with, making loans to, or acting as a guarantor of, or borrowing loans from or with the assistance of (except for normal bank loans), any person who has business dealings with the company.

5.1.6 Companies must not tolerate corruption or any other illegal acts. If there is any reasonable suspicion of a contravention of the Prevention of Bribery Ordinance or other laws of Hong Kong, this should immediately be reported to the Independent Commission Against Corruption or the relevant law enforcement agencies.

6. Keeping of company files / records / client information

6.1 Companies should establish a filing system for the proper management of all information in relation to employees (including information on declaration of interests), properties and clients.

- 6.2 Companies must comply with the EAA's practice circulars on the preventive measures against money laundering and retain estate agency agreements or "property viewing forms" or similar documents securely for at least five years from the date of the signing of the relevant provisional agreements for sale and purchase.
- 6.3 A company should make clear to its employees that they should not without authorisation disclose or sell any information about the company or its clients (e.g., clients' personal data or details of the properties listed). Employees authorised to access or manage such information must adopt adequate security measures to prevent abuse or misuse of such information. Examples of abuse include "unlawful transfer of clientele", "unlawful transfer of listings", selling the information, and using the information to make a secret profit. If an agent solicits or accepts any advantage as inducement or remuneration for the divulgence of such information, he may breach section 9(1) of the Prevention of Bribery Ordinance.
- 6.4 A company should require all its employees to strictly observe the Personal Data (Privacy) Ordinance in order to protect their client's personal data. Such personal data may be used only for authorised business operations, and may be accessed only by those who have the lawful right to know. A company should devise a policy for the protection of personal data and

privacy in accordance with the said Ordinance, setting out the type and use of the data, stipulating a data-retention policy and destroying regularly those documents which are no longer required.

- 6.5 If a client requests access to, or amendment of, his personal data, the company should process the request as soon as possible.

7. Information security and privacy protection

- 7.1 Companies should clearly define the roles and responsibilities of each level of staff in data privacy and protection. They should enforce the “least privilege principle” when resources and privileges of information systems are assigned to users. They must ensure the confidentiality, integrity and availability of information and the security of all aspects of information systems under their control, including outsourced systems. They should perform information security audit on data protection regularly.
- 7.2 Companies must ensure that each user of the information systems under their control is assigned with his own user identity and review the privileges assigned to each user regularly. They should document all access to sensitive personal data. They should adopt a strict password policy that details the minimum password length, initial assignment,

restricted words and format and password life cycle.

- 7.3 Companies must install anti-malware/virus software on the servers and computers where personal data are stored. They should also install firewall and/or intrusion detection mechanism to safeguard their network. They should ensure that back-up is regularly performed on personal data held.
- 7.4 Companies must ensure that information systems under their control are placed in a secured environment or otherwise attended by staff to prevent unauthorized access. They should ensure that their staff pay attention in protecting computing equipment provided to them. They should adopt precautionary measures to protect sensitive information from unauthorized access when a user is away from his computing equipment.
- 7.5 Companies should not allow their staff to copy data away from their offices and/or load them onto their home or personal computing devices. Should any such action become necessary, companies must ensure that staff obtain prior approval and take precautionary measures. They must not allow their staff to connect privately owned computing devices, including personal notebook computers, PDAs, USB storage devices, etc., to their network unless they approve the same in advance.

- 7.6 Companies should ensure that third party service providers observe and comply with their own information security policy and other information security requirements issued by the relevant authorities. They must not expose the personal data of clients to third party service providers without taking the appropriate precautionary measures.
- 7.7 Companies should reserve the right to examine all information stored in or transmitted by their information systems to ensure compliance with the Personal Data (Privacy) Ordinance.
- 7.8 Companies must ensure that adequate logging of activities in their information systems / applications under their purview is defined. They shall retain logs for a period commensurate with their usefulness as an audit tool. They should keep these logs securely and allow access to them only by authorized staff. They must not use these logs to profile the activity of a particular user unless to do so is (part of) a necessary audit or incident investigation activity.
- 7.9 Companies must educate their staff about information security and personal data privacy protection. They should provide regular information sessions or training and issue regular circulars to staff on personal data privacy and protection and the latest information security trends and threats.
- 7.10 Companies should make reference to the minimum

requirement set out in the Information Security and Privacy Protection Policy, which is available at <http://www.eaa.org.hk/publications/ispppgea.pdf>, and formulate their own policy according to the particular risks of exposure under their operating environment and the resources available at their disposal.

8. Accounting records

8.1 Companies must set up detailed accounting codes. Accounting books and records must show in detail all of the company's transactions, its assets and liabilities, etc. They should require all transaction records and books to be accurately, completely and systematically maintained. All accounting records must be maintained in accordance with the relevant laws.

8.2 Under section 9(3) of the Prevention of Bribery Ordinance, any agent who, with intent to deceive his principal (the company or the client he represents), uses any receipt, account or other document which contains any statement which is false or erroneous or defective in any material particular with intent to mislead the principal, commits an offence. Management should ensure that there is a proper system to prevent such incidents.

9. Anti-money laundering

- 9.1 Companies should ensure the following:
- 9.1.1 On the basis of risk assessment, to establish internal control procedures for identifying and reporting suspicious money-laundering transactions.
 - 9.1.2 To review the above policies and procedures on a regular basis.
 - 9.1.3 To make known to employees (including new employees) the policies and procedures to ensure that they are aware of the anti-money laundering measures, and the steps and procedures for identifying and reporting suspicious transactions.
 - 9.1.4 To devise measures to monitor staff's compliance with the guidelines and requirements on anti-money laundering issued by the relevant law enforcement authorities and the EAA.
 - 9.1.5 To consider the appointment of a compliance officer responsible for receiving suspicious transactions reported by its staff and taking such appropriate action after reporting the suspicious transactions to the relevant law enforcement authorities.
 - 9.1.6 To keep proper records of all cases which are the

subjects of suspicious transactions.

9.1.7 To provide training to staff on identifying, reporting and handling suspicious money-laundering transactions, and encourage staff to participate in such training.

10. First sale of residential developments

10.1 Before embarking on promotional activities for the first sale of residential development, management should ask the person in charge of the development to hold a briefing to explain in detail to its agents the sales brochure, and in particular, the environment and details of the development. Agents should be reminded to relay truthfully the information about the development to prospective purchasers.

10.2 Management should also remind their agents that if they do not have the information requested by prospective purchasers, they should make every possible effort to obtain the information before replying the prospective purchasers. If they are unable to obtain the relevant information, they should frankly so inform the prospective purchasers and advise them to enquire with the developer directly.

10.3 When preparing advertising or other promotional materials for a development, management should not use artists'

impressions to give a misleading or distorted description of the development and its environment.

PART IV

Estate Agents Ordinance

Licensees must comply with the Estate Agents Ordinance, Cap. 511 (“the Ordinance”), the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“the Practice Regulation”) and the Estate Agents (Licensing) Regulation (“the Licensing Regulation”). To facilitate practitioners’ understanding of the relevant legislation, this Part uses plain language to explain the key contents of the provisions. To obtain a better understanding of the provisions of the relevant legislation, practitioners should read the full text of the Ordinance, the Practice Regulation and the Licensing Regulation which shall prevail over this Practice Guide. The relevant terms used in this Part, such as “estate agency work”, “estate agency agreement”, “licensed estate agent”, “estate agent”, “salesperson”, “licensee”, etc., have the same meaning as those in the Ordinance, the Practice Regulation and the Licensing Regulation.

1. **Licence**

1.1 **Unlicensed estate agency work**

1.1.1 Any person or company engaged in estate agency work or operating an estate agency business must hold a valid licence granted by the EAA; otherwise, the person or company may commit an offence.

Section 15;
section 16; section
55(1)(a) and (b) of
the Ordinance

1.1.2 A licensee should note that he may commit an offence if he continues to be engaged in estate agency work or operate an estate agency business after the expiration of his licence.

1.2 **Mode of operation**

1.2.1 Sole proprietorship

1.2.1.1 The sole proprietor of an estate agency business must be a licensed estate agent himself. According to the licensing requirements, the sole proprietor of the estate agency must also be a “fit and proper” person to hold a licence.

Section 15(1) and
section 19(1) of the
Ordinance

1.2.2 Partnership

1.2.2.1 Each partner who is engaged in estate agency work must be a licensed estate agent.

Section 15(1)
of the Ordinance

<p>1.2.2.2 At least one partner is a licensed estate agent.</p>	<p>Section 3(1)(c) of the Estate Agents (Exemption from Licensing) Order (the “Exemption Order”)</p>
<p>1.2.2.3 Each partner must fulfil the relevant “fit and proper” requirement, regardless of whether or not he is engaged in the partnership as an estate agent.</p>	<p>Section 19(1) of the Ordinance; section 3(1)(b) of the Exemption Order</p>
<p>1.2.3 Company</p>	
<p>1.2.3.1 A limited company carrying on estate agency business must hold an Estate Agent’s Licence (Company).</p>	<p>Section 15(2) of the Ordinance</p>
<p>1.2.3.2 At least one director of the company must be a licensed estate agent.</p>	<p>Section 20(1)(a) of the Ordinance; section 8 of the Licensing Regulation</p>
<p>1.2.3.3 Each director who is engaged in a company’s business as an estate agent must be a licensed estate agent.</p>	<p>Section 20(1)(a) of the Ordinance</p>
<p>1.2.3.4 The company must have a licensed estate agent who is in effective control of the company’s business as an estate agent.</p>	<p>Section 20(1)(b) of the Ordinance</p>

<p>1.2.3.5 Each director of the company must fulfil the “fit and proper” requirement, whether as an individual or as a company and whether or not that director is engaged in estate agency work and holds an estate agent’s licence.</p>	<p>Section 20(1)(c) of the Ordinance</p>
<p>1.2.3.6 The company itself must also fulfil the “fit and proper” requirement.</p>	<p>Section 20(1)(e) of the Ordinance</p>
<p>1.2.4 Employed salesperson</p>	
<p>1.2.4.1 Any person employed by an estate agency as a salesperson must ascertain that his employer is a licensed estate agent; otherwise, he may commit an offence.</p>	<p>Section 16(1)(b) and section 55(1)(b) of the Ordinance</p>
<p>1.3 <u>Renewal of licence</u></p>	
<p>1.3.1 Term</p>	
<p>1.3.1.1 A licensee should apply for the renewal of his licence one to three months prior to the expiration of the licence.</p>	<p>Section 23 of the Ordinance; section 13 of the Licensing Regulation</p>
<p>1.3.2 False declaration</p>	
<p>1.3.2.1 A licence applicant must not make any statement or furnish any information which is false or misleading in a</p>	<p>Section 55(1)(c) and (d) of the Ordinance</p>

<p>material particular in connection with any application for the renewal of his estate agent's or salesperson's licence; otherwise, he may commit an offence.</p>	
<p>1.4 <u>Other licence issues</u></p>	
<p>1.4.1 A licensee must comply with all conditions attached to his licence.</p>	<p>Section 27(2)(f) of the Ordinance</p>
<p>1.4.2 A licensee must not use any name other than the one specified in his licence for or in connection with an estate agency business; otherwise, he may commit an offence.</p>	<p>Section 55(2)(a) of the Ordinance</p>
<p>1.4.3 A licensee must notify the EAA within 14 days if there is any change to his registered address.</p>	<p>Section 14(3)(a) of the Ordinance</p>
<p>1.4.4 If a licence has been lost, stolen, damaged or destroyed, a licensee should apply to the EAA for a replacement as soon as possible.</p>	<p>Section 11 of the Licensing Regulation</p>
<p>2. <u>Carrying on estate agency business and engaging in estate agency work</u></p>	
<p>2.1 <u>Application for a "statement of particulars of business"</u></p>	
<p>2.1.1 Before carrying on estate agency business, a licensed estate agent must apply for a "statement of particulars of business" for each place of business under a particular business name.</p>	<p>Section 10(1) of the Licensing Regulation</p>

<p>2.2 <u>Informing the EAA of personnel changes</u></p> <p>2.2.1 A licensee must notify the EAA by filling in the prescribed form within 31 days after he ceases to be engaged in estate agency work.</p> <p>2.2.2 A licensed estate agent must notify the EAA by filling in the prescribed form within 31 days after the employment or cessation of employment of a person as a salesperson.</p> <p>2.2.3 A licensed estate agent must notify the EAA by filling in the prescribed form within 31 days after the appointment or termination of the appointment of a manager.</p> <p>2.2.4 A company which holds an estate agent’s licence must notify the EAA by filling in the prescribed form within 31 days after the appointment or termination of the appointment of a person as a director.</p> <p>2.2.5 A licensed estate agent must notify the EAA by filling in the prescribed form within 31 days after he becomes or ceases to be a member of a partnership.</p>	<p>Section 40(1) of the Ordinance; Form 8 of the Schedule to the Practice Regulation</p> <p>Section 40(2) of the Ordinance; Form 9 of the Schedule to the Practice Regulation</p> <p>Section 40(3) of the Ordinance; Form 10 of the Schedule to the Practice Regulation</p> <p>Section 40(4) of the Ordinance; Form 11 of the Schedule to the Practice Regulation</p> <p>Section 40(5) of the Ordinance; Form 12 of the Schedule to the</p>
---	---

<p>2.3 <u>Identification</u></p> <p>2.3.1 A licensed estate agent must state clearly and conspicuously in any letter, account, receipt, brochure, pamphlet, or other document and all advertisements issued by him or on his behalf the following:</p> <p>2.3.1.1 the number of his licence or statement of particulars of business;</p> <p>2.3.1.2 the business name as stated in the relevant statement of particulars of business; and</p> <p>2.3.1.3 the place of business as stated in the relevant statement of particulars of business (advertisements other than brochures and pamphlets excepted).</p> <p>2.3.2 A licensee who uses any name other than the name specified in his licence when carrying out estate agency work may commit an offence.</p> <p>2.3.3 A licensee must inform his clients that he is licensed and provide the number of his licence.</p> <p>2.4 <u>Retention of listings and offer records</u></p> <p>2.4.1 A licensed estate agent must keep a record of all listings of residential properties received and keep a copy of all estate agency agreements</p>	<p>Practice Regulation</p> <p>Section 14(1)(b) and (c) of the Licensing Regulation</p> <p>Section 55(2)(a) of the Ordinance</p> <p>Section 5 of the Practice Regulation</p> <p>Section 8(2)(a) of the Practice Regulation</p>
--	---

<p>entered into in relation to residential properties for not less than three years after the listings were received or the agreements entered into.</p>	
<p>2.4.2 Any authorized officer of the EAA has the right to inspect the record of listings of residential properties and copies of estate agency agreements entered into in relation to residential properties. A licensee must supply any information requested and answer any questions asked by an EAA officer in relation to such an inspection.</p>	<p>Section 8(2)(b) and (c) of the Practice Regulation</p>
<p>2.4.3 A licensee must keep a written record of all offers in respect of a residential property.</p>	<p>Section 11(d) of the Practice Regulation</p>
<p>2.5 <u>Handling clients' moneys</u></p>	
<p>2.5.1 A licensed estate agent must repay to a client all moneys, or any part thereof, received on account of that client or make payments in accordance with the client's written instructions; otherwise, he may commit an offence.</p>	<p>Section 43(1) and (3), and section 55(2)(c) of the Ordinance</p>

<p>2.5.2 When receiving moneys on account of a client, any person employed by a licensed estate agent as a salesperson must forthwith pay such moneys either to the licensed estate agent employing him or to a trust account maintained by that licensed estate agent; otherwise, he may commit an offence.</p>	<p>Section 43(2) and section 55(2)(d) of the Ordinance</p>
<p>2.5.3 A licensed estate agent must keep proper accounts as to all moneys received or held, or paid by him, for or on account of clients in relation to residential properties.</p>	<p>Section 12(1) of the Practice Regulation</p>
<p>2.5.4 A licensed estate agent must furnish to the EAA, if so required by the EAA, a certificate issued by a certified public accountant (practising) confirming whether or not he has kept proper accounts of moneys received or held or paid by him for, or on account of, clients in relation to residential properties.</p>	<p>Section 12(8) of the Practice Regulation</p>
<p>2.5.5 A licensed estate agent must issue a written receipt to a client immediately for any moneys or commission received in relation to a residential property, and must retain a copy of the receipt for no less than three years after it is issued.</p>	<p>Section 12(2) and section 14(3) of the Practice Regulation</p>
<p>2.6 <u>Trust account</u></p> <p>2.6.1 A licensed estate agent must deposit all moneys received or held for, or on account of, a client in</p>	<p>Section 12(3) and (4) of the Practice</p>

<p>relation to a residential property in a trust account maintained at an authorized institution. “Authorized institution” refers to banks, restricted licence banks or deposit-taking companies as described under the Banking Ordinance (Cap. 155).</p>	<p>Regulation</p>
<p>2.6.2 A licensed estate agent shall not withdraw money from the trust account concerned, except:</p> <p>2.6.2.1 in accordance with his client’s instructions; and</p> <p>2.6.2.2 by cheque or electronic funds transfer.</p>	<p>Section 12(5) of the Practice Regulation</p>
<p>2.6.3 A licensed estate agent who has neither received nor held money for, or on account of, a client during any financial year must send to the EAA a statutory declaration to that effect if required to do so and within such period as is specified by the EAA.</p>	<p>Section 12(6) of the Practice Regulation</p>
<p>2.6.4 A salesperson who in the course of work receives any moneys on account of a client must forthwith pay such moneys either to his employer or to a trust account maintained for such purpose; otherwise, he may commit an offence.</p>	<p>Section 43(2) and section 55(2)(d) of the Ordinance</p>

2.7 Management and effective control

2.7.1 A licensed estate agent who carries on estate agency business must ensure that all individuals employed by him to carry out estate agency work hold a valid Estate Agent's Licence (Individual) or Salesperson's Licence.

Section 39(1) of the Ordinance

2.7.2 A licensed estate agent who carries on estate agency business must ensure that every one of his offices (whether principal office, only office, branch office, sub-office or otherwise) is under the effective and separate control and management of a manager appointed by him, and must ensure that the manager holds an Estate Agent's Licence (Individual). A person must not accept an appointment as a manager unless he is a licensed estate agent; otherwise, he may commit an offence.

Section 38(1) and section 55(1)(g) of the Ordinance

2.7.3 A licensed estate agent must establish proper procedures or systems to monitor and manage his business of doing estate agency work to ensure that his employees and other persons under his control comply with the Ordinance.

Section 15 of the Practice Regulation

2.7.4 When a company has committed an offence under the Ordinance and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company,

Section 42 of the Ordinance

<p>the director or officer will be guilty of the like offence.</p>	
<p>2.7.5 Where a manager has been appointed in accordance with section 38 of the Ordinance and acts in relation to a particular residential property, the provisions of section 36(1)(a)(i) to (vii) of the Ordinance (for details, please refer to paragraph 2.10.6) applicable to a licensed estate agent will also apply to him.</p>	<p>Section 38(3) of the Ordinance</p>
<p>2.8 <u>Advertising</u></p>	
<p>2.8.1 Under the Ordinance, “advertisement” includes every form of advertisement, whether to the public or not.</p>	<p>Section 2 of the Ordinance</p>
<p>2.8.2 A licensed estate agent issuing an advertisement must comply with the relevant requirements in the Licensing Regulation and Practice Regulation:</p>	
<p>2.8.2.1 He must state clearly in all advertisements, the number of his licence or the relevant statement of particulars of business and the business name as stated in the statement of particulars of business. If the advertisements are in the form of pamphlets or brochures, the place of business as stated in the statement of particulars of business should also be</p>	<p>Section 14(1)(c) of the Licensing Regulation</p>

<p>stated therein.</p>	
<p>2.8.2.2 In relation to advertisements for a residential property, he must not issue any advertisement relating to his estate agency business which includes any statement that is false or misleading in a material particular.</p>	<p>Section 9(1) of the Practice Regulation</p>
<p>2.8.2.3 In relation to the advertisements for a residential property, he must obtain the vendor's / landlord's written consent prior to the issue of an advertisement in respect of his residential property.</p>	<p>Section 9(2) of the Practice Regulation</p>
<p>2.8.2.4 In relation to advertisements for a residential property, he must not advertise a price / rental different from that instructed by his client.</p>	<p>Section 9(3) of the Practice Regulation</p>
<p>2.8.2.5 In relation to advertisements for a residential property which is to be sublet, he must expressly state that the property is to be sublet.</p>	<p>Section 9(4) of the Practice Regulation</p>
<p>2.8.2.6 In relation to advertisements for a residential property, he must remove all advertisements in relation to that residential property as soon as is practicable when the property is no longer available for sale or lease; or after the termination of the estate agency agreement concerned, whichever is the earlier.</p>	<p>Section 9(5) of the Practice Regulation</p>

<p>2.8.2.7 In relation to advertisements for a residential property, the above subparagraphs 2.8.2.4, 2.8.2.5 and 2.8.2.6 also apply to sub-listing agents.</p>	<p>Section 9(6) of the Practice Regulation</p>
<p>2.9 <u>Property information</u></p>	
<p>2.9.1 A licensed estate agent must, as regards a residential property for which he has entered into an estate agency agreement, ensure the following:</p>	
<p>2.9.1.1 If he acts for the vendor, he must have in his possession information prescribed in Form 1 under the Practice Regulation (in the case of sale and purchase), or if he acts for the landlord, have in his possession information prescribed in Form 2 under the Practice Regulation (in the case of leasing).</p>	<p>Section 36(1)(a)(i) of the Ordinance</p>
<p>2.9.1.2 He must be reasonably satisfied as regards the accuracy of the prescribed property information.</p>	<p>Section 36(1)(a)(ii) of the Ordinance; section 3(3)(b) of the Practice Regulation</p>
<p>2.9.1.3 He must supply to the client the information required in the prescribed form.</p>	<p>Section 36(1)(a)(iii) of the Ordinance; section 3(2) of the Practice Regulation</p>
<p>2.10 <u>Estate agency agreements for residential properties</u></p>	

<p>2.10.1 Prescribed estate agency agreement forms:</p> <p>2.10.1.1 The agent and the vendor (Form 3 of the Schedule to the Practice Regulation)</p> <p>2.10.1.2 The agent and the purchaser (Form 4 of the Schedule to the Practice Regulation)</p> <p>2.10.1.3 The agent and the landlord (Form 5 of the Schedule to the Practice Regulation)</p> <p>2.10.1.4 The agent and the tenant (Form 6 of the Schedule to the Practice Regulation)</p>	<p>Section 3(1) of the Practice Regulation</p>
<p>2.10.2 Prescribed forms for the provision of residential property information and leasing information:</p> <p>2.10.2.1 Property Information Form for use in the sale and purchase of residential properties (Form 1 of the Schedule to the Practice Regulation)</p> <p>2.10.2.2 Leasing Information Form for use in the lease of residential properties (Form 2 of the Schedule to the Practice Regulation)</p>	<p>Section 3(1) of the Practice Regulation</p>
<p>2.10.3 Signing of estate agent agreements and explanation of provisions:</p> <p>2.10.3.1 A licensed estate agent who represents a vendor / landlord must enter into an</p>	<p>Section 6 of the Practice Regulation</p> <p>Section 6(1) of the Practice Regulation;</p>

<p>estate agency agreement with the vendor / landlord (a) within 7 working days of 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.</p>	<p>Form 3 of the Schedule to the Practice Regulation; Form 5 of the Schedule to the Practice Regulation</p>
<p>2.10.3.2 A licensed estate agent who represents a purchaser / tenant must enter into an estate agency agreement with the purchaser / tenant prior to (a) arranging an inspection of the residential property concerned by the purchaser / tenant; or (b) signing an agreement for sale and purchase or a lease of the property, whichever is the earlier.</p>	<p>Section 6(2) of the Practice Regulation; Form 4 of the Schedule to the Practice Regulation; Form 6 of the Schedule to the Practice Regulation</p>
<p>2.10.4 A form must be completed in accordance with such directions and instructions in the form and accompanied by such documents as are specified in the form; and if the completed form is required to be provided to a specified person, so provided in the manner (if any), specified in the form.</p>	<p>Section 3(2) of the Practice Regulation</p>
<p>2.10.5 When supplying a form, a licensee must obtain the information required to be included in the form as soon as is practicable; and ensure the</p>	<p>Section 3(3) of the Practice Regulation</p>

accuracy of such information and of any other information included in the form.

- 2.10.6 A licensed estate agent must, as regards a residential property for which he has entered into an estate agency agreement ensure the following:-
- 2.10.6.1 If he represents the vendor / landlord, he must possess and fill in the property information prescribed in Form 1 (in the case of sale and purchase) or Form 2 (in the case of a lease).
- 2.10.6.2 He must be reasonably satisfied as regards the accuracy of the property information mentioned in subparagraph 2.10.6.1.
- 2.10.6.3 He must supply to prescribed persons the completed Form 1 (in the case of sale and purchase) or Form 2 (in the case of a lease) in accordance with the requirements for the said forms.
- 2.10.6.4 He must inform the vendor / landlord client of each offer received by him, except if the client has expressly instructed that he need not be informed of such offers, or the relevant provisions of the estate agency agreement are no longer applicable to him.

Section 36(1) (a)(i)
to (vii) of the
Ordinance

2.10.6.5 He must disclose to the client all pecuniary or other beneficial interest which the agent has in the property concerned, together with particulars of any benefit (including commission or any interest of any kind) in such property, which will accrue to the agent should the property be sold / leased.

2.10.6.6 If the agent concurrently acts for both the purchaser and the vendor or the landlord and the tenant, he must inform both clients that he is so acting, and provide to either client, at the request of that client, any information provided by the other client as regards the property concerned, unless the other client has expressly instructed him not to provide such information.

2.10.7 A licensee must, before a person who is not legally represented enters into an estate agency agreement in relation to a residential property, explain to the person the different types of agency appointment in the agreement and their respective implications and their effect on the person, and every term and condition set out in the agreement to ensure that the person is made aware of his rights and obligations. If the

Section 6(3) of the Practice Regulation

<p>person does not understand his explanation, the licensee must recommend that the person seek legal advice.</p>	
<p>2.10.8 When presenting personally an unexecuted estate agency agreement in relation to a residential property for signature by a client, even if the document does not become an executed agreement after it is signed by the client, a licensed estate agent must nevertheless give the client there and then a copy of the unexecuted agreement and of any other document referred to in it.</p>	<p>Section 47(1) of the Ordinance</p>
<p>2.10.9 When sending an unexecuted estate agency agreement in relation to a residential property for signature by a client, a licensed estate agent must send a copy of the unexecuted agreement and of any other document referred to in it at the same time to the client whose signature is sought.</p>	<p>Section 47(2) of the Ordinance</p>
<p>2.10.10 When presenting personally an unexecuted estate agency agreement in relation to a residential property for signature by a client, if the document becomes an executed agreement after being signed by the client, a licensed estate agent must deliver there and then to the client a copy of the executed agreement and of any other document referred to in it.</p>	<p>Section 48(1) of the Ordinance</p>

<p>2.10.11 A licensed estate agent must give a client a copy of the executed estate agency agreement and of any other document referred to in it within 7 days following the execution of the estate agency agreement in relation to a residential property, unless subsection 48(1) of the Ordinance applies, or an unexecuted estate agency agreement was sent for signature by a client and, on the occasion when it was so signed, the document became an executed estate agency agreement.</p>	<p>Section 48(2) of the Ordinance</p>
<p>2.11 <u>Seeking instructions from clients</u></p>	
<p>2.11.1 When seeking instructions from a client, a licensee must not supply any information to the client which is false or misleading in a material particular in relation to a residential property.</p>	<p>Section 8(1) of the Practice Regulation</p>
<p>2.11.2 A licensee must not pass to a sub-listing agent any information about a vendor / landlord or his residential property supplied by the vendor / landlord without the prior written consent of the vendor / landlord.</p>	<p>Section 8(3) of the Practice Regulation</p>
<p>2.11.3 A licensee must not solicit instructions from a vendor / landlord if he knows, or ought reasonably to know, that the residential property concerned is subject to exclusive</p>	<p>Section 8(4) of the Practice Regulation</p>

agency under an executed estate agency agreement, unless the licensee has drawn to the attention of the vendor / landlord that the vendor / landlord may be liable for an additional commission if he signs another estate agency agreement in respect of the property.

- 2.11.4 A licensed estate agent must keep a record of all listings of residential properties received and a copy of all estate agency agreements entered into in relation to residential properties, for not less than 3 years after the listings were received or the agreements entered into, as the case may be. Any officer of the EAA, authorized in writing by the EAA, has the right to inspect such records. A licensee must answer any questions and supply any information requested by any officer of the EAA in relation to such an inspection.

Section 8(2)(a), (b) and (c) of the Practice Regulation

2.12 Property inspection and viewing

- 2.12.1 A licensee must assist in making arrangements for and accompany a purchaser / tenant for the inspection and viewing of a residential property (including a car parking space and common areas if applicable), unless otherwise instructed by the purchaser / tenant.

Section 10(a) of the Practice Regulation

<p>2.12.2 A licensee must not arrange an inspection and viewing by any person of a residential property without the prior consent of the vendor / landlord of the property.</p>	<p>Section 10(b) of the Practice Regulation</p>
<p>2.12.3 Before the signing of an agreement for sale and purchase or a lease, a licensee must establish what is to be included in the sale or lease of the residential property concerned and prepare a written inventory thereof.</p>	<p>Section 10(c) of the Practice Regulation</p>
<p>2.13 <u>Conduct of negotiation</u></p>	
<p>2.13.1 A licensee must not claim that a purchaser / tenant has made an offer unless the offer exists.</p>	<p>Section 11(a) of the Practice Regulation</p>
<p>2.13.2 A licensee must ensure that the information and comparables on residential property prices and rentals supplied to a client do not misrepresent the value of the residential property concerned.</p>	<p>Section 11(b) of the Practice Regulation</p>
<p>2.13.3 A licensee must not exercise any undue influence on a vendor / landlord or a purchaser / tenant for the purpose of inducing him to enter into an agreement for sale and purchase or a lease.</p>	<p>Section 11(c) of the Practice Regulation</p>
<p>2.13.4 A licensee must keep a written record of all offers in respect of a residential property.</p>	<p>Section 11(d) of the Practice Regulation</p>

<p>2.13.5 A licensee must present an offer in respect of a residential property to a client for acceptance as soon as is practicable after receiving it.</p>	<p>Section 11(e) of the Practice Regulation</p>
<p>2.13.6 A licensee must inform a client of all offers received in the order he received them and present them in an objective and unbiased manner. A licensee is not obligated to disclose any further offers after the signing of an agreement for sale and purchase or a lease to the vendor / landlord in respect of a residential property.</p>	<p>Section 11(f) of the Practice Regulation; section 13(2)(b) of the Practice Regulation</p>
<p>2.14 <u>Agreements for sale and purchase or leases</u></p>	
<p>2.14.1 A licensee must, before a client who is not legally represented enters into an agreement for sale and purchase or a lease of a residential property, explain to the client the meaning of each clause therein and draw to his attention the meaning of any essential terms and provisions thereof. A licensee must recommend that the client seek legal advice if the client does not understand any part of his explanation.</p>	<p>Section 13(1) of the Practice Regulation</p>
<p>2.14.2 A licensee must not continue to market a residential property after the signing of an agreement for sale and purchase or a lease in respect of the property, and is not obligated to</p>	<p>Section 13(2) of the Practice Regulation</p>

<p>disclose any further offers to the vendor / landlord concerning the property.</p>	
<p>2.14.3 A licensee must take practicable steps to ensure that the name of the vendor / landlord is correct for the purpose of avoiding any intentional impersonation of the owner when an agreement for sale and purchase or a lease of a residential property is entered into. If the vendor / landlord is an individual, the licensee should take a copy of the vendor / landlord's Hong Kong identity card or other identification document.</p>	<p>Section 13(3) of the Practice Regulation</p>
<p>2.14.4 A licensee representing the vendor / landlord of a residential property must, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and provide a copy of the land search to the purchaser / tenant of the property.</p>	<p>Section 13(4) of the Practice Regulation</p>
<p>2.15 <u>Commission</u></p>	
<p>2.15.1 A licensee who acts as a sub-listing agent for a residential property must not demand payment of any commission from the client concerned of the principal agent.</p>	<p>Section 14(1) of the Practice Regulation</p>
<p>2.15.2 A licensee must not recommend to a client the use of services of any other person where a</p>	<p>Section 14(2) of the Practice Regulation</p>

pecuniary or other beneficial interest may accrue to the licensee in consequence of the recommendation, or the use of the services by the client, without first disclosing that interest to the client at the time of the recommendation.

2.15.3 A licensed estate agent must issue a written receipt to a client immediately for any commission paid by the client, and retain a copy of the receipt for not less than three years after it is issued. This regulation also applies to an invoice issued for any commission payable by a client.

Section 14(3) and (4) of the Practice Regulation

2.16 Assisting in an investigation by the EAA

2.16.1 Pursuant to section 28 of the Ordinance, the EAA may appoint an officer to investigate instances of non-compliance. When an investigation is being conducted, a licensee has the following duties:

Section 28 of the Ordinance

2.16.1.1 If required by the investigator, he must produce any record or document which is in his possession or under his control.

2.16.1.2 He must give to the investigator an explanation or further particulars in respect of such record or document.

2.16.1.3 He must give the investigator all assistance which he is reasonably able

to provide.	
-------------	--

N.B. Provisions relating to a property in the Practice Regulation are applicable to a residential property only.

PART V

Related legislation

In addition to complying with the legal provisions of Part IV, a licensee must also note and comply with other laws and legislation that are closely related to their practice. For example:

1. <u>Personal Data (Privacy) Ordinance</u>	<u>Relevant provisions of the legislation</u>
1.1 The personal data collected from a client by a licensee must be for the purpose of providing estate agency services, and must be collected by means which are lawful and fair, and may only be transferred to designated persons related to the purpose of collection for their use. He must obtain the prescribed consent of the client before using the client's personal data for any other purpose or before disclosing such information to a third party.	Data Protection Principles, Schedule 1, Chapter 486
1.2 A data user who uses the personal data of a client for direct marketing purposes must ensure the following: 1.2.1 The first time he so uses the data, he must inform the data subject that the data subject is entitled to request him to cease using the data.	Section 34, Chapter 486

<p>1.2.2 If the data subject so requests, he must cease using the data.</p> <p>1.3 In any direct marketing activity, the data user should provide the data subject concerned with the opportunity to “choose not to accept”, i.e., the opportunity to choose not to receive communications from the data user. For instance, if the direct marketing is carried out through a mailing, the data subject should be provided with the opportunity to “choose not to accept”, and a return address to state his choice. If the data subject decides to “choose not to accept”, the data user must cease the use of the relevant data.</p>	
<p>2. <u>Prevention of Bribery Ordinance</u></p> <p>2.1 Under section 4(1)(a), any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to, or reward for, or otherwise on account of, that public servant’s performing or abstaining from performing any act in his capacity as a public servant, commits an offence.</p> <p>2.2 Under section 8, any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government or any</p>	<p>Section 4(1)(a), Chapter 201</p> <p>Section 8, Chapter 201</p>

other public body, offers any advantage to any prescribed officer employed in the department, office or establishment of the Government, or any public servant employed by that public body, commits an offence.

2.3 Under section 9(1), any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to, or reward for, or otherwise on account of, his doing or forbearing to do any act in relation to his principal's affairs, but without the permission of his principal, commits an offence. Under Section 9(2), any person who offers any advantage to any agent under the above circumstances shall also be guilty of an offence.

2.4 The term "principal" includes an employer. The term "agent" means any person employed by or acting for the principal. An agent employed by an estate agency company is both an agent of the estate agency company and an agent of the client, and the estate agency company is also an agent of the client. Before accepting any advantage, an agent must obtain the permission of his principal; the agent may obtain prior permission, or obtain permission as soon as is practicable after the provision or acceptance of an advantage.

Section 9(1) and
section 9(2),
Chapter 201

<p>2.5 Under Section 9(3), any agent who, with intent to deceive his principal, uses any receipt, account or other document which contains any statement which is false or erroneous or defective in any material particular intended to mislead the principal, is also guilty of an offence.</p>	<p>Section 9(3), Chapter 201</p>
<p>3. <u>Theft Ordinance</u></p> <p>3.1 Any person who, by any deceit and with intent to defraud, induces another person to commit an act which results either in benefit to any person other than the second-mentioned person; or in prejudice to any person other than the first-mentioned person, commits the offence of fraud.</p>	<p>Section 16A(1), Chapter 210</p>
<p>4. <u>Housing Ordinance</u></p> <p>4.1 An agent must not aid or abet others to violate Section 27A of the Housing Ordinance. By virtue of sections 17B and 27A of the Housing Ordinance, if the alienation restrictions of the flats under the Home Ownership Scheme, the Private Sector Participation Scheme, the Tenants Purchase Scheme of the Hong Kong Housing Authority have not been removed, any agreement or other instrument purporting to sell or otherwise alienate the flat is void, unless the relevant sale and purchase agreement includes the special condition prescribed</p>	<p>Schedule, Section 27A, Chapter 283</p>

in the Schedule of the Ordinance (i.e., providing that the premium as assessed by the Director of Housing is to be paid to the Hong Kong Housing Authority prior to the assignment of the unit and within 28 days of the date of the agreement or within such period as may be otherwise stipulated by the Director), and any person entering into such an agreement or other instrument is guilty of an offence. The agent who aids or abets the commission of the offence may also be guilty of the same offence.

5. **Organized and Serious Crimes Ordinance and Drug Trafficking (Recovery of Proceeds) Ordinance**

5.1 Every person has a duty to disclose to the Police and Customs any property that they suspect directly or indirectly represents the proceeds of a crime.

Section 25A,
Chapter 455;
section 25A,
Chapter 405

6. **Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance**

<p>6.1 A person discriminates against another individual if he, on the ground of the other's sex, marital status, pregnancy, disability, care-giving responsibilities or race, treats the other less favourably than he treats or would treat any other person. He may contravene the law.</p> <p>6.2 In handling property transactions, agents should avoid committing any discriminatory act or conducting themselves in ways that prejudice any individual's right to accommodation.</p>	<p>Sections 5 and 6, Chapter 480; section 6(a), Chapter 487; section 5, Chapter 527; section 4 Chapter 602</p>
<p>7. <u>Public Health and Municipal Services Ordinance and Fixed Penalty (Public Cleanliness Offences) Ordinance</u></p> <p>7.1 Any person who posts bills and posters on Government land without the permission of the Secretary for Food and Health commits an offence. Similarly, any person who posts bills and posters on private property without the owner's or occupier's written consent commits an offence.</p>	<p>Section 104A, Chapter 132; Schedule 1, Chapter 570</p>
<p>8. <u>Registration of Persons Ordinance</u></p> <p>8.1 Any person who, without lawful authority or reasonable excuse, has in his custody or possession another person's identity card commits an offence.</p>	<p>Section 7A (1A) and section 7A(2), Chapter 177</p>

<p>8.2 Agents must not keep their clients' identity cards unless they have been given the authority to do so by these clients. Agents must, therefore, obtain their purchaser clients' authority before keeping their identity cards for verification of identity in preparing provisional agreements for sale and purchase between the developer and the purchaser.</p>	
<p>9. <u>Road Traffic Ordinance</u></p>	
<p>9.1 A pedestrian who in using any road negligently endangers his own safety or that of any other person commits an offence.</p>	<p>Section 48, Chapter 374</p>
<p>9.2 Agents must avoid intercepting passers-by or vehicles on roads and creating a danger or nuisance on the road and to road-users.</p>	
<p>10. <u>Offences Against the Person Ordinance</u></p>	
<p>10.1 Agents must avoid physical confrontation or fighting with other agents when promoting sales.</p>	<p>Section 39 and section 40, Chapter 212</p>
<p>10.2 Any person who assaults another occasioning actual bodily harm is guilty of an offence.</p>	
<p>11. <u>Mass Transit Railway By-laws, Mass Transit Railway (North-West Railway) Bylaw</u></p>	

<p>11.1 Any person who causes a nuisance to passengers on the railway premises, or sells any services, distributes any leaflet or solicits custom without authorization in writing from MTR Corporation Limited commits an offence.</p>	<p>Bylaw 25, bylaw 30 and bylaw 32, Chapter 556B; section 22(1)(d), section 26 and section 27, Chapter 556H</p>
<p>12. <u>Summary Offences Ordinance</u></p>	
<p>12.1 Any person who in a public place, to the annoyance of any other person, importunes the person to give his custom to any business, commits an offence.</p>	<p>Section 6A, section 4A and section 4(5), Chapter 228</p>
<p>12.2 Any person who without lawful authority or excuse sets out or leaves any thing which may obstruct, inconvenience or endanger any person or vehicle in a public place, commits an offence.</p>	
<p>12.3 Any person who without lawful authority or excuse causes any annoyance or obstruction in any public place by exposing any thing for sale in any street, commits an offence.</p>	
<p>12.4 Agents should avoid causing annoyance to passers-by by intercepting passers-by to solicit business, or obstructing passers-by by placing any advertising object in their way.</p>	

<p>13. <u>Crimes Ordinance</u></p> <p>13.1 Any person who without lawful excuse damages property belonging to another, intending to damage any such property or being reckless as to whether any such property will be damaged, commits an offence.</p> <p>13.2 Agents must avoid physical confrontation with other agents or passers-by or damaging property belonging to another while soliciting customers.</p> <p>13.3 Any person who obtains access to a computer (a) with intent to commit an offence; (b) with a dishonest intent to deceive; (c) with a view to dishonest gain for himself or another; or (d) with a dishonest intent to cause loss to another, commits an offence.</p>	<p>Section 60, Chapter 200</p> <p>Section 161, Chapter 200</p>
--	--

The above contains, among others, summaries of some key points of the related legislation. For a better understanding of the provisions, practitioners are advised to read the full text of the related legislation. The full text shall prevail over this Practice Guide.

This Practice Guide is only intended to be for general reference and should not be construed as a source of legal advice. Estate agents and salespersons should seek legal advice or make their own enquiries on matters encountered in specific situations in case of doubt.

While every effort has been made to ensure that the contents of this Practice Guide are accurate and relevant, the Estate Agents Authority shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or in reliance on, any error, omission, statement or misstatement contained in the whole or any part of this Practice Guide.

The male pronoun is used to cover references to both the male and female. No gender preference is intended.

The copyright of this Practice Guide vests in the Estate Agents Authority. No part of it may be copied, reprinted or excerpted in any way or in any place for any commercial purpose.

Date of publication March 2010