



**Estate Agents Authority reminds practitioners
to handle takeover of tenancy/business with care**

(17 May 2005) The Estate Agents Authority (EAA) has received complaints about practitioners arranging for the transfer of a tenancy held by a client to another party, or arranging for the client's takeover of such a tenancy. In order to draw practitioners' attention to the potential risk involved in the takeover of tenancy/business and to enhance consumer protection, the Authority has recently issued a practice circular on the subject.

The circular reminds practitioners that any takeover of tenancy is potentially a complicated matter. The subject matter to be transferred may be the tenancy only, or may include also a business currently carried on at the tenanted premises. Even at its simplest, a so-called "transfer" will most likely involve the termination of the existing tenancy held by the "transferor" and, thereafter, the grant of a new tenancy in favour of the "transferee", both requiring the landlord's consent. Where the intended takeover involves furthermore an existing business or the payment of a premium, even greater will be the degree of complication of the transaction, hence legal risk for all parties involved. For adequately protecting the interest of the parties concerned, comprehensive legal documentation is usually required, while a standard-form tenancy agreement will normally not suffice.

The circular also points out that except for the part involving the grant of a new tenancy, the rest of the so-called "takeover of tenancy/business" arrangement may actually fall outside the scope of "estate agency work" as defined under the Estate Agents Ordinance. Strictly speaking, therefore, a practitioner has no duty to put together such an arrangement for a client. Where a client indicates an intention to effect a takeover of tenancy/business, a practitioner should, as a measure of prudence, advise the client to consult a lawyer before implementing such arrangement, in order to avoid any legal risk.

If a practitioner is found to have arranged for a takeover of tenancy or business without advising his client to obtain legal advice, which arrangement resulted in a loss suffered by the client, he may be subject to



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disciplinary action by the Authority and if the case is serious, his licence may be revoked.

Recently, two practitioners' licences were suspended due to mishandling of the takeover of tenancy/business.

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