



EAA issues new Practice Circular on first sales

(24 October 2006) The Estate Agents Authority (EAA) issued a Practice Circular today on guidelines that estate agency practitioners should follow when dealing with first sales of residential properties.

Chairman of the EAA Licensing and Practice Committee Mr William Leung said, “EAA always strives to promote the standard of services of the estate agency trade, and encourages open, fair and honest property transactions.”

“We are concerned about the practice and conduct of practitioners in first-sale activities. The new Circular will remind practitioners on matters that they should pay attention to when selling first-hand residential properties. It will increase transparency of the market and enhance protection for consumers and the community at large.”

The latest Circular has laid down guidelines in ten areas.

1. ***Price Lists***

Where the practitioner has been given a price list by the developer, he should provide the same to prospective purchasers without any charge, restriction, or conditions. Also, practitioners should not prepare price lists with other prices without the developer’s instruction.

Practitioners who provide additional information to prospective purchasers concerning the price or price calculation such as the “price per square foot”, 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. ***“Deposits”***

In cases where the practitioner acts for the developer only or for both the developer and the prospective purchaser, he should not accept any money, whether described as a deposit or not, from a



prospective purchaser without the developer's authorisation.

In the case of the Consent Scheme, if the agent is so authorised by the developer, the sum of money should be same as the preliminary deposit payable to the developer referred to in the Government's consent letter in respect of the development concerned.

3. ***Authorisation for advertising***

Unless the practitioner is authorised by the developer in writing, he should not issue any advertisements in respect of a development.

4. ***Accuracy of advertisements***

If the practitioner is authorised by the developer to issue an advertisement in respect of a development, he should ensure that any key features mentioned, such as the location plan, floor area and floor plan, fittings and finishes, anticipated completion date, management and details of amenities/facilities, are correctly described in the advertisement.

5. ***Representations by agents***

If authorised by the developer, the practitioner may, on behalf of the developer, make written and/or oral representations in respect of a development. Nevertheless, the practitioner should restrict such representations made on behalf of the developer to information contained in the sales brochure and documents supplied by the developer and which the practitioner has taken all reasonable steps and exercised all due diligence to verify.

6. ***Publication of sales information***

Practitioners should not publicise information on the sales figures or performance of a development on behalf of the developer, unless they have verified the same by taking all reasonable steps and exercising all due diligence.

7. ***Obtaining potential purchasers' identity cards***

Practitioners must not keep their purchaser clients' identity cards



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unless they have been given authority to do so by these clients. Practitioners should, therefore, obtain their purchaser clients' authority before keeping purchaser clients' identity cards for verification of identity in preparing preliminary agreements for sale and purchase between the developer and the potential purchaser.

Under Sections 7A(1A) and 7A(2) of the Registration of Persons Ordinance, any person who, without lawful authority or reasonable excuse, has in his custody or possession another person's identity card commits an offence.

8. *Number of agents at sales sites*

Estate agency companies should comply with the maximum number of estate agents who may be sent and stationed at the sales site at a particular time as may be specified by the developer.

9. *Maintaining order at sales sites*

Practitioners should comply with the rules and regulations as may be set by the developer for maintaining order at a sales site.

10. *Compliance with laws, rules and regulations when conducting sales activities in the vicinity of sales sites*

Practitioners should comply with laws, rules and regulations (such as the Road Traffic Ordinance, bye-laws of the Mass Transit Railway Corporation/Kowloon Canton Railway Corporation, etc.) when conducting sales activities in the vicinity of a sales site.

Practitioners who do not observe the above may, in addition to breaching the law, discredit or bring the estate agency trade into disrepute by their conduct, which may in turn affect their being considered fit and proper persons to hold licences and could make them subject to disciplinary sanctions by EAA. Under the Estate Agents Ordinance, disciplinary sanctions that can be meted out by EAA include admonishment, reprimand, attachment of conditions to a licence, variation of the conditions of a licence, a fine of up to \$300,000, suspension of a licence for up to two years and revocation of a licence.



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EAA issues Practice Circulars to practitioners on a needs basis to remind them of the relevant laws and regulations and to provide them with guidelines on conduct and practice. In the past two years, EAA has issued five Practice Circulars related to first sales. A summary of these five Circulars is provided in the Annex.

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Annex

From 2004 to 2006, EAA has issued five Practice Circulars related to first sales. The following is a summary:

1. **Introducing / explaining information on mortgage schemes /terms of first-hand properties** (issued in May 2004)

If practitioners take the initiative to introduce or explain the mortgage schemes or terms to prospective purchasers when promoting the sale of first-hand properties, or accede to prospective purchasers' request to do so, they must remind prospective purchasers to seek information directly from the bank or developer if there is any question.

Practitioners must also exercise due care and diligence in ensuring that the information regarding mortgage or property financing schemes provided is accurate.

2. **Identification of personnel at first-sales Site** (issued in June 2005)

EAA urges all practitioners to wear their Estate Agent Card and employee card whenever they are on duty at first-sale sites for easy identification by EAA staff and prospective clients alike.

Estate agency companies are reminded to establish and maintain an effective and reliable system for keeping a daily record of all employees deployed at a first-sale site. If EAA investigates an incident of suspected unlawful behaviour at a first-sale site, this record should be made readily available to EAA upon request.

3. **Provision of information on first-hand residential properties** (issued in August 2005)

Practitioners are advised to take note that under the new guidelines issued by the Real Estate Developers Association of Hong Kong, price lists and lists of units on offer should be made available to prospective



purchasers before a private sale at the sales office and through agents engaged by the developers.

Where practitioners have been given the price list and the list of units on offer by the developer, they should provide the same to prospective purchasers or remind them to obtain them at the sales office before entering into any agreement for sale and purchase.

Practitioners should also advise prospective purchasers to consult documents such as the sales brochures, draft Deed of Mutual Covenant and Government lease before entering into any agreement for sale and purchase.

If practitioners take the initiative or accede to the prospective purchasers' request to explain or introduce to them property information, they must exercise due care and diligence in ensuring that the information provided is accurate.

4. **Obtaining of vendor's written consent prior to the issue of Advertisement** (issued in September 2005)

Practitioners are reminded that they must have prior written consent from the vendor of a property before they issue any advertisement in respect of such a property. This also applies to advertisements of first-sale residential properties so long as the advertisement refers to a recognisable development and suggests in any way or gives the impression that the development is up for sale, even if the developer's name is not expressly quoted in the advertisement or it is not suggested in the advertisement that the licensed estate agent is acting for the developer.

Practitioners are also reminded that under the Lands Department Consent Scheme, unless permission to commence promotional activities for the sale of units in a development has been given by the Lands Department, and any such promotional publicity or advertisement specifies that the consent to sell has not yet been obtained, and that all conditions pertaining to such permission have been fully complied with, no publicising or advertising of such units



available for sale shall be launched prior to the Lands Department's issue of consent to sell.

Furthermore, no reservation fee, deposit or any other consideration shall be accepted or collected by the grantee or his agent in any form or manner prior to the Lands Department's issue of the consent to sell.

5. **Duties of management in ensuring effective control of their estate agency business** (issued in June 2006)

Practitioners are reminded that, under Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, they have a duty to establish proper procedures and systems to ensure that employees and persons under their control comply with the Estate Agents Ordinance.

The fact that an employee engaged in inappropriate conduct or circumvented the rules of his employment may be prima facie evidence of a failure on his employer's and/or the management's part to observe Section 15. Failure to give proper training to staff on compliance with the Ordinance, its subsidiary legislation or the Code of Ethics may also be a breach of Section 15.

Practitioners are reminded that fighting and other unruly behaviour at first-sale sites, conducting estate agency work by unlicensed persons, failure to conduct and/or supply a land search, failure to provide correct property information and issuance of misleading or false advertisements might be attributed to a lack of effective control by the estate agency employer and/or the management.