地 產 代 理 監 管 局
ESTATE AGENTS AUTHORITY

Practice Circular on Provision of floor area information for second-hand residential properties –

Questions and Answers (Q&As)

Notes:

1. All references to:

   a. "EAA" shall mean the Estate Agents Authority.
   b. "EAO" shall mean the Estate Agents Ordinance.
   c. "RVD" shall mean the Rating and Valuation Department.
   d. "First Agreement" shall mean the agreement for sale and purchase of the first assignment of the property registered in the Land Registry.
   e. "Practice Circular" shall mean Circular No. 12-02(CR) issued by the EAA on provision of floor area information for second-hand residential properties.
   f. "Practice Regulation" shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

2. These Q&As are for general reference only. They do not constitute legal or professional advice. You should seek legal or professional advice as and when necessary, especially on the interpretation of legal provisions and specific advice on any individual case. While the EAA has used its best endeavours to ensure the accuracy of the information provided in these Q&As, no statement, representation, warranty or guarantee, express or implied, is given by the EAA as to the accuracy, or completeness of such information, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.

Q&As

Q1. Must licensees provide the property's price per square foot which is calculated on the basis of saleable area to their clients?

Answer: The EAO and its subsidiary legislations do not have any provisions requiring licensees to provide the price per square foot of the property. If licensees provide the price on a per square foot basis in respect of a property, they must state whether it is calculated on the basis of saleable area or gross floor area so as to avoid any misunderstanding.

Q2. Many clients prefer adopting the figure of area information in terms of square feet but the figure of saleable area provided by the prescribed sources is in terms of square metres. How exact the figure (e.g. any decimal places) is needed if licensees convert the figure from square metre to square foot?

Answer: There is no provision on this matter in the Practice Regulation or the Practice Circular. Generally speaking, rounding up the figure is a reasonable method. For example, if the saleable area of a property is 91 sq. m. (i.e. 91 sq. m. x 10.764 sq. ft. = 979.524 sq. ft.), it is acceptable to convert it to either 979 sq. ft., 979.5 sq. ft. or 980 sq. ft. when providing the information to client or in advertisement. Licensees may also explain to their clients about the conversion if their clients have concerns on this matter.

Q3. Must the font size regarding saleable area be larger than that of gross floor area in the advertisement? Can their font size be the same? Is there any requirement on the position of saleable area in the advertisement?

Answer: The Practice Circular requires the font size for the letters, characters and numbers used regarding the saleable area shall

be no smaller than those of the gross floor area of the property. It is not a breach if the size for both is the same. There is no provision in the Practice Circular on how the characters or numbers for saleable area are placed in the advertisement.

Q4. Apart from listing the saleable area information of the property in the advertisement, can licensees also list other information such as the area of balcony, utility platform and bay window in the same advertisement?

Answer: Licensees may also provide the gross floor area or other floor area information of the property in the advertisement if the saleable area of the property is already provided in the advertisement.

However, if the gross floor area or other floor area information of the property are included in the advertisement, the licensee concerned must, upon the EAA's request, produce evidence to prove that the gross floor area or other floor area information of the property is obtained from a reasonable source or there is a proper basis upon which he could rely in quoting such information in the advertisement.

Q5. What is the meaning of "reasonable source" and "proper basis" in paragraph (8)(c) of the Practice Circular? Is there any example?

Answer: Licensees may provide the gross floor area or other floor area information of the property if the saleable area of the property has been provided or the saleable area of the property (e.g. village type houses) cannot be obtained from either the RVD or the first agreement. However, the licensee concerned must, upon EAA's request, produce evidence to substantiate that the gross floor area or other floor area information of the property was obtained from a reasonable source or there was a proper basis upon which he could rely for supplying such information.

As to the examples of "reasonable source" or "proper basis", it can be the surveyor's report or the sales brochure provided by the developer. Licensees should note that they should take all reasonable steps and exercise due diligence to ensure the relevant information is accurate.

Q6. There might be discrepancy in the figure of saleable area of a property recorded by the RVD compared with those by the developer. Will licensees be held responsible if this causes any disputes?

Answer: Under the Practice Regulation, licensees are required to obtain the saleable area of the property provided by the RVD or as stipulated in the First Agreement and specify the source of information to their clients. Other sources such as sales brochures are not prescribed sources under the Practice Regulation.

Licensees shall be deemed to have complied with the requirements of the Practice Circular if they have taken all reasonable steps and exercise due diligence to obtain the saleable area of the property from the RVD or the First Agreement and convey the same to their clients truthfully. Of course licensees should also comply with other applicable law and EAA requirements in the course of handling a transaction.

Regarding certain trade members' concern on the possible discrepancy in the saleable area information provided by the two prescribed sources (RVD and first agreement), the EAA clarifies that licensees are only required to provide the information obtained from either one of the two sources and they should clearly explain to the client when and from which prescribed source the relevant figure was obtained.

As to whether any disputes will be caused, the EAA would like to clarify that the Practice Circular does not require licensees to include the saleable area information in the sale and purchase agreement / tenancy agreement. Licensees may, however,

specify the prescribed source of information and when the information was obtained if they find it necessary to include the relevant information in the agreement.

Q7. If the saleable area obtained from the two prescribed sources (i.e. the RVD and First Agreement) are different, which one should the licensee provide to client?

Answer: Under the Practice Regulation, licensees are required to obtain the saleable area of the property provided by the RVD or as stipulated in the First Agreement and specify the source of information. There is no provision on which one of the two should be chosen.

If licensees have provided clients the saleable area information obtained from either the RVD or the First Agreement, they have complied with the related requirement in the Practice Regulation and the Practice Circular. If a client requests for the saleable information from both the RVD and the First Agreement, it is subject to the licensee's own decision to entertain such request or not.

Q8. If a practitioner does not comply with the Practice Circular, e.g. failure in providing the information of saleable area to client and in advertisement, who will be punished? The practitioner concerned or its employer, the estate agency company?

Answer: The Practice Circular applies to all EAA licensees, including the holders of estate agent's licence (individual), salesperson's licence and estate agent's licence (company). Non-compliance will be subject to EAA's disciplinary actions and the severest penalty is licence revocation. Generally speaking, estate agency company is responsible for ensuring the advertisements issued in its name do not include any false or misleading information. However, all licensees should ensure the information they provide to clients is accurate.

Q9. Will there be a transitional period after the Practice Circular becomes effective, i.e. will there be any discretion in enforcing the Circular and related disciplinary actions?

Answer: The Practice Circular will come into operation on 1 January 2013. The trade has more than six months to prepare for the change since the promulgation of the Circular. Meanwhile, the EAA will educate the trade and consumers in this period. From 1 January 2013 onwards, the Practice Circular will come into effect and the EAA will handle related complaints and take enforcement action in an impartial manner.

Q10. The Practice Circular requires licensees to provide information of saleable area to clients and it will increase the operating costs of the trade. Will the EAA provide any assistance on this?

Answer: Under the Practice Regulation, licensees are required to obtain the saleable area of the property provided by the RVD or as stipulated in the First Agreement. It is not a new or additional requirement. Regarding the possible costs involved in adjusting computer programmes as a result of the implementation of the Circular, it will be a one-off and unavoidable expense. This is because the first-hand residential properties with information on saleable area only will be transacted in the secondary market in future, and the computer programmes will need to be changed after all.

Q11. Is it advisable for estate agents to design a form which stipulates clearly the saleable area of a property, the source and when the information is obtained and then ask clients to acknowledge receipt of such information by signature? Are there other ways which agents could adopt to avoid future legal contention by disgruntled customers?

Answer: Licensees are required to provide the information of saleable

area obtained from either one of the two prescribed sources (RVD and first agreement) and they should clearly explain to the client when and from which prescribed source the relevant figure was obtained. The Practice Circular does not require licensees to obtain a written acknowledgement from their clients. However, licensees may, if they find it desirable, provide a copy of the saleable area information obtained from the prescribed source to their clients and ask them to acknowledge receipt.

Q12. Should the figure of saleable area information of the property listed in the advertisement be described in terms of square metres or square feet? Do licensees need to state that "1 square metre = 10.764 square feet" when listing the figure in square metres?

Answer: There is no provision on the measurement unit for the provision of the floor area information of the property in the Practice Regulation or the Practice Circular. Licensees may use either one of the two measurement units to meet their own business needs. However, licensees should state clearly what measurement unit is being used to avoid misunderstanding.

There is also no provision in the Practice Circular requiring licensees to specify the conversion method between different measurement units. Nevertheless, licensees should clearly explain to clients about the conversion if their clients have concerns on this matter to avoid misunderstanding.

Q13. Can licensees provide only the saleable area in advertisements for old buildings without information on gross floor area? On the contrary, what should licensees do in order to comply with the Practice Circular if the saleable area information cannot be obtained from the prescribed sources? Under such circumstances, what should licensees do if clients insist to obtain the saleable area information?

Answer: Under the Practice Circular, licensees are required to provide information on the saleable area of a second-hand residential property obtained from the prescribed sources to their clients in the provision of the floor area information of the property. There is, however, no provision requiring licensees to provide floor area information other than saleable area. Therefore, an advertisement providing only the saleable area information obtained from a prescribed source does not contravene the requirements in the Practice Circular.

On the contrary, licensees can provide the gross floor area or other floor area information of the property if the saleable area information cannot be obtained from the prescribed sources. However, licensees must produce evidence to prove that the gross floor area or other floor area information of the property is obtained from a reasonable source or there is a proper basis (e.g. surveyor's report or sales brochure provided by the developer) upon which the licensees can rely in quoting such information in the advertisement. In this case, licensees should also explain to their clients that the saleable area information of the property cannot be obtained from the prescribed sources. If their clients insist on obtaining the saleable area information, licensees may suggest their clients seek advice from professionals (e.g. surveyors).

Q14. If the saleable area of certain units (e.g. units B) in a building are the same, do licensees need to obtain the saleable area information from the prescribed sources for every unit B in the building?

Answer: Both the Practice Regulation and Practice Circular require licensees to obtain the saleable area information from the prescribed sources. Therefore, licensees should not jump to the conclusion that all the units with the same number designation in a building are of the same saleable area. Licensees should obtain the saleable area information from the prescribed sources for the particular property that they are appointed to sell.

Q15. Should property price be calculated on the basis of saleable area or gross floor area?

Answer: No matter whether the floor area of the property is expressed in terms of the gross floor area or saleable area, the transaction price of the property is the same.

On the question of whether the property price per square foot should be calculated on the basis of saleable area or gross floor area, the EAO and its subsidiary legislations do not have any provisions requiring licensees to provide the price per square foot of the property. If licensees provide the price of a property on a per square foot basis, they must state whether it is calculated on the basis of saleable area or gross floor area so as to avoid any misunderstanding.

Q16. If the saleable area information of the property cannot be obtained, are licensees required to explain the reasons to their clients or other parties (verbally/in writing)?

Answer: Under the Practice Regulation, licensees are required to complete the Property Information Form (Form 1) (for use in the sale and purchase of residential properties), or a Leasing Information Form (Form 2) (for use in the leasing of residential properties), in accordance with the Notes specified in the Forms. Licensees are required to obtain the saleable area information from the RVD or as stipulated in the First Agreement in order to fill in the floor area information of the property in Part B of the Forms. If the saleable area information of the property cannot be obtained from either the RVD or the First Agreement, licensees should tick the relevant box in the forms, stating that no such information can be obtained from the two prescribed sources.

Licensees are also required to provide the completed forms (including the saleable area information of the property or

stating that no such information can be obtained from the prescribed sources) to their clients in accordance with the Notes specified in Form 1 or Form 2.

Q17. Is it necessary to provide the saleable area for commercial properties? If so, where can it be obtained?

Answer: The Practice Regulation and the Practice Circular are applicable to the provision of the floor area information for second-hand residential properties but not commercial properties.

10 August 2012