



**The EAA to issue a new practice circular on deed of gift/
assignment at nil consideration and updated circulars
on property information and land search**

(13 March 2013) The Estate Agents Authority (EAA) today announced the issuance of a new practice circular to remind estate agents of the points to note when handling transactions of properties involving a deed of gift / assignment at nil consideration. In addition, the EAA has updated a practice circular into two, respectively on property information and land search, so as to provide clearer and more detailed guidelines.

According to the Chairman of the Practice and Examination Committee of the EAA, Mr William Leung Wing-cheung, the Committee had earlier approved the issuance of a new practice circular on deed of gift / assignment at nil consideration. The eight trade associations were also consulted on the circular at earlier trade liaison meetings and were all supportive of its issuance.

Mr William Leung said that the EAA had received complaints that estate agents had not properly brought to the attention of the purchasers the risk of buying properties involving a deed of gift / assignment at nil consideration. He added that the risks associated with purchasing properties involving a deed of gift / assignment at nil consideration might include the purchaser not being able to obtain any or sufficient mortgage loan to complete the purchase, or to prove that the property has a good title when resale.

Mr William Leung said, “The EAA issues the new practice circular to remind estate agents of the points to note when handling properties involving a deed of gift / assignment at nil consideration so as to enable estate agents to better protect their clients’ interests.”

According to the new practice circular, if the current land search reveals that the vendor has been the current registered owner of the property for less than five years, estate agents should conduct a historical and current land search for the property to confirm whether there was any



registration of a deed of gift / assignment at nil consideration in the land search record. If such a record has been registered, estate agents should inform the purchasers, alert them to the possible risks involved in the purchase, and advise clients to seek legal advice before entering into any agreement for sale and purchase of the property.

In addition, the EAA has updated the related practice circular on the provision of property information and land search and issued two related circulars, so as to provide the trade with clearer and more detailed guidelines.

The practice circular on the provision of property information makes it clear that unless an estate agent has already possessed the prescribed information and such information is still accurate, he is required, on the commencement date of the validity period of the estate agency agreement, to obtain property information from the prescribed sources.

As regards the practice circular on land search, it states more clearly the responsibilities of an estate agent to provide the land search result in respect of the property when he acts for the vendor or for the buyer.

The EAA Chief Executive Officer Mr Augustine Ng pointed out that the aforementioned three practice circulars would take effect on 1 April 2013. Estate agents who are found to have failed to comply with the guidelines will be subject to disciplinary actions by the EAA. Please refer to the annex for details of the practice circulars.

Mr Augustine Ng added that the EAA would organize continuing professional development courses to explain the circulars to the licensees in detail. The EAA would also assist frontline practitioners in meeting the circulars' requirements through educational visits to estate agency shops.



地產代理監管局 ESTATE AGENTS AUTHORITY

新聞稿
Press Release



Chairman of the Practice & Examination Committee of the EAA Mr William Leung (centre), Chief Executive Officer Mr Augustine Ng (right) and Director of Regulatory Affairs & General Counsel Ms Eva Lau (left) brief the press on the new practice circular on deed of gift/assignment at nil consideration and the updated circulars on property information and land search.

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Annex

**(A) Gist of the new practice circular on deed of gift /
assignment at nil consideration**

- (1) Estate agents should conduct a historical and current land search of the property if its current land search reveals that the vendor has been the current registered owner of the property for less than five years.
- (2) Estate agents should check the land search(es) to see if there was any registration of a deed of gift / assignment at nil consideration.
- (3) Where the land search reveals that a deed of gift / assignment at nil consideration made within five years from the date of the land search has been registered, estate agents should:
 - (a) inform clients of the existence of the deed of gift / assignment at nil consideration;
 - (b) alert clients that the deed of gift / assignment at nil consideration may affect the title of the property and that there is a risk that the purchaser may not be able to obtain sufficient mortgage loan to complete the purchase of the property; and
 - (c) advise clients to seek legal advice on the risk of selling / purchasing the property before they enter into any agreement for sale and purchase of the property
- (4) If, despite the existence of the registered deed of gift / assignment at nil consideration and the clients having been alerted to the risks as stated above, the clients still decide to proceed with the transaction, the estate agent concerned, in order to protect his own interests in case of dispute, is advised to obtain a written acknowledgement from his clients stating that they have been informed of the related risks.



(B) Gist of the practice circular on property information

- (1) Under section 36(1)(a)(ii) of the Estate Agents Ordinance, the licensed estate agent is required to be reasonably satisfied as regards the accuracy of the prescribed property information.
- (2) To comply with the said requirement, a licensed estate agent who acts for the vendor (or landlord) must have in his possession or under his control the prescribed information **during the full period** when he so acts, starting from the commencement date of the validity period of the estate agency agreement. Unless he has already possessed the prescribed information and such information is still accurate, he is required to, on the commencement date of the validity period of the estate agency agreement, carry out a land search of the property and, if necessary:
 - (a) conduct a search on the online service of the Rating and Valuation Department; or
 - (b) obtain the relevant prescribed information from other prescribed sources.

(C) Gist of the practice circular on land search

To protect the client's interests, a licensee who acts only for the purchaser (or tenant) should also conduct a land search (unless a land search has been provided by the estate agent acting for the vendor (or landlord) and the land search is conducted immediately before an agreement for sale and purchase (or tenancy agreement) is entered into) and explain its contents to his client immediately before an agreement for sale and purchase (or a tenancy agreement) is entered into. This duty applies irrespective of whether the property is a residential one and whether a copy of the land search of the property concerned has been provided by the estate agent acting for the vendor (or landlord) on a day before the agreement for sale and purchase (or tenancy agreement) is entered into.