

Circular

Circular No. 05-06 (CR)

Obtaining of vendor's written consent prior to the issue of Advertisement

Section 9(2) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("Practice Regulation") provides that a licensed estate agent shall obtain a vendor's written consent prior to the issue of an advertisement in respect of the vendor's residential property.

It has recently been brought to the Authority's attention that some licensed estate agents have issued advertisements in respect of a vendor's residential property without having obtained the vendor's prior written consent. In some cases, where the first sale of units in an uncompleted residential development is involved, the advertisements were issued even before the consent to sell or permission to commence promotional activities was granted to the developers by the Lands Department.

Practitioners are reminded to take note of the following matters in respect of the said section 9(2) :

- A licensed estate agent must have **prior written consent** from the vendor of a property before the licensed estate agent may issue any advertisement in respect of such property.
- Where first sale of residential properties is involved, so long as the advertisement refers to a recognizable development and suggests in any way or gives the impression that the development is up for sale, the said section 9(2) shall apply, even though 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. This means that all licenced estate agents must obtain prior written consent from developers before they may issue any form of advertisement for any first sale of residential properties.

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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 publicizing 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. Failure by the practitioner acting for the grantee to observe this requirement may render its grantee client liable for breach of the Conditions under which the land is being held. For details of the Lands Department Consent Scheme, please visit the website of the Lands Department at www.info.gov.hk/landsd/

Practitioners must comply strictly with the regulations on advertising. The Authority will continue to monitor the situation regarding the issue of advertisements. Non-compliance of the regulations will result in disciplinary actions.

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This Circular should be made available for the information of all staff engaged in estate agency work