



Circular

Circular No. 06-03 (CR)

- **Licensed estate agents to establish proper procedures and systems to ensure that employees and persons under their control comply with the Estate Agents Ordinance**

Duties of management in ensuring effective control of their estate agency business

Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“the Practice Regulation”) provides that a licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Estate Agents Ordinance (“the Ordinance”).

It has come to the attention of the Authority that in a number of cases, the misconduct of estate agency employees in their practice or their failure to comply with the Ordinance, the Practice Regulation, the Estate Agents (Licensing) Regulation and/or the Code of Ethics could be attributed to the lack of a proper system or procedures, supervision and control by their employers and/or the management of the estate agencies.

Practitioners are reminded to pay attention to the following implications of Section 15 of the Practice Regulation:

- Section 15 imposes a duty on estate agents to organize their businesses in such a way as to ensure compliance with the Ordinance by their employees.
- 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, Practice Regulation, Licensing Regulation and/or Code of Ethics may also be a breach of Section 15.
- A proper system is one that includes adequate and continuous monitoring and enforcement. A failure to include these in the system may also be a breach of Section 15.



- When a misconduct has occurred, the Authority will consider whether the estate agency employer and/or the management have/has done all that they should have done to prevent it.

For example, practitioners are advised to note that breaches of the Ordinance, the Practice Regulation, the Estate Agents (Licensing) Regulation and/or the Code of Ethics in the following scenarios might be attributed to a lack of effective control by the estate agency employer and/or the management:

- Fighting and unruly behaviour at first-sale sites — the estate agency employer and/or the management fail(s) to keep a record of all employees deployed at a particular first-sale site on a particular day, thereby failing to establish a proper system for maintaining effective control of their employees at the site.
- Conducting estate agency work by unlicensed persons — the estate agency employer and/or the management fail(s) to ensure that persons without licences, such as mortgage brokers without holding any estate agent's or salesperson's licences or those whose licences have expired without renewal, do not carry out estate agency work.
- Failure to conduct and/or supply a land search and failure to provide correct property information — the estate agency employer fails to provide resources for conducting land searches or the estate agency employer and/or the management fail(s) to monitor compliance of such regulations by their employees.
- Issuance of misleading or false advertisements — the estate agency employer and/or the management fail(s) to check the accuracy of advertisements issued by staff.

In considering whether the estate agency employer and/or the management are/is in breach of section 15 of the Practice Regulation, the Authority would look into whether the estate agency employer and/or the management have/has established proper procedures or systems and whether due diligence has been exercised by the estate agency employer and/or the management to ensure that their staff have followed such procedures or systems.

Practitioners must comply strictly with Section 15 of the Practice Regulation. Non-compliance will result in disciplinary action.

June 2006