



Circular

Circular No. 11-02 (CR)

Guidelines on practitioners' conduct in first sales:

- **Appoint a controller to oversee all matters relating to conduct in promotional activities.**
- **Provide training and pre-sale briefing(s) to staff prior to their conducting any promotional activities.**
- **Monitor compliance with the guidelines by taking quality control measures.**
- **Advise the developer in respect of developments not subject to the Consent Scheme to follow the requirements of LACO for the Consent Scheme to provide sales brochure.**
- **Inform the prospective purchaser whether the estate agency company is acting for the developer and/or purchaser.**
- **Do not issue advertisements without the written consent of the developer and do not issue misleading advertisements.**
- **Before issuance of promotional materials, obtain the developer's express endorsement in writing of the accuracy of the information contained in such materials.**
- **Do not solicit or accept deposits from a prospective purchaser without the developer's authorization.**
- **Provide sales brochures and price lists to prospective purchasers when available, or advise them to obtain the same before they make any purchase decision.**
- **Provide the area of the property and the price per square foot/metre of the "Saleable Area".**
- **Remind prospective purchasers to pay attention to the actual dimensions of the units.**
- **Do not make misleading representations.**
- **Inform prospective purchasers of the details of incentive schemes and set out in writing any promise of incentives.**
- **Do not keep a prospective purchaser's identification documents and/or credit card without his permission.**



- Do not arrange for payment of deposits by using the prospective purchaser's credit card without his written approval.
- Do not make loans to a prospective purchaser.
- Do not make any assurance on mortgage terms.
- Do not publicise sales information without the developer's authorization.

First Sale of Residential Properties (2)

Conduct in promotional activities

The conduct of practitioners in their promotional activities in relation to the first sale of residential properties is a matter of serious concern to the community. This Circular sets out the guidelines of the Estate Agents Authority (EAA) on the subject. These guidelines apply to both the first sale of residential properties which are subject to the Lands Department Consent Scheme (Consent Scheme) and the first sale of residential properties not subject to the Consent Scheme, except for items (13), (18), (20), (25) and (27), which are applicable to the Consent Scheme only.

General

- (1) Practitioners must act in accordance with the principles of fairness, honesty, fidelity, integrity, due care and due diligence; and avoid any practice which may bring discredit/disrepute to the estate agency trade.
- (2) Practitioners must act in accordance with the provisions of the Estate Agents Ordinance and its subsidiary legislation, and the guidelines promulgated by the EAA.
- (3) Practitioners should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market, in order to be in a position to advise their clients in a responsible manner. They should strive to provide services and opinions based on knowledge, training, qualifications, and experience

in the real estate business.

- (4) Estate agency companies must establish proper and effective procedures or systems to ensure compliance by their employees or other persons under their control with the provisions of the Estate Agents Ordinance and its subsidiary legislation, as well as the guidelines promulgated by the EAA. They should give proper training to their staff to ensure that they are equipped with the necessary knowledge and expertise to handle the first sale of residential properties in compliance with the law.

Appointment of a controller

- (5) Each estate agency company must assign an employee who is the holder of an estate agent's licence (individual) ("the controller") to oversee all of its staff deployed to first-sale sites and all matters relating to the conduct in promotional activities in the first sale of residential properties. The estate agency company must provide the name and licence number of the controller to the EAA as soon as possible after the controller has been so assigned.

Pre-sale briefings

- (6) Estate agency companies and/or the controller must, for each development, provide or cause to be provided a pre-sale briefing(s) to staff who will be involved in promotional activities for the sale of units in the development prior to their conducting any such promotional activities.
- (7) The pre-sale briefing(s) must include, but not limited to, information about the development and guidelines given by the EAA regarding the first sale of residential properties contained in this Circular and order at first-sale sites contained in Circular No. 10-02 (CR).
- (8) Estate agency companies and/or the controller must ensure that any staff engaged in promotional activities of the first-sale attend the pre-sale briefing(s), keep proper records of the pre-sale briefing(s),



including attendance records of the staff concerned, and supply such records to the EAA upon request.

Quality Control

- (9) Estate agency companies and/or the controller must ensure that staff involved in promotional activities of the first-sale follow the guidelines given in the pre-sale briefing(s) and conduct promotional activities in compliance with the law and guidelines promulgated by the EAA. They should monitor compliance to deter and detect irregularities in staff conduct and evaluate staff performance by taking reasonable measures, such as conducting customer surveys on customer satisfaction, internal audits, random compliance checks, “mystery customers” reports, etc.

Sales brochures and promotional materials for developments not subject to the Consent Scheme

- (10) Estate agency companies and/or the controller must, in respect of any development not subject to the Consent Scheme, advise the developer in writing to provide a sales brochure with such information as required by the Legal and Advisory And Conveyancing Office (LACO) for the Consent Scheme from time to time and also advise the developer to follow the LACO’s requirements relating to the issuance of promotional materials if the same are to be issued by the developer.

Capacity in which to act

- (11) Practitioners must, at the first opportunity after they have successfully established contact with a prospective purchaser, clearly explain to the prospective purchaser whether their estate agency company acts (i) only for the developer, or (ii) only for the purchaser, or (iii) for both the developer and the purchaser; and (iv) whether their estate agency company may act for both the purchaser and the developer subsequently. Practitioners must inform the prospective purchaser of the above matters in writing and supply a copy of the same to the

prospective purchaser.

- (12) Practitioners must act in an impartial and just manner to all parties involved in the transaction, no matter whether they are acting as agent of the developer and/or purchaser.

Advertisements

- (13) Estate agency companies must note that under the 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 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.
- (14) Estate agency companies must obtain the **written consent** of the developer before they issue any advertisement, poster, bill, brochure, pamphlet or any other form of promotional material in relation to the first sale of residential properties, pursuant to Section 9(2) of the Estate Agents Practice (General Duties and Hong Kong Properties) Regulation, which 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.
- (15) Estate agency companies must note that 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, 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 estate agency company is acting for the developer.
- (16) When preparing promotional materials such as the advertisement, poster, bill, brochure or pamphlet to assist developers to promote a development, estate agency companies must take all reasonable steps to verify the accuracy of the information contained in such materials,

and before issuance, obtain the developer's express endorsement in writing of the accuracy of the particulars, such as the internal layout and efficiency rate of the properties, and communal facilities and features of the development contained therein. (N.B. Promotional materials must clearly state the name of the district where the development is located and the address of the development as may be supplied by the developer.)

- (17) Estate agency companies are specifically reminded not to misrepresent the surroundings of a development in their promotional materials: for example, by drawing green pastures around the development when there are in fact buildings and structures in the nearby area, omitting certain nearby buildings or facilities, or substantially lowering the height of nearby buildings.

Deposits

- (18) Practitioners must note that under the Consent Scheme, no reservation fee, deposit or any other consideration shall be accepted or collected by the grantee (e.g. the developer) or its agent in any form or manner prior to the Lands Department's issue of the consent to sell.
- (19) Practitioners must not solicit or accept any money, whether described as a deposit or not, from a prospective purchaser without the developer's authorization.
- (20) In the case of a first sale of uncompleted residential properties in a development governed by the Consent Scheme, where the consent letter has specified the amount payable as the preliminary deposit as a percentage of the purchase price, and the estate agency company is authorized by the developer to receive the payment of deposits for the developer, the deposits to be collected should be calculated by reference to the same percentage.
- (21) Practitioners are reminded that it is their duty to disclose to the Police and the Customs and Excise Department any property that directly or indirectly represents the proceeds of a crime. Where practitioners

suspect that the payment of deposits involves suspicious money-laundering transactions, they must make a report to the Joint Financial Intelligence Unit in accordance with the Organized and Serious Crimes Ordinance (Cap. 455) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Sales brochures and price lists

- (22) If practitioners have been provided with copies of the sales brochures and price lists by the developer, they must provide them to prospective purchasers without any charge, restrictions or conditions. They must not prepare their own sales brochures or price lists.
- (23) Practitioners must advise prospective purchasers to obtain the sales brochures and price lists made available by the developer at the developer's sales office(s) or website(s) if they themselves have not already provided the same to the prospective purchasers.
- (24) Practitioners must advise prospective purchasers to carefully study the information in the sales brochures and price lists before they make any purchase decision.
- (25) In the first sale of uncompleted residential properties under the Consent Scheme, practitioners must also advise prospective purchasers that the sales brochure contains all information required under the Consent Scheme and that any other promotional materials do not form part of the sales brochure.
- (26) Practitioners must provide to prospective purchasers information concerning the area of the property and the price per square foot or metre of the "Saleable Area" as contained in the price list(s) supplied by the developer.
- (27) In the case of the Consent Scheme, as the sales brochure and price lists have to be in compliance with the guidelines and requirements of the Real Estate Developers Association of Hong Kong and the Lands Department, practitioners should only use the sales brochures and



price lists compiled by the developer in their promotional activities, and should refrain from reproducing such materials, lest there may be mistakes in the reproduction process.

Information in relation to the properties

- (28) When practitioners provide information to prospective purchasers about the property – for example, the location plan, floor plan, fittings and finishes, anticipated completion date, management, and details of the amenities/facilities, environment, future development in the vicinity, and/or terms of sale, they must do so (i) only on the basis of the information contained in the sales brochure and documents provided by the developer, and (ii) only after they have taken all reasonable steps and exercised all due diligence to verify the information. Practitioners must not make any representation that may mislead prospective purchasers.
- (29) Practitioners must remind prospective purchasers/flat viewers to pay attention to the actual dimensions of the units as stated in the sales brochure and not to rely on their perception about the size of the units gathered from their viewing of the show flats.

Incentives

- (30) Practitioners must inform prospective purchasers of the details of any incentive schemes which may be offered to purchasers and state clearly whether the incentives are offered by the developer or their estate agency company.
- (31) Practitioners must set out in writing any promise of incentives, including any gifts, discounts or rebates they have made to prospective purchasers, and stipulate clearly the terms and format of the incentives offered by the developer or their estate agency company.
- (32) Estate agency companies must issue clear guidelines on the offer of incentives to prospective purchasers, maintain close supervision of



their staff to ensure adherence to the guidelines, and establish proper procedures for fulfilling the incentives promised.

Identification documents and/or credit cards

- (33) Unless specifically required by the developer, practitioners must not ask a prospective purchaser/flat viewer to provide his identification documents, such as identity card, passport and/or credit card, whether for the purpose of arranging the viewing of properties, the payment of moneys in relation to the purchase of the properties, or for any other purpose.
- (34) When practitioners ask a prospective purchaser/flat viewer to provide his identification document and/or credit card at the request of the developer, they must state clearly in writing (i) the purposes for which the identification document/credit card will be used, and (ii) that it is the developer's requirement.
- (35) Practitioners must obtain the permission of the prospective purchaser/flat viewer before keeping his identification document for verification of identity when preparing the preliminary agreement for sale and purchase.
- (36) Practitioners must specifically obtain the written approval of the prospective purchaser/flat viewer before any arrangement is made to use the credit card for the payment of deposits or any other moneys.
- (37) Practitioners must promptly return the identification document and/or credit card to the prospective purchaser/flat viewer (i) when such documents are no longer required for the stated purposes for obtaining the same in the first place, or (ii) after the purposes have been fulfilled.
- (38) Practitioners must promptly return the identification document and/or credit card to the prospective purchaser upon demand, irrespective of whether such documents are still required for the stated purposes for obtaining the same in the first place.

Loans

- (39) Practitioners must not offer loans to a prospective purchaser/flat viewer, even when the prospective purchaser/flat viewer states that he does not have sufficient money for the payment of the deposit on the spot.
- (40) Practitioners must not propose to make loans to a prospective purchaser/flat viewer, whether in order to persuade the latter to sign a preliminary agreement for sale and purchase or for any other purpose.
- (41) Practitioners must not make loans to a prospective purchaser/flat viewer, even if the prospective purchaser/flat viewer requests that they do so.

Mortgage plans and financing schemes

- (42) Information about mortgage plans and financing schemes is usually made available at the sales office, so practitioners are not obliged to explain these matters to prospective purchasers. If, however, practitioners take the initiative to explain such plans and schemes, the explanation must be based solely on the information provided by the banks and finance companies, or the developer concerned.
- (43) Practitioners must not make any statement to assure a prospective purchaser that he will successfully obtain a mortgage loan(s) to finance his purchase of the property. They must also make no statement of assurance to a prospective purchaser concerning the terms of the mortgage loan(s). They should advise the prospective purchaser to make enquiries directly with the banks and finance companies, or the developer concerned.

Publication of sales information

- (44) Practitioners must not publicize or release information on sales figures or sales performance, unless they have been expressly so authorized by the developer and taken all reasonable steps to verify

the accuracy of the information.

- (45) In cases where practitioners publicize or release information on sales figures or sales performance, they must (i) specify the time frame of the information, and (ii) provide as far as possible the latest information.
- (46) When informing prospective purchasers that units on a certain floor or in a certain block or of a certain size of a development are all sold out, practitioners must clarify with the prospective purchasers whether all the units on that floor or in that block or of that size are sold out, or whether only the units allotted to their respective estate agencies are sold out.

Practitioners who fail to comply with the above guidelines may be subject to disciplinary action by the EAA.

Practitioners must note that under Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation), the employer and management of an estate agency must establish proper procedures or systems to supervise and manage estate agency work. If a frontline practitioner commits a breach of conduct in respect of the matters abovementioned, the employer and estate agency management, and indeed the controller, may be seen as not having established a proper system to manage their business. They would therefore be in breach of Section 15 of the Practice Regulation.

This Circular supercedes Circular No. 10-03 (CR).

May 2011

Holders of Statements of Particulars of Business
 must bring this Circular to the attention of all staff
 engaged in estate agency work