

Circular

Circular No. 13-03 (CR)

- **Carry out a land search immediately before an agreement for sale and purchase or a tenancy agreement is entered into.**
- **Supply a land search copy to clients before an agreement for sale and purchase or a tenancy agreement is entered into.**

Land Search

Land searches are important documents in property transactions. Despite the fact that a land search may now be conducted at the Land Registry through the internet, the Estate Agents Authority (“EAA”) continues to notice that many licensees fail to carry out land searches and/or provide a copy of them to clients. Licensees are reminded that carrying out a land search is not only a statutory requirement in certain cases but also an essential step in protecting their clients’ interests.

Section 13(4) of the Practice Regulation

- (2) Under section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”), a licensee who acts for the vendor (or landlord) of a residential property is required to, **immediately before** an agreement for sale and purchase (or a tenancy agreement) of the property is entered into, carry out a land search of the property and provide a copy of the land search to the purchaser (or tenant).
- (3) Some licensees are still not fully conversant with the requirements of section 13(4) of the Practice Regulation and often hold the following **misconceptions**:
 - ✘ It is permissible to defer carrying out a land search and

supplying a copy of it to the purchaser (or tenant) until the following day if the provisional agreement for sale and purchase (or provisional tenancy agreement) is entered into late at night.

- ✘ It is not necessary for a licensee acting for the vendor to carry out a land search and supply a copy of it to the purchaser (or tenant) if the purchaser (or tenant) has his own estate agent to act for him in the transaction.
- ✘ It is not necessary to carry out a land search and supply a copy of it to the tenant leasing only a room.

(4) The correct position is that in each of the cases mentioned in paragraph (3) above, the requirements of section 13(4) still apply. Licensees should note the following:

- (a) The requirements are to carry out a land search and supply a copy of it to the purchaser (or tenant) **immediately before** an agreement for sale and purchase (or a tenancy agreement) is entered into. Carrying out the land search and supplying a copy of it only on the following day does not meet this requirement;
- (b) Any explanation that no land search could be carried out because the agreement for sale and purchase (or tenancy agreement) was entered into outside the service hours of the Integrated Registration Information System (“IRIS”) of the Land Registry will not be accepted by the EAA;

[N.B. Since 21 August 2010, the operation hours of IRIS Online Services have been extended to 20 hours a day (including Saturday, Sunday and public holidays) running from 7:30 a.m. to 3:30 a.m. (with last order cut-off at 2:30 a.m.) the next day.]

- (c) The duty of a licensee acting for the vendor (or landlord) to carry out a land search applies irrespective of whether or not the purchaser (or tenant) has his own estate agent acting for him in the transaction. In other words, this duty applies to licensees acting only for the vendor (or landlord) as well as those acting for both the vendor (or landlord) and purchaser (or tenant);
- (d) The duty of a licensee acting for the landlord to carry out a land search and supply a copy of it to the tenant applies to all cases of leasing a residential property, irrespective of whether the property to be leased is only a room in a residential flat. In the latter case, the licensee is required to carry out a land search of the flat in which the room is situated; and
- (e) It is a good practice to have the purchaser (or tenant) to sign a receipt for the land search.

Licensees Acting Only for the Purchaser (or Tenant)

- (5) 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.

Use and Handling of Land Searches

- (6) The purpose¹ for which the information contained in the land records may be used is specified in the land register of the Land Registry. Licensees must not use the information contained in land searches for purposes that are not related to the purposes of the land records. Using personal data of individuals (e.g. personal information of property owners) in land records beyond the specified purpose may breach the Personal Data (Privacy) Ordinance.
- (7) Licensees should also dispose of land searches properly after use. For example, land searches obtained from the Land Registry should not be left in public places after use. When supplying copies of land searches to the parties concerned, licensees should also remind them to handle the land search copies properly, as they may contain personal data, and to dispose of them properly after use.

Licensees who fail to comply with the requirements may breach the Practice Regulation and/or the Code of Ethics and/or the guidelines set out in this Circular, and may be subject to disciplinary action.

This Circular shall take effect on 1 April 2013. Circular No. 11-01 (CR) will be superseded on the same date.

March 2013

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

¹ The land register of the Land Registry contains the following statement: “The land records are kept and made available to members of the public to prevent secret and fraudulent conveyances, and to provide means whereby the titles to real and immovable property may be easily traced and ascertained. The information contained in the land records shall not be used for purposes that are not related to the purposes of the land records. The use of information provided is subject to the provisions in the Personal Data (Privacy) Ordinance”.