



Practice Circular on Conduct and Provision of Property Information in First Sale of Residential Properties

Questions and Answers (Q&As)

Notes:

1. All references to:
 - a. “EAA” shall mean the Estate Agents Authority.
 - b. “SRPA” shall mean the Sales of First-hand Residential Properties Authority.
 - c. “EAO” shall mean the Estate Agents Ordinance.
 - d. “Practice Regulation” shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
 - e. “Ordinance” shall mean the Residential Properties (First-hand Sales) Ordinance.
 - f. “Practice Circular” shall mean Circular No.13-04(CR) issued by the EAA on the conduct in promotional activities and provision of property information for first-hand sales of residential properties.
 - g. “SRPE” shall mean the electronic database established and kept under the Ordinance, and is named the Sales of First-hand Residential Properties Electronic Platform.
 - h. Unless otherwise specified, “property” or “properties” herein shall mean first-hand residential properties.
2. These Q&As are for general reference only. They do not constitute legal or professional advice. You should seek legal or professional advice as and when necessary, especially on the interpretation of legal provisions and specific advice on any individual case. While the EAA has used its best endeavours to ensure the accuracy of the information provided in these Q&As, no statement, representation, warranty or guarantee, express or implied, is given by the EAA as to the accuracy, or completeness of such information, or the appropriateness for its use in any particular circumstances. The EAA will not accept any liability or responsibility whatsoever for any loss or damage caused to any person howsoever arising from any use, misuse of, or reliance on the contents of these Q&As.



Q&As

Q1. Under the Ordinance, there is no provision regulating purchasers expressing their intention to purchase a residential property. As such, how should a licensee acting for the purchaser handle such an expression from his client? Can the licensee receive a cheque from his client prior to the issuance of the price lists? Before the property is offered for sale, can a client appoint a licensee to handle the purchase on his behalf?

Answer: Under the Ordinance, vendors must not seek or accept any general or specific expression of intent to purchase any residential property before the relevant price lists for such properties are made available to the general public; and any specific expression of intent to purchase a particular residential property before the relevant property is offered for sale.

In addition, according to the Practice Circular, licensees (whether they are appointed by the vendor as its sales agent or otherwise) must not solicit or accept any such expression of intent (whether or not accompanied by a payment of money) before the relevant price lists of the properties are made available to the general public or the sale of the property has commenced (as the case may be).

Therefore, no matter whether licensees are appointed by the purchaser to purchase the relevant property or otherwise, they should explain to the purchaser that they must not accept or relay such expression of intent to the vendor if neither the relevant price lists for such properties are made available nor the sale of the property has commenced (as the case may be). Even if the purchaser gives any expression of intent to purchase a residential property (whether or not accompanied by a payment of money), licensees must reject such expression of intent.



Q2. The Ordinance only requires vendors to set out, in the relevant price lists, the incentives they offer. There is no provision on what licensees must do in this aspect. Can licensees provide incentives to clients that are not set out in the price lists and offered by vendors?

Answer: According to the Practice Circular, licensees must inform prospective purchasers of the details of any incentives which may be offered to purchasers and state clearly whether the incentives are offered by the vendor or their estate agency companies.

If incentives are offered by the vendor, under the Ordinance, the vendor must provide information pertaining to the relevant incentives in the relevant price lists. Licensees must furnish the prospective purchasers with information on the vendor's incentives set out in the latest price lists.

If the incentives are offered by estate agency companies, licensees must set out in writing any incentives (including any gifts, discounts or rebates) that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered.

Q3. Can the estate agency company appointed by the vendor cooperate with other estate agency companies to promote the sale? Can the “sub-agent” engage in the promotion of the development?

Answer: In accordance with the Ordinance, if the vendor has appointed an estate agent to act in the sale of any residential property in the development, the price list for the development must set out the name of the estate agent. The Ordinance also requires that if an advertisement in respect of the property is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact.

According to the Practice Regulation and Practice Circular, no advertisement or promotional materials shall be issued by



licensees other than estate agency companies. Estate agency companies must obtain written consent of the vendor before they issue any advertisement or promotional material.

Therefore, depending on the content of the agreement / appointment letter entered into by the vendor and its appointed estate agency companies for the above purpose, estate agency companies appointed by the vendor may need to obtain the vendor's approval before sub-listing. The "sub-agent" must also acquire the consent of the vendor and its appointed estate agency company prior to the issuance of any advertisement and the advertisement must state that fact in accordance with the Ordinance.

Q4. That said, if the name of a sales agent has been set out in the price list, can that price list be considered as proof that the estate agency company has been appointed by the vendor?

Answer: The Ordinance stipulates that the names of estate agents appointed by the vendor to act in sale of any residential property must be set out in the price list. However, in order to avoid any potential disputes, licensees should state clearly in writing their relationship with the vendor. The Practice Circular also stipulates that, to avoid any misunderstanding on the scope of work to be undertaken by licensees as sales agents of the vendor, estate agency companies appointed by the vendor should set out their duties as sales agents clearly in the appointment letter issued by the vendor or the agreement entered into by the parties for the purpose.

Q5. In the course of property sales, can licensees show or quote the relevant sales information reported by the media to purchasers, such as the number of transactions and amount?

Answer: Under the Ordinance, a vendor must make available free of charge to the general public a register containing information of



the transactions for a development. That register must be uploaded to the SRPE as well.

Therefore, if licensees provide transaction information, sales figures or sales performance of a development, they must provide the same based on the information from the register only and specify the time frame of the information. Licensees must not quote or provide, to prospective purchasers, any other sales information of a property which is not from the register.

Q6. Will estate agents receive double penalties if they breach both the Ordinance and the relevant guidelines of the Practice Circular? Will the penalties be executed at the same time?

Answer: The EAA is responsible for the implementation of the EAO, whereas SRPA enforces the Ordinance. The EAO and the Ordinance are two different pieces of legislation. EAA and SRPA can, under the respective enabling ordinances, investigate non-compliant cases and exercise their respective powers against any person in contravention of the relevant ordinance. As the two organizations are independent from each other, the EAA cannot comment on whether the penalties to be imposed by EAA and SRPA would be executed simultaneously.

Q7. Does the Ordinance apply to first-hand developments which sales have commenced before the Ordinance takes effect and are still available for sale?

Answer: Most of the provisions under the Ordinance aim to regulate a particular property rather than an entire or a phase of a development. In general, unless exempted from the Ordinance, the Ordinance applies to any residential property in respect of which no preliminary agreement for sale and purchase or an agreement for sale and purchase has been entered into; and no assignment has ever been made. Licensees may refer to Section 10 of the Ordinance for details of the application of the Ordinance.



Q8. If the vendor notifies estate agents verbally regarding the amendments made to the sales brochures before revising the brochures and notifying the SRPA of the relevant amendment in writing, can estate agents disclose such amendments to purchasers in advance?

Answer: Licensees must ensure that copies of the sales brochures and price lists they provide to prospective purchasers are the latest versions. The latest sales brochure and price lists are available on the website designated by the vendor, as well as the SRPE.

When licensees provide information to prospective purchasers, they must do so only on the basis of the latest information contained in the sales brochures and documents prepared and provided by the vendor, and only after they have taken all reasonable steps and exercised all due diligence to verify the information.

Q9. The Ordinance has different requirements for the font size of words appearing in advertisements of different sizes. If an advertisement is merged with other promotional materials (for example, a poster pasted on a larger board), how should the font size be determined?

Answer: According to the Practice Circular, estate agency companies must ensure that all the relevant promotional materials comply with the requirements of the Ordinance when they prepare materials to promote a development.

Section 73 of the Ordinance stipulates different requirements for the font size of the prescribed statement appearing in advertisements of different sizes. In the frequently asked questions provided by SRPA to stakeholders, there is further explanation on how to define the size of an advertisement so as to meet the relevant requirements of the Ordinance. Licensees should note that an amalgamation of an advertisement with another promotional material may become a new advertisement or promotional material. If there is a change in the



advertisement's size, the font size of the prescribed statement shown in the advertisement has to be correspondingly adjusted in order to comply with the relevant requirements of the Ordinance.

Q10. Can the pre-sale briefings be held in the form of videotaping or recording? Can the briefings on the sales of first-hand residential properties held by the vendor for estate agents be considered as a part of the pre-sale briefings?

Answer: There is no stipulation in the Practice Circular regarding the format of pre-sale briefings. However, the Practice Circular stipulates that estate agency companies and/or controllers must, for each development, provide a pre-sale briefing(s) to staff to be involved in promotional activities for the development prior to their conducting any such activities. The pre-sale briefing(s) must include information about the development and guidelines set out in the Practice Circular and other circulars related to the sales of first-hand residential properties as may be issued by the EAA from time to time. Estate agency companies and/or controllers must ensure that their staff attend the pre-sale briefing(s), and keep proper records of the briefing(s).

The EAA takes the view that estate agency companies should make proper arrangements and to ensure that their staff attend the pre-sale briefing(s) **in person** and have basic understanding of the information about the development. At the pre-sale briefings, there should be opportunities for the attending agents to demonstrate their understanding and raise any questions on the sale, including information about the development as contained in the sales brochures and / or any relevant information provided by the developer; regulations under the Ordinance; and the EAA's guidelines. Staff who have only watched the videotape or listened to the recording of the briefing will not be regarded as having attended the briefing. Besides, such arrangements do not comply with the requirements of attending the briefing(s) as stated in the Practice Circular.



Q11. Can licensees receive cheques from their clients after the price list of first-hand residential properties has been issued but before the sale commences, after being notified by the vendor? If prospective purchasers express their intent to purchase any units or any units of a particular floor set out in the price list, will it be regarded as a specific expression of intent?

Answer: Under the Ordinance, vendors must not seek or accept: (a) any general expression of intent to purchase any residential property before the relevant price lists for such properties are made available to the general public, including general expression of intent or specific expression of intent; and (b) any specific expression of intent to purchase a particular residential property before the property is offered for sale. In other words, vendors can only seek or accept general expression of intent to purchase any residential property after the relevant price lists for such properties are made available to the general public and before the first day when the property is offered for sale.

As such, the Practice Circular requires licensees (whether they are appointed by the vendor as its sales agent or otherwise) must not solicit or accept any such expression of intent (whether or not accompanied by a payment of money) before the relevant price lists of the properties are made available to the general public or the sale of the property has commenced.

According to the SRPA, general expression of intent, in relation to specified residential properties, means an expression of intent to purchase any of the specified residential properties set out in the price list which has been made available to the general public.

Q12. That said, after the vendor issues the first price list, can estate agents accept their clients' express of intent to purchase the units that have not been set out in the price list?

Answer: As aforementioned, according to the Ordinance, the vendor



must not seek or accept any general expression of intent to purchase any residential property before the relevant price lists for such properties are made available to the general public. Therefore, licensees must not solicit or accept any such expression of intent to purchase any other properties which have not been set out in the relevant price list from prospective purchasers.

Q13. Under the Ordinance, licensees must not receive cheques for clients before the issuance of price list/the sales commences. However, if estate agency companies request their staff to receive their clients' cheque as a deposit, so as to facilitate the company to obtain properties from the vendor, will the concerned licensee be legally liable?

Answer: The Practice Circular requires that licensees (whether they are appointed by the vendor as its sales agent or otherwise) must not solicit or accept any such expression of intent (whether or not accompanied by a payment of money) before the relevant price lists of the properties are made available to the general public or the sale of the property has commenced (as the case may be). (Please refer to Q11 for details). Therefore, both the estate agency companies and their staff must not solicit or accept any such expression of intent before the relevant price lists of the properties are made available to the general public or the sale of the property has commenced (as the case may be). Estate agency companies should not request their staff to do so either. Otherwise, both of them may breach the requirements under the Ordinance. Licensees may also be disciplined by the EAA for failing to comply with the guidelines set out in the Practice Circular.

Q14. Should the selling price of the first-hand residential properties directly sold by the vendor be the same as that sold through estate agents?

Answer: Under the Ordinance, the vendor may only sell, or offer to sell, the specified residential properties at the prices set out in the



price list (including the revised price list). According to the Practice Circular, licensees should provide the property information to prospective purchasers on the basis of the latest information contained in the sales brochure and price list. Hence, no matter the property is sold directly by the vendor or through estate agents, the price of the property to be sold or offered for sale must be based on the price shown in the price list.

Q15. After the issuance of price list, if the clients request estate agents to ask for a price reduction from the vendor, can the estate agents express such request to the vendor?

Answer: Under the Ordinance, the price list of the first-hand residential properties must, among other things, set out (a) payment terms, (b) basis of any available discount, and (c) any gift, financial advantage or benefit in connection with a property purchase.

Under the Ordinance, the vendor may only sell, or offer to sell, the first-hand residential properties at price in the price list or the revised price list.

There is no provision in the Ordinance prohibiting the purchasers to negotiate prices with the vendor on or after the first day on which the specified residential properties are offered to be sold.

However, as the price of a first-hand residential property has been set out in a price list, any change to that price must be reflected in the price list revised by the vendor. Moreover, in order to sell or offer to sell the relevant properties, the vendor must, in accordance with the requirements of the Ordinance, make available the revised price lists to the general public (at least three days immediately before the date of sale and on the day of sale). The vendor must also consider whether the method used to determine the order of priority of sale of the residential property concerned, as stated in the previous sales arrangement documents, is still applicable to the sale of the property at the revised price to the person who has negotiated



the price of it with the vendor. If the previously used method to determine the order of priority of sales arrangement is no longer applicable, the vendor must make proper amendments to the sales arrangements regarding the method to be used to determine the priority of sale. The vendor must also make available the revised arrangements to the general public (at least three days immediately before the date of sale and on the day of sale).

In light of the requirement of information transparency under the Ordinance, the price list provided by the vendor, among other things, usually sets out a series of feasible payment terms, discount and any gift, financial advantage or benefit in connection with a property purchase. The SRPA opines that licensees should not take the initiative to tell the prospective purchasers that they can negotiate prices with the vendor, because the vendor may not be willing to negotiate prices. By doing so licensees may cause the prospective purchasers mistakenly think that they will be able to negotiate the prices with the vendor. In case of failure in negotiation, the prospective purchasers may complain against the licensees for making misrepresentation or dissemination of false or misleading information.

Q16. As the sales information on the SRPE will not be updated immediately, if licensees provide sales information of a property based on the record uploaded at the Register of Transactions of the SRPE and arrange for the prospective purchaser to purchase a specified unit, will the licensee concerned be regarded as having breached the regulations if he is informed by the vendor later that the unit has been already sold?

Answer: Under the Practice Circular, when licensees provide transaction information, sales figures or sales performance of a development, they must (a) provide the same based on the information from the Register of Transactions, and (b) specify the time frame of the information. Therefore, licensees will not breach the regulations when they follow the above



requirements to provide the latest information from the Register of Transactions, and explain clearly to clients.

Under the Ordinance, the vendor must, within 24 hours after the owner has entered into a preliminary agreement, provide the information of that agreement in the Register of Transactions for the development. According to the SRPA, the vendor should upload the transaction information onto the Register of Transactions as soon as the preliminary agreement is entered into.

Q17. When both first-hand units and second-hand units are available for sale in the same residential development, can licensees use the old version of sales brochure and promotional materials to carry out promotional activities for the second-hand units?

Answer: When handling the sales of first-hand residential properties under the Ordinance, licensees must comply with the Ordinance and guidelines set out in the Practice Circular. When licensees provide the relevant property information to prospective purchasers, they must provide the information from the sales brochures and documents prepared by the vendor.

When handling the sales of second-hand residential properties in the same development of the first-hand residential properties, licensees must follow the Practice Regulation and the Practice Circular (No.12-02(CR)) issued by the EAA on the provision of floor area information for second-hand residential properties.

Moreover, information contained in the old version of sales brochures and promotional materials may be no longer accurate. Therefore, to avoid misleading the prospective purchasers, licensees should not use such information when they carry out promotional activities for the second-hand properties.



Q18. If prospective purchasers want to know about the gross floor area of a first-hand residential property, can licensees provide the “efficiency rate” of that property to their clients for them to calculate the gross floor area?

Answer: Under the Ordinance, only saleable area shall be used as the basis for quoting the floor area and unit price of any first-hand residential property in sales brochures, price lists and advertisements. Therefore, licensees must not use any basis other than the saleable area of the property for quoting the floor area and/or unit price of the property.

Since saleable area is the only benchmark, there is no such “efficiency rate” or any other floor area information which is calculated on the basis of gross floor area. Licensees should not provide such information to their clients in order to avoid any misunderstanding or making any misleading representations, and thus breaching the Ordinance.

Q19. Can licensees prepare and issue their own advertisements or promotional materials to assist vendors to promote a development?

Answer: Under the Practice Circular, no advertisement or promotional materials shall be issued by licensees other than estate agency companies. Estate agency companies must obtain the vendor’s written consent before they issue any advertisement or promotional materials.

Moreover, when preparing promotional materials to assist vendors 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 vendor’s express endorsement in writing of the accuracy and completeness of the particulars contained therein, and ensure that the relevant requirements in the Ordinance are complied with.

Please refer to paragraphs 37 and 38 of the Practice Circular.



Q20. Referring to paragraph 38 of the Practice Circular, is it necessary for an estate agency company to obtain the vendor’s express endorsement in writing of the accuracy and completeness of the particulars contained in each version of the advertisement or promotional material prepared by the estate agency company?

Answer: Yes.

The estate agency company is required to obtain the vendor’s express endorsement in writing of the accuracy and completeness of the particulars contained in each version of the advertisement or promotional material prepared by the estate agency company concerned before such advertisement or promotional material is issued.

In this regard, the estate agency company should be able to, upon the EAA’s request, produce evidence to show that the vendor has endorsed the accuracy and completeness of the particulars contained in the advertisement or promotional material prepared by the estate agency company. An example of such evidence includes production of the relevant advertisement or promotional material with a stamp of the vendor having words “Contents Approved on [Date] by [Name of vendor]” (or words to such effect) appended thereon.

Q21. Can estate agency companies extract information from the sales brochures, price lists or register of transactions prepared by the vendors etc. for preparing their own materials for internal use (e.g. staff training), and for this purpose, words “for internal use only” or “for internal training only” would be marked on the materials to signify that they are not meant to be promotional materials for distribution to purchasers?

Answer: The Practice Circular does not prohibit estate agency companies from preparing their own materials for internal use only. However, apart from marking the words “for internal use



only” (or words to such effect) on the relevant materials, estate agency companies should also take proper steps to ensure that these materials, which are not meant to be promotional materials for the first-sale of residential properties, would not be released to outsiders by their staff.

In this regard, estate agency companies should issue clear guidelines to their staff regarding the requirement of the company that materials given to them for internal use only must not be released to outsiders, otherwise they could be regarded as promotional materials in which case all such materials would require the vendor’s express endorsement in writing of the accuracy and completeness of the particulars contained therein before issuance. They should also set up a monitoring system (e.g. conducting random compliance checks) to ensure staff compliance; and put in place sanctioning measures to sanction non-compliant staff etc.

Licensees should note that if any of these materials contained information which is not correct and were released to outsiders, such as prospective purchasers, the licensee who provides such materials to the outsider may be liable for misrepresentation, and dissemination of false or misleading information etc. under the Ordinance, and the licensee concerned may also be disciplined by the EAA.

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