

Circular

Circular No. 13-04 (CR)

Guidelines on conduct and provision of property information in first sale of residential properties (with the relevant paragraph numbers in brackets):

(A) Agency Management

- Appointment of Controller (2–3)
 - Appoint a controller to oversee all matters.
 - Ensure that the number of staff deployed to sales sites is manageable.
- Pre-sale Briefings (4–7)
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(B) Provision of Information to Prospective Purchaser

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- Saleable Area (12–13)
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- Sales Brochures, Price Lists and Sales Arrangements (14–25)
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 - Do not seek or accept any expression of intent before the relevant price list is made available or the sale of the property has commenced.

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 - Do not make misleading representations.
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 - Inform prospective purchasers of the details of incentive schemes and set out any offer of incentives in writing.
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- (C) Advertisements (35–41)
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 - Obtain the vendor’s express endorsement in writing of the accuracy of information contained in promotional materials and ensure compliance of the relevant requirements in the Residential Properties (First-hand Sales) Ordinance (Ordinance).
 - Publication of Transaction Information (42–44)
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 - Do not keep a prospective purchaser’s identification document and/or credit card without his permission.
 - Do not arrange for payment of deposits by using a prospective purchaser’s credit card without his written approval.
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 - Do not solicit or accept deposits from a prospective purchaser without the vendor’s authorization.
 - Prohibition of Loans from Licensees (55)
 - Do not make loans to a prospective purchaser.

First Sale of Residential Properties
Conduct in Promotional Activities and Provision of Property
Information

This circular sets out guidelines on the conduct of promotional activities and the provision of property information for the first sale of residential properties, and shall take effect on 29 April 2013. The guidelines are issued in light of the requirements under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“Ordinance”). Certain key provisions of the Ordinance pertaining to the estate agency practice are summarized in the **Annex**. Circulars Nos. 10-04 (CR) and 11-02 (CR), respectively issued in May 2010 and 2011, are hereby superseded.

(A) Agency Management

Appointment of a Controller

- (2) Each estate agency company¹ must appoint a controller to oversee its staff deployed to first-sale sites and their conduct in promotional activities. The controller must be a holder of an estate agent’s licence (individual). The estate agency company must provide the name, licence number and contact details of the controller to the Estate Agents Authority (“EAA”) as soon as possible after the appointment.
- (3) Estate agency companies and/or controllers must ensure that the number of staff deployed to sales sites is commensurate with their ability to effectively manage the staff so deployed.

¹ The term “estate agency company” or “estate agency companies” refers to those firms or companies which are licensed estate agents under the Estate Agents Ordinance.

Pre-sale Briefings²

- (4) Estate agency companies and/or controllers must, for each development, provide or cause to be provided a pre-sale briefing(s) to staff to be involved in promotional activities for the development prior to their conducting any such activities.
- (5) The pre-sale briefing(s) must include information about the development³ and guidelines set out in this and other related circulars as may be issued by the EAA from time to time. Estate agency companies and/or controllers must take all reasonable steps to ensure that their staff is familiar with the information and all relevant guidelines.
- (6) Estate agency companies and/or controllers must ensure that their staff attend the pre-sale briefing(s), keep proper records of the briefing(s) including the dates and time the briefings are held, the contents of the briefings and attendance records of the staff concerned, and supply such records to the EAA upon request.
- (7) Only licensees who have attended such pre-sale briefing(s) may engage themselves in promotional activities for the development.

Quality Control

- (8) Estate agency companies and/or controllers must ensure that their staff follow the guidelines and instructions given in the pre-sale briefing(s) and conduct promotional activities in compliance with the relevant law and the guidelines. They should monitor compliance to deter irregularities in staff conduct by such measures as conducting surveys on customer satisfaction, internal audits, random compliance checks and “mystery customers” reports.

² For the avoidance of doubt, the requirements on pre-sale briefings set out in paragraphs (4) to (6) apply to those estate agency companies which conduct promotional activities for the vendor for the first sale of residential properties.

³ Information about the development includes, but is not limited to, the latest version of the following: sales brochures, price lists, sales arrangements and transaction information in the Register (see the relevant paragraphs in this circular).

(B) Provision of Information to Prospective Purchaser

Capacity to Act

- (9) Licensees must, at the first opportunity after they have successfully established contact with a prospective purchaser⁴, clearly explain to the prospective purchaser whether their estate agency company acts: (a) only for the vendor; or (b) only for the purchaser; or (c) for both the vendor and the purchaser; and (d) whether their estate agency company may act for both the purchaser and the vendor subsequently. Licensees must inform the prospective purchaser of the above matters in writing and supply a copy of the same to the prospective purchaser.
- (10) Licensees must act in an impartial and just manner to all parties involved in a transaction regardless of their capacity.
- (11) 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.

Saleable Area

- (12) Under the Ordinance, the term “saleable area” in brief means the floor area of a residential property enclosed by walls and includes the floor area of any balcony, utility platform and verandah but excludes the area of any air-conditioning plant room, bay window, cockloft, flat roof, garden, parking space, roof, stairhood, terrace and yard to the extent that it forms part of the property.
- (13) Under the Ordinance, saleable area will be the only basis that can be used to provide information on floor areas and unit prices in sales brochures, price lists and advertisements. Licensees must

⁴ A prospective purchaser includes a flat viewer for the purpose of this circular.

therefore not provide information concerning floor area and price per square foot or metre other than by reference to the saleable area of the property.

Sales Brochures & Price Lists

- (14) If there is a sale of any residential property in a development, the vendor must prepare and make available to the general public free of charge a publication about the development entitled “Sales Brochure” (which must be bilingual) and a price list in accordance with the relevant requirements of the Ordinance.
- (15) Under the Ordinance, no person except the vendor shall make available to the general public copies of any publication for the development that is entitled “Sales Brochure”.
- (16) Licensees must advise prospective purchasers that, under the Ordinance, the sales brochure prepared by the vendor must contain all information required under the Ordinance and that any other promotional materials do not form part of the sales brochure.
- (17) Licensees should note that under the Ordinance, vendors must make available: (a) the bilingual sales brochures to the general public and also on the website designated by the vendor for the development (“designated website”) at least seven days immediately before the date of sale; and (b) the price lists to the general public and also on the designated website at least three days immediately before the date of sale.
- (18) Sales brochures and price lists are also available on the electronic database under the Sales of First-hand Residential Properties Electronic Platform (“SRPE”) established by the Sales of First-hand Residential Properties Authority (“SRPA”).
- (19) If licensees have been provided with copies of the sales brochures and/or price lists by the vendor, they must provide them to

prospective purchasers without any charge, restrictions or conditions.

- (20) A sales brochure made available to the general public must be printed, examined or revised by the vendor within the previous three months. Licensees must ensure that copies of the sales brochures and price lists they provide to prospective purchasers are the latest version.
- (21) Licensees must advise prospective purchasers to obtain and read the sales brochures and price lists which should be made available at the vendor's sales office(s), the designated website or the SRPE if they have not collected the same from the vendor and provided them to the prospective purchasers.
- (22) Licensees must also advise prospective purchasers to refer to the "Note to Purchasers of First-hand Residential Properties" ("Note") before they make a purchase decision. The Note may be downloaded from the website of the SRPA.

Sales Arrangements

- (23) Under the Ordinance, vendors are required to make available free of charge to the general public certain key information on sales arrangements at least three days before a date of sale. The key information includes the date and time for the sale, the sales venue, the number of units offered for sale and the method to be used to determine the order of priority of purchases etc. The information must be in the form of a document available at the sale site for collection and also available at the designated website for inspection. Licensees should either provide to prospective purchasers a copy of the said document or advise them to obtain it directly from the vendor or inspect it at the designated website.
- (24) Unless appointed by the vendor as the sole sales agent for the development, licensees must inform prospective purchasers that

other sales agents have also been appointed by the vendor and allotted with different flats, and their names are, as required by the Ordinance, set out in the price list.

- (25) 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; and (b) any specific expression of intent to purchase a particular residential property before the property is offered for sale. 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).

Property Information

- (26) Licensees must advise prospective purchasers to consult the latest version of the sales brochures, price lists, sales arrangements and the Register⁵ (as the information therein may be revised/updated by the vendor), the (draft) deed of mutual covenant and Government Lease before they enter into any agreement for sale and purchase.
- (27) When licensees provide information⁶ to prospective purchasers, they must do so: (a) only on the basis of the latest information contained in the sales brochure and documents prepared and provided by the vendor; and (b) only after they have taken all reasonable steps and exercised all due diligence to verify the information.
- (28) Licensees must remind prospective purchasers to pay attention to the dimensions of the units as stated in the sales brochure, and not

⁵ More about the Register is set out in paragraph (42).

⁶ Which may include, 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 etc.

to rely on their perception on the size of the units formed from the viewing of show flats. They must also inform prospective purchasers that they may take measurements of show flats.

- (29) Licensees must not make any representation that may mislead prospective purchasers. Under the Ordinance, a person who makes a fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to purchase any residential property commits an offence⁷.

Mortgage Plans and Financing Schemes

- (30) Licensees are not obliged to explain information about mortgage plans and financing schemes to prospective purchasers. If, however, licensees take the initiative to do so, the explanation must be based solely on the information provided by the banks and finance companies, or the vendor concerned.
- (31) Licensees must not make any statement to assure prospective purchasers that they will successfully obtain a mortgage loan or the desired terms to finance their purchase. They should advise prospective purchasers to make enquiries directly with the banks and finance companies, or the vendor concerned.

Incentives

- (32) 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. They must also advise prospective purchasers to consult the price list for information on any gift, or financial advantage or benefit offered by the vendor which, under the Ordinance, must be set out by the vendor in the price list.

⁷ A person also commits an offence if he disseminates, or authorizes, or is concerned in the dissemination of, information that is likely to induce another person to purchase any residential property and if the information is false or misleading as to a material fact or through the omission of a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact or through the omission of the material fact.

- (33) 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.
- (34) Estate agency companies must issue clear guidelines on their offer of incentives to prospective purchasers, maintain close supervision of their staff to ensure adherence to the guidelines, and establish proper procedures to fulfill the incentives offered.

(C) Advertisements⁸

Properties under the Consent Scheme

- (35) Licensees 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 all conditions pertaining to such permission have been fully complied with, no publicising or advertising shall be launched prior to the Lands Department's issue of consent to sell. If the permission is given, any such promotional publicity or advertisement must specify that the consent to sell has not yet been obtained.

Vendor's Consent and Verifying Information

- (36) The Ordinance requires that if an advertisement is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact.
- (37) No advertisement or promotional material shall be issued by licensees other than estate agency companies. Estate agency companies must obtain written consent of the vendor before they

⁸ The word "advertisement" is not defined in the Ordinance. Section 69 of the Ordinance stipulates that Part 3 of the Ordinance applies to an advertisement purporting to promote the sale of any specified residential property (as defined the Ordinance).

issue any advertisement or promotional material⁹.

- (38) When preparing materials¹⁰ 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.
- (39) Under the Ordinance, an advertisement must not give information on the size or unit price other than by reference to the saleable area of the property.
- (40) Estate agency companies are specifically reminded not to misrepresent the surroundings of a development¹¹. An advertisement containing a picture, image, drawing or sketch showing an artist's impression of the development or its surrounding area must contain a statement specified in section 74 of the Ordinance.
- (41) Estate agency companies shall not cause or permit to be advertised a residential property in respect of which he is acting as such agent at a price or on terms different from that instructed by the client concerned¹².

⁹ As per section 9(2) of the Estate Agents Practice (General Duties and Hong Kong Properties) Regulation, it should be noted that so long as the advertisement refers to a recognizable development and suggests in any way or gives the impression that the development is for sale, section 9(2) shall also apply, even though the vendor's name is not expressly quoted in the advertisement or it is not suggested in the advertisement that the estate agent is acting for the vendor.

¹⁰ Such materials may be regarded as advertisements under the Ordinance and will have to comply with the relevant requirements of the Ordinance.

¹¹ The following may be regarded as misrepresentation: 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.

¹² As per section 9(3) of the Estate Agents Practice (General Duties and Hong Kong Properties) Regulation. Also, under section 35 of the Ordinance, a vendor may only sell, or offer to sell, a specified residential property at the price of that property as set out in the price list copies of which have been made available to the general public in accordance with sections 32(1), (2) and (3) of the Ordinance, or that price as last revised under section 29(4) of the Ordinance and have been made available to the general public in accordance with sections 32(1), (2) and (3) of the Ordinance.

Publication of Transaction Information

- (42) Under the Ordinance, vendors must make available¹³ free of charge to the general public a register (“Register”) containing information of the transactions for a development.
- (43) If 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 only; and (b) specify the time frame of the information.
- (44) When informing prospective purchasers, by whatever means, that units on a certain floor or in a certain block or of a certain size of a development are all sold out, licensees must, after verifying the accuracy of such information from the Register, also state 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.

(D) Payment-related Matters

Identification Documents and/or Credit Cards

- (45) Unless specifically required by the vendor, licensees must not ask a prospective purchaser to provide identification documents (e.g. identity cards, passports) and/or credit cards, whether for the purpose of arranging viewing, the payment of moneys in relation to a purchase, or for any other purpose.
- (46) When licensees ask a prospective purchaser to provide an identification document and/or a credit card at the request of the vendor, they must state clearly in writing: (a) the purposes for which the identification document/credit card will be used; and (b) that it is the vendor’s requirement.

¹³ The Ordinance requires that the Register be made available at the sale site, the designated website and the SRPE.

- (47) Licensees must obtain permission from the prospective purchaser before keeping his identification document and/or credit card for the stated purposes.
- (48) Licensees must specifically obtain the written approval of the prospective purchaser before any arrangement is made to use the credit card for the payment of deposits or any other moneys.
- (49) Licensees must promptly return the identification document and/or credit card to the prospective purchaser: (a) when the document and/or the card is no longer required for the stated purposes; or (b) after the purposes have been fulfilled.
- (50) Licensees must promptly return the identification document and/or credit card to the prospective purchaser upon demand, irrespective of whether the document and/or the card is still required for the stated purposes.

Deposit on Entering into Preliminary Agreement

- (51) Under the Consent Scheme, no reservation fee, deposit or any other consideration shall be accepted or collected by the grantee or its agent in any form or manner prior to the Lands Department's issue of consent to sell. In any event, the grantee shall comply with the Ordinance governing any expression of intent (with or without payment of money) to purchase any of the specified residential properties from any person.
- (52) Under the Ordinance, a preliminary deposit of 5% of the purchase price is payable by a purchaser on entering into a preliminary agreement for sale and purchase ("PASP"). Licensees must not solicit or accept any money, whether described as a deposit or not, from a prospective purchaser without the vendor's authorization. Where licensees are authorized by the vendor to receive a preliminary deposit on its behalf, the amount of deposit to be collected must be equivalent to the rate specified in the Ordinance only.

- (53) Licensees should remind prospective purchasers that if they do not execute the Agreement for Sale and Purchase within five working days after entering into the PASP, the PASP will be terminated and the preliminary deposit (i.e. 5% of the purchase price) will be forfeited.
- (54) Licensees have a duty to: (a) disclose to the Police and the Customs and Excise Department any property that directly or indirectly represents the proceeds of a crime; and (b) report to the Joint Financial Intelligence Unit on the payment of deposits suspected to be money-laundering transactions¹⁴.

Prohibition of Loans from Licensees

- (55) Licensees must not offer or make loans to a prospective purchaser, even if the prospective purchaser states that he does not have sufficient money for the payment of the deposit on the spot, whether in order to persuade a prospective purchaser to sign a PASP, or for any other purpose, and even if a prospective purchaser requests licensees to do so.

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Licensees who fail to comply with the above guidelines or the relevant law may be disciplined by the EAA. Estate agency companies, their management and the controller may also be disciplined for failing to establish a proper system to manage their business¹⁵.

April 2013

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

¹⁴ In accordance with the Organized and Serious Crimes Ordinance (Cap. 455) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

¹⁵ As per section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

**Summary of certain key provisions of the Residential Properties
(First-hand Sales) Ordinance pertaining to the estate agency practice**

Sales Brochure

- Vendors must make public the bilingual sales brochure¹ during a period of at least seven days immediately before the sale commences.
- Sales brochure must be printed, examined or revised by the vendors within the previous three months.

Price List

- Vendors must make public the price list during a period of at least three days immediately before the sale commences.
- The price list must, among other things, set out payment terms, basis of any available discount and any gift, financial advantage or benefit in connection with a property purchase.
- The name(s) of estate agent(s) appointed by the vendor to act in the sale of any residential property in the development must be set out in the price list.

Saleable Area

- Only saleable area shall be used as the basis for quoting the floor area and unit price of any residential property in sales brochures, price lists and advertisements².

¹ Any other person (except the vendor) who prepares, for the purpose of making it available to the general public, any publication for a development that is entitled “Sales Brochure” commits an offence and is liable to a fine of \$1,000,000. (Section 16)

² A person who publishes an advertisement or causing an advertisement to be published, in contravention of the requirement that it must not give information on the size or unit price other than by reference to the saleable area of the property commits an offence and is liable to a fine of \$500,000. (Section 71(6))

Sales Arrangements

- Vendors must make public during a period of at least three days immediately before the sale commences certain key information relating to logistics arrangements such as the date and time for the sale, the sales venue(s), the number of units offered for sale and the method to be used to determine the order of priority of purchases.
- Vendors must not seek or accept any general expression of intent to purchase any residential property before the issuance of the price list.
- Vendors must not seek or accept any specific expression of intent to purchase a particular residential property before the property is offered for sale.

Preliminary Agreement and Agreement

- A preliminary deposit of 5% of the purchase price is payable by the purchaser on entering into the Preliminary Agreement for Sale and Purchase (“PASP”).
- The Agreement for Sale and Purchase (“ASP”) must be executed by the purchaser within five working days after entering into the PASP.
- The 5% preliminary deposit will be forfeited if the purchaser does not execute the ASP.

Disclosure of Transaction Information

- Vendors must make public a register of transaction for the transaction information relating to the development on the date the sale commences.

Advertisements

- Advertisements must not contain false or misleading information.
- If an advertisement is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact³.

³ A person who publishes the advertisements or causes the advertisement to be published in contravention of this requirement commits an offence and is liable to a fine at level 6 (i.e.\$100,000). (Section 71(5))

Misrepresentation and Dissemination of False or Misleading Information

- A person who makes a fraudulent misrepresentation or a reckless misrepresentation for the purpose of inducing another person to purchase any residential property commits an offence⁴.
- A person also commits an offence if he disseminates, or authorizes, or is concerned in the dissemination of, information that is likely to induce another person to purchase any residential property and if the information is false or misleading as to a material fact or through the omission of a material fact, and the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact⁵.

Electronic Database on First-hand Residential Properties

- Information on the sales of first-hand residential developments provided by vendors (i.e., the sales brochures, price lists and transaction information); and general information and statistics on the residential property market is available on the electronic database (i.e. the “Sales of First-hand Residential Properties Electronic Platform”) established and maintained by the Sales of First-hand Residential Properties Authority (“SRPA”) or any person whom the SRPA thinks fit.

Attention: Licensees should note that the information contained in this Annex only contains a summary of some key provisions of the Ordinance pertaining to the estate agency practice and is not meant to be exhaustive. Licensees are advised to read the full text of the Ordinance, which is available at <http://www.legislation.gov.hk> for a better understanding of the provisions which may be relevant to and are required to be observed or complied with in their practice.

⁴ The maximum penalties for a person who commits this offence are a fine of \$5,000,000 and imprisonment for 7 years. (Section 76(2))

⁵ The maximum penalties for a person who commits this offence are a fine of \$5,000,000 and imprisonment for 7 years. (Section 78(2))