

## December 2018 e-Quiz

*Notes to candidates:*

1. *Most of the contents of this e-quiz are adopted from December 2016 e-Quiz.*
2. *Please read the scenario before attempting the questions. The subject matter and names of parties are fictitious.*
3. *Clause 5.3 of the CPD Guidelines provides that, for the purpose of the award of the Certificate of Attainment, the following limitation applies in calculating CPD points: To encourage practitioners to diversify their modes of learning, certain modes may be capped. For example, the cap for EAA e-Quiz is four CPD points per a 12-month CPD period. Therefore, even if a participant completes more than four e-Quizzes (one CPD point each) during a 12-month CPD period, only four CPD points can be earned.*

**Pass Mark: You will have 10 questions in this e-quiz. You will earn one CPD point if you can score not less than 5 correct answers.**

**Remarks:** In the following questions, the following words have the following corresponding meanings:

“the Authority” means the Estate Agents Authority;

“the Ordinance” means the Estate Agents Ordinance;

“the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;

“the Licensing Regulation” means the Estate Agents (Licensing) Regulation;

“the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and

“the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

### Case Scenario No.1 (Questions No.1-5)

**In the year of 2018**

Mr Chan (“Chan”) owns a residential flat (“Property A”). He telephones his estate agent Alan on 15 September to list Property A for sale and asks Alan to recommend a list price. Alan tells him that Property B five floors below was sold for \$8.9 million three months ago. Alan tells Chan that he thinks the market has slowed down, and recommends Chan to list Property A at \$8.8 million. Chan tells Alan to list Property A at \$8.9 million and not to bother him with offers below \$8.8 million.

Alan advertises Property A for sale on 20 September at \$8.9 million.

The land search of Property A reveals that Chan is the sole owner, and that the property is mortgaged and subject to a memorandum for outstanding management fees.

Ms Mak (“Mak”) is a purchaser client who has entered into the estate agency agreement with the estate agency company which employs Alan. On 22 September, Alan shows her Property A in Chan’s presence. During the visit, Chan says he has lived in the flat for many years. His girlfriend shares the flat and contributes to household expenses, and helped him out with repayment of the mortgage when Chan was unemployed two years ago.

The next day, Chan leaves for Europe for a one-week business trip and tells Alan not to bother him during the trip. On the same day the Government successfully sells certain land lots at four times the opening bid and the property market becomes very buoyant. The next day Alan advertises Property A for \$8.95 million in light of the optimistic market trend.

Mak makes an offer of \$8.9 million after Chan returns to Hong Kong. Chan accepts this offer and on 30 September enters into a provisional agreement with Mak. The formal agreement for sale and purchase is signed on 21 October.

Chan later learns that a similar flat two floors below Property A was sold for \$9.1 million on 1 July.

### **Case Scenario No.2 (Questions No. 6-10)**

#### **In the year of 2018**

Mr Wong (“Wong”) is the owner of a residential flat in Tsim Sha Tsui with an advertising space on its external wall (“the Property”). On 1 February, he lists the Property for sale at \$8.8 million with Sam, a licensed estate agent of Success Estate Agency (“Success”). Wong instructs Sam that the sale is to include the advertising space on the external wall, which he claims belonging to him.

Wong enters into an estate agency agreement with Sam on 4 February and tells Sam he does not want to have the Property Information Form then. Wong agrees to Sam acting as dual agent and to pay commission at 1% of the transaction price to him if the Property is sold. Sam advertises the Property on 5 February. On the same day, a prospective purchaser Mr Chui (“Chui”) engages Sam and views the Property. Chui makes an offer of \$8.9 million for the Property, and instructs Sam that because of the surge in the property market he intends to sub-sell the Property and therefore needs a longer completion period. Sam forwards Chui’s offer to Wong for consideration.

On 12 February, another of Sam's purchaser clients Mr Fung ("Fung") offers \$11.1 million for the Property. Sam is too busy to tell anyone about Fung's offer. Sam does not obtain consent from Fung nor from Chui about his acting for both of them. On 15 February, Wong accepts Chui's offer of \$8.9 million and enters into a vendor-purchaser-estate agent tripartite provisional agreement ("the Provisional Agreement"). As Sam has forgotten to conduct a land search for the Property immediately before arranging for the parties to sign the Provisional Agreement, he tells them that he will do it the day after (i.e. 16 February). The formal agreement for sale and purchase is signed on 1 March, and completion is to take place on 10 May.

On 16 February, Sam tells Chui that his client, Fung, is willing to pay \$11.1 million for the Property. On 22 February, Chui agrees to sub-sell the Property as confirmor to Fung for \$11.1 million, and they sign a sub-sale agreement which provides that it shall be cancelled if Chui is unable to complete the transaction with Wong.

Meanwhile, another purchaser is willing to pay \$9.4 million to Wong for the Property. Wong then cancels the sale to Chui on 23 February. As a consequence, Chui cancels the transaction with Fung.

-The End-

## **December 2018 e-Quiz**

### **Answer Guide**

#### **Note:**

1. This answer guide is prepared by the Professional Development Section of the Estate Agents Authority and provides the correct answers to the questions of the December 2018 e-Quiz.
2. In this answer guide, the following words have the following corresponding meanings:
  - “the Authority” means the Estate Agents Authority;
  - “the Ordinance” means the Estate Agents Ordinance;
  - “the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;
  - “the Licensing Regulation” means the Estate Agents (Licensing) Regulation;
  - “the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and
  - “the Practice Circular” means the practice circulars issued by the Estate Agents Authority.
3. The copyright of the e-Quiz, this answer guide and all supporting materials (collectively “the materials”) belongs to the Authority, and the materials may be reproduced by candidates for the purpose of attempting the questions only. No reproduction of the materials for any other purpose is allowed without the prior written consent of the Authority.

### Answer Guide

1. Under the Practice Regulation, which of the following is **THE LATEST DATE** by which the estate agency company which employs Alan shall enter into an estate agency agreement with Chan?
  - A. 15 September
  - B. 16 September
  - C. 19 September
  - D. 20 September**
  - E. 21 September

#### **Answer to Question 1:**

Section 6(1) of the Practice Regulation provides that: a licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor-

- (a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to signing an agreement for sale and purchase or a lease of the property, whichever is the earlier.”

Alan accepted Chan’s instructions to sell Property A on 15 September (within 7 working days would be 22 September).

He advertised Property A for sale on 20 September and the agreement for sale and purchase with Mak was signed on 30 September.

The event which happened earlier is the advertising of Property A on 20 September, so the answer is D.

2. Under the Practice Regulation, as regards Alan's handling of the transaction of Property A, which of the following statements is/are **NOT CORRECT**?
- (i) as Chan has instructed Alan to list Property A at \$8.9 million, Alan can accept any offer above \$8.9 million on Chan's behalf
  - (ii) Alan should not advertise Property A for \$8.95 million without Chan's written instructions
  - (iii) if Chan agrees, Alan can advertise Property A before Chan enters into an estate agency agreement with him
- A. (ii) only
  - B. (i) and (ii) only
  - C. (i) and (iii) only**
  - D. (ii) and (iii) only
  - E. (i), (ii) and (iii)

**Answer to Question 2:**

Section 9(2) of the Practice Regulation 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. The statement in option (ii) is correct.

Alan cannot accept any offer on Chan's behalf, so the statement in option (i) is incorrect. Without entering into an estate agency agreement with Chan (paragraph 8 of Form 3), Alan has not obtained the prior written consent from Chan to advertise Property A for sale, so the statement in option (iii) is incorrect.

Answer is C.

3. To protect Mak's interest, what advice should Alan have given her?
- (i) Chan's girlfriend should declare that she has no interest in Property A
  - (ii) Chan's girlfriend should agree to Mak's purchase of Property A
  - (iii) all deposit money should be stakeheld by Chan's solicitors
- A. (i) only
  - B. (ii) only
  - C. (i) and (ii) only
  - D. (i) and (iii) only**
  - E. (ii) and (iii) only

**Answer to Question 3:**

EAA's Monograph on Encumbrances, paragraph 7c on p33 states that:

"The lack of actual notice of unregistrable equitable interest of an occupier who has contributed to the purchase price of the property is not sufficient to protect a purchaser. A purchaser may be found to have constructive notice of the existence of the equitable interest. One is said to have constructive notice of an equitable interest if such interest would have been discovered had he carried out such enquiries as a prudent purchaser would have made. Actual notice of occupation by person(s) other than the registered owner (for example, the registered owner's spouse) should alert the purchaser to make enquiries as to the rights (if any) of such occupiers regarding the property (as in the case of Wong Chim Ying v Cheng Kam Wing (CACV000075/1990)).

The Law Society of Hong Kong has issued a practice direction directing that a purchaser should be advised to inspect property to ascertain the identity and interest of all adult occupants (other than the registered owner) in the property and to secure written confirmation that such adult occupants have no rights or claim in the property." Option (ii) is insufficient to protect Mak's interest. Therefore, option (i) is correct.

EAA's Monograph on Encumbrances, p18 paragraph (2)(d) provides that:

"Some encumbrances only incur financial liability (e.g. a charge to secure payment of outstanding management fees). In these cases, the vendor may be required to give an undertaking for their discharge on or before completion. To secure performance of the vendor's undertaking, an appropriate sum from the deposit may sometimes need to be stakeheld pending discharge of the encumbrances." Therefore, option (iii) is correct.

Answer is D.

4. From which of the following Government departments/bodies may Alan obtain a copy of the memorandum for outstanding management fees of Property A?
- A. Housing Department
  - B. Land Registry**
  - C. Rating and Valuation Department
  - D. Lands Department

**Answer to Question 4:**

A copy of the memorandum for outstanding management fees of Property A may be obtained from a memorial search at the Land Registry.

Answer is B.



5. Under the Practice Regulation, as regards Alan's provision of the information on the comparable property, which of the following statements are **NOT CORRECT**?
- (i) he must ensure that the information does not misrepresent the value of Property A
  - (ii) in order to advise reasonable comparable prices he should refer to the prices of at least three properties
  - (iii) he can only quote the price shown in a land search of Property B
  - (iv) he must attach to the Property Information Form for Property A a copy of the land search of Property B
- A. (i), (ii) and (iii) only
  - B. (i), (iii) and (iv) only
  - C. (i), (iii) and (iv) only
  - D. (ii), (iii) and (iv) only**
  - E. (i), (ii), (iii) and (iv)

**Answer to Question 5:**

Section 11 of the Practice Regulation provides that: "A licensee shall- (b) where information and comparables on residential property prices and rentals have been supplied to a client for reference or comparison, ensure that the information or comparables supplied do not misrepresent the value of the residential property concerned", so option (i) is correct.

There is no requirement as to at least how many properties should an agent refer to in order to ascertain the comparable prices, so option (ii) is incorrect.

There is no requirement that only the price of one property could be quoted, so option (iii) is incorrect.

Section 3(2) of the Practice Regulation provides that:

A form to be supplied under this Regulation shall be-

- (a) completed in accordance with such directions and instructions as are specified in the form;
- (b) accompanied by such documents as are specified in the form; and
- (c) if the completed form is required to be provided to a person, so provided in the manner, if any, specified in the form.

Property Information Form (Form 1):

Part I, Part B 1(f): other matters registered as encumbrances:

Note: Copy of land search from the Land Registry shall be attached.

Alan must attach the land search of Property A (not Property B) to the Property Information Form for Property A, so option (iv) is incorrect.

Answer is D.

6. Under the Practice Regulation, which of the following is **THE LATEST DATE** by which Sam should provide Wong with the Property Information Form (Form 1) unless Wong specifically gives up his right to receive the same?
- A. 1 February
  - B. 4 February
  - C. **15 February**
  - D. 18 February
  - E. 1 March

**Answer to Question 6:**

Estate Agency Agreement, Form 3 provides that:

“10 Acknowledgement by Vendor

The Vendor acknowledges he has-

- (a) read and understood the terms of this Agreement; and
- (b)  received the Property Information Form including the Vendor's Statement required to be provided under clause 5 of this Agreement;  
 agreed to receive the Property Information Form including the Vendor's Statement before entering into a binding agreement for sale and purchase between the Vendor and a purchaser.”

Note 3 of Form 1 (Property Information Form) provides that: A licensed estate agent is required to provide to the Vendor the original or a copy of the completed Form either before entering into an estate agency agreement with the Vendor or before entering into an agreement for sale and purchase between the Vendor and a purchaser in respect of the Property at the option of the Vendor.

As the estate agency agreement was entered into on 4 February and Wong said he did not want to have the Property Information Form then, Sam should provide the Form to Wong at the latest on 15 February (before entering into the Provisional Agreement).

Answer is C.

7. If the advertising space on the external wall of Wong's flat does belong to him, it will normally be indicated in which of the following documents of the building?
- (i) the occupation permit
  - (ii) the Government lease
  - (iii) the deed of mutual covenant
- A. (i) only
- B. (iii) only**
- C. (i) and (ii) only
- D. (i) and (iii) only
- E. (ii) and (iii) only

**Answer to Question 7:**

Neither options (i) nor (ii) have any indication as to the ownership of the external wall of the building. Old-style Deed of Mutual Covenant is likely to indicate if the external wall is a common part, or if it is reserved to the developer or some other party. Option (iii) is correct.

Answer is B.

8. Regarding the sub-sale agreement signed between Chui and Fung, to protect the parties' interest, Sam should remind them that the sub-sale will be subject to which of the following taxes?
- (i) Property Tax
  - (ii) Betting Duty
  - (iii) Special Stamp Duty
- A. (i) only  
B. (ii) only  
**C. (iii) only**  
D. (i) and (iii) only  
E. (i), (ii) and (iii)

**Answer to Question 8:**

Sale or purchase of property will not be subject to Property Tax or Betting Duty. Options (i) and (ii) are incorrect.

With effect from 20 November 2010, any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of where it is incorporated), and resold within 24 months (the property was acquired on or after 20 November 2010 and before 27 October 2012) or 36 months (the property was acquired on or after 27 October 2012), will be subject to a Special Stamp Duty. Chui entered into a Provisional Agreement to purchase the Property with Wong on 15 February 2018, then signed a sub-sale agreement with Fung to sub-sell the Property on 22 February 2018. The disposal of the Property is within 36 months from the date that the Property was acquired by Chui. Therefore, it will be subject to a special stamp duty. Option (iii) is correct.

Answer is C.

9. On 15 February before the Provisional Agreement is signed, Sam may have breached the Practice Regulation and his duties as an agent by virtue of his:
- (i) acting as an agent for two purchasers bidding for the same property at the same time without the consent of both
  - (ii) not telling Wong about Fung's offer as soon as practicable
  - (iii) failing to carry out a land search in respect of the Property and supply a copy of the land search to the purchaser immediately before the Provisional Agreement is entered into
- A. (i) only
  - B. (i) and (ii) only
  - C. (i) and (iii) only
  - D. (ii) and (iii) only
  - E. (i), (ii) and (iii)**

**Answer to Question 9:**

Practice Regulation, Section 11(e) provides that:

A licensee shall-

(e) present an offer to a client for acceptance as soon as is practicable after receiving it.

Option (i) – there may be a breach of duty for the agent to act for more than one purchaser without the consent of both, as laid down in the case of Eric V Stansfield (1998).

Option (ii) – Sam may have breached section 11 (e) of the Practice Regulation as stated above.

Option (iii) – Section 13(4) of the Practice Regulation provides that a licensee acting for the vendor of a residential property shall immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property. Failing to carry out a land search of the property before arranging for the vendor and the purchaser to sign the Provisional Agreement, Sam has breached the above provision.

Answer is E.

10. Which of the following statements is/are correct?
- (i) under the prescribed estate agency agreement that he entered into with Success, Fung is not required to pay Success any agency commission after cancelling the transaction with Chui
  - (ii) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum, Chui cannot claim for specific performance of the Provisional Agreement
  - (iii) If the Provisional Agreement provides that the defaulting vendor is to refund the purchaser the initial deposit and to compensate him with an equivalent sum and thereafter the purchaser shall have no further claim against the defaulting vendor, Chui cannot claim for specific performance of the Provisional Agreement
- A. (i) only
  - B. (i) and (ii) only
  - C. (i) and (iii) only**
  - D. (ii) and (iii) only
  - E. (i), (ii) and (iii)

**Answer to Question 10:**

EAA's Monograph on Conveyancing, Part 2 paragraphs 12, 13 and 15 on "Provisional Agreement for Sale and Purchase" provides that:

12. Vendor's default

Should the vendor fail to complete pursuant to the agreement, the vendor shall refund the initial deposit to the purchaser and compensate him with a sum equivalent to the amount of the initial deposit and thereafter the purchaser shall have no further claim against the vendor. (Note, however, some agreements may provide the alternative that the purchaser shall be entitled to enforce specific performance, that is, compel the vendor in court to proceed with the sale of the property according to the terms of the agreement.)

As the Provisional Agreement does not expressly exclude the right for specific performance, option (ii) is incorrect. Option (iii) is correct.

13. Estate agent's commission:

In consideration of the services provided by the estate agent in connection with the sale

and purchase transaction, the estate agent is entitled to receive an agreed and specified commission from the vendor and the purchaser respectively. The amount and payment of the commission is subject to the respective estate agency agreements entered into by the estate agent with the vendor and the purchaser respectively. An estate agent who is agent for both the vendor and the purchaser in a transaction and is entitled to receive commission from both should disclose the fact to both the vendor and the purchaser.

#### 15. Defaulting party to pay commission

If either party fails to complete the sale or purchase, he shall immediately compensate the estate agent the total amounts of the commission stated in the agreement. However, if the court finds that the amount payable by a defaulting party is in the nature of a penalty (as opposed to liquidated damages), the purpose of which is to punish the defaulting party rather than to compensate the reasonably foreseeable loss of the injured party, as where it far exceeds such loss of the injured party, this will not be recoverable.

Estate Agency Agreement, Form 4, Schedule 3 paragraph 2 and 3 provides that:

2. Subject to section 3 of this Schedule, the Purchaser shall have no obligation to pay any commission to the Agent if completion of the property transaction falls through without fault on the part of the Purchaser.....
3. The commission shall become payable to the Agent in the case of mutual cancellation of a binding agreement for sale and purchase of the property concerned not arising from any provisions of the agreement for sale and purchase.

As the transaction falls through without fault on the part of Fung and arising from mutual cancellation of the subsale agreement with Chui which provides that such agreement shall be cancelled if Chui is unable to complete the transaction with Wong, so Fung is not required to pay Success any agency commission. Option (i) is correct.

Answer is C.