

October 2018 e-Quiz

Notes to candidates:

- (1) Most of the contents of this e-Quiz are adopted from October 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 Scheme 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 12 questions in this e-quiz. You will earn one CPD point if you can score not less than 6 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

Mr. Black is the registered owner of a residential property in Hong Kong, Villa Vera. Mr. Black has recently been assigned by his employer to supervise the daily operation of a new office in Shanghai for a period of 2 years and hence, he has decided to sell his property. Mr. Black is so busy that he cannot appoint an estate agent to handle the intended sale of property for him before he leaves Hong Kong.

When Mr. Black finally settled down in Shanghai, he called his best friend, Mr. White, to see if Mr. White can arrange for the sale of property for him. Mr. White agrees without hesitation. Mr. White has a good friend, Ms. Agent, a licensed salesperson. Ms. Agent is employed by Excellence Property Agency Company Limited, a licensed estate agent.

“Here are the keys, please feel free to arrange for interested buyers to inspect the property at any time you like. Mr. Black has moved out of the property for over 2 months now and he would like to have his property sold as soon as possible.” Ms Agent promised Mr. White that she will do her best.

Two weeks later, Ms. Agent called Mr. White to inform him that she has procured a “genuine” offer of HK\$12 million. After a telephone discussion with Mr. Black in Shanghai, Mr. White replied to Ms. Agent that the offer of HK\$12 million is unacceptable unless Ms. Agent’s commission would be cut by half. Mr. White however said Mr. Black will agree to pay full commission to Ms. Agent if Villa Vera is sold at HK\$12.2 million.

There is indeed a ready buyer, Mr. Blue, who has made the offer of HK\$12 million. Mr. Blue would like to secure the property as quickly as possible. Mr. Blue has advised Ms. Agent that he will be prepared to pay HK\$12.2 million for Villa Vera.

Ms. Agent does not inform Mr. Blue of Mr. Black’s willingness to accept HK\$12 million because she is afraid that her commission will be reduced. Ms. Agent just reported to Mr. White that Mr. Blue will be happy to offer HK\$12.2 million.

Ms. Agent knows that Mr. White will need to go to a business trip on the following morning and therefore she urges Mr. Blue to sign the agreement and pay the initial deposit without any delay. Mr. Blue agrees to sign the provisional agreement for sale and purchase immediately. Mr. White also thinks it is a good idea to confirm the deal before he leaves. Ms. Agent said she will urgently prepare the agreement for the parties to sign.

Mr. White and Mr. Blue then arrived at Excellence Property Agency Company Limited at 11:45 p.m. Ms Agent thinks that no land search can be obtained after 11:30 p.m. She therefore does not conduct a land search for the property [Note: With effect from 21 August 2010, the operation hours of the online search system provided by the Land Registry have been extended from previously 16 to 20 hours daily (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]. Ms. Agent advises Mr. Blue that Mr. White is the authorised representative of the registered owner Mr. Black. Ms. Agent assured Mr. Blue that she has known Mr. White for over ten years and Mr. Blue needs not worry about the risk of any fraud. “It is provided in the provisional agreement that you will be paying the initial deposit to the vendor’s solicitors to hold as stakeholders. I will obtain a land search tomorrow morning.” Ms. Agent said.

Mr. Blue thinks there is only a gap of less than 9 hours. If anything goes wrong, he can simply instruct his banker to stop payment. After all, the cheque is not drawn in favour of either Mr. Black or Mr. White. Mr. Blue then proceeds to sign the provisional agreement for sale and purchase and Mr. White also signs as representative of Mr. Black.

Ms. Agent has never requested Mr. White to produce a power of attorney or written authorization of any kind. One week after the provisional agreement for sale and purchase is signed by Mr. White and Mr. Blue, Ms. Agent received a call from Mrs. Red. Mrs. Red reminded Ms. Agent that she has inspected Villa Vera earlier and is happy to offer HK\$12.5 million. Ms. Agent apologized and told Mrs. Red that Villa Versa has already been sold.

Completion takes place one month afterwards. Mr. Blue is satisfied with the services of Ms. Agent and instructed Ms. Agent to find a tenant for him.

After inspecting Villa Vera twice, Mr. Green decided to offer to rent the property at a monthly rent of HK\$45,000.00, inclusive of rates, management fee and Government rent. He

requests for a rent free period of one month and an option to renew for a further term of 2 years at the then current market rental. Mr. Green would also like Mr. Blue to provide a new dryer.

Mr. Blue is prepared to accept all the terms proposed by Mr. Green, except only the provision of a new dryer. Mr. Blue is of the view that one month rent free period is a bit long and Mr. Green should buy the dryer at his own cost. Ms. Agent is anxious that the deal might fall through. Despite her effort, both Mr. Blue and Mr. Green still insist on their own stance on the dryer. Ms. Agent finally decided to buy the dryer herself as she will still be making a gain out of the commission and Mr. Blue and Mr. Green can conclude the deal.

Ms. Agent informed Mr. Blue that Mr. Green no longer insisted on the dryer. On the contrary, Ms. Agent told Mr. Green that Mr. Blue finally agree to buy the dryer for him.

Where arranging for signing of the tenancy agreement, Ms. Agent produces a list of inventory to Mr. Blue on which the dryer was not mentioned. On the other hand, Mr. Green is shown a tenancy agreement with a list of furniture and appliances to be provided by Mr. Blue and the dryer is one of the items. To avoid any trouble, Ms. Agent annexed different inventory lists to the tenancy agreements and sent them to Mr. Blue and Mr. Green for custody after stamping. Ms. Agent thought this probably is the only way to resolve the differences between Mr. Green and Mr. Blue.

- End-

October 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 October 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

Question 1

In the light of the five-day clearing week in the banking industry, Ms. Agent is recommended to:

- (i) avoid signing of Provisional Agreement for Sale and Purchase on Saturday
 - (ii) advise the vendor and purchaser client to avoid selecting Saturday as the completion date for any sale and purchase
 - (iii) advise the landlord and tenant client to avoid selecting Saturday as the commencement date of any tenancy
 - (iv) advise the vendor or purchaser client to avoid selecting Saturday as due date for payment of deposit or any part payment of the purchase price
-
- A. (i) and (ii) only
 - B. (i) and (iii) only
 - C. (ii) and (iii) only
 - D. (ii) and (iv) only**
 - E. (iii) and (iv) only

Answer to Question 1:

The Hong Kong banking industry adopted five-day clearing week. "Clearing date" means a date, other than a Saturday, Sunday or public holiday, on which banks provide clearing and settlement facilities to customers. If any due date for payment of deposit or part payment or completion shall take place on Saturday, purchaser may not be able to arrange for drawdown of bank loan. On the other hand, vendor cannot make repayment to existing mortgage loan on Saturday. Despite the fact that some banks may provide services on Saturday, e.g cheques can still be marked good on Saturdays, the settlement of fund will only be processed on the clearing date following the Saturday.

Practice Circular No.06-04(CR) was issued to remind practitioners of the change and its effect on the sale and purchase transactions.

Answer is D.

Question 2

On the assumption that stamp duty is paid within the statutory time limit, calculate the stamp duty chargeable on the tenancy agreement between Mr. Blue and Mr. Green **executed in duplicate** with the following terms:

Rent	: HK\$45,000 / month
Term	: Two (2) years commencing from 1st October 2018
Rent free period	: One (1) month from 1st October 2018
Option to renew	: Two (2) years at the then current market rental
Use	: Residential

- A. HK\$0.00
- B. HK\$100.00
- C. HK\$2,592.00
- D. HK\$2,592.50**
- E. HK\$2,700.00

Answer to Question 2:

On Lease of Immovable Property in Hong Kong

Stamp duty is calculated at rates which vary with the term of the lease as follows:

Term		Rate
Not defined or is uncertain		0.25% x of the yearly or average yearly rent (Note 1)
Exceeds	Does not exceed	
	1 year	0.25% x of the total rent payable over the term of the lease (Note 1)
1 year	3 years	0.5% x of the yearly or average yearly rent (Note 1)
3 years	.	1% x of the yearly or average yearly rent (Note 1)
Key money, construction fee etc. mentioned in the lease		4.25% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property
Duplicate or counterpart		\$5 each

Note 1: The yearly rent/average yearly rent/total rent has to be rounded-up to the nearest \$100.

Please note that any deposit which may be mentioned in the lease will not be taken into account in assessing the stamp duty.

No stamp duty is chargeable on the further term under the option to renew. However, if the landlord and the tenant shall enter into a new tenancy agreement or any

instrument to confirm the renewal, such tenancy agreement/instrument will be chargeable with stamp duty. The one month rent free period shall be taken into account in calculating the average yearly rent. There is no difference in stamp duty payable on leases for commercial or residential properties.

The formula in calculating the stamp duty payable is set out below:

$$0.5\% \times (\text{HK\$}45,000 \times 23/2) + \text{HK\$}5.00 = \text{HK\$}2,592.50$$

HK\$5.00 is payable on the duplicate copy of the tenancy agreement.

Answer is D.

Question 3

When first approached by Mr. White, who claimed to have been authorized by Mr. Black as his representative to sell Villa Vera, Ms. Agent should:

- (i) obtain a power of attorney showing proper authorization from Mr. Black to Mr. White before accepting appointment and the signing of estate agency agreement
- (ii) rely on the lawyer to obtain a power of attorney showing proper authorization from Mr. Black to Mr. White when the formal agreement for sale and purchase is signed and further deposit is paid
- (iii) state in the provisional agreement for sale and purchase that Mr. White shall be personally responsible for all legal consequences if no power of attorney can be provided
- (iv) obtain a letter of authorization from Mr. Black to Mr. White on the sale of the property
- (v) check if the power of attorney provided is in proper form and has been duly executed and attested

- A. (i) and (iii) only
- B. (i) and (v) only**
- C. (ii) and (iii) only
- D. (iii) and (iv) only
- E. (i), (iii) and (v) only

Answer to Question 3:

Paragraph 3.4.1 of the Code of Ethics states:

“Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.”

An estate agent should obtain the proper authorization **before** accepting appointment from any person acting as representative of another person. Where the agreement for sale and purchase is not signed by the vendor, it is prudent for estate agents to advise purchasers to pay the deposit to the vendor’s solicitors as stakeholders even if a power of attorney has been produced.

Practice Circular No. 15-02 (CR) was issued to remind licensees that it is not sufficient and is highly risky simply to request the representative to sign a declaration to the effect that he has or he will have proper authorization from the absent contracting party and he will be personally responsible for all consequences.

Answer is B.

Question 4

After a binding agreement for sale and purchase of Villa Vera is signed by Mr. Blue as purchaser and Mr. White as representative of Mr. Black as vendor, Ms. Agent:

- (i) should inform Mr. White or (if applicable) Mr. Black as soon as practicable when Ms. Agent receives the higher offer from Mrs. Red
 - (ii) should not continue to market Villa Vera
 - (iii) is no longer obliged to inform Mr. White or (if applicable) Mr. Black even if Ms. Agent receives a higher offer
 - (iv) should advise Mr. White or (if applicable) Mr. Black to accept the new higher offer received from Mrs. Red and to cancel the agreement with Mr. Blue
- A. (iii) only
 - B. (iv) only
 - C. (i) and (iv) only
 - D. (ii) and (iii) only**
 - E. (ii) and (iv) only

Answer to Question 4:

It is stipulated in Sections 11(e) and (f) of the Practice Regulation that a licensee should present an offer to a client for acceptance as soon as practicable and that a licensee should inform a client of all offers received in the order he receives such offers, it is further provided in Section 13(2) of the Practice Regulation that after the signing of an agreement for sale and purchase, a licensee shall not (i) continue to market the property concerned or (ii) be obligated to disclose any further offers to the vendor client.

Option (iv) is incorrect. Where the agent has received a higher offer after an agreement for sale and purchase has already been signed between the vendor and the purchaser, both of whom are the agent's client, the licensee should not continue to act for the vendor in rescinding the agreement for sale and purchase on the ground of conflict of interests.

Answer is D.

Question 5

As dual agent for Mr. Blue and Mr. Green in the leasing of the property, the duties of Ms. Agent as set out in the relevant forms specified in the Schedule to the Practice Regulation include:

- (i) to obtain information in relation to the subject property for Mr. Green
- (ii) assist Mr. Blue and Mr. Green in entering into a binding agreement
- (iii) conduct negotiation and submit all offers in relation to the property to Mr. Blue
- (iv) arrange for inspection of the subject property by Mr. Green
- (v) clean the subject property before the commencement of the lease term to ensure that the subject property can be handed over to Mr. Green in a good and clean condition

- A. **(i), (ii), (iii) and (iv) only**
- B. (i), (ii), (iii) and (v) only
- C. (i), (ii), (iv) and (v) only
- D. (i), (iii), (iv) and (v) only
- E. (i), (ii), (iii), (iv) and (v)

Answer to Question 5:

Due to the increasing competition within the industry it is common for estate agents to provide additional “value added” services to their clients. Sometimes, estate agents who are allowed to keep the keys to the subject property will take the initiative to arrange for cleaning of the subject property free of charge without notifying the landlord. The cleaning of the subject property is however not one of the duties of an estate agent under either Form 5 or Form 6. Estate agents shall obtain prior consent from the landlord before carrying out such cleaning or other services to the subject property.

Section 10 of the Practice Regulation provides

“A licensee shall-

- (a) assist in making arrangements for the inspection and viewing by a purchaser of a residential property (including a car parking space and common areas if applicable) and accompany the purchaser for such inspection and viewing unless otherwise instructed by the purchaser;
- (b) not arrange an inspection and viewing by any person of a residential

property without the prior consent of the vendor of the property;....”

Estate agents will need to obtain prior consent from the vendor before arranging for an inspection of the property and the need to obtain consent will certainly extend to any matters involving the subject property, even if the estate agents are of the view that the landlord/vendor client will benefit from such conduct.

Answer is A.

Question 6

If an individual who is not a licensed estate agent shall act as an estate agent or in any way hold himself out to the public as being ready to undertake estate agency work as an estate agent, such individual shall be liable upon conviction upon indictment to:-

- (i) a fine of HK\$500,000
 - (ii) imprisonment for one year
 - (iii) a fine of HK\$100,000
 - (iv) imprisonment for two years
- A. (i) and/or (ii) only
 - B. (i) and/or (iv) only**
 - C. (ii) and/or (iii) only
 - D. (iii) and/or (iv) only
 - E. None of the above (i), (ii), (iii) and (iv)

Answer to Question 6:

Section 15(1) of the Ordinance provides that “an individual shall not, either by himself or as a member of a partnership-

- (a) exercise or carry on or advertise, notify or state that he exercises or carries on, or is willing to exercise or carry on, the business of doing estate agency work as an estate agent; or
- (b) act as an estate agent; or
- (c) in any way hold himself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,

unless he is a licensed estate agent.”

A person who contravenes Section 15(1) of the Ordinance commits an offence and under Section 55(3) (a) of the Ordinance, such person shall be liable-

- “(i) on conviction upon indictment to a fine of \$500,000, to imprisonment for 2 years or both to such a fine and such imprisonment;
- (ii) on summary conviction to a fine at level 6, to imprisonment for 6 months or both to such a fine and such imprisonment;”

Under Section 113B and Schedule 8 of Criminal Procedures Ordinance (Cap. 221), the applicable amount of fine at level 6 is HK\$100,000.

Answer is B.

Question 7

In handling transactions involving the leasing of residential premises, Ms. Agent need not inspect the occupation permit.

The above statement is:-

- A. True
- B. False**

Answer to Question 7:

Estate agent should not rely solely on the property information provided by vendor/landlord. In addition to inspection of the land search of the property concerned, estate agent should note that the occupation permit or the deed of mutual covenant of the building will contain restrictions on user.

The failure of an estate agent to disclose the actual use of the subject property contravenes paragraph 3.4.1 of the Code of Ethics.

Paragraph 3.4.1 of the Code of Ethics states:

“Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.”

Answer is B.

Question 8

Which of the following information forms part of the property information to be provided by Ms. Agent in Property Information Form for use in the sale and purchase of the property under Part 1 of Form 1 as prescribed in the Practice Regulation?

- (i) user under the occupation permit of the building of which the subject property forms part
 - (ii) building orders
 - (iii) year of completion of the subject property
 - (iv) unexpired term of the relevant Government Lease
-
- A. (i), (ii) and (iii) only
 - B. (i), (ii) and (iv) only
 - C. (i), (iii) and (iv) only
 - D. (ii), (iii) and (iv) only
 - E. (i), (ii), (iii) and (iv)**

Answer to Question 8:

It is provided in Section 36(2) of the Estate Agents Ordinance the information to be provided when an estate agency agreement is entered into.

Under Sections 2 and 3 of the Practice Regulation, estate agents shall adopt the forms specified in the Schedules to the Practice Regulation and comply with the relevant requirements in completing the forms. In addition to the information listed and also such information to be given in Part 1 of Form 1, estate agents shall procure the vendor to complete Part 2 of Form 1 and provide such information to ensure that the purchaser are provided with all necessary information before signing of an agreement for sale and purchase.

Answer is E.

Question 9

Under the Practice Regulation, a licensed estate agent shall not permit any person to become his client before:

- (i) that person is advised of the name of his employer
- (ii) that person is advised that the agent is a licensed estate agent
- (iii) that person is advised of the number of the estate agent's licence held by the agent
- (iv) that person is advised of the amount of commission payable

- A. **(ii) and (iii) only**
- B. (ii) and (iv) only
- C. (i), (ii) and (iii) only
- D. (i), (ii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Answer to Question 9:

Section 5(1) of the Practice Regulation states that before a person becomes a client of a licensed estate agent, that person shall be informed that the agent is a licensed estate agent and also the estate agent's licence number.

Section 5(2) of the Practice Regulation provides that before a licensed salesperson performs any estate agency work for a person, that person shall be informed: "(a) that the salesperson is a licensed salesperson; and (b) of the number of the salesperson's licence held by the salesperson."

Answer is A.

Question 10

Ms. Agent may, with the consent of Mr. White (for Mr. Black) and Mr. Blue, dispense with the need to obtain a land search of the subject property before signing of the agreement for sale and purchase.

The above statement is:

- A. True
- B. False**

Answer to Question 10:

Estate agents should always conduct land search to ascertain ownership and existing encumbrances. Since 21 August 2010, land search may be conducted on the internet from 7:30 a.m. to 3:30 a.m. (with last order cut-off at 2:30am) the next day via the on-line search system provided by the Land Registry. Estate agents should always ensure that land search is provided to the parties. It is not appropriate for the estate agents to arrange for signing of an agreement for sale and purchase even if the parties agree.

Section 13(4) of the Practice Regulation provides “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.”

According to Practice Circular No. 13-03(CR), Section 13(4) of the Practice Regulation requires practitioners to carry out the 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 in every case. Carrying out the land search and supplying a copy of it only on the following day does not meet this requirement. Any purported explanation that no land search could be carried out because the provisional 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 is not acceptable to the Estate Agents Authority.

Answer is B.

Question 11

Pursuant to Schedule 2 of Form 3 as specified in the Practice Regulation, if a vendor enters into a binding agreement for sale and purchase, the vendor shall be liable to pay commission unless:

- (i) it is provided in Form 3 that no commission is payable by the vendor
 - (ii) the sale and purchase was cancelled by mutual agreement not arising from any provisions of the agreement for sale and purchase
 - (iii) the property transaction falls through without any fault of the vendor
- A. (i) only
 - B. (ii) only
 - C. (iii) only
 - D. (i) and (iii) only**
 - E. (i), (ii) and (iii)

Answer to Question 11:

The commission to be paid by a vendor are dealt with under paragraph 2 of Schedule 2 of Form 3. The vendor will still be liable to pay commission if it is the mutual agreement of the purchaser and vendor to cancel the agreement and which is not provided in the agreement. Where the vendor is not liable to pay commission but such commission has already been paid, an estate agent shall refund the commission paid as soon as practicable and in any event, not later than 5 working days from the completion date specified in the cancelled agreement for sale and purchase.

Answer is D.

Question 12

Ms. Agent's acquisition of the dryer at her own expense and act of arranging Mr. Blue and Mr. Green to sign tenancy agreements with different inventory lists annexed:

- A. will not be considered as a misconduct if none of her clients suffers any loss and damage
- B. is in the best interests of her clients
- C. is justifiable despite the conduct is not appropriate
- D. is a serious misconduct**

Answer to Question 12:

Paragraph 3.3.1 of the Code of Ethics states:

“Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.”

It is a decision of the Disciplinary Committee of the Authority that the conduct of replacing pages of the signed tenancy agreement amounted to dishonesty. Having considered the mitigation submissions of the relevant estate agent, it was the Disciplinary Committee's decision that the estate agent's licence be suspended for six months.

Answer is D.