

Legislative Council Panel on Housing

Complaints against Estate Agency Trade and Estate Agents and Salespersons Qualifying Examinations

Purpose

To analyse the complaints against the estate agency trade and to provide supplementary information on the Estate Agents and Salespersons Qualifying Examinations.

Background

2. At the Panel meeting of 6 February 2006, the Estate Agents Authority (EAA) briefed Members on the general work of EAA. To follow up the Panel's suggestions, this paper provides –
 - (i) an analysis of the basis of complaints against the estate agency trade received by EAA recently; and
 - (ii) supplementary information on the candidates for the Estate Agents and Salespersons Qualifying Examinations in the past few years.

Analysis of Complaints

3. As the statutory authority empowered by the Estate Agents Ordinance and its subsidiary legislation to regulate the local estate agency trade, EAA regularly receives, deals with and investigates complaints from the public against licensees for alleged breaches of the law and/or misconduct.

4. The number of complaint cases received by EAA has gone up considerably in recent years, as follows:

<u>Year</u>	<u>Complaint cases received</u>
2003	496
2004	588
2005	746
2006 (Jan – Jun)	400

5. The nature of the complaints has been varied. For the complaints received in the first half of 2006, an analysis was conducted and the findings are given below:

<u>Reason for the complaint</u>	<u>Number of allegations⁽¹⁾</u>	<u>%</u>
(i) Failure to supply property or market information; failure to advise clients to seek legal advice; failure to check information provided by contracting parties, etc.	157	20.6
(ii) Incorrect property or market information provided, and misrepresentation, etc.	154	20.2
(iii) Improper means or manner of demanding commission payment; promotional activities causing obstructions; improper behaviour in public, etc.	81	10.7
(iv) Failure to act impartially with all parties in a transaction, for example, failing to inform the purchaser of the subsisting building orders and incorporating terms in provisional agreements which are unfavourable to one of the parties	51	6.7

⁽¹⁾ A complaint may consist of more than one allegation, hence the number of allegations (761) does not tally with the number of complaints (400).

(v) Failure to enter into or explain an estate agency agreement with clients, complete an estate agency agreement properly or supply the executed agreement to clients	38	5.0
(vi) Failure to carry out a land search and / or supply a copy of the search result to clients	37	4.9
(vii) Failure to comply with practice directions or guidelines regarding cold-calling, dealing with jointly-owned properties, or the display of licence number on name cards/advertisements, etc.	36	4.7
(viii) Misleading advertisements or advertisements without proper authorisation	30	3.9
(ix) Failure to exercise due care and diligence in performing estate agency work, for example, failing to ascertain the landlord's consent in dealing with sub-tenancy and filling in provisional agreements wrongly	26	3.4
(x) Failure to explain the provisional sale and purchase agreement or lease to clients	20	2.6
(xi) Failure to carry out client's instructions	20	2.6
(xii) Criminal convictions or conduct	16	2.1
(xiii) Poor service or service provided to clients in a poor manner	15	2.0
(xiv) Failure to disclose potential conflict of interests	14	1.8
(xv) Acting as a salesperson without a valid licence/employing unlicensed salespersons	11	1.5
(xvi) Providing comparables which misrepresent the property value	8	1.1
(xvii) Others	47	6.2
	Total	100.0
	761	100.0

6. Among the complaint cases completed during the period from January 2003 to June 2006, about 22% were substantiated, as follows:

<u>Year</u>	<u>Complaints cases completed⁽²⁾</u>	<u>Complaint cases substantiated⁽³⁾</u>
2003	401	99 (25%)
2004	395	69 (17%)
2005	689	142 (21%)
2006	303	77 (25%)
(Jan – Jun)		

7. In other words, about 78% of the complaint cases received were either not substantiated after investigation, or could not be pursued further for one reason or another. The breakdown of these cases is given below:

<u>Year</u>	Complaint cases			<u>Total</u>
	<u>Complaint cases resolved through mediation or withdrawn by complainants</u>	<u>Complaint cases with insufficient information given by complainants and/or other major parties</u>	<u>Complaint cases found unsubstantiated after investigation</u>	
2003	152	29	121	302
2004	165	41	120	326
2005	234	86	227	547
2006	93	49	84	226
(Jan – Jun)				

⁽²⁾ New cases received in a particular year (say, 2003) may be carried forward/completed in a subsequent year. Hence, the number of complaint cases completed in a particular year does not necessarily tally with the number of new complaint cases received in that year.

⁽³⁾ Substantiated cases include cases in which EAA Disciplinary Committee has imposed sanctions and those in which the EAA Administration has issued advisory letters/reminders of good practice.

8. Based on the above figures and the experience of the EAA Complaints investigation team, we have the following general observations about the reasons for the upward trend in the number of complaints:
- (i) The sheer volume of property transactions that has increased substantially in the past three years (87,309 transactions in 2003, 123,480 in 2004 and 123,697 in 2005) might have afforded more occasions for disputes to arise between estate agents and their clients.
 - (ii) As a result of EAA's enhanced community education initiatives these years, consumers have a higher awareness of the legal protection they enjoy in property transactions and are more aware of ways to lodge a complaint.
 - (iii) The nature of complaints varies, but the majority of the allegations are failure to provide accurate property information or land search documents, engagement in improper practices, and failure to explain clearly the provisions in various legal documents such as the estate agency agreement, the provisional sale and purchase agreement or the tenancy agreement. Upon further investigations, some of the estate agents allegedly involved in these complaints were found to be lacking in necessary professional knowledge.
 - (iv) Many initially so-called "complaints" were in reality civil disputes and disputes over commission or non-delivery of promised incentives that either got subsequently settled through mediation or were withdrawn by the complainants, after the latter gained a better understanding of the role and responsibilities of estate agents.

9. In light of the above, EAA is taking the following measures:
- (i) In community education, EAA will focus on the promotion of better public understanding of the role and functions of estate agents as well as the rights and obligations of consumers. While consumers may demand good service from estate agents, they should also take more proactive and preventive steps to protect their own interests in property transactions (e.g. through the signing of an estate agency agreement) and should be aware of their responsibilities (e.g. paying the commission that has been agreed upon).
 - (ii) To enhance the professional competency of estate agency practitioners, EAA has raised the level of the Estate Agents and Salespersons Qualifying Examinations to ensure that new entrants to the trade have the necessary knowledge and meet the required standard (also see paragraph 12 below).
 - (iii) Also, EAA has launched a Continuing Professional Development (CPD) Scheme since May 2005. Under the scheme, which is operating on a voluntary basis, practitioners are encouraged to attain at least 10 CPD points (about 10 learning hours) every year in order to bring their professional knowledge up to date. So far, over 420 CPD activities have been organised with the majority of the subjects covered by these activities related to legal issues (such as conveyancing) and estate agency practice (such as land search).
 - (iv) Last but not least, to deter professional misconduct and malpractice, EAA will not hesitate to mete out disciplinary sanctions against those licensees found to have breached the law. (A summary of the actions taken in recent years is given at **Annex.**)

Estate Agents and Salespersons Qualifying Examinations

10. To be eligible for an Estate Agent's or Salesperson's licence, an individual must have passed the relevant qualifying examination within 12 months immediately prior to the date of his/her application⁽⁴⁾.
11. The numbers of candidates for the two qualifying examinations are given below:

<u>Year</u>	<u>Estate Agents Qualifying Examination</u>	<u>Salespersons Qualifying Examination</u>	<u>Total</u>
2003	731	2,345	3,076
2004	1,665	5,732	7,397
2005	4,412	7,640	12,052
2006 (Jan – Sep)	1,990	3,205	5,195

12. The number of examination candidates increased substantially in 2004 and 2005, probably due to the gradual revival of the property market and announcements that the level of the Estate Agents Qualifying Examination and the Salespersons Qualifying Examination would be raised from July 2005 and July 2006 respectively⁽⁵⁾.
13. Recent surveys have been conducted on the occupational background of examination candidates. The breakdown is given below:

⁽⁴⁾ Applicants must also be at least 18 years of age, fulfil the "fit and proper" requirements and have completed Form 5 or its equivalent. Both licensed Estate Agents and Salespersons may perform estate agency work. Each estate agency business shall be under the effective control of a manager. Only licensed estate agents, but not licensed salespersons, may be appointed as managers.

⁽⁵⁾ The format of the examinations has been changed, and more in-depth case studies have been introduced with a view to raising the level of the examinations and thereby the overall standard of new entrants to the estate agency trade.

Estate Agents Qualifying Examinations⁽⁶⁾

<u>Occupational background of candidates</u>	<u>%</u>
Estate Agency (e.g. salespersons)	24.7
Property Management	13.6
Banking/Accounting/Investment	9.6
Retail/Wholesale Business	8.0
Construction/Surveying	5.6
Students	3.7
Education/Social Service	3.5
Insurance	2.5
Hotel/Catering	1.5
Legal	1.5
Tourism	1.3
Unemployed	1.1
Clerical	0.9
Information Technology	0.6
Sales & Marketing	0.6
Others	12.9

⁽⁶⁾ About 92% of the candidates registered for the Estate Agents Qualifying Examinations held in the financial year of 2005-06 provided information with respect to their occupational backgrounds.

Salespersons Qualifying Examinations⁽⁷⁾

<u>Occupational background of candidates</u>	<u>%</u>
Property Management	15.4
Retail/Wholesale Business	13.6
Students	11.1
Hotel/Catering	5.2
Banking/Accounting/Investment	4.7
Salesperson-trainee	3.2
Insurance	3.2
Construction/Surveying	3.1
Education/Social Service	2.6
Clerical	1.8
Tourism	1.6
Information Technology	1.2
Unemployed	1.1
Sales & Marketing	0.8
Legal	0.3
Others	12.8

⁽⁷⁾ About 82% of the candidates registered for the Salesperson Qualifying Examinations held in the financial year of 2005-06 provided information with respect to their occupational backgrounds.

14. The above surveys revealed that candidates came from a range of occupational backgrounds, including property management, construction and surveying, banking, accounting, and the retail and wholesale sectors, among others. Some were students.

For Information

15. This paper is submitted for Members' information.

**Chairman
Estate Agents Authority
October 2006**

**Actions taken by Estate Agents Authority on licensees ⁽¹⁾
between 2003 and 2006**

<u>Year</u>	<u>Admonishment/ Reprimand</u>	<u>Fine imposed</u>	<u>Licence with conditions attached/varied</u>	<u>Licence suspended</u>	<u>Licence revoked</u>
2003	6	4	170	21	14
2004	6	20	93	16	1
2005	18	11	124	28	5
2006 (Jan-June)	23	5	93	37	1

⁽¹⁾ including bankrupt licensees