

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee on
Estate Agents Practice
(General Duties and Hong Kong Residential Properties) Regulation
and Estate Agents (Determination of Commission Disputes) Regulation**

**Minutes of meeting
held on Friday, 4 June 1999, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Raymond HO Chung-tai, JP (Chairman)
Hon Cyd HO Sau-lan
Hon Edward HO Sing-tin, JP
Hon Fred LI Wah-ming
Hon Gary CHENG Kai-nam

Members absent : Hon David CHU Yu-lin
Hon LEE Wing-tat
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon Mrs Miriam LAU Kin-yee, JP

Public officers attending : Ms Eva TO, Principal Assistant Secretary (1) for Housing,
Housing Bureau

Miss Betty CHEUNG, Senior Government Counsel,
Department of Justice

Ms Stella CHAN, Government Counsel, Department of Justice

Mrs Grace CHOW, Chief Executive Officer, Estate Agents
Authority

Clerk in attendance : Ms LEUNG Siu-kum, Chief Assistant Secretary (1)2

Staff in attendance : Miss Anita HO, Assistant Legal Adviser 2
Miss Becky YU, Senior Assistant Secretary (1)3

Mr Fred LI and Mr CHENG Kai-nam declared interests that they were both members of the Estate Agents Authority (EAA).

I Election of Chairman

2. Nominated by Mr Fred LI and seconded by Ms Cyd HO, Dr HO Chung-tai was elected Chairman of the Subcommittee.

II Meeting with the Administration

(Legislative Council Brief (Ref: HB 9/7/42 IV), LC Paper Nos. LS 193/98-99 and CB(1) 1431/98-99(02))

3. At the invitation of the Chairman, the Principal Assistant Secretary for Housing (1) (PAS for H (1)) highlighted the salient points in the Legislative Council Brief.

Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (the Regulation)

4. Mr CHENG Kai-nam enquired about the rationale for excluding the sale and leasing of commercial/industrial properties from the proposed Regulation. PAS for H (1) advised that in view of the distinct difference in sales conditions such as the calculation of floor area between residential and commercial/industrial properties, separate regulation for the latter would be considered. Mr CHENG expressed concern on how disputes arising from the sale and leasing of commercial/industrial properties could be dealt with pending the availability of the concerned regulations. The Chief Executive Officer/EAA (CEO/EAA) replied that this should not be a problem as the Estate Agents Ordinance (the Ordinance) had already laid down a regulatory framework governing the conduct and practice of estate agents. They would be subject to disciplinary actions by EAA in the event of non-compliance with the requirements under the Ordinance. She added that EAA was still examining the feasibility of expanding the proposed Regulation or introducing a new set of regulations to cover commercial/industrial properties.

5. On provision of property information, Ms Cyd HO opined that EAA should list out the prescribed information and the avenues through which such information could be obtained to facilitate compliance by estate agents. In reply, PAS for H (1) pointed out that the Ordinance had already specified the types of property information to be provided

by a licensed estate agent to his client upon introduction of the property. These included particulars of current ownership and subsisting encumbrances, saleable floor area, year of completion, user restrictions, unexpired term of the lease and right of renewal. Efforts had also been made to facilitate the trade in obtaining such information. At present, the majority of the information required such as particulars of current ownership, subsisting encumbrances, year of completion and user restrictions in the occupation permit (OP) could be obtained from the Land Registry (LR). Estate agents could conduct searches at LR in person or subscribe to the Direct Access Service in order to have access to the land register through electronic means in their offices. Other searching services such as bulk-request counter, all-service counter and self-service terminals for placing orders were also available. Quick reference on saleable area and age of properties could be obtained through the 24-hour Info-Hotline System under the Rating and Valuation Department. Estate Agents could also approach the Buildings Department for access of OP. The retrieval time for OP had been reduced from 14 to about three days after the department had streamlined its information access system.

6. Referring to Item B3 of Part 1 of the Property Information Form under the Schedule to the proposed Regulation, Mr Edward HO asked if all the prescribed certificates, particularly those certificates of compliance and letters of no objection to occupy showing the year of completion of properties, were readily available at LR. If not, searches at other departments such as the Lands Department would be required. PAS for H(1) advised that all the prescribed certificates for properties built after 1974 were filed with LR. However, searches for these certificates for properties built before 1974 had to be conducted in other departments. Given that the prescribed information was scattered in different departments, Mr HO expressed worries that estate agents might not be able to gather all the required information within a short period of time. PAS for H(1) clarified that estate agents were only required to obtain the information on the year of completion of properties as stipulated in the prescribed certificates from the prescribed sources viz LR or BD. They would not be blamed for the non-availability of the required information if they had tried to obtain the information from the prescribed sources. Mr HO expressed concern on the extent of protection for buyers if estate agents were not required to ensure the presence of all the statutory certificates. While acknowledging Mr HO's concern, CEO/EAA considered it not appropriate to require estate agents to check all relevant certificates as this was beyond their knowledge and expertise. Besides, the checking of legal documents was the job of the representing solicitors.

7. Noting that LR and BD might impose different user restrictions on a property, Mr HO asked if estate agents were required to obtain all these particulars from both departments. PAS for H(1) clarified that estate agents were only required to obtain particulars on user restrictions stipulated in OPs.

8. On unauthorized building works (UBWs) within properties, PAS for H(1) advised that estate agents were required to obtain a statement from the vendor on whether any structural additions or alteration works had been undertaken and whether there were any commitments to repairs and improvements which might involve additional costs to the new owner. Ms HO however pointed out that some vendors, in particular those who bought their properties in the secondary market, might not be aware of any UBWs carried

out prior to their ownership of the properties. She asked if estate agents were required to check the building plans to ascertain the presence of UBWs. PAS for H (1) clarified that section 36 of the Ordinance only requested vendors to disclose structural alterations, additions, repairs or improvements within their knowledge. Given the substantial number of residential properties in Hong Kong and the prevalence of UBWs, PAS for H (1) considered it inappropriate to require estate agents to check building plans for each transaction. Moreover, the interpretation of technical documents and plans was beyond the knowledge and expertise of estate agents. Nevertheless, the Law Reform Commission was examining the need for surveyor reports before completion of property transactions in the secondary market.

9. The Chairman remarked that vendors might be reluctant to disclose information in fear that they would be held liable for such information. The Assistant Legal Adviser 2 pointed out that vendors could choose not to disclose the required information to obviate the liability for false declaration. Ms HO expressed concern about the extent of protection for both purchasers and estate agents in the event of non-disclosure of information by vendors. In reply, PAS for H (1) reiterated that it was not unreasonable to request vendors to disclose matters such as repairs and improvements required or to be required by the Government or the Owners' Incorporations as these might entail additional cost to prospective buyers. Nevertheless, vendors were only requested to disclose matters within their knowledge. The authenticity of information provided by vendors in the event of disputes would be for the court to decide. On protection, PAS for H (1) advised that buyers would become more cautious on whether they should proceed with the transaction if vendors refused to disclose information. As regards estate agents, PAS for H (1) said that they would not be blamed for failure to fulfil their duties so long as they had taken reasonable steps to obtain the required information from vendors.

10. After noting the Administration's advice that estate agents were given a "due diligence" defence in disciplinary and civil proceedings under section 36 of the Ordinance if they had already taken reasonable steps to obtain the prescribed information, Mr CHENG remained concerned about the ability of vendors to disclose information on UBWs carried out prior to their ownership of the properties. Expressing similar view, Ms HO considered it more appropriate to request vendors to disclose structural alterations or additions carried out during their ownership of the properties. PAS for H (1) undertook to consider members' view.

11. Ms HO considered that EAA should prepare a list of the prescribed information for reference of buyers. PAS for H (1) explained that the Estate Agency Agreement for Purchase of Residential Properties in Hong Kong had stipulated that all Property Information Forms, including the Vendor's Statement, had to be provided to purchasers prior to their viewing of properties.

12. Mr HO remarked that EAA should refine the Property Information Forms to make them more user friendly. CEO/EAA advised that these forms served only to set out the standard requirements. Without prejudice to the provisions in the forms, estate agents were allowed to modify the format of these forms such as inserting the company's logo in the forms to suit their individual needs. The Chairman however did not agree that estate

agents should be allowed to prepare their own forms. He held the view that EAA should provide standard forms for estate agents. CEO/EAA undertook to relay members' views to EAA for consideration.

III Any other business

13. In view of the tight schedule, the Chairman advised that he would move a motion to extend the scrutiny period of the proposed Regulations to 30 June 1999. The deadline for amendments to these Regulations would be 23 June 1999.

14. Ms HO suggested and members agreed that the Consumer Council, the Law Society of Hong Kong, surveyor institutions and representatives from the trade should be invited to express their views on the proposed Regulations at the next meeting.

15. Members agreed to hold the next meeting on Wednesday, 9 June 1999, at 8:30 am.

16. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat

11 February 2000