

立法會
Legislative Council

LC Paper No. CB(1) 959/99-00
(These minutes have been seen
by the Administration)

Ref: CB1/SS/9/98/1

**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 Wednesday, 9 June 1999, at 8:30 am
in Conference Room A 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 Margaret NG
Hon Gary CHENG Kai-nam
Hon Mrs Miriam LAU Kin-yee, JP

Members absent : Hon David CHU Yu-lin
Hon LEE Wing-tat
Hon Ronald ARCULLI, JP

Public officers attending : **Housing Bureau**
Ms Eva TO, Principal Assistant Secretary (1) for Housing
Department of Justice
Miss Betty CHEUNG, Senior Government Counsel
Ms Stella CHAN, Government Counsel

Estate Agents Authority

Mrs Grace CHOW, Chief Executive Officer

Attendance by invitation : Consumer Council

Mr LI Kai-ming, Acting Chief Executive

Hong Kong Institute of Surveyors

Mr Simon LAI, Member of the Working Group on Estate Agents Ordinance

Hong Kong Real Estate Agencies Association

Mr LUN Chi-yim, Chairman
Mr Man Kuong-hoi, Vice-Chairman

Property Agencies Association Ltd.

Mr LI Man-pong, Chairman
Mr MAK Lin-on, Vice Chairman

New Territories Estate Agency Association Limited

Mr LIU Chi-ming, Chairman

Hong Kong Chamber of Professional Property Consultants Limited

Mr Mike KOO Kim-fai, President
Mr Denny WONG man-yin, Immediate Past President and Consultant

Society of Hong Kong Real Estate Agents Ltd.

Mr Eric LEE, Vice President
Mr Alex TANG, Honorary Secretary & Practice Committee Chairman

HKU Professional Real Estate Agencies Alumni Limited

Mr WU Kin-shun, Public Affairs Committee member

Hong Kong Institute of Real Estate Administration

Mr Joseph LEUNG Wai-kan, Publication Committee Chairman
Mr YU Kam-hung, Public Affairs Committee Chairman

Midland Property Holdings Limited

Ms Kitty IP, Executive Director
Ms Magdalene TANG, Public Relations Manager

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

I Meeting with deputations

Meeting with the Consumer Council
(LC Paper No. CB(1) 1477/98-99(01))

At the invitation of the Chairman, Mr LI Kai-ming briefed members on the submission from the Consumer Council (CC).

2. On consumer protection, Mr Edward HO enquired about CC's view on the effectiveness of the vendor's statement on structural alterations or additions if vendors could choose not to disclose such matters. Mr LI advised that CC had expressed similar concern during the formulation of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation). CC had proposed that either vendors or estate agents should be obliged to disclose such information. However, the proposal was withdrawn after CC accepted the objection from the trade on the ground that it would be difficult for a vendor or an estate agent to say with certainty in each case the presence of any alterations or additions. Mr LI added that although a vendor could refuse to disclose the required information, the vendor's statement did provide a useful reference for the prospective purchasers to make an informed decision. CC expected that with the enhancement in the information retrieval systems, access to information on illegal structures could be accessed more easily.

3. Mr Edward HO considered that the Administration should expedite the establishment of a centralized property databank so that useful references, including building plans for identification of illegal structures, could be made available for inspection of purchasers. In reply, the Principal Assistant Secretary for Housing (1) (PAS for H (1)) admitted that problems arising from the presence of illegal structures

could not be fully addressed by the introduction of the Practice Regulation which aimed to regulate the conduct and practice of estate agents. Nevertheless, the requirements under the Regulation for a vendor to disclose information on repairs and improvements required by the Government or Owners' Incorporations should help purchasers to make an informed decision on whether to proceed with the property transactions. Mr Edward HO however remained of the view that efforts should be made by the Administration, in particular the Buildings Department (BD), to facilitate the provision of property information.

Meeting with the Hong Kong Institute of Surveyors

4. Mr Simon LAI remarked that consumers would prefer to use the service of large estate agency companies to handle their property transactions after the implementation of the Practice Regulation. This would affect the business of those small and medium estate agency companies and the real estate agency trade could be monopolized by a few large companies in the long run. He also pointed out that as vendors would usually engage a number of estate agents to handle their properties, it would not be cost effective to require each of the estate agents to provide a separate Property Information Form taking into account the cost incurred in obtaining the required information. To this end, the Administration should ask vendors to engage professionals such as lawyers, Authorized Persons or surveyors to complete the Form for distribution to estate agents concerned. The ultimate solution would be for the Administration to set up a centralized property databank in the long run to optimize the use of resources. As regards the present sources of property information, the Administration should consider including sale brochures issued by developers as one of the prescribed sources through which particulars on saleable floor area should be obtained.

Meeting with the Hong Kong Real Estate Agencies Association, the Property Agencies Association Limited, the New Territories Estate Agency Association Limited and the Hong Kong Chamber of Professional Property Consultants Limited (LC Paper No. CB(1) 1477/98-99(03) and (04))

5. Representatives of the deputations briefed members on their two submissions.

6. Mr Mike KOO said that estate agents would tend to concentrate on handling transactions of certain types of properties of which the prescribed property information could be more easily obtained. As a result, vendors of less popular properties such as those in old districts or village houses might not be able to get proper service from estate agents. He also shared Mr Simon LAI's point that it would not be cost effective to require each of the estate agents handling the same property to provide a separate Property Information Form in respect of the property. To this end, Mr KOO proposed that the provision of property information to prospective purchasers should be deferred until the signing of the agreement for sale and purchase. This would save the time and expenses of estate agents without sacrificing the interest of the consumers with respect to the availability of the requisite information. He also urged the Administration to expedite the establishment of a centralized property databank.

7. Referring to Appendix II to the survey report prepared by the CityU Consultants Limited at Annex I to LC Paper No. CB(1) 1477/98-99(04), Mr MAN Kuong-hoi pointed out that 98.13% of respondents indicated that they would engage fewer number of estate agents if they had to sign an individual estate agency agreement with each estate agent. He anticipated that consumers would also tend to use large estate agency companies which would conduce to monopolization and affect the survival of many small and medium estate agency companies. The Chairman asked if the high resistance against the use of the agreement was due to the lack of publicity in this respect and whether the situation would be improved after the launching of a series of education and publicity programmes by the Estate Agents Authority (EAA). Mr KOO advised that as estate agents were required to explain in detail to consumers the particulars of the agreement and relevant forms, the time taken for completion of these documents would not be substantially reduced even after the stepping up of publicity by EAA. Mr Edward HO however pointed out that the additional time and cost incurred from the signing of agreement and provision of property information were worth spending to protect the interest of both the consumers and the estate agents.

8. Mr Fred LI remarked that the current design of the questionnaire for the survey might have affected the reliability of the findings of the report. Mr MAN replied that the questionnaire was fairly simple to gauge the views of respondents on the use of the estate agency agreement. Mr KOO added that the real situation could be worse than what had been revealed in the report. According to the results of a trial conducted by his company before the introduction of the Practice Regulation, only 1 out of 100 customers had agreed to complete the agreement and relevant forms.

9. Mr Fred LI enquired about the discrepancy between the figures, which were \$218.28 and \$197.72, provided by different deputations on the additional expenses incurred per transaction after the implementation of in the Practice Regulation. Mr LUN Chi-yim attributed this to the use of different wages as the basis for calculation.

10. On the technical aspects of the Practice Regulation, Mr LI Man-pong considered that the requirement for estate agents to enter into estate agency agreement with vendors prior to advertising the property for sale and lease under section 6 was too restrictive. As estate agents had to obtain the requisite information before signing the agreement, it would affect the timing, which was a crucial factor in property transactions, at which the properties concerned were put up in the market. To tackle the problem, Mr LI proposed that the relevant section should be amended to allow estate agents to list the properties upon receipt of oral instruction from vendors. He also tabled a number of proposed amendments to the Vendor's Statement, the Estate Agency Agreement for Sale of Residential Properties in Hong Kong and the Estate Agency Agreement for Purchase of Residential Properties in Hong Kong. To facilitate a better understanding, members requested and representatives of the deputations undertook to provide a consolidated proposal on possible amendments to the forms under the Practice Regulation.

(Post-meeting note: The proposals were circulated vide LC Paper No. CB(1) 1545/98-99(03) and (04).)

11. On the Estate Agents (Determination of Commission Disputes) Regulation, Mr LI considered it unreasonable that legal representation was prohibited in the determination proceedings given the high financial jurisdictional limit of \$300,000 of disputes handled by EAA. The prohibition was also at variance with the existing practice in legal proceedings.

12. In view of the considerable dissatisfaction on the Regulations from the trade, Mr Fred LI asked whether the trade had reflected their views to their representatives in EAA. Mr MAN admitted that there was a lack of communication between the trade and their representatives in EAA because the former had doubts on the representativeness of the latter who were appointed by the Administration direct. He therefore urged the Administration to consider appointing elected representatives of the trade to EAA.

Meeting with the Society of Hong Kong Real Estate Agents Limited
(LC Paper No. CB(1) 1477/98-99(05))

13. Mr Eric LEE remarked that even if estate agents had taken all reasonable steps, they still might not be able to obtain all the requisite information for each property transaction, particularly in the case of village houses where particulars on age and saleable floor areas were not available. Moreover, as departments from which property information could be obtained were not open on Saturday afternoons and Sundays when property transactions usually took place, estate agents might find it difficult to provide timely information to consumers concerned. He therefore reiterated the need for the expeditious establishment of a centralized property databank.

14. On the technical aspect of the Practice Regulation, Mr Alex TANG opined that instead of requiring estate agents to inform their customers of the number of their estate agent licences, sections 5(2)(a) and (b) should be amended to require estate agents to inform customers of their names as stipulated in their licences and the names of their companies. Mr TANG also considered the requirement under section 8(2)(a) for a licensee to keep a record of all listings of residential properties received by the agent and a copy of all estate agency agreements entered into in relation to residential properties for not less than three years impractical as these would take up space and incur additional administrative cost. He therefore urged the Administration to consider reducing the period to one year or a shorter period of time. Mr LEE added that the Administration should also review the Chinese version of the forms to make it more user friendly.

HKU Professional Real Estate Agencies Alumni Limited
(LC Paper No. CB(1) 1477/98-99(06))

15. Mr WU Kin-shun briefed members on the submission from the HKU Professional Real Estate Agencies Alumni Limited.

16. Referring to the third paragraph of the submission, Mrs Miriam LAU enquired about the intention behind the proposal for requesting representing solicitors to collect the commission for estate agents. Mr WU replied that the purpose was to provide additional protection on commission income for estate agents.

Meeting with the Hong Kong Institute of Real Estate Administration

17. While agreeing with the need to regulate the estate agency trade, Mr YU Kam-hung cautioned that over-regulation would affect the livelihood of many estate agents. He also shared other deputations' views that the implementation of the Practice Regulation would lead to monopolization in the trade; that the relevant forms under the Practice Regulation should be simplified to make them more user friendly; and that vendors should be requested to engage professionals to complete the vendor's statement for distribution to estate agents. Moreover, as representing solicitors would collect the stamp duty in respect of property transactions for the Government, it was not unreasonable to request them to collect the commission for estate agents as well. Mr YU added that the Administration should also consider drawing up a standard provisional agreement for sale and purchase.

Meeting with the Midland Property Holdings Limited

18. Ms Kitty IP agreed with the views expressed by various organizations.

Meeting with the Administration

(Legislative Council Brief (Ref: HB 9/7/42 IV), LC Paper Nos. LS 193/98-99, CB(1) 1431/98-99(02) and 1477/98-99(07))

19. In response to the views expressed by the deputations, the Principal Assistant Secretary for Housing (1) advised that the Administration had received similar concerns during the formulation of the two Regulations. She said that although the new practices such as the requirements for the provision of property information and a written estate agency agreement would inevitably involve a change to the workflow and the culture of the trade, they were essential to reflect the spirit of the Estate Agents Ordinance. The estate agency agreement, in particular, formed a core part of the regulatory system. It sought to avoid disputes arising from oral instruction and to codify clearly the duties of estate agents. It contained more comprehensive and balanced provisions than those featured in the "property viewing form" and "engagement agreement" currently used by the trade. The requirement for estate agency agreements would also help reduce the incidence of "fake listing" because future listing of residential properties would need to be supported by a corresponding estate agency agreement. It should also be noted that some consumers were hesitant to enter into written agreements with estate agents at present because they were uncertain of the effects and implications of the various agreements provided by different estate agents. With the implementation of the Practice Regulation, the estate agency agreement would be prescribed by EAA and in standardized format. Consumers would therefore be more willing to enter into such an agreement, particularly when the signing of the standard agreement became a mandatory practice upon the implementation of the Practice Regulation. She nevertheless undertook to examine and fine-tune, if necessary, the wording and format of the prescribed forms taking into account the concerns and views of the trade.

20. Owing to time constraints, the Administration was requested to provide a written

response to various concerns raised by the deputations, in particular on the need for the vendor's statement and the establishment of a centralized property databank, for future discussion of the Subcommittee.

(Post-meeting note: The Administration's response was circulated vide LC Paper No. CB(1) 1502/98-99(02).)

II Any other business

21. Members agreed to hold the next two meetings as follows:
 - Tuesday, 15 June 1999, at 2:30 pm; and
 - Thursday, 17 June 1999, at 10:45 am.
22. There being no other business, the meeting ended at 10:45 am.

Legislative Council Secretariat
11 February 2000