

Information Paper
15 June 1999

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

Introduction

During the Sub-committee meeting held on 9 June 1999, depositions from six estate agency associations and the Consumer Council were invited to give their views on the two Regulations relating to estate agency practice and determination of commission disputes. This paper provides a response from the Administration after consultation with the Estate Agents Authority on the following issues -

- (a) the requirement of a written estate agency agreement and the possibility of simplifying the agreements;
- (b) the supply of property information by estate agents;
- (c) the provision of a vendor's statement; and
- (d) legal representation in the determination of commission.

Estate agency agreement

2. Many disputes between estate agents and clients arise from the use of oral instructions, i.e. the absence of written agreements between these two parties in which their respective obligations and duties are stipulated. The desirability and need for a written estate agency agreement has already been fully debated during the scrutiny of the Estate Agents Bill by the Legislative Council. The Bill was passed in May 1997, and, among other things, provides for the signing of an estate agency agreement (section 45 of the Estate Agents Ordinance (Cap. 511)). Section 46 of the Ordinance further provides the Estate Agents Authority (EAA) with the power to prescribe the form of such agreements, and the particulars to be included therein. Thus, the prescription of the form and particulars of the agreements under the Practice Regulation merely reflects the spirit of the principal Ordinance, and expresses the same in implementable terms.

3. The estate agency agreement forms a core part of the regulatory system under the Ordinance. It seeks to avoid disputes arising from oral

instructions and to codify clearly the duties of estate agents. It contains provisions which are much more comprehensive and balanced than those featured in the “property viewing form” and “engagement agreement” which are widely used by the trade at the moment. The signing of an agreement with the vendor will also help reduce the incidence of “fake listing” because in future such listing will be supported by a corresponding estate agency agreement. A comparison of the estate agency agreement and the forms currently used by the trade is at Annex I. The estate agency agreement is thus a fairer agreement and upon use, will certainly enhance protection of the interest of the consumers, and the estate agents as well.

4. It is noted that some of the consumers are hesitant to enter into written agreements with estate agents at present. The reason could be that they are uncertain of the effects and implications of the various agreements provided by different estate agents. These agreements vary in both format and substance. With the implementation of the Practice Regulation, the estate agency agreement will be prescribed by the EAA, and in standardised format. It is only logical that consumers will be more willing to enter into such an agreement in due course. This is especially so once the signing of the standard agreement becomes a matter of market practice in future upon the implementation of the Regulation.

5. Consumer education will play an important part in promoting the use of the agreement. Recognising that both the trade and the public need to learn to adjust to the new arrangement, the EAA will soon launch a series of education and publicity programmes to promote the new regulatory system. These include seminars, the setting up of a Resource Centre, the despatch of outreach teams to district offices and the advisory centres of the Consumer Council, and publication of pamphlets and articles as well as radio and TV API (Announcements in the Public Interest). In fact, a series of seminars have just been held in late May and early June to introduce the new arrangement to the trade. The Estate Agents Ordinance and all its subsidiary legislation, together with the prescribed forms, will be made available in CD-ROM and distributed to trade members shortly after the passage of the Practice Regulation in the Legislative Council.

6. Taking into account the concerns and views of the trade, we shall examine the form of the agreements with a view to fine-tuning the wording and format. In doing so, we will also ensure that the quality

and precision required by the Regulation is not compromised.

The supply of property information by estate agents

7. The supply of property information to a client by estate agents is an integral part of the proposed regulatory system to improve the standard of services of the trade and to afford greater protection to consumers. The proposal gained wide support from the community. Under section 36 of the Estate Agents Ordinance, it has already been provided that estate agents are required to have in his possession prescribed types of property information so long as he acts for the vendor and supply such information to prospective purchasers. While this duty will inevitably increase the cost of operation of estate agents, we believe that this is not unreasonable for the following reasons -

- (a) estate agent being the middleman in a property transaction to introduce and negotiate on behalf of a client should have a duty and be in a position to provide basic property information to the client;
- (b) the prospective purchaser relies heavily on the information provided by the estate agent to make an informed decision;
- (c) the information prescribed by the EAA are very basic information which can be obtained readily from Government departments; and
- (d) to allay the concern of the trade, an estate agent is already given a “due diligence” defence in disciplinary and civil proceedings under section 36 of the Ordinance if he has taken reasonable steps to obtain the prescribed information from prescribed sources.

8. A list of property information and where they are to be obtained is at Annex II. The Government has taken various steps to facilitate the trade in the provision of property information. These include -

- (a) Land Registry

The majority of the information required can be obtained from the Land Registry, such as particulars of current ownership, subsisting encumbrances, year of completion and user restrictions in the occupation

permit. Estate agents can either conduct the search in the Land Registry or subscribe to the Direct Access Service (DAS) so that they can have access to the land register through computers in their offices. Other searching services such as special information counters help filing search tickets, bulk-request counter, all-service counter and self-service terminals for placing orders are also provided. As far as we know, many estate agents are already using the services of the Land Registry to conduct land searches for access to information about property owners.

(b) Rating and Valuation Department's Info-Hotline Service

The Rating and Valuation Department has launched a new 24-hour Info-Hotline Service to provide quick reference on the saleable area and age of properties. Estate agents can simply use a tone-dialed telephone and obtain the information via a fax machine. Simple user guide can be obtained from the Rating and Valuation Department. The Info-Hotline System currently provides information in respect of nearly one million private housing units, some 220,000 Home Ownership Scheme and Private Sector Participation Scheme units. Information on subsidised flats provided by the Housing Society will be downloaded to the system by July this year.

There may be cases where saleable area are not available in the system such as uncompleted flats and new flats not yet assessed to rates. The property information form has already allowed flexibility to deal with these cases. For example, for new properties, estate agents may refer to the saleable area as provided for in the agreement for sale and purchase of the first assignment. In the case of the first sale of properties by developers through an estate agent, the saleable area is to be provided by the developers.

(c) Buildings Department

Since the Land Registry and the Info-Hotline Service provided by the Rating and Valuation Department are

also prescribed sources for obtaining information on age and user restrictions of the properties in the occupation permit, there is no actual need to make referral to the Buildings Departments for similar information. Only in the unlikely event that this information is not available from the above two sources, estate agent may approach the Buildings Department. The Buildings Department has recently streamlined its information access system on certified copies of Occupation Permit. The retrieval time has been significantly reduced from 14 days to about 3 days (available for collection after 2 pm on the day following the next working day). Moreover, it should be noted that Occupation Permits are issued for the whole development or building and thus there is no need for estate agents to obtain Occupation Permit for each and every property within the same development or building. This is especially the case since most estate agents operate their business on a locality basis.

9. One of the aims of the Regulation is to state clearly the duty of estate agents in respect of provision of property information and ways in which they are to be regarded as having discharged their duties. As mentioned in paragraph 7(d) above concerning the "due diligence" defence, so long as estate agents have taken reasonable steps to obtain the information from the prescribed sources, they are not to be blamed for failure to fulfil their duties. This should have addressed the concern of the trade and strike a balance between the interest of consumers and the trade.

10. There have been suggestions that the provision of property information to prospective purchasers can be deferred until the signing of the agreement for sale and purchase. This in fact is the current practice which is the cause of many disputes and complaints. Essential property information should be provided to the prospective purchasers as soon as possible to allow them to make informed decisions. It is clearly undesirable for an estate agent to introduce, advertise or promote the properties to his clients without knowing or verifying such important information as ownership, floor area use and age of properties, etc. The suggestion will also run the risk of sacrificing the interest of the consumers as the importance of property information can be easily overlooked when the agent or parties involved are eager to conclude the deal as soon as possible, particularly when prospective purchasers are under the influence to make a quick decision without a cooling off period.

11. The suggestion that estate agents be allowed to accept property information provided by the vendor instead of from prescribed sources to prevent over-lapping of efforts will effectively, shift the responsibility of providing information from the estate agents to the vendor. This runs counter to the spirit of the Estate Agents Ordinance.

12. The new practice inevitably involves a change to the workflow and the culture of the trade in the main. However, many of the elements that make up the cost per listing on the part of the estate agent (e. g. travelling) have been part and partial of the nature of estate agency work. For example, estate agents are used to outreach clients for discussion, flat viewing and promotion. The extra cost brought about by the new practice should be less substantial than what the trade members have anticipated. In any event, the cost per listing, being part of the operating cost of the agent, must be seen in the light of the amount of commission receivable. In fact, on closer examination, certain information collected by estate agents can be built up and eventually become part of the assets of the estate agents. Smaller estate agents may also consider sharing property information database through the help of trade associations.

13. The suggestion of setting up a centralised property databank for all properties in Hong Kong is worth pursuing but is not a prerequisite for the implementation of the Regulation given the above considerations and reasons. The setting up of a territory-wide databank involves manipulation of a huge volume of land and building data as well as extensive integration of incompatible data now stored in different forms in different departments. As majority of secondary market transactions concentrates on a number of popular estate developments and the Government has already taken steps to facilitate the accessibility to property information from various sources, this is no need to defer the implementation of a regulatory system for estate agents until the setting up of the centralised property databank.

The vendor's statement

14. The vendor's statement which requests the vendor to disclose structural alterations, additions, repairs or improvements within his/her knowledge is provided for under section 36 of the Estate Agents Ordinance. The legislative intention is that it is a provision attempting to streamline property transaction practice and reduce the chances of disputes or rescission arising from such alterations or additions by requiring disclosure of such be made at an early stage. This will help

improve the existing practice whereby such disclosures are usually through relevant clauses inserted in the formal agreement for sale and purchase and the process of requisitions by representing solicitors. Thus, the statement, if to be adopted as a market practice, will serve to facilitate information flow from a vendor to a prospective purchaser at an earlier stage of property transaction. Moreover, it is not unreasonable to request the vendor to disclose such matters as repairs and improvements required by the Government or the Owners' Incorporation which may incur additional cost to a prospective purchaser. If the vendor refuses to disclose the information, the prospective purchaser will hence be more aware of related matters and can make an informed decision on whether to proceed with the transaction or to seek help from other professionals such as surveyors.

15. There has been suggestion on whether the Regulation should impose a statutory obligation on the vendors or the estate agents to disclose the above matters. Our view is that it is inappropriate to use the Estate Agents Ordinance, which primarily regulates the estate agency trade, as a means to impose a statutory obligation with penalties on vendors for non-disclosure. Moreover, it is not an easy task for a vendor or an estate agent to say with certainty in each case whether any alterations/additions are present or not as this requires interpretation of technical documents and plans as well as professional knowledge which are beyond the knowledge and expertise of the estate agents. Thus, the vendor is only requested to disclose such matters within his knowledge.

16. While the introduction of a vendor's statement cannot address fully problems arising from the presence of illegal structures, it is a step forward in streamlining the property transaction process and enables such matters to be disclosed, if possible, at an earlier stage.

17. In the light of comments made by Members, we have proposed some refinements to the wordings of the vendor's statement which is provided in Annex III.

Legal representation in the determination of commission

18. Some trade members suggested that legal representation should be allowed in the determination proceedings. The purpose of the commission dispute mechanism is to provide a speedy, informal and relatively inexpensive avenue for estate agents and their clients to resolve commission disputes. It is for this reason that no legal representation is allowed as this will invariably lead to higher cost and more lengthy

proceedings. To allow legal representation will defeat the aforesaid purpose. Since the mechanism is only meant as an alternative avenue for the resolution of commission disputes with the consent of both parties, there is no question of the interest of the parties involved being compromised as they can always choose to resolve their disputes in a court of law. Moreover, the suggestion may deter consumers to make use of the avenue to resolve disputes as they may have to pay for the legal fees.

Conclusion

19. The proposed Regulations have been discussed amongst the parties concerned for quite some time and views of these parties have been taken into account during the drafting process. Such requirements as provision of property information and signing of an estate agency agreement have been fully debated during the scrutiny of the Estate Agents Bill and now embedded in the Estate Agents Ordinance. With the implementation of the licensing system on 1 January this year, the public has high expectation on the EAA to regulate and control the conduct and practice of the estate agency trade. Further delay in the implementation of the Practice Regulation is undesirable. As the implementation of a regulatory system for the trade will be an on-going process, the Practice Regulations will be subject to review in the future in view of operational experience.

Housing Bureau
Government Secretariat
June 1999

**Major difference between the proposed content
of estate agency agreement and “property viewing form”/
engagement agreement currently used by the trade**

Estate agency agreement	Property viewing form and Engagement agreement
● Standardised format and content, easier to understand	● Varied content, different standard of protection to consumers
● Essential terms are stipulated in writing	● Many terms based on oral instructions
● Coverage is more comprehensive, including listing price, advertisement, sublisting, property inspection	● Terms are sketchy and selective which easily give rise to dispute
● State clearly the validity period	● Unclear on validity period
● State clearly type of agency, including general/exclusive agency; single/double agency	● Unclear on type of agency
● State agents’ duties in providing property information	● No mention of agents’ duties to provide property information
● State clearly rate of commission and other payment terms	● Unclear payment terms
● Require disclosure of beneficial interests	● No disclosure requirements or clauses
● Specifically require copies be provided to client	● No specific requirement for copies
● All blank space should be properly signed and acknowledged by parties concerned	● Presence of blank space which easily give rise to subsequent dispute
● With appropriate warning clauses and notes	● No warning clauses and notes

Property information to be provided by estate agents

Information required	Government Departments where information can be obtained
Current ownership and subsisting encumbrances	Land Registry
Saleable Floor area	Rating & Valuation Department (Infoline Service) Land Registry
Year of Completion	Rating & Valuation Department (Infoline Service) Land Registry Buildings Department
User restrictions	Land Registry Buildings Department
Unexpired term of lease and right of renewal	Land Registry
Lease term	Land Registry

PART 2

VENDOR'S STATEMENT

1. Are there any structural additions to or alterations of any part of the Property or the building of which the Property forms part, which have been or are or shall be made by the Vendor?
 Yes No
 If "yes", please provide particulars: _____
2. Are there any reinstatements or rectification of any defects to any part of the Property or the building of which the Property forms part, which have been or are or shall be required by the Government or the management office or the owners incorporation of the building?
 Yes No
 If "yes", please provide particulars: _____
3. Are there any of the following works, the cost of which a purchaser of the Property shall be wholly or partly liable, which have been or are or shall be required or proposed by the Government or the management office or the owners incorporation of the building as regards any part of the Property or the building of which the Property forms part?
 repairs or improvements work slope maintenance works
 others none
 Please state the nature of the work, if any: _____
4. If the answer to Question(s) No. 2 or No. 3 is "yes", please state the cost/estimated cost* for which a purchaser of the Property will be liable:
 HK\$ _____ in total.
5. (a) The Property is to be sold with vacant possession. OR
 (b) The Property is to be sold subject to a lease/licence for a specific term/statutory tenancy* as follows:
 • The monthly rental is HK\$ _____ (inclusive of rates; Government rent; management fee).
 • The term is _____ year(s) month(s) beginning _____ on _____ (D/M/Y) and expiring on _____ (D/M/Y) (both days inclusive).
 • Other terms:
 break clause rental review option to renew
 other special terms; please specify: _____
- All the information given by _____ ("Vendor") in Part 2 of this Form are true and correct within the Vendor's knowledge.

Signature of Vendor: _____ Date: _____

OR

- We, _____ ("Agent" (see note 12)), acting for the Vendor, have duly advised the Vendor to provide information concerning the Property in Part 2 of this Form but the Vendor decided not to provide the same.

We, _____ (“Agent” (see note 12)), are reasonably satisfied as regards the accuracy of the information contained in this Form.

Signature of the estate agent/salesperson*
signing for and on behalf of Agent: _____

Name and licence number of the signatory: _____

Number of Agent’s statement of particulars of business: _____

Address: _____

Telephone number: _____

Fax number: _____

Date: _____

NOTES

1. This Form should not be used with any alterations.
2. Nothing in Part 2 of this Form shall be construed as affecting or defining the terms and conditions of an agreement for sale and purchase to be entered into between the Vendor and a purchaser.
3. A licensed estate agent is required to provide to the Vendor the original or a copy of the completed Form before entering into an estate agency agreement with the Vendor.
4. A licensed estate agent is required to provide to a purchaser the original or a copy of the completed Form unless the purchaser specifically waives his right to receive the same.
5. A purchaser or the Vendor should seek legal or other professional advice if:
 - (a) he is in doubt of the effects and implications of any of the encumbrances listed in Part B in Part 1 of this Form;
 - (b) any prescribed information is not available or he is in doubt of any information provided herein; or
 - (c) he wishes to obtain additional information which is not provided in this Form.
6. Complete all questions and fill in all blanks except Part 1C. If any question is not applicable, please write “N/A” which means not applicable. If any prescribed information is not available, please write “Not Available”.
7. A separate form should be completed for each property.
8. Any material changes in the given information should be conveyed immediately to the recipients of this Form.
9. “*” means delete whichever is inappropriate. Provisions deleted must be initialled. Where appropriate, mark a tick “^” in the box provided.
10. Documentary evidence of the information provided in Part 2 of this Form may be attached by the Vendor.
11. Prescribed sources of information:
 - A: Land Registry
 - B: Rating and Valuation Department (Info-Hotline Service)
 - C: Buildings Department
12. Enter the name of the estate agency business entity concerned.