

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

**(A) Administration's Response to the Concerns Raised on 15.6.1999**

**(I) Vendor's statement**

The vendor's statement in Part 2 of Form 1 will be revised taking into account Members' views.

**(II) Chinese text of the forms**

Chinese text of Forms 1 to 6 will be revised to make the Forms more user-friendly.

**(III) Ascertain the identity of the vendor before the signing the Agreement for Sale and Purchase**

Section 13(3) has been revised to state more clearly that a licensed estate agent or salesperson has to take all practicable steps to ensure that the identity of the vendor is correct. EAA will issue practice guidelines to advise estate agents on how to ascertain the identity of the vendor and his capacity to sell the property. The amended version of Section 13(3) is attached at Annex I.

**(IV) Legal representation as stated in section 10(1) and (2) of the Estate Agents (Determination of Commission Disputes) Regulation**

The existing provisions are similar to related provisions under the Small Claim Tribunal Ordinance (Cap 338). No amendment is therefore recommended.

**(V) Appointment of elected representatives of the trade as members of the Estate Agents Authority**

Under the Estate Agents Ordinance, the Secretary for Housing is empowered to appoint members of the EAA. The suggestion will be taken into consideration by the Administration in future appointment of the EAA upon the expiry of the current term on 31 October 1999.

**(B) Administration's Response to the Submissions received from trade organisations**

The Administration has carefully considered the views submitted by the four trade associations and our comments on the points raised are summarised as follows -

- (1) We agree that the forms should be simplified as far as possible. In doing so, we should not compromise the legality of the agreements. However, some of the suggestions put forward by the trade are not in line with the spirit of the Estate Agents Ordinance and the estate agency agreement. Some are outside the scope of the Estate Agents Ordinance. For example, the trade suggested that the commission should be deposited into the account of the estate agent or with the solicitor before the completion of the transaction. This is outside the purview of the EAO. Moreover, the aim of the Practice Regulation is to regulate the conduct and practice of the trade. It is therefore not appropriate to stipulate in the regulation the method of commission payment by the consumers. On the suggestion by the trade to delete the supply of Property Information Form to the vendor in the estate agency agreement, we do not think it appropriate to do so as Section 36 of the EAO already stipulate the duty of the estate agent to possess and supply property information.

- (2) We also disagree to the deletion of the Estate Agent's Duty (Schedule 1) from the estate agency agreement because the purpose of the agreement is to state clearly the duties and obligations of both parties.
- (3) It is not necessary to split the Appointment of Agent and the Validity Period of the agreement into two sections. In doing so, this will lengthen the agreement form.
- (4) This regulation applies to residential property only. The EAA is considering appropriate regulations to be applied to non- residential property and the regulations will be drafted at a later stage.
- (5) The suggestion that the inclusion of the purchaser's brothers, sisters and parents etc. into the definition of specified relative and that they should be liable to pay commission is regarded as too harsh by the Consumer Council.
- (6) The suggestions that the sales price of the property should be specified within a certain range to avoid future alteration and the widening of the definition of advertising are considered acceptable.
- (7) We have consulted legal advice and confirmed that a salesperson could sign for and on behalf of the licensed estate agent in the agreement.

*Housing Bureau*

*Government Secretariat*

*June 1999*

**Revised Section 13(3)**

“(3) A licensee shall, for the purpose of avoiding the fraudulent misrepresentation of identity in an agreement for sale and purchase or a lease of a residential property, take all practicable steps to ensure that the name of the vendor is correct (which steps may include, if the vendor is an individual, collecting a copy of the vendor’s identity card within the meaning of the Registration of Persons Ordinance (Cap. 177)).”