

LEGISLATIVE COUNCIL BRIEF

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

PURPOSE

This paper briefs Members on the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (the “Practice Regulation”) and the Estate Agents (Determination of Commission Disputes) Regulation (the “Determination Regulation”) which have been published in the Government Gazette on 21 May 1999.

BACKGROUND AND BRIEFING

BACKGROUND

2. The Estate Agents Ordinance (Cap. 511) (EAO) aims to improve the standard of service provided by estate agents and protect consumers involved in property transactions. The EAO provides for the setting up of an Estate Agents Authority (EAA) to regulate the trade through the implementation of a licensing system. The Estate Agents (Licensing) Regulation was passed by the Legislative Council on 18 November 1998 and the licensing system was introduced on 1 January 1999. Estate agents and salespersons who practise estate agency work are now required to obtain a licence from the EAA.

3. While the EAO has already laid down a broad framework on the regulation of estate agents, it further empowers the EAA to prescribe by regulations matters relating to the conduct and practice of estate agents as well as the procedures for the determination of disputes over commission.

PRACTICE REGULATION

4. The Practice Regulation stipulates detailed rules relating to the conduct and practice of licensed estate agents, including provision of property information to a client, disclosure of pecuniary and other beneficial interests in a transaction, the use of the standard forms, estate agency agreements, conduct to be observed in seeking instructions, advertising, property inspection, negotiation and keeping of accounts, etc. The proposed Regulation aims to ensure that transactions are to be conducted in a fair, open and honest manner and that the interests of both consumers and estate agents can be better protected. As a first step, the Practice Regulation will apply to the sale and leasing of local residential properties. Regulations covering other types of properties such as commercial and industrial properties will be prescribed at a later stage. The salient provisions of the Practice Regulation are as follows -

(a) Provision of specified property information

5. The EAO has already specified certain types of property information to be provided by a licensed estate agent to his client upon the introduction of the property. The estate agent must also take reasonable steps to ensure that such information is accurate. Specified information includes prima facie evidence of ownership, subsisting incumbrances, saleable floor area, year or period of completion of the property, permitted use, unexpired term of the lease and whether there is a right of renewal and if so, the term. The estate agent is also asked to obtain a statement from the owner of the property as to whether any structural additions or alteration works have been undertaken and whether there are any commitments to repairs and improvements which may involve additional costs to the new owner.

6. To assist the trade in the provision of property information, the EAA has prescribed two standard forms for use by estate agents, one for sale/purchase of properties and the other for leasing of properties. The EAA also prescribes the sources whereby such property information are to be obtained. These include the Land Registry, Rating and Valuation Department and Buildings Department.

7. If an estate agent fails to comply with these requirements, they will subject themselves to disciplinary actions by EAA. And if the client suffers loss or damage as a result of such failure, the non-compliance will also constitute a cause of action whereby damages or remedy may be recovered via legal proceedings. However, it shall be a defence for an estate agent to show that he has taken all reasonable steps and exercised due diligence to avoid the failure, e.g. the agent relies on information obtained from a prescribed source.

(b) Written estate agency agreement

8. To avoid disputes arising from oral instructions and to codify clearly the duties of estate agents, an estate agent is required to enter into a written estate agency agreement with his client for the sale and leasing of residential properties. The EAA has prescribed the form of and the particulars to be contained in such an agreement, e.g. rate of commission, estate agent's beneficial interests in the transaction, type of agency (whether single or dual agency), etc. The agreement also contains provisions to ensure that a client is aware of his contractual obligations should the client acquire or dispose of the property other than through the contractual estate agent. An estate agent will have no legal remedy in relation to his commission or other fees unless a prescribed estate agency agreement is entered into between him and the client. The EAA has prescribed four standard estate agency agreements, i.e. for vendor in the sale of residential property, for purchaser in buying residential property, for landlord in letting residential property and for tenant in renting residential property.

(c) Conduct in seeking instructions, placing advertisements, negotiation and keeping of clients' money

9. The Practice Regulation further prescribes various rules to regulate the practice of licensed estate agents. These include, for example, –

- (i) estate agents shall not supply information relating to a property which is false and misleading in a material particular such as misrepresent the value of a property in an attempt to seek instruction from a client;

- (ii) estate agents shall not pass a listing to other agents unless with prior consent of the vendor;
- (iii) estate agents shall not issue advertisements relating to their estate agency business which are false or misleading in a material particular;
- (iv) estate agents shall not place advertisements without the prior consent of the client;
- (v) estate agents shall assist in making arrangements for the inspection by a purchaser of the property and establish what are to be included in the disposition of the property such as car parks, furniture, fixtures and preparation of a written inventory to this effect;
- (vi) estate agents shall present an offer to a client for acceptance as soon as practicable and shall not make fraudulent claim of the existence of an offer; and
- (vii) estate agents shall keep proper accounts and record of any client's money received.

DETERMINATION REGULATION

10. The Determination Regulation prescribes matters relating to the resolution of disputes over commission by the EAA under section 49 of the EAO. The dispute resolution mechanism under the EAO aims to provide an additional avenue, other than the court, to settle disputes over commission in a speedier and less formal manner. Such disputes can be referred to the EAA if with both parties' consent.

11. The Determination Regulation sets out the procedures to be followed by the parties involved in the determination proceedings. It also sets out the jurisdiction in respect of the amount of commission that can be referred to the EAA for determination. The proposed maximum amount of the commission in dispute is \$300,000.

COMMENCEMENT

12. The EAA proposed that the two Regulations should be brought into force on 1 November 1999 on the basis that the Regulations can be passed in July. This will allow several months for both the trade and the consumers to familiarize themselves with the new mode of operation and the use of the standard documents before they are actually put into practice. In particular, estate agents can make use of this period to prepare estate agency agreements for their existing listings, to update their property information base and to improve internal management control in order to comply with the new Regulations. Besides, the EAA will be launching a series of consumer education and publicity programmes after the passage of the Regulations to promote the new regulatory system. By given the trade and the consumers a bit of time to adapt to the new arrangement should help ensure a smooth operation and success of the new regulatory system. In making the recommendation, the EAA has taken into full account views of the trade and the consumers.

PUBLIC CONSULTATION

13. The EAA issued a consultative paper titled “Proposed Licensing Requirements and Practising Regulations for the Estate Agency Trade” in May 1998 to gauge the opinion of the trade, relevant professional bodies and the public. The EAA and the Housing Bureau also participated in a number of seminars and meetings subsequently to exchange views with the trade and these interested parties. The proposed Regulations tabled in the Legislative Council have taken into account views received.

PUBLICITY

14. A press release was issued on 21 May 1999.

ENQUIRY

15. Members may address any enquiries about the Regulations to Ms Eva TO, Principal Assistant Secretary of the Housing Bureau on 2509 0290.

Housing Bureau
Government Secretariat
May 1999