

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

(Made by the Estate Agents Authority, with the approval of the
Secretary for Housing, under sections 37, 44, 46 and 56 of the
Estate Agents Ordinance (Cap. 511))

1. Commencement

This Regulation shall come into operation on the day appointed under section 1(2) of the Ordinance for sections 36, 37 and 44 and Part VI of the Ordinance to come into operation for the purposes of the application of those sections and that Part to and in relation to any property in Hong Kong used wholly or primarily for human habitation.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires---

"authorized institution" (認可機構) means an authorized institution within the meaning of the Banking Ordinance (Cap. 155);

"estate agency agreement" (地產代理協議) means an estate agency agreement in a form prescribed under section 3(1);

"form" (表格) means a form specified in the Schedule;

"instruction" (指示) means an instruction (whether oral or written) from a client or, where the context requires, a principal agent, for carrying out estate agency work for and on behalf of the client;

"offer" (要約) means a proposal (whether oral or written) made by an offeror in respect of the acquisition or disposition of a residential property in which the offeror has instructed a licensee to communicate to a vendor or purchaser with a view to concluding a transaction;

"practicable" (切實可行) means reasonably practicable;

"principal agent" (主代理) means a licensee who takes instructions directly from a vendor or purchaser;

"residential property" (住宅物業) means a property in Hong Kong used wholly or primarily for human habitation;

"self-contained unit" (獨立單位) means an independent dwelling with separate cooking facilities and bathroom with or without lavatory;

"sub-listing agent" (分銷放盤代理) means a licensee who obtains an instruction from a principal agent in respect of the listing of a residential property;

"working day" (工作日) means any day other than a public holiday and other than a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) In this Regulation---

(a) the term "form" followed by a number is a reference to the form bearing that number;

(b) a reference to the supply of a form means the supply of the form in accordance with section 3(2) and (3).

(3) In this Regulation, references to a residential property include, in relation to an estate agency agreement, whichever of the following as is appropriate having regard to the agreement, namely the whole or any part of the residential property to which the agreement relates or, in case the agreement relates to 2 or more distinct residential properties, all of those properties when taken together as a whole, the whole of each of any 1 or more of those properties and part of any 1 or more, or all, of those properties.

3. Forms

(1) Subject to subsection (4), the forms are prescribed for the purposes of the Ordinance and, accordingly---

(a) the information (including particulars and other matters) required to be included in those forms; and

(b) the requirements to be complied with as specified in those forms, are also prescribed for those purposes.

(2) A form to be supplied under this Regulation shall be---

(a) completed in accordance with such directions and instructions as are specified in the form;

(b) accompanied by such documents as are specified in the form; and

(c) if the completed form is required to be provided to a person, so provided in the manner, if any, specified in the form.

(3) A licensee supplying a form pursuant to this Regulation shall---

(a) obtain the information required to be included in the form as soon as is practicable; and

(b) ensure the accuracy of the information so obtained and of any other information included in the form.

(4) The forms are not prescribed for the purposes of the Ordinance in the case of---

(a) the sale and purchase or leasing of a car parking space carried out separately from the sale and purchase or leasing of a residential property;

(b) the leasing of a residential property that is not a self-contained unit; or

(c) subject to section 7(1), a first sale of an undivided share in land in which a residential property forms part.

4. Guidelines as to professional standards

(1) The Authority may, with the approval of the Secretary, for the purpose of

providing practical guidance for licensees, issue guidelines specifying any conduct or practice which the Authority considers is a professional standard that ought to be followed by licensees in the course of exercising or carrying on the business of doing estate agency work, or in the course of acting as a salesperson, as the case may be.

(2) The other provisions of this Regulation shall not affect the generality of subsection (1).

5. Licensed estate agents and salespersons to inform clients they are licensed

(1) A licensed estate agent shall not cause or permit a person to become his client before the person is informed---

- (a) that the agent is a licensed estate agent; and
- (b) of the number of the estate agent's licence held by the agent.

(2) A licensed salesperson shall not do any estate agency work for a person before the person is informed---

- (a) that the salesperson is a licensed salesperson; and
- (b) of the number of the salesperson's licence held by the salesperson.

6. Use of estate agency agreement

(1) A licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor---

- (a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to signing an agreement for sale and purchase or a lease of the property, whichever is the earlier.

(2) A licensed estate agent who acts for a purchaser shall enter into an estate agency agreement with the purchaser prior to---

- (a) arranging an inspection of the residential property concerned by the purchaser; or
- (b) signing an agreement for sale and purchase or a lease of the property, whichever is the earlier.

(3) A licensee shall, before a person who is not legally represented enters into an estate agency agreement in relation to a residential property---

- (a) explain to the person the different types of agency appointment in the agreement and their respective implications and effects on the person;
- (b) explain to the person every term and condition set out in the agreement to ensure that the person is made aware of his rights and obligations under the agreement; and
- (c) recommend that the person seek legal advice if the person does not understand

any part of the explanation given under paragraph (a) or (b).

7. First sale of undivided share in land in which residential property forms part

(1) A licensed estate agent shall not enter into an agreement (not being an estate agency agreement) with a vendor in a first sale of an undivided share in land in which a residential property forms part unless the agreement states---

(a) that the agent shall obtain the information required to be included in Part 1 of Form 1---

(i) subject to subparagraph (ii), in accordance with the provisions of that form;

(ii) from the vendor in the case of any such information which he is unable to obtain in accordance with those provisions after taking all reasonable steps and exercising all due diligence to do so;

(b) that the agent shall be supplied with Part 2 of Form 1 from the vendor unless the property is a unit in an uncompleted building;

(c) subject to subsection (2), whether the agent is also permitted to act for the purchaser; and

(d) that if the agent also acts for the purchaser, then he shall disclose in writing any pecuniary or other beneficial interest he has in the property in the agreement or when the interest subsequently arises.

(2) Section 36(1)(a)(vii) of the Ordinance shall apply to an agreement (not being an estate agency agreement) entered into by a licensed estate agent with a client in relation to a residential property as it applies to an estate agency agreement entered into by a licensed estate agent with a client in relation to such a property.

8. Seeking instructions

(1) When seeking an instruction from a client, a licensee shall not supply any information to the client which is false or misleading in a material particular in relation to a residential property.

(2) (a) A licensed estate agent shall keep a record of all listings of residential properties received by the agent, and keep a copy of all estate agency agreements entered into in relation to residential properties, for not less than 3 years after the listings were received or the agreements entered into, as the case may be.

(b) Any officer of the Authority authorized in writing by the Authority for the purpose shall have the right to inspect a record kept under paragraph (a) at any time during ordinary office hours without prior notice.

(c) A licensee shall answer any question and supply any information requested by any officer of the Authority in relation to an inspection under paragraph (b).

(3) A licensee shall not pass to a sub-listing agent any information of a vendor or his residential property supplied by the vendor without the prior written consent of the vendor.

(4) A licensee shall not solicit an instruction from a vendor if he knows, or ought reasonably to know, that the residential property concerned is subject to an instruction exclusively granted to another licensed estate agent under an executed estate agency agreement unless the licensee has drawn to the attention of the vendor that the vendor may be liable for additional commission if he signs another estate agency agreement in respect of the property.

9. Advertising

(1) A licensed estate agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular.

(2) A licensed estate agent shall obtain a vendor's written consent prior to the issue of an advertisement in respect of the vendor's residential property.

(3) A licensed estate agent shall not cause or permit to be advertised a residential property in respect of which he is acting as such agent at a price or rental or on terms different from that instructed by the client concerned.

(4) A licensed estate agent shall not cause or permit to be issued an advertisement in respect of a residential property which is to be sublet without the advertisement expressly stating that the property is to be sublet.

(5) A licensed estate agent shall remove all advertisements issued or caused to be issued by him as soon as is practicable after---

(a) the residential property concerned is no longer available for sale or purchase or leasing; or

(b) the termination of the estate agency agreement concerned, whichever is the earlier.

(6) For the avoidance of doubt, it is hereby declared that a licensed estate agent who acts as a sub-listing agent shall comply with subsections (3), (4) and (5).

10. Property inspection and viewing, etc.

A licensee shall---

(a) assist in making arrangements for the inspection and viewing by a purchaser of a residential property (including a car parking space and common areas if applicable) and accompany the purchaser for such inspection and viewing unless otherwise instructed by the purchaser;

(b) not arrange an inspection and viewing by any person of a residential property without the prior consent of the vendor of the property;

(c) before the signing of an agreement for sale and purchase or a lease, establish what is to be included in the disposition of the residential property concerned and prepare a written inventory thereof.

11. Conduct of negotiation

A licensee shall---

- (a) not cause or permit a claim to be made of the existence of an offer from a purchaser unless the offer exists;
- (b) where information and comparables on residential property prices and rentals have been supplied to a client for reference or comparison, ensure that the information or comparables supplied do not misrepresent the value of the residential property concerned;
- (c) not exercise any undue influence on a vendor or a purchaser for the purpose of inducing him to enter into an agreement for sale and purchase or a lease;
- (d) keep a written record of all offers in respect of a residential property;
- (e) present an offer to a client for acceptance as soon as is practicable after receiving it;
- (f) subject to section 13(2)(b), inform a client of all offers received in the order he receives them and present them in an objective and unbiased manner.

12. Keeping of accounts and records

(1) (a) A licensed estate agent shall keep proper accounts as to moneys received or held, or paid by the agent, for or on account of clients.

(b) Any officer of the Authority authorized in writing by the Authority for the purpose shall have the right to inspect the accounts kept under paragraph (a) at any time during ordinary office hours without prior notice.

(c) A licensee shall answer any question and supply any information requested by any officer of the Authority in relation to an inspection under paragraph (b).

(2) A licensed estate agent shall---

- (a) issue a written receipt to a client immediately for any moneys received; and
- (b) retain a copy of the receipt for not less than 3 years after it is issued.

(3) A licensed estate agent shall deposit all moneys received or held for or on account of a client in a trust account maintained at an authorized institution.

(4) A licensed estate agent shall retain a copy of the deposit slip of any moneys deposited into a trust account maintained under subsection (3) for not less than 3 years after the deposit was made.

(5) A licensed estate agent shall not withdraw money from a trust account maintained under subsection (3) except---

- (a) in accordance with his client's instructions; and
- (b) by a cheque or by electronic funds transfer.

(6) A licensed estate agent who has neither received nor held money for or on account of a client during any financial year of the agent shall send to the Authority a statutory declaration to that effect---

- (a) if required to do so by the Authority; and

(b) within such period as is specified by the Authority.

(7) (a) A licensed estate agent shall only release deposit money in relation to the sale and purchase or lease of a residential property in accordance with---

- (i) the terms of the agreement for sale and purchase or lease concerned; or
- (ii) the purchaser's instructions.

(b) A licensed estate agent shall ensure that the identity of the vendor and of the owner of the residential property concerned are the same or, if they are different, that the vendor has authority to sell the property, before releasing any money under paragraph (a).

(c) A licensed estate agent shall return a purchaser's cheque or deposit money to the purchaser as soon as is practicable if the purchaser's offer to purchase or lease the residential property concerned is not accepted by the vendor.

(8) A licensed estate agent shall furnish to the Authority if required to do so by the Authority a certificate issued by a professional accountant as to whether or not subsection (1) has been complied with by the agent.

13. Agreements for sale and purchase and leases

(1) A licensee shall, before a client of the licensee who is not legally represented enters into an agreement for sale and purchase or a lease of a residential property---

(a) explain to the client the meaning of each clause of the agreement or lease, as the case may be, and draw to his attention the meaning of any essential terms and provisions thereof; and

(b) recommend that the client seek legal advice if the client does not understand any part of the explanation given under paragraph (a).

(2) A licensee shall not---

(a) continue to market a residential property after the signing of an agreement for sale and purchase or a lease in respect of the property;

(b) be obligated to disclose any further offers to the vendor concerning the property.

(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, ensure that the name of the vendor concerned who is an individual is correct by collecting a copy of the vendor's identity card (within the meaning of the Registration of Persons Ordinance (Cap. 177)) or other identification document.

(4) A licensee acting for the vendor of a residential property shall, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property.

14. Commission

(1) A licensee who acts as a sub-listing agent shall not demand payment of any commission from the client concerned of the principal agent.

(2) A licensee shall not recommend to a client the use of services of any other person where a pecuniary or other beneficial interest may accrue to the licensee in consequence of the recommendation, or the use of the services by the client, without first disclosing that interest to the client at the time of the recommendation.

(3) A licensed estate agent shall---

(a) issue a written receipt to a client immediately for any commission paid by the client; and

(b) retain a copy of the receipt for not less than 3 years after it is issued.

(4) Subsection (3) applies to an invoice for commission to be paid as it applies to a receipt for commission paid.

15. Effective control

A licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Ordinance.

16. Compliance by partnership

Where 2 or more licensed estate agents are members of a partnership, the requirements under sections 38(1)(a), 40(2) and (3), 47(1) and (2) and 48(1) and (2) of the Ordinance shall, as regards each of the members, be regarded as having been complied with if, but only if, each such requirement or provision has been complied with by at least one of such members.