

**Extracts from information paper for the meeting of
Subcommittee on Estate Agents Practice
(General Duties and Hong Kong Residential Properties) Regulation and
Estate Agents (Determination and Commission Disputes) Regulation
held on 15 June 1999**

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-dailed 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.

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