

***Matters Relating to Buying and Selling
Residential Properties in the United Kingdom,
the United States and Hong Kong***

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EXECUTIVE SUMMARY

1. This paper describes the costs and procedures of buying and selling residential properties in England and Wales, the United States (US) and Hong Kong.
2. The Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("Practice Regulation") requires estate agents in Hong Kong to provide property information to buyers upon the introduction of property. Therefore, the costs of obtaining such information are incurred by estate agents. In England and Wales, property information or documents are required after the buyer and seller have entered into an agreement and these costs are borne by the buyer and the seller. If the trial scheme in Bristol is successful, these costs will be shifted to be borne by the seller. In the US, these costs are negotiable between buyers and sellers.
3. While there is no evidence showing that estate agents in England and Wales and the US are required to incur any specific costs in a property transaction, intense competition among estate agents might compel them to offer some 'discounted or even free services'. It all depends on the market situation.
4. Regarding the procedures of buying and selling residential properties, the Department of the Environment, Transport and the Regions of the government of the United Kingdom (DETR) introduced a pilot scheme in Bristol to improve the current buying and selling procedures. A seller is required to put together a pack of standard property documents such as title documents, replies to searches made of the local authority, guarantees for work carried out on the property, survey report, etc. before putting a property on market. This Pack is given to the prospective buyer to inspect when his offer to the seller has been accepted. If a person wishes to have copies of the documents before making an offer, he can obtain the Pack after paying the copying costs to the seller.
5. Residential property transactions in the US are regulated at state level, not federal level. In some states in the US, there is a duty on sellers to disclose to buyers certain standardized information about the property prior to its marketing. They require sellers to disclose all known attributes of the property such as structural additions or repairs, environmental hazards, any encroachments or easements, etc. to buyers. Property documents such as title documents are provided to buyers only when buyers and sellers have entered into an agreement.
6. In Hong Kong, the Practice Regulation requires estate agents in Hong Kong to provide specified property information to prospective buyers upon the introduction of property. Such information includes prima facie evidence of ownership, subsisting encumbrances, saleable area, year of completion of the property, etc. Sellers are also required to disclose property information such as structural alterations to buyers.
7. The buying and selling procedures of residential properties in England and Wales, US and Hong Kong share one similarity, that is, they all try to provide property information to prospective buyers at the very outset. It aims to speed up the overall time of the transaction process.

MATTERS RELATING TO BUYING AND SELLING RESIDENTIAL PROPERTIES IN THE UNITED KINGDOM, THE UNITED STATES AND HONG KONG

PART 1 - INTRODUCTION

1. Background and Objective

1.1 Members attending a LegCo Case Conference on 'Business Difficulties of Small Estate Agents Caused by the Implementation of the Estate Agent Practice (General Duties and Hong Kong Residential Properties) Regulation' requested the Research and Library Services Division (RLS) to conduct a research on the costs of obtaining property information incurred by estate agents in the United Kingdom (UK) and the United States (US). The research aims to compare the costs of obtaining such information in the above two countries with that in Hong Kong.

1.2 To facilitate understanding of the subject, a brief introduction on the procedures of buying and selling residential properties in the two countries is also provided.

1.3 All the information presented in this paper is sourced from the Internet.

2. Scope

2.1 In this research paper, Scotland is not included since the Scottish system of home purchase and sale is quite different from that of England and Wales. First, estate agent's services in Scotland are normally provided by solicitors. Solicitors assist sellers in putting properties on market and in conducting negotiations of the sale between buyers and sellers.

2.2 Secondly, it is typical for a buyer, with the assistance of his solicitor, to make an offer to a seller based on the outcome of a property survey and an associated mortgage offer. This is in contrast with the situation in England and Wales where the property survey report, mortgage valuation report, etc, are put in place only after the offer has been accepted by the seller.

2.3 Thirdly, when a prospective buyer makes an offer to a seller, the offer is usually in writing and accompanied by a cash offer for the property (deposit money). Hence, buyers in Scotland have incurred expenditure at an earlier stage than their counterparts in England and Wales where the deposit is required only after the terms and conditions have been agreed by the seller and the buyer.

2.4 In view of the above differences found between Scotland and England and Wales, Scotland is not included in this research paper.

PART 2 - BUYING AND SELLING RESIDENTIAL PROPERTIES IN ENGLAND AND WALES

3. Overview

3.1 There is no evidence showing that estate agents in England and Wales are required to incur any specific costs in a property transaction. They may conduct property searches on behalf of buyers or sellers and hence may incur some costs. However, they usually obtain reimbursement afterwards. Yet, intense competition among estate agents in an area might compel them to offer some 'discounted or even free services' and thus reducing the total costs incurred by buyers or sellers. It all depends on the market situation.

3.2 The next few sections give a brief introduction to the procedures and costs of buying and selling residential properties and the role of estate agents in England and Wales. A table summarizing the costs of property searches is also provided to give readers an idea of the costs, if any, which might be incurred by estate agents.

4. Procedures of Buying and Selling Residential Properties

England and Wales

4.1 The current procedures of buying and selling residential properties in England and Wales are summarized as follows:

- a. A seller instructs an estate agent to place property on market.
- b. The property is viewed by prospective buyers.
- c. In England and Wales, a verbal offer is made by the prospective buyer and confirmed to the seller in writing by the estate agent. There follows an optional period for negotiations.
- d. When the seller accepts the buyer's offer, this acceptance is regarded as informal only and both sides may withdraw with no legal penalty.
- e. Both seller and buyer instruct solicitors to prepare for exchange of contracts.

- f. The buyer's solicitor conducts title searches¹ and initiates other enquiries.
- g. The seller's solicitor draws up draft contract.
- h. The buyer approaches mortgage lender for firm offer of mortgage.
- i. The buyer conducts optional survey of property.
- j. The mortgage lender carries out valuation and other credit and collateral checks.
- k. If the final price and conditions are agreed, the buyer pays deposit to the seller.
- l. Contracts are exchanged between the seller and the buyer and a completion date will be set by both solicitors.
- m. The buyer's solicitor makes final Land Registry search. If everything is in order, the transaction is finalized and property ownership changes hands. The buyer's solicitor registers title with the appropriate body.

5. Recent Changes

5.1 In September 1997, the Department of the Environment, Transport and the Regions (DETR) of the UK government conducted a research into the process and problems associated with buying and selling homes in England and Wales. The research was completed in 1998 which revealed that fewer than half of buyers and sellers were satisfied with the buying and selling process. A consultation paper prepared by DETR was released in December 1998 which set out proposals for improving the process.

5.2 The consultation paper puts forward a package of proposals hoping that they can reduce delays and uncertainties experienced by both buyers and sellers. One of the proposals put forward by DETR is the 'Seller's Information Pack'. The Pack is prepared by or on behalf of the seller which is made available for a prospective buyer to inspect as soon as his offer has been accepted. If a prospective buyer wishes to have a copy of the Pack before making an offer, he can obtain it only after paying a fee to cover copying costs to the seller.

¹ A title search is a check of the title records to ensure that the seller is the legal owner of the property and that there are no liens such as unpaid taxes or other claims outstanding.

- 5.3 This 'Seller's Information Pack' includes:
- a. copies of title documents;
 - b. replies to standard preliminary enquiries made on behalf of buyers;
 - c. replies to searches made of the local authority;
 - d. copies of any planning, listed building and building regulations consents and approvals;
 - e. for new properties, copies of warranties and guarantees;
 - f. any guarantees for work carried out on the property;
 - g. a survey report; and
 - h. a draft contract.

5.4 This 'Seller's Information Pack' is currently being tried in a pilot scheme in Bristol. The trial period started early this year and would last for approximately six months. Since this is a pilot scheme and is participated by volunteer estate agents, solicitors, conveyancers², etc., the UK government will pay the costs of the Seller's Information Pack to ensure that the cost to sellers is no different from the cost incurred by the homeowners in Bristol who sell their homes outside the pilot scheme. A review of the Bristol Scheme will be conducted afterwards to examine the possibility of extending this practice to the rest of the UK.

6. Role of Estate Agents

6.1 The role of estate agents in England and Wales is to help sellers to make an accurate valuation of their properties, produce publicity materials of the property and organize appointments for prospective buyers to view the property. They play a critical role in the early stages of the process: bringing buyers and sellers together and setting the selling process in motion. In the Bristol Scheme, the volunteer estate agents help sellers put together the 'Seller's Information Pack'. In general, estate agents' commission fee usually ranges from 1.5% to 4% (plus VAT³ at 17.5%) of the selling price and is negotiable.

² Conveyancers do similar tasks as solicitors. They assist buyers and sellers in the sale, purchase and remortgage of freehold and leasehold houses or flats, the creation of new leases and tenancies, and the transfer of interests in residential properties.

³ VAT stands for value added tax.

7. Cost Incurred in Buying and Selling Properties

Selling a Property

7.1 The average fees and costs incurred by sellers in England and Wales are listed in Table 1.

Table 1 - Average Fees and Costs Paid by Sellers in England and Wales

Fee type	Median £ (including VAT)
Estate agent's fees: advertising	176 (or HK\$2,208.8)
Estate agent's fees: main	1,035 (or HK\$12,989.25)
Estate agent's fees: other	1,067 (or HK\$13,390.85)
Solicitor's fees: conveyancing	345 (or HK\$4,329.75)
Solicitor's fees: other	240 (or HK\$3,012)
Other expenditure	424 (or HK\$5,321.2)

Remarks:

1. VAT stands for value added tax.
2. The average exchange rate in 1999 between HK\$ and UK£ was HK\$12.55 = £1.

Sources:

1. Department of the Environment, Transport and the Regions, *Key Research on Easier Home Buying and Selling*, at www.housing.deter.gov.uk/hbs/research/chap04.htm.
2. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, February 2000.

7.2 Since not all sellers have to incur costs of every item listed above, the average costs to sellers in a transaction are between £1,400 (or HK\$17,570) and £1,500 (or HK\$18,825)⁴, amounting to about 2.3% of the selling price.

Buying a Property

7.3 The average fees and costs incurred by buyers in England and Wales are listed in Table 2.

⁴ The costs include estate agent's fees, advertising costs and solicitor's fees for conveyancing.

Table 2 - Average Fees and Costs Paid by Buyers in England and Wales

Fee type	Median £ (including VAT)
Solicitor's fees: conveyancing	376 (or HK\$4,718.8)
Solicitor's fees: search fees	94 (or HK\$1,179.7)
Solicitor's fees: Land Registry	94 (or HK\$1,179.7)
Solicitor's fees: stamp duty	1,058 (or HK\$13,277.9)
Solicitor's fees: other	39 (or HK\$489.45)
Mortgage: valuation	176 (or HK\$2,208.8)
Mortgage: arrangement	294 (or HK\$3,689.7)
Mortgage: broker / adviser	255 (or HK\$3,200.25)
Survey fee	294 (or HK\$3,689.7)

Remarks:

1. VAT stands for value added tax.
2. The average exchange rate in 1999 between HK\$ and UK£ was HK\$12.55 = £1.

Sources:

1. Department of the Environment, Transport and the Regions, *Key Research on Easier Home Buying and Selling*, at www.housing.deter.gov.uk/hbs/research/chap04.htm.
2. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, February 2000.

7.4 Since not all buyers have to incur costs of every item listed above, the average costs to buyers in a transaction are £1,060 (or HK\$13,303)⁵, amounting to about 1.6% of the buying price⁶.

⁵ The costs include conveyancing costs, mortgage processing costs and survey fees.

⁶ There was a difference of about £3,000 between the buying price and the selling price because they were drawn from two different samples during the home buying and selling survey conducted by the DETR between 1997 and 1998.

Bristol Scheme

7.5 The 'Seller's Information Pack' shifts some of the burden of costs from buyers to sellers. On the one hand, some information in the 'Seller's Information Pack' is still provided by or on behalf of the seller, and at the expense of the seller. This includes a copy of title deeds; a property information form with replies to pre-contract enquiries; copies of planning and other consents; copies of warranties and guarantees; documents for leasehold properties; and a draft contract. On the other hand, the costs of conducting searches with the local authority and of HM Land Registry records are shifted from buyers to sellers. On the whole, the Pack would mean an additional cost to the seller of around £100 (or HK\$1,255), although there will be no increase in the cost of the transaction, i.e. the combined cost of the buyer and seller.

7.6 If a survey report is included, this will incur extra cost of around £250 (or HK\$3,137.5) plus VAT. If a more detailed building survey is commissioned, the extra cost incurred will rise to over £350 (HK\$4,392.5) plus VAT.

7.7 The Bristol Scheme does not change the role of estate agents in the home buying and selling process. Costs incurred by estate agents during the preparation of the Seller's Information Pack will be met by sellers.

8. Searches

8.1 Before contracts can be exchanged, a number of searches have to be undertaken. Currently, these searches are made by the buyer's solicitor. If the Bristol Scheme is to be implemented, these searches will be made by or on behalf of the seller. These searches include local authority search, land charge⁷ search and HM Land Registry⁸ search fee.

a. The local authority search

It is necessary to find out, for example, whether the local authority intends to develop area surrounding the property concerned such as building a road passing through the property. The cost of this varies from local authority to local authority but it is in the general region of £100 (or HK\$1,255).

b. Land charge search fee

The cost of conducting a land charge search is £2 (or HK\$25.1) per name search and £1 (or HK\$12.55) per office copy.

⁷ Land charge is a term used for the security that the lender (mortgagee) relies on when granting a mortgage.

⁸ The Land registry search is usually carried out by solicitor to verify whether or not the seller is the registered legal owner of the house.

- c. HM Land Registry search fee.
The HM Land Registry keeps a register which provides an official record of the legal ownership and matters relating to the property in question.

8.2 Listed below is the fee schedule at the HM Land Registry.

Table 3 - Fee Schedule at the HM Land Registry

Type	Fee (£)
Copy of the register or any part thereof - per copy	4 (or HK\$50.2)
Copy of the title plan - per copy	4 (or HK\$50.2)
Copy of any or all of the documents referred to in the register - per copy or per set	4 (or HK\$50.2)
Personal inspection of the register or any part thereof - per title	4 (or HK\$50.2)
Personal inspection of the title plan - per title	4 (or HK\$50.2)
Personal inspection of any or all of the documents referred to in the register - per title	4 (or HK\$50.2)
The supply of a copy of an Index Map Section ¹ - per copy	40 (or HK\$502)

Remarks:

1. An Index Map indicates whether or not a particular piece of land is registered and if it is, the registered title number and whether the registration is of freehold or leasehold land. Each single map is called a Section.
2. The average exchange rate in 1999 between HK\$ and UK£ was HK\$12.55 =£1.

Sources:

1. HM Land Registry, *The Open Register ~ A Guide to Information Held by the Land Registry and How to Obtain It*, March 1999.
2. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, February 2000.

9. Costs Incurred by Estate Agents

9.1 Normally, the costs such as obtaining property information incurred by estate agents during the transaction are reimbursed by either the buyer or the seller. However, it is observed that some of these costs might be met by estate agents so that they can 'attract' more customers. How the cost will be shouldered by estate agents depends on the market situation of the localities in question.

PART 3 - BUYING AND SELLING RESIDENTIAL PROPERTIES IN THE UNITED STATES

10. Overview

10.1 Again, there is no evidence showing that estate agents in the United States (US) are required to incur any specific costs in a property transaction. Costs are shared between sellers and buyers, depending on their bargaining position.

10.2 The next few sections give a brief introduction to the procedures and costs of buying and selling residential properties and the role of estate agents in the US. It is noted that residential property transactions in the US are regulated at state level, not federal level. While different states may have different buying and selling procedures, they roughly follow the guidelines issued by the Department of Housing and Urban Development. This research paper chooses the procedures of buying and selling residential properties in California⁹ as an example.

11. California

Procedures of Buying and Selling Residential Properties

11.1 The procedures of buying and selling residential properties in California are summarized as follows:

- a. A seller instructs an estate agent to place his property on market.
- b. The seller is required to complete a Real Estate Transfer Disclosure Statement¹⁰ which specifies the existence and condition of all known physical attributes of the property ranging from air conditioning to the type of water heater or sewer system. The Disclosure Statement also asks the seller to note the presence of environmental hazards, any encroachments or easements, room additions or repairs made without the necessary permits or not in compliance with building codes, zoning violations, etc.

⁹ There are two reasons for choosing California. First, it has the largest state population in the US. Secondly, its procedures of buying and selling residential properties bear resemblance to that of Hong Kong.

¹⁰ The requirement to complete a Disclosure Statement is not adopted in every state in the US.

- c. Estate agents representing prospective buyers and the seller are required to make their inspections of the property. The disclosures of the seller, together with the comments made by the estate agents after their inspection will be presented to prospective buyers.
- d. A prospective buyer makes an offer to the seller. The offer must be in writing as oral promises are not enforceable in the sale of property in the US. The purchase offer which the buyer submits, if accepted, will become a binding sales contract.
- e. The offer is usually accompanied by a deposit of earnest money. The earnest money is deposited in an escrow account where the funds will remain until the transaction is completed, the amount of which varies from community to community.
- f. The buyer approaches mortgage lender for firm offer of mortgage.
- g. The day on which the property actually changes ownership is known as closing (or settlement). Before closing, the buyer usually conducts title search¹¹. He usually employs a title company¹² to search and examine the title and to prepare a title commitment¹³ or other form of title evidence to be forwarded to a closing agent (or a settlement agent)¹⁴ who coordinates the closing activities.

¹¹ In the majority of localities, public records affecting real estate title are spread among several local government offices, including recorders of deeds, county courts, tax assessor and surveyors. Records of death, divorces, court judgements, liens and contest over wills (all of which affect ownership rights) must also be examined.

¹² A title company is a company which specializes in examining and insuring titles to real estate.

¹³ It is generally a legal requirement of regulated mortgage lenders (mortgagee) to require buyers to purchase title insurance in order to protect the mortgagee against loss arising from disputes over ownership of a property. A title commitment is a commitment issued by a title company to insure the title.

¹⁴ A settlement agent or a closing agent is responsible for coordinating closing activities, such as preparing and recording the closing documents and disbursing funds. They can be people from the lending companies, title companies, escrow companies, real estate professionals or attorneys for the buyer or the seller.

- h. The closing agent then checks all the information received for completeness, consistency and accuracy. It is typical in the closing process to order property inspections, surveys and termite reports¹⁵.
- i. The closing agent prepares the HUD-1 Settlement Statement¹⁶. All costs must be shown on the HUD-1. This includes costs paid at closing as well as pre-paid costs, such as earnest money deposit or loan application fee. The lender has three days from the time of the loan application to provide the buyer with a Good Faith Estimate of his loan costs. Within those three days the buyer should also receive a copy of the HUD-1 Booklet, "Buying Your Home", which outlines the settlement process.
- j. Once the closing agent is satisfied that the paperwork is in order, he will confirm the date, time and location of the closing with all the parties involved.
- k. At closing, the buyer requires the seller to prove that the title is complete and free of anyone else's claims.
- l. The transaction is finalized and property ownership changes hands.

12. Role of Estate Agents

12.1 The roles of estate agents are to provide advice to sellers or buyers or both and to guide them to complete the whole transaction. They will help sellers and buyers in the negotiation of the sales contracts and help buyers to obtain a mortgage loan if necessary. They earn a commission from providing advice to a successful transaction. In general, the commission is 6% of sale price and is paid by the seller. Estate agents in the US work in teams of licensed brokers and agents and the commission is split between the two.

¹⁵ In many localities, homes must be inspected for termites before they can be sold. The buyer needs a certificate from a termite inspection firm which states that the property is free of both visible termite infestation and termite damage.

¹⁶ HUD-1 Settlement Statement is a statement required by the Department of Housing and Urban Development (HUD) to be completed at closing.

13. Cost Incurred in Buying and Selling Properties

13.1 Since customs vary significantly from area to area, it is difficult to provide estimates for fees and costs incurred by sellers or buyers or even estate agents, if they incur any. For example, while the cost of a full natural hazard disclosure report (a report which shows whether the property is within earthquake fault zones, seismic hazard zones or flood hazard zones, etc.) prepared by a specialist company ranges from US\$50 to US\$100 (or HK\$387.9 to HK\$775.8), information on flood insurance availability, limits of coverage and copies of flood insurance maps can be obtained through the National Flood Insurance Program free of charge. In some counties, the cost of a county map is US\$1 (or HK\$7.758) per record¹⁷ and fees of searching real estate records range from US\$1 to US\$1.5 (or HK\$7.758 to HK\$11.637) per record. It is generally assumed that at least an additional 3% will be added to the price of the home through settlement expenses. In some relatively high-tax areas of the country, 5% to 6% is more common.

13.2 Table 4 shows a sample range of closing cost charges for specific services on a US\$75,000 home purchase with either a 10% down payment or a 20% down payment.

13.3 Closing costs or settlement costs in the US are negotiable. They can be paid by the buyer or the seller. Estate agents can usually get reimbursement from the buyer or seller for the costs they incurred. There are generally no fixed rules about which party pays which fees, although in many cases this is largely controlled by local custom.

¹⁷ Each record shows a parcel of land. Take San Diego as an example, it has more than 830 000 parcels of land.

Table 4 - Closing Costs Charge

Down Payment	10%	20%
Loan Application Fees	US\$75 to US\$300 (or HK\$581.85 to HK\$2,327.4)	US\$75 to US\$300 (or HK\$581.85 to HK\$2,327.4)
Loan Origination Fees ¹	US\$675 (or HK\$5,236.65)	US\$600 (or HK\$4,654.8)
Points ²	US\$675 to \$ US\$2,025 (or HK\$5,236.65 to HK\$15,709.95)	US\$600 to US\$1,800 (or HK\$4,654.8 to HK\$13,964.4)
Mortgage Insurance	US\$338 to \$ US\$675 (or HK\$2,622.204 to HK\$5,236.65)	US\$338 to US\$675 (or HK\$2,622.204 to HK\$5,236.65)
Title Search / Insurance Fees	US\$450 to \$ US\$600 (or HK\$3,491.1 to HK\$4,654.8)	US\$450 to US\$600 (or HK\$3,491.1 to HK\$4,654.8)
Attorney's Fees	US\$500 to US\$1,500 (or HK\$3,879 to HK\$11,637)	US\$500 to US\$1,500 (or HK\$3,879 to HK\$11,637)
Appraisal	US\$100 to US\$300 (or HK\$775.8 to HK\$2,327.4)	US\$100 to US\$300 (or HK\$775.8 to HK\$2,327.4)
Homeowners Insurance	US\$300 to US\$600 (or HK\$2,327.4 to HK\$4,654.8)	US\$300 to US\$600 (or HK\$2,327.4 to HK\$4,654.8)
Inspections	US\$175 to \$ US\$350 (or HK\$1,357.65 to HK\$2,715.3)	US\$175 to US\$350 (or HK\$1,357.65 to HK\$2,715.3)
Survey	US\$125 to US\$300 (or HK\$969.75 to HK\$2,327.4)	US\$125 to US\$300 (or HK\$969.75 to HK\$2,327.4)
Notary Fees	US\$10 to US\$25 (or HK\$77.58 to HK\$193.95)	US\$10 to US\$25 (or HK\$77.58 to HK\$193.95)
Recording Fees	US\$40 to US\$60 (or HK\$310.32 to HK\$465.48)	US\$40 to US\$60 (or HK\$310.32 to HK\$465.48)
State / Local Transfer Fees	US\$75 to US\$1,125 (or HK\$581.85 to HK\$8,727.75)	US\$75 to US\$1,125 (or HK\$581.85 to HK\$8,727.75)
TOTAL	US\$3,538 to US\$8,535 (or HK\$27,447.8 to HK\$66,214.53)	US\$3,388 to US\$8,235 (or HK\$26,284.1 to HK\$63,887.13)

Remarks:

1. Loan Origination Fees - This fee covers the mortgagee's administrative costs in processing the loan.
2. Points - A one-time charge by the mortgagee for originating a loan. A point is 1% of the amount of the mortgage.
3. The average exchange rate in 1999 between HK\$ and US\$ was HK\$7.758 = US\$1.

Sources:

1. <http://mtgloan.com/abcmortgage1/mbasettl.html>
2. Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, February 2000.

14. Costs incurred by Estate Agents

14.1 Normally, the costs incurred by estate agents during the transaction such as the cost of inspection or obtaining property information are reimbursed by either the buyer or the seller. In some areas where competition among estate agents is intense, some of these costs might be met by estate agents. Yet, how the costs are shared depends on the market situation in that area.

14.2 In some areas such as Dallas where the property market is booming, estate agents are charging US\$200 (or HK\$1,551.6) to US\$400 (or HK\$3,103.2) to cover the cost of publicizing the property. This is a new fee as previously, estate agents did not charge sellers separately for this item. It is estimated that about 10% of Dallas sellers are paying this new fee¹⁸.

¹⁸ Burney, Teresa, 'Real Estate Pay UpFront', *St. Petersburg Times*, 25 March 2000.

PART 4 - A COMPARISON OF RESIDENTIAL PROPERTY TRANSACTION IN THE UNITED KINGDOM, THE UNITED STATES AND HONG KONG

15. Hong Kong

Procedures of Buying and Selling Residential Properties

15.1 The conveyancing procedures in Hong Kong are similar to those in England and Wales. The only difference is the initial process of the property transaction which has been brought about by the Estate Agents Ordinance.

15.2 The Estate Agents Ordinance, enacted in May 1997, aims to improve the standard of services provided by estate agents and to protect consumers in property transaction. It also provides for the setting up of an Estate Agents Authority ("the Authority") which is empowered to prescribe by regulations matters relating to the conduct and practice of estate agents. In May 1999, the Authority completed the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (hereafter "the Practice Regulation"). This Practice Regulation stipulates rules relating to the conduct and practice of licensed estate agents. It aims to ensure that the interests of both consumers and estate agents can be better protected.

15.3 Under the Practice Regulation, a licensed estate agent is required to complete the prescribed property information form upon the introduction of a property to prospective buyers. The estate agent must also take reasonable steps to ensure that such information is accurate. He is also required 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. The sources of information are the Land Registry, Rating and Valuation Department and Buildings Department.

15.4 If an estate agent fails to comply with these requirements, he will subject himself to disciplinary actions by the Authority. And if the buyer or the seller represented by the estate agent 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.

Information Required

15.5 Under the Practice Regulation, a licensed estate agent is required to provide specified property information to the prospective buyer upon the introduction of a property. Such information includes:

- a. prima facie evidence of ownership;
- b. subsisting encumbrances;
- c. saleable floor area;
- d. year or period of completion of the property;
- e. permitted use of the property;
- f. unexpired term of the Government lease; and
- g. whether there is a right of renewal.

15.6 The Authority also prescribes a set of standard forms in the Practice Regulation for use by estate agents.

15.7 The seller is also required to disclose property information on structural alterations, additions, repairs or improvements of a property in order to facilitate prospective buyers to make an offer.

Cost of Obtaining Information

15.8 Table 5 lists the costs of obtaining such information from government departments. They are usually paid by estate agents acting on behalf of sellers. Sellers are not required to reimburse estate agents for such costs.

Table 5 - Costs of Obtaining Property Information

Property Information	Document	Prescribed Source	Cost
Ownership	Land Registry land search	Land Registry	\$15 (current)
Subsisting encumbrances			\$30 (historical and current)
Government lease			
Saleable area	Info-Hotline search reply	Rating and Valuation Department	\$12 (approx.)
Year of completion			
User Restriction	Occupation Permit	Land Registry land register search	\$120
		Buildings Department	\$190

15.9 In general, the cost of obtaining the required information incurred by estate agents is HK\$147. This sum of money includes Land Registry search (HK\$15), Info-Hotline Service of the Rating and Valuation Department (HK\$12) and Land Registry land register search for Occupation Permit (HK\$120).

16. Findings

Buying and Selling Residential Properties

16.1 In Hong Kong, California and Bristol, there is a duty on sellers to disclose to buyers certain standardized information about the property prior to marketing. They require sellers of the property to disclose all known physical attributes of the property such as structural additions or repairs, to prospective buyers. Both Bristol and Hong Kong further require property documents such as title documents to be provided to prospective buyers before putting a property on the market. In the other parts of England and Wales and the US, title documents are provided only when the buyer and seller have entered into an agreement. Table 6 summarizes the findings.

Table 6 - Requirements on Sellers to Provide Information and Property Documents to Buyer

Stage of Property Transaction	Hong Kong	Bristol (Pilot Scheme)	England and Wales (Other than Bristol)	United States
General enquiry by prospective buyers	Property information and documents (estate agents pay for the costs incurred)	Property information and documents (upon request and must pay copying costs to seller)		Property information
Buyer making offer to seller		Property information and documents		
Buyer and seller enter into agreement for sale and purchase				
Buyer and seller prepare for transfer of ownership			Property information and documents	Property documents
Transfer of ownership completed				

16.2 It is clear from Table 6 that in order to facilitate property transaction, property information provided to the buyer at the outset is very important. Sellers in some states in the US such as California are obliged to complete the Real Estate Transfer Disclosure Statement before putting properties on market, the Practice Regulation in Hong Kong requires estate agents to provide property information to buyers upon introduction of property, and the Bristol Scheme in the UK requires sellers with the assistance of estate agents, to prepare the 'Seller's Information Pack' to prospective buyers.

16.3 Different places require different property information to be provided to buyers at different time. In Bristol and Hong Kong, nearly all property information and documents such as title documents have to be provided to buyers upon the introduction of property. In the US, property documents are required to be provided a later stage. However, the information provided during the transaction is more comprehensive. In the US, either the buyer or the seller is required to provide property survey report, termite report, well and septic report, flood insurance map (to see if flood insurance is required to purchase), certificates or other assurance stating that the plumbing, heating, electrical systems, appliances and structural conditions of the property, etc are in working order at or by closing.

Cost of Obtaining Information

16.4 In Hong Kong, property information such as ownership, encumbrances, user restriction etc is obtained from government departments at a certain charge. Estate agents have to pay for these charges in order to fulfil the new requirements of the Practice Regulation. In the US, these costs are paid by the buyer or the seller or both although some of the information is freely available from government agencies. In England and Wales, these costs are incurred by the seller and the buyer.

16.5 Since buyers and sellers in England and Wales and the US have to provide more property information than their counterparts in Hong Kong, the costs incurred by them are higher. A comparison of their search costs is given in Table 7.

Table 7 - A Comparison of Cost of Obtaining Property Information in HK, the UK and the US

	Hong Kong ¹	England and Wales ²	United States ³
Cost	HK\$ 147	£388 (or HK\$4,869.4)	US\$575 to US\$900 (or HK\$4,460.85 to HK\$6,982.2)

Remarks:

1. Hong Kong: HK\$147 includes Land Registry Search, Info-Hotline Service of the Rating and Valuation Department and Land Registry land register search for Occupation Permit.
2. United Kingdom: £388 includes search fees and survey fees.
3. United States: US\$575 to US\$900 includes title search/insurance fees and survey fees.

16.6 Costs incurred by estate agents in the UK and the US are usually reimbursed by either buyers or sellers or both. If competition among estate agents is intense in a locality, estate agents might offer services at no or a lower fee.

16.7 In sum, estate agents in Hong Kong are required by law to ensure all information provided to prospective buyers upon the introduction of a property must be accurate. They have to obtain the information from the relevant authorities directly upon the payment of the necessary fees, which are not reimbursed by either buyers or sellers. In this regard, estate agents in Hong Kong have to bear extra costs of their operation as compared to their counterparts in England and Wales and the US.

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