

***PRACTICE
CIRCULAR ON
COLLECTIVE
SALE OF
PROPERTY
PC 1/2016***

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Practice Circular on Collective Sale of Property

Preamble

This Practice Circular on Collective Sale of Property sets out the general duties that are owed by estate agents and salespersons who may provide advice in respect of a collective sale of properties under the Land Titles (Strata) Act (Cap. 158) ('**LTSA**') or what is commonly known as "*en bloc* sale".

This Practice Circular is to be read with the Estate Agents Act (Cap. 95A) ("**EAA**") and the regulations made thereunder including the Code of Ethics and Professional Client Care ("**CEPCC**"), set out in the First Schedule to the Estate Agents (Estate Agency Work) Regulations 2010, and in particular the following paragraphs:

- a. paragraph 4(1) which provides that estate agents and salespersons must perform their work in accordance with applicable laws and must not perform estate agency work unless they have the relevant knowledge to perform the work that they are engaged to perform.
- b. paragraph 5(1) which provides that estate agents and salespersons shall conduct their work with due diligence and care and in compliance with all laws including statutory and regulatory requirements.
- c. paragraph 6(1) which provides that estate agents and salespersons shall render professional and conscientious service to their clients and shall act with honesty, fidelity and integrity.
- d. paragraph 7 which provides that estate agents and salespersons shall not do anything misleading or use harassing tactics or apply unreasonable or improper pressure which may bring disrepute to the estate agency trade or industry.
- e. paragraph 13(1) which provides that estate agents and salespersons must not accept an appointment or continue to act on behalf of a client where to do so would place their interest in conflict or potential conflict with those of their clients.

In this Practice Circular, 'subsidiary proprietors' includes proprietors of flats in relation to developments registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157).

This Practice Circular takes effect upon publication on 15 Jan 2016.

Duties of Estate Agents and Salesperson in En Bloc Sales / Collective Sale of Property

1. Where an estate agent or salesperson is involved in the provision of any advice or service in relation to a collective sale of property, he shall comply with this Practice Circular. Paragraph 4(2)(a) of the CEPC provides that estate agents and salespersons must be fully conversant and comply with the EAA, the regulations made thereunder, and the policies, practice circulars and guidelines of the Council. Non-compliance of this Practice Circular may result in disciplinary action.
2. In a collective sale, an appointed Collective Sales Committee (“**CSC**”) has duties which are imposed upon them by law including the LTSA. A CSC is formed and appointed by the subsidiary proprietors to undertake the task of promoting, negotiating, arranging and, if successful, managing the sale of all of the units within the development or property. It is the CSC whom the estate agent or salesperson will be actively assisting in the negotiations and commercial arrangements for the sale. The CSC appoints the estate agent or salesperson whom it believes is a qualified professional capable of undertaking the various tasks with care and concern. The CSC is further seen to place great expectation and reliance on the knowledge, expertise and skill of the engaged estate agent or salesperson to see through the sale to its natural fruition.
3. CSCs have a duty to act in good faith and to manage the collective sale process to obtain the best price possible for the property. Important factors to be taken into account in determining “good faith” will include the following matters:
 - a. sale price;
 - b. process of obtaining the price and requisite consent;
 - c. method of distributing the proceeds of sale and whether there are penalties which may substantially or materially impact the distribution of sale proceeds to the detriment of a class of subsidiary proprietors e.g. subjecting minority subsidiary proprietors to a larger burden of the costs; and
 - d. the relationship of the purchaser to any of the subsidiary proprietors.
4. CSCs are obliged to act in accordance with the transparency and procedural propriety and fairness of the collective sale process provided for under the LTSA.
5. CSCs have also been recognised to owe duties to all the subsidiary proprietors including but not limited to the following:
 - a. duty of loyalty or fidelity to all subsidiary proprietors as a whole;
 - b. duty of even-handedness or impartiality as between all subsidiary proprietors;
 - c. duty to avoid any potential or actual conflict of interest;
 - d. duty to make full disclosure of relevant information and act in a transparent manner;
 - e. duty to act with conscientiousness, care and diligence; and
 - f. not to make or attempt to make secret profits.

6. As advisers or agents of CSCs and sub-agents of the subsidiary proprietors, estate agents and salespersons owe similar duties to the CSCs and subsidiary proprietors. The estate agents and salespersons must also be mindful that the CEPC applies to collective sales.
7. Estate agents and salespersons, who are providing advice in relation to a collective sale, must at all times act with honesty and good faith and in a transparent and open manner as regards the CSC and all subsidiary proprietors.
8. Estate agents and salespersons shall be fully conversant and comply with the laws and requirements that govern collective sale transactions and to duly perform their duties, in particular their duties to avoid any potential or actual conflict of interest and to act with transparency and openness, in their dealings with the CSC and all subsidiary proprietors.
9. Estate agents and salespersons shall not do anything that may infringe, or which may directly or indirectly lead to the infringement by the CSC or any other person, of any legal obligation which may be applicable to them in a collective sale.
10. Estate agents and salespersons shall not make any express or implied misrepresentation or exert undue pressure to induce or procure any subsidiary proprietor to agree to a collective sale.
11. Estate agents and salespersons shall not make any incentive payments, and shall not facilitate or participate in the making of such payments by anyone, which may be contrary to any of their legal obligations in a collective sale transaction or in any way affect the good faith of those involved in the collective sale process.
12. Estate agents and salespersons shall not place themselves in a position of conflict or potential conflict of interest in a collective sale. Estate agents and salespersons shall not prefer the interest of any group of subsidiary proprietors, or their own interest in earning a commission, over that of any other subsidiary proprietor.
13. Estate agents and salespersons shall keep proper records of communications, and of the proceedings of meetings of the CSC as well as meetings of the subsidiary proprietors, in relation to the collective sale.
14. Estate agents and salespersons who are at any time uncertain of the scope or content of their obligations, or encounter an issue or matter that is beyond their knowledge or expertise, shall seek appropriate legal and professional advice.
15. Estate agents shall ensure that salespersons engaged in collective sales have undergone relevant training to equip them with necessary knowledge and skills.
16. Estate agents and salespersons shall keep themselves updated and abreast of developments in respect of the laws and practices in relation to the conduct of collective sale of properties, and decided cases such as the following: .

- (a) *N K Rajarh and others v Tan Eng Chuan and others* [2013] SGCA 62 (“Harbour View Gardens”);
- (b) *Ngui Gek Lian Philomene and others v Chan Kiat and others* [2013] SGHC 166 (“Thomson View Condominiums”);
- (c) *Lim Li Meng Dominic and others v Ching Pui Sim Sally and another and another matter* [2015] SGCA 54 (“Gilstead Court”); and
- (d) *Ng Eng Ghee and others v Mamata Kapildev Dave and others* [2009] SGCA 14 (“Horizon Towers”).



This Practice Circular shall be strictly complied with by estate agents and salespersons. While every effort has been made to ensure that the contents are accurate and relevant, the Council for Estate Agencies shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or in reliance on, any error, omission, statement or misstatement contained in the whole or any part of this Practice Circular.

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