

CASES INVOLVING RENTAL OF HDB FLATS

Overview

Salespersons must be fully conversant and comply with the applicable laws, regulations, rules and procedures that apply when handling transactions of the Housing and Development Board (“HDB”) flats.

Paragraphs 4(1) and 4(2)(e) of the Code of Ethics and Professional Client Care as set out in the First Schedule, Estate Agents (Estate Agency Work) Regulations (“CEPCC”) states the following:

4(1) 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.

(2) Sub-paragraph (1) means, among other things, that estate agents and salespersons -

(e) must not undertake estate agency work in respect of Housing and Development Board flats unless they are fully conversant and comply with the applicable laws, regulations, rules and procedures that apply to transactions involving such flats.

In Oct 2013, a Joint CEA-HDB Practice Circular on HDB Subletting Policies and Regulations and duties of Estate Agents and Salespersons in Subletting Transactions was issued to the industry. Estate agents and salespersons are to comply with this Practice Circular when they facilitate rental of HDB flats.

These 8 cases listed below involving rental of HDB flats are provided for the purpose of learning by estate agents and salespersons. The outcome and decisions of each case depend on the specific facts of each case and do not serve to indicate that outcomes and decisions of similar cases will be the same.

Case 1 - Advertising for rental of HDB flat on a short term basis**Facts**

An advertisement for a short term rental of a HDB flat for 1-4 months was listed in an online property portal. Investigations revealed that the salesperson was acting under instruction from the client to advertise the property for short term rental for 4 months. However, under HDB's rules, flat owners are not allowed to sublet the flat on a short term basis and the period of subletting to each subtenant per application must not be less than 6 months.

Decision

The salesperson was issued a Letter of Advice for breach of paragraph 4(2)(e) of the CEPC for not complying with applicable laws, regulations, rules and procedures in respect of HDB flats.

Case 2 - Facilitating the rental of HDB flat on a short term basis

Facts

The owner of a HDB flat issued an Option to Purchase (“OTP”) to a buyer for his unit in June 2012. The OTP was exercised by the buyer and the HDB appointment was scheduled in Aug 2012. In the midst of the resale transaction, the owner approached a salesperson to help him rent out his flat. The salesperson managed to find a tenant and facilitated in the rental transaction. The salesperson also drafted the tenancy agreement which stated that the tenancy was between 3 to 6 months. This is despite knowing that under HDB’s rules, flat owners are not allowed to sublet the flat on a short term basis and the period of subletting must not be less than 6 months.

Decision

The salesperson was issued a Letter of Advice for breach of paragraph 4(2)(e) of the CEPC for not complying with applicable laws, regulations, rules and procedures in respect of HDB flats.

Key Learning for Cases 1 & 2

The salesperson should inform the client if the instruction is a contravention of the HDB’s rules. The salesperson should not participate nor act in any transaction that is a contravention of the HDB’s rules.

Case 3 - Advertising for rental of utility room in HDB flat

Facts

An advertisement of a utility room for rental in a HDB flat was listed in an online property portal. Investigations revealed that the salesperson had attempted to rent out a utility room and did not get the flat owner's consent to advertise. However, under HDB's rules, flat owners are not allowed to sublet a utility room.

Decision

The salesperson was issued a Letter of Advice for breach of paragraph 4(2)(e) of the CEPC for not complying with applicable laws, regulations, rules and procedures in respect of HDB flats; and paragraph 12(4)(d) of the CEPC for advertising without the owner's consent.

Key Learning for Case 3

Salespersons must be fully conversant and comply with the applicable laws, regulations, rules and procedures that apply when handling transactions of HDB flats.

Salespersons must also get the flat owner's consent to advertise before marketing the property.

Case 4 - Advertising for rental of HDB flat before Minimum Occupancy Period was met

Facts

An advertisement of a Built-to-Order (“BTO”) HDB flat that had not fulfilled the Minimum Occupancy Period was listed in an online property portal. This was a new BTO flat, with the keys recently received from the HDB. Investigations revealed that the salesperson had attempted to sublet the whole flat when it had yet to meet the Minimum Occupancy Period. Under HDB’s rules, flat owners are not allowed to sublet the flat before the Minimum Occupancy Period is met.

Decision

The salesperson was issued a Letter of Advice for breach of paragraph 12(4)(a) of the CEPCC for providing misleading information in his advertisement.

Key Learning for Case 4

Salespersons must not facilitate to rent out HDB flats that had not met the Minimum Occupancy Period and must ensure that their advertisements do not provide misleading information.

Case 5 - Advertising for rental of HDB flat not approved for subletting**Facts**

An advertisement of a HDB flat for rental was listed in an online property portal. Investigations revealed that the salesperson did not verify the information and had facilitated a rental transaction when the flat was not approved for subletting. Under HDB's rules, flat owners must seek approval from HDB before subletting a flat.

Decision

The salesperson was issued a Letter of Advice for breach of paragraph 4(2)(e) of the CEPCC for not complying with applicable laws, regulations, rules and procedures in respect of HDB flats.

Key Learning for Case 5

The salesperson should verify the information that his client had obtained HDB's approval for sublet.

Case 6 – Advertising and facilitating the sublet of a HDB rental flat

Facts

A complaint was made after an unsuccessful attempt by a salesperson to sublet a HDB rental flat. Investigations revealed that the salesperson had advertised the flat, brought a potential sub-tenant for viewing and negotiated for its rental. The salesperson knew that it was against HDB's rules to sublet the rental flat.

Decision

The salesperson was charged in a disciplinary proceeding and convicted under paragraph 4(1) read with paragraph 4(2)(e) of the CEPC for advertising and conducting a viewing of a HDB rental flat in breach of HDB rules. He was sentenced to a fine of \$2,000 and 3 weeks suspension. Fixed costs of \$1,000 were awarded to CEA.

Key Learning for Case 6

HDB rental flats are not meant to be sublet and it is a serious matter to do so. If a salesperson suspects that a flat is a rental flat, they should verify before marketing the flat.

Case 7 – Facilitating rental of HDB rental flat and dual representation

Facts

A salesperson had facilitated the lessee of a 2 room HDB rental flat to enter into 3 separate sub tenancy agreements to rent out the flat to 3 different sub tenants. She advised both parties on the lease and received commission from both parties, thereby contravening the no dual representation regulation under Regulation 5 of the Estate Agents (Estate Agency Work) Regulations (EAW Regs). She also received rental payments and rental deposits from the sub tenants, thus contravening the no handling of transaction monies regulation under Regulation 7 of the EAW Regs.

Decision

The salesperson was prosecuted in Court and sentenced to a fine of \$15,000 per charge (in default, 5 weeks' imprisonment) for each of the 3 dual representation charges.

Key Learning for Case 7

Salespersons should not sublet HDB rental flats and any such infringement is a serious matter.

Salespersons should also not commit the offences of dual representation and handling of transaction monies under regulations 5 and 7 respectively of the EAW Regs.

Case 8 – Facilitating rental of HDB rental flat by an unlicensed estate agent

Facts

A complaint was made to CEA after a complainant had attempted to rent a flat but found out later that it was a rental flat and that the person serving him was unlicensed. Prior to these discoveries, the complainant had placed a rental deposit with the landlord and paid commission to the unlicensed estate agent. Investigations revealed the complaint to be substantiated. CEA charged him in court for acting as an unlicensed estate agent under Section 28(1)(b) of the Estate Agents Act.

Decision

The subject was convicted and sentenced to a fine of \$16,000. As he was unable to pay the fine, he was imprisoned for 6 weeks. Additionally, the HDB rental flat was repossessed by the HDB.

Key Learning for Case 8

Salespersons should verify to ensure that they do not facilitate the rental of any unauthorised HDB flats or work with any unlicensed estate agent or unregistered salesperson.

Salespersons are advised to check the Public Register to check if the other salesperson(s) that they are working with can perform estate agency work.
