

Date: 26 April 2013

**Key Executive Officers**

Dear Sir/Madam

Effective Date: 1 June 2013

**PRACTICE CIRCULAR ON PROFESSIONAL PRACTICES:**

- A) DECLARING POTENTIAL CONFLICT OF INTEREST UPFRONT;**
- B) DISALLOWING SALESPERSONS TO BE AN ATTORNEY PURSUANT TO A POWER OF ATTORNEY FOR THEIR CLIENTS;**
- C) ADVICE ON USE OF CHEQUES; AND**
- D) NO MONEY LENDING OR ADVANCES BY ESTATE AGENTS AND SALESPERSONS**

1. CEA will be launching the Practice Guidelines on the Professional Service Manual (PSM) on 27 April 2013. The PSM comprises Practice Guidelines to estate agents and salespersons regulated under the Estate Agents Act for their conduct of estate agency work in property transactions involving residential, commercial and industrial properties.

2. The PSM is the result of collective effort by the real estate agency industry, industry and consumer associations and relevant government agencies in raising the professionalism and ethics of the industry. It seeks to set clear standards and guidelines to ensure salespersons render their services competently, professionally and ethically, thus promoting open, fair and honest property transactions. It also highlights the responsibilities and duties that salespersons must pay attention to when carrying out estate agency work in both the sale and leasing of property transactions.

**Effective Dates**

3. Estate agents and salespersons will be required to comply with the Practice Guidelines on the PSM with effect from **1 January 2014**. The PSM is available on the CEA's website from 27 April 2013.

4. Meanwhile estate agents and salespersons shall comply with the following provisions with effect from **1 June 2013**. As the following topics falls within the scope of the PSM, this Practice Circular shall be superseded by the PSM when it comes into effect on 1 January 2014.

**A) Declaring Potential Conflict of Interest Upfront**

5. The Code of Ethics and Professional Client Care (CEPCC) specifies the duty of estate agents and salespersons to avoid potential conflict of interest. Estate agents and salespersons

must not accept an appointment by or continue to act on behalf of a client if in doing so their action would place the agent's or salesperson's interest in conflict or potential conflict with those of the client.

6. A potential conflict of interest shall be deemed to exist in respect of a salesperson if the other party to the transaction or his salesperson is related to the first mentioned salesperson. For such purposes and without being exhaustive, a person shall be deemed to be related to another person if:

- a) One person is the spouse or ex-spouse, parent or parent-in-law, sibling or sibling-in-law, or child of the other person; or
- b) One person is a partner or employee of the other person; or one person is a shareholder, director, partner or employee of a company (in respect of which the other person is a shareholder) [in which case the two persons are deemed to be related].

Whether a conflict of interest or potential conflict of interest may exist in other situations would depend on the facts and circumstances of each case.

7. In addition, relationships that salespersons have with other persons or organisations which may have an impact on the property transaction should be disclosed by salespersons in advance. For example, the salesperson appointed by the seller is getting a bank's referral fee for the prospective buyer.

8. Salespersons shall disclose to their clients if the other party to the transaction or the other party's salesperson is from the same estate agent. Salespersons should also make a disclosure if they have a formal or informal arrangement to collect an overriding fee from, or otherwise share or receive a part of, the commission of another salesperson representing the other party in the same property transaction.

**Example 1:**

Salesperson A is representing the seller in the sale of a property. Salesperson B is representing the purchaser and both salespersons have a co-broke arrangement. Salespersons A and B are from the same Estate Agent; B is the supervisor/team leader of A and will get the co-broke commission as well as an overriding fee from A. In such an instance, Salesperson B shall disclose in writing to the purchaser that (i) both salespersons are from the same estate agent and Salesperson B is the supervisor/team leader of Salesperson A; (ii) Salesperson B will be collecting the co-broke commission; and (iii) Salesperson B will be collecting an overriding fee from Salesperson A's commission.

**Example 2:**

Salespersons C and D, who are representing the tenant, and Salespersons E and F, who are representing the landlord, are from the same Estate Agent. The tenant and the landlord both agree to pay commission to their respective salespersons. The commission earned by Salespersons C, D, E and F will be pooled together and divided amongst all salespersons of

the Estate Agent as per the Estate Agent's remuneration policy. Salespersons C and D as well as Salespersons E and F are to disclose to their respective clients that such a remuneration policy is practised by their Estate Agent. This is to avoid the possibility of complaint that there was an undisclosed direct or indirect conflict of interest e.g. a complaint by the landlord that his salespersons chose to transact with the tenant to maximise their own personal remuneration instead of recommending another tenant who may not wish to pay commission but who may be prepared to pay a higher rental.

9. Salespersons have a duty to avoid potential conflict of interest in the property transaction that they are handling. If avoidance of potential conflict of interest is not possible, disclosure of potential conflict and the client's acceptance and agreement to allow the salesperson to represent the client should be obtained in writing. If in doubt, salespersons should seek clarification from their Key Executive Officers (KEOs). As a good practice, estate agents should require salespersons to keep them informed of such potential conflict of interest situations as and when they arise.

[Note: "writing" or "written" includes e-mail or other verifiable forms of electronic or mobile communications including short message service (sms) and other forms of text message.]

**Example:**

A buyer engaged a salesperson to handle the purchase of an HDB resale flat, and signed an exclusive estate agency agreement with his salesperson. When the resale transaction was completed, the buyer learnt that the salesperson representing the seller was his salesperson's husband. The buyer's salesperson should have informed the former in writing (at the onset) that the seller's salesperson was related to her. She should only continue to represent the buyer after written consent was sought from the buyer for this disclosure.

**B) Disallowing Salespersons to be an Attorney pursuant to a Power of Attorney (POA) for their Clients**

10. The norm in any POA case is to appoint a person who is a family member or close family friend, as the person given the POA (i.e. the attorney) will be entrusted with heavy responsibilities related to the property matters. A salesperson is already in a contractual relationship with his client and there is a conflict of interest in acting as an attorney concurrently for the same property transaction. In view of the inherent conflict of interest, salespersons shall not be attorneys for clients whom they are acting for in the property transaction. If a salesperson is not facilitating the property transaction and he is appointed by the buyer or seller to be an attorney, this is permissible but the salesperson is not allowed to directly or indirectly handle, direct or instruct the distribution of the sales proceeds. If the salesperson is appointed as an attorney by one party, he cannot represent the other party to the transaction.

### C) Advice on use of cheques

11. The practice of collecting any cheque other than securing the purchase by way of the OTP and S&P agreement in developer sales is not encouraged as it could lead to abuse, exposes prospective buyers to risk and hence is detrimental to their interests. The salesperson shall not collect cheques unless there is a request in writing initiated by the developer direct to the estate agent. If a cheque is issued it must be crossed and made out in the name of the payee such as a developer (for non-residential properties) or the project account (for residential properties).

12. Under such arrangements, there must also be an Authorisation Letter that captures the names and NRIC numbers of prospective buyer(s) as well as the name, NRIC number and registration number of the salesperson. The Authorisation Letter should also state clearly the terms that will safeguard the interest of the prospective buyer. Such terms include but are not limited to the following:

- a) The name of the housing project, including whether it is approved or pending approval by all the relevant authorities for sale at the time the cheques are issued by the prospective buyers and the specific unit number(s) which the prospective buyer is interested in. If such information including the specific unit number(s) is not available, the salesperson shall not collect a cheque from the potential buyer;
- b) Conditions under which the estate agent/salesperson is authorised to hand over the cheque to the developer, e.g. the maximum allowable amount for which the cheques can be drawn, validity period of cheques, buyer's prior knowledge and approval;
- c) Procedure for return of the cheque to the prospective buyer if he decides against booking a unit;
- d) Any changes such as addition/deletion of name(s), changes of payment scheme, and change of unit will not be permitted. The purchaser(s) listed shall be final and there shall be no subsequent change;
- e) All purchasers must be at least 21 years old and must be eligible to make the purchase under the applicable terms or conditions, such as restrictions under the Housing and Development Act (Cap. 129) and the Executive Condominium Housing Scheme Act (Cap. 99A); and
- f) Non-Singapore citizen purchasers will be subject to LDAU (Land Dealings Approval Unit) approval.

13. The estate agent should have a proper written procedure for the preparation, issue, receipt, safekeeping and return of the cheques. In addition, the estate agent must maintain a register of all the cheques collected. The register shall include all pertinent information such as the name of the person who signed the cheque (the drawer), the name of the person or entity the cheque is made payable to (the drawee), the maximum allowable amount that can be drawn, cheque number, date of cheque, date salesperson received the cheque, particulars of

the housing project etc. The Authorisation Letters and cheques should also be kept by the estate agent (and not the salesperson) in a properly secured place. A copy of the Authorisation Letter must be given to the client on the same day that it is signed.

14. When marketing a completed property, a seller's salesperson could receive multiple offers from potential buyers. However, he should not go around collecting cheques from potential buyers as a symbol of "sincerity". He also should not use the cheques to solicit for a higher offer from other potential buyers. The salesperson should advise his seller that such a practice exposes prospective buyers to the risk of fraud and is not encouraged.

#### **D) No Moneylending or Advances by Estate Agents and Salespersons**

15. Estate agents and salespersons shall not lend or advance money to or for their clients with the exception of the payment of rental stamp duties before reimbursement by the client. Estate agents and salespersons are prohibited from introducing, referring or recommending moneylenders to their clients. They are also not allowed to accept client referrals directly or indirectly from any moneylender. The term 'moneylenders' used in this paragraph also refers to the employees, agents or representatives of a moneylender.

#### **Compliance with Practice Circular**

16. Estate agents and salespersons are required to comply with this Circular. Estate Agents should also manage and supervise their salespersons to ensure their compliance with this Circular.