

Circular

Circular No. 14-01 (CR)

- **Request clients to use a digital signature under the Electronic Transactions Ordinance for the execution of the estate agency agreement.**
- **Ensure that clients are able to distinguish the additional information inserted in the electronic version of the agreement from the contents prescribed by the law.**
- **Arrange for clients to counter-sign on the hard copy of the agreement if the agreement was completed by hand and transmitted through fax or electronic mail for client's execution.**
- **Explain the terms and conditions of the estate agency agreement to clients before they execute the agreement by electronic means.**

Execution of Estate Agency Agreements by Electronic Means

Under the Estate Agents Ordinance (“EAO”) and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”), a licensed estate agent is required to enter into and properly execute a prescribed estate agency agreement with his clients when dealing with the sale, purchase or leasing of residential properties in Hong Kong. Noting that some licensees may like to execute the estate agency agreements with their clients by electronic means, the Estate Agents Authority (“EAA”) has set out in this Circular certain matters to which licensees should pay attention when they choose to execute the prescribed estate agency agreements (Forms 3 to 6) by electronic means.

Execution of the Estate Agency Agreements by Using a Digital Signature

2. Licensees should note the following when they arrange for their clients to execute the prescribed estate agency agreements by using

a digital signature pursuant to the Electronic Transactions Ordinance (“ETO”)¹:

- (a) To prevent disputes on the authenticity of a signature, licensees should request their clients to execute the prescribed estate agency agreement by using a digital signature supported by a recognised digital certificate issued by a certification authority recognised under the ETO². This is because the use of digital signature under the ETO is a more secure technology to establish the identity of the other party;
- (b) In the course of preparing the prescribed estate agency agreement, a licensee may key in certain information to the electronic version of the agreement before transmitting it to his client for execution. It is important that a client should be able to distinguish the information and the extra terms (if any) inserted by the licensee from the contents prescribed by the law; and
- (c) In order to avoid any misunderstanding that the information and extra terms (if any) inserted by a licensee in the electronic version of the prescribed estate agency agreement are part of the prescribed agreement, licensees may adopt the e-form in Portable Document Format (PDF) of the prescribed estate agency agreements made available by the EAA at www.eaa.org.hk/en-us/Compliance/Prescribed-forms.

Transmission of the Digitised Estate Agency Agreements for Execution

3. Some licensees may complete the information and extra terms (if any) on the prescribed estate agency agreement by hand and

¹ The Electronic Transactions Ordinance has accorded electronic record and electronic signature the same legal status as that of their paper-based counterparts.

² Currently, they are either the Hongkong Post Certification Authority or Digi-Scan Certification Services Limited.

convert the same into digital form (e.g. through scanning) for transmission through fax or electronic mail³ so that the agreement may be printed on paper and signed physically by their clients. After signing physically on the hard copy of the agreement (the soft copy of which having been received by clients through fax or electronic mail earlier on), some clients may also fax or email the agreement back to the licensee first before they meet.

4. In the above case, and in order to avoid disputes on the authenticity of the client's signature sent through fax or electronic mail, licensees are advised to arrange for their clients to counter-sign on the hard copy of the agreement to endorse the scanned signatures as soon as they meet their clients and in any event, before any agreement for sale and purchase/lease of the property is entered into.

Explanation to Clients

5. According to section 6(3) of the Practice Regulation, licensees are required to explain to clients who are not legally represented the terms and conditions of the estate agency agreement to ensure that they are aware of their rights and obligations, and to advise them to seek legal advice if they do not understand any provision before they enter into the agreement.
6. Licensees are reminded that they should not pre-print⁴ any extra term on the prescribed estate agency agreements and that any extra term on the agreements should also be explained to clients and agreed upon before it is added to the agreement⁵.
7. Even though licensees and their clients may not be meeting face-

³ Licensees are advised to impose security measures (e.g. password protection or encryption) on the agreement and other electronic files before transmitting them for client's execution through electronic means, so that the risk of alteration or leakage of data may be reduced.

⁴ Save as mentioned in paragraph 2(b) above in the case of an e-form.

⁵ Circular No. 12-01(CR).

to-face when they execute the prescribed estate agency agreement by electronic means (whether in the manner mentioned in paragraph 2 or 3 above), licensees are nonetheless required to comply with the requirements set out in section 6(3) of the Practice Regulation and the relevant guidelines issued by the EAA on adding extra terms to the prescribed estate agency agreements.

8. In light of the above requirements, licensees are advised to keep proper records of the course of explanation (for example, recordings of telephone conversations) to protect their interests and to avoid future disputes.

Disputes Arising from the Estate Agency Agreements

9. Licensees are cautioned that although the electronic execution of the prescribed estate agency agreement mentioned in this Circular are acceptable to the EAA as far as compliance of the relevant requirements under the EAO and the Practice Regulation is concerned, the courts may not necessarily rule that an estate agency agreement so executed has been properly executed as required by section 45 of the EAO⁶, in the event of a licensed estate agent taking legal action against his client under an executed estate agency agreement.
10. Licensees are therefore advised to consider using the conventional method of arranging for clients to sign the estate agency agreement on a paper document and/or in the presence of the licensee concerned (instead of executing the same by electronic means) if they have any concern in this respect.

Licensees who fail to comply with the requirements set out in section 6(3) of the Practice Regulation and/or breach the guidelines issued by the EAA regarding the pre-printing and explanation of extra terms on

⁶ Section 45(1) of the EAO provides that in respect of estate agency work performed by an agent, a right or other cause of action for damages or other relief against the client may lie if, and only if, (a) a prescribed estate agency agreement has been properly executed; and (b) the agent was a licensed estate agent at the time when the agreement was entered into.

the prescribed estate agency agreements⁷ (save as mentioned in paragraph 2(b) above in the case of an e-form) may be subject to disciplinary action by the EAA.

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Holders of Statements of Particulars of Business
 should bring this Circular to the attention of all staff
 engaged in estate agency work

⁷ For details, please see Circular No. 12-01(CR).