

***PRACTICE
GUIDELINES
ON USE OF
PRESCRIBED
ESTATE
AGENCY
AGREEMENT
FORMS 1-8
PG 1/2011***

***DATE OF ISSUE:
29 JUNE 2011***

Practice Guidelines on the use of Prescribed Estate Agency Agreements 1 to 8 PG 1/2011

Introduction

- A. This Practice Guideline provides guidance to licensed estate agents and registered salespersons on the use of the Prescribed Estate Agency Agreements Forms 1 to 8 provided for in the Estate Agents (Estate Agency Work) Regulations.
- B. The prescribed forms are:
- Form 1: Estate Agency Agreement for the Sale of Residential Property
 - Form 2: Estate Agency Agreement for the Purchase of Residential Property
 - Form 3: Estate Agency Agreement for the Lease of Residential Property by a Landlord
 - Form 4: Estate Agency Agreement for the Lease of Residential Property by a Tenant
 - Form 5: Exclusive Estate Agency Agreement for the Sale of Residential Property
 - Form 6: Exclusive Estate Agency Agreement for the Purchase of Residential Property
 - Form 7: Exclusive Estate Agency Agreement for the Lease of Residential Property by a Landlord
 - Form 8: Exclusive Estate Agency Agreement for the Lease of Residential Property by a Tenant
- C. Such forms need not be used with regard to estate agency work for which there is no prescribed form. For example, if a tenant appoints an estate agent to find a replacement tenant, there is no applicable prescribed form.

1. Commission Clause

- 1.1 Under the “Commission” clause in the Prescribed Agreements, if the estate agent is a GST-registered company, the “Yes” box should be ticked and “No” if the estate agent is not GST-registered. Under the Goods and Services Tax Act, only GST-registered businesses are allowed to charge and collect GST on the goods and services purchased from them.
- 1.2 Within the sentence “If Yes, the commission specified is *inclusive / exclusive⁽¹⁾ of GST”, if the estate agent or registered salesperson has factored in GST into the commission amount, the commission specified is inclusive of GST. If GST has not been factored into the commission amount, the commission is exclusive of GST. The commission amount is subject to negotiation between the client and the estate agent or salesperson.
- 1.3 For the sale, purchase or leasing of HDB property, the salesperson or estate agent is required to assess the eligibility of their clients to sell, buy or lease the property. As such, for HDB property, if completion of the property transaction, or the leasing, falls through by reason of the client’s ineligibility to sell, buy or lease under HDB rules or regulations, the client shall have no obligation to pay any commission to the estate agent.

2. Disclosure Requirements

- 2.1 Estate agents and salespersons are required to disclose in writing in the prescribed estate agency agreement, any conflict or potential conflict of interests to their client. Such disclosures are required in situations which include but are not limited to the following:
- i) The salesperson of the other party to a transaction is with the same estate agent of, or is married or otherwise related to, the salesperson of the client
 - ii) The other party to a transaction is working with the same estate agent of the salesperson of the client
 - iii) The other party to a transaction is a friend, family or relative of the salesperson of the client.
 - iv) The salesperson of the client (who is not receiving commission from his client) is receiving any commission, reward, fee, “ang pow”, payment or other benefit from the estate agent or salesperson of the other party or any other person.

2.2 If a conflict of interest only arises or is made aware to the salesperson or estate agent after the signing of the agreement, the conflict or potential conflict of interest must be immediately disclosed in writing to the client. Upon such disclosure, the estate agent and salesperson may continue to act for the client only if the client, being fully informed, consents in writing to the estate agent and salesperson continuing to act for him. The further disclosure and consent may be written on a separate sheet of paper which makes reference to the agreement, and need not be written in the same prescribed agreement form. The record of further disclosure/s should be kept by the estate agent for similar duration as the prescribed agreement.

3. Co-broking Clause / Obligation and Conflict of Interest

3.1 Under the “Co-broking” or “Property Inspection and Co-broking” clause, “co-broking” refers to the involvement of two or more estate agents or salespersons in the same property transaction. The choice to allow co-broking is subject to negotiation between the client and the estate agent or salesperson. The estate agent or salesperson is required to promote and protect the interests of his client; and should properly explain to and advise the client about co-broking. The “no co-broking” option shall not be used to deny co-broking opportunities because the salesperson is (a) working with another salesperson to jointly market the property or (b) has pre-identified salesperson/s whom he is only prepared to work or co-broke with.

3.2 Whether or not a client authorises his estate agent or salesperson to co-broke, the ban on dual representation remains i.e. a salesperson (or an individual who is an estate agent) cannot represent both parties. A salesperson who in substance or in effect represents, or collects commission from two parties shall be in breach of the ban against dual representation notwithstanding the masking or concealment of this by way of a purported representation of a party by another salesperson.

3.3 A salesperson, of a client, who deals with a direct other party shall ensure that the direct other party, knows that the salesperson does not represent him and, is not under an impression that the salesperson will protect his interest.

3.4 CEA takes a serious view of estate agents or salespersons who seek to benefit themselves, at their clients’ expense or detriment, by misrepresenting or improperly advising their clients or failing to comply with their client’s instructions. CEA may take prosecution or disciplinary action against estate agents or salespersons who do not

promote and protect their client's interest or who do not comply with the relevant Codes or Practice Circulars or Guidelines.

4. Additional Terms

- 4.1 If there are additional terms to the prescribed agreements and the space provided in the forms is insufficient, the Additional Terms are to be written / printed in black ink on a separate sheet of pink paper and in a font not smaller than the font of the prescribed terms.
- 4.2 The original separate sheet of Additional terms signed by the client must be in pink paper. There is no requirement for the photocopy or carbonised copies of the separate sheet to be in pink paper.
- 4.3 The Additional Terms must not conflict with, vary or otherwise limit the prescribed terms of the agreements. Examples of Additional Terms are provisions for:
- i) payment of any expense incurred or compensation (in an exclusive agency) when the seller unreasonably refuses to sell despite the estate agent having expended substantial effort to find a potential buyer who is prepared to pay more than the expected sale price;
 - ii) payment to the estate agent of a portion of any option deposit which the seller may forfeit.

5. Duty to Clients in Relation to Signing of Documents

Under the Code of Ethics and Professional Client Care, the client must be given a copy of any form or document that he signs either immediately or as soon as possible after signing. The client may be given the original or a copy of the form or document.

6. Pre-Typing and Logo

Estate agents may include the logo of the estate agency in the prescribed estate agency agreement forms. Estate agents may not pre-type any matter which is supposed to be negotiated with or chosen by the client. Examples of matters which can be pre-typed include the name of the estate agent, the licence number and estate agent address.

7. Signing of Prescribed Estate Agency Agreement

- 7.1 CEA does not prescribe when the prescribed estate agency agreement should be signed. The prescribed estate agency agreement may be entered into any time before or at the same time as the property transaction depending on the business practice of the estate agent.
- 7.2 The address to be written below the signature of the salesperson or estate agent may be the salesperson's or estate agent's address. This decision can be made by the estate agent based on its business requirements.

8. Amendments to Signed Prescribed Agreements

There should be no cancellation of the prescribed clauses. Amendments may only be made to the Additional Terms or the information filled in the blanks or choices in the prescribed agreement. All amendments must be initialled by the parties and dated.

9. Use and Retention of Form

- 9.1 If an estate agent does not use an applicable prescribed estate agency agreement form, his right to claim against his client will be affected under section 44 of the Estate Agents Act.
- 9.2 The applicable prescribed form may be signed even if a client is not paying his estate agent a commission.
- 9.3 A salesperson/estate agent who represents a client but does not sign a prescribed form with him will nevertheless continue to owe the client duties as imposed by the Estate Agents Act, Regulations and common law. For example, such a salesperson/estate agent will be obliged to make disclosure of any potential conflict of interest to his client.
- 9.4 Estate agents should retain the originals or copies of all estate agency agreements as prescribed in paragraphs 7(1)(c) of the Code of Practice for Estate Agents.

This Practice Guide shall be strictly complied with by estate agents and salespersons.

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