

***PRACTICE
GUIDELINES
FOR ESTATE
AGENTS AND
SALESPERSONS
MARKETING
FOREIGN
PROPERTIES***

PG 1/2014

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Introduction

1 There has been a growing trend of more buyers in Singapore considering purchases of foreign properties. Factors that affect their decision include the property prices, rates of return, rental yield, cost of living factor, or for purposes of diversifying investment risk.

2 Estate agents may approach foreign developers directly or may tie-up with foreign estate agents to market foreign property to consumers in Singapore. The scope of the Estate Agents Act applies to estate agency work conducted in Singapore for properties located both in Singapore and outside Singapore.

Objective

3 Sale and purchase of a foreign property carries additional risk not associated with local property transactions. The foreign property transaction is subject to the laws of the country where the property is sited and there may be differences in the processes and financing requirements. This Practice Guidelines (PG) guides estate agents and salespersons to adopt professional practices in the marketing and sale of foreign properties. In this PG, foreign properties refer to properties located outside Singapore, regardless of whether they are developed by foreign developers or Singapore based developers.

Pre-marketing Checks

4 Estate agents intending to represent the foreign developer/ estate agent shall perform due diligence before marketing any foreign property. It will help the estate agents ensure that they are marketing a property which they are confident to sell and which they are prepared to shoulder the risks and liabilities that may arise. The following due diligence shall be performed:

a. Due diligence on developer

- (i) To ensure that they are reliable with good financial standing and proven track record.
- (ii) To ensure that the developer is the legal owner of the property (eg by verifying against the foreign land registry) and is legally entitled to market and develop the property.
- (iii) To ensure the payment arrangements for consumers, including the parties that receive payment, are appropriate for the property purchase.

b. Due diligence on foreign estate agent

To ascertain that they are reliable and with good track record (applicable if the estate agent is working with a foreign estate agent).

c. Due diligence on the property

Due diligence should be done on the property title, tenure, location, features and amenities.

Estate agents are to ascertain the details and specifications of the property, and to ensure that they gain better knowledge and understanding of the property and its surroundings through various means, e.g. by visiting the sites themselves, by having their local representative of the country where the project is located. If estate agents engage or depend on third parties to do due diligence, they shall determine if the third parties are qualified to perform due diligence. They shall also determine the areas to be checked and shall review the results delivered by the third parties.

d. Due diligence on claims

Due diligence check on claims related to the property, including guarantee of rate of return or rental returns or yields.

5 The areas listed at **Annex A** are areas which estate agents may consider when performing due diligence as required above.

6 If a salesperson intends to represent a developer to market a foreign property, he shall inform his estate agent so that the estate agent can perform due diligence before allowing the salesperson to market the property. This is required as the salesperson is acting in the name of the estate agent and the latter may be liable for the marketing and sale of the property. The salesperson shall not market the property if his estate agent does not give him approval.

7 If a salesperson intends to represent a buyer in foreign property purchase, he shall seek his estate agent's approval as he will act in the name of his estate agent and may subject the estate agent to risk and liabilities.

8 Estate agents shall ensure that they possess the necessary professional indemnity insurance for the conduct of estate agency work by themselves and their salespersons for the specific foreign property before commencing any such work in relation to the said property.

9 When estate agents have decided to market an overseas project, they must conduct the following preparatory activities:

a. Selection and Training for salespersons

Select the salespersons to be involved in marketing the foreign property. Those selected are required to be conversant with the requirements of marketing foreign property including knowledge of this Practice Guidelines. The selection of salespersons shall be made by the KEO or someone authorised by him. The selected salespersons are to undergo project specific training to ensure that they are knowledgeable and competent in selling the property. The training should include the foreign property fact sheet with details on the property, the processes and guidelines in the payment and financing package/ arrangements, the law governing the overseas development, and frequently asked questions for sales and marketing for the project. The training shall aid the salespersons in understanding and explaining the property, processes and requirements to consumers. The training programme is to be conducted by the estate agent and records of the

training materials and list of salespersons trained are to be kept by the estate agent.

After training, the salespersons should be able to:

- (i) Offer advice and attend to queries and requests for information from consumers; and
- (ii) Clearly explain all relevant processes, forms and documents for the transaction, prior to the consumers entering into binding agreements. (For sales and purchase agreement, the salesperson shall inform the consumers that the lawyer will explain the terms and conditions before they sign the agreement.)

b. Enter into a written agreement with developer/ foreign estate agent

The estate agent appointed by the foreign developer/ estate agent shall enter into a written agreement with the foreign developer/ estate agent that it is working with before marketing their projects. The agreement shall cover the terms and conditions (such as commissions), responsibilities and obligations (e.g. to the developer and to the consumers). The written agreement will allow the estate agent to be clear of its responsibilities and obligations.

Estate agents shall ensure that the agreements they enter into are in compliance with the Estate Agents Act and its Regulations.

c. Enter into an agreement between estate agents

- (i) If more than one estate agent is appointed by the foreign developer/ estate agent to be involved in marketing the project, the appointed estate agents may consider entering into an agreement to clearly define their respective responsibilities and their accountability to the foreign developer/ estate agent and the consumers.
- (ii) Similarly, if an appointed estate agent engages another estate agent to assist the appointed estate agent to represent the foreign developer/ estate agent, the estate agent may consider entering into an agreement with the estate agent it engages to clearly define their respective responsibilities and their accountability to the foreign developer/ estate agent and the consumers.

d. Buyers' salespersons co-broke with salespersons representing foreign developer/ estate agent

Salespersons who represent the buyers, and who co-broke with salespersons representing the foreign developer/ estate agent, usually are unable to conduct the same degree of due diligence as salespersons who represent the foreign developer/ estate agent. However, they shall ascertain the details and specifications of the property and give advice to the buyers, as they act in and protect the interests of the buyers.

Marketing Phase

Representation

10 When marketing foreign properties, estate agents and salespersons shall inform the consumers whether they are representing the consumers or the foreign developer/ estate agent.

11 Salespersons who are marketing on behalf of the developer cannot represent consumers in the same transaction. They shall comply with the provisions of the Regulations and the Code of Ethics and Professional Client Care.

12 If the estate agent and salespersons are acting for the consumers, the provisions of the Regulations and the Code of Ethics and Professional Client Care shall also apply.

Advertisements

13 Advertisements on foreign properties are to comply with the requirements in the Code of Ethics and Professional Client Care and the Practice Guidelines on Ethical Advertising.

Understanding consumers' needs

14 Estate agents and salespersons should check with consumers their needs and requirements so as to help them decide if the project meets their needs. Some of the questions that estate agents and salespersons should assist to guide consumers are as follows:

- a. Is this foreign property an investment, a future retirement home, an accommodation for children studying overseas, a holiday resort, etc?
- b. What does the consumer want to get out of the property – passive income from rental, profit gains from capital appreciation, better living standards, etc?
- c. What is his budget? Is he able to meet the full financial commitment?

Information for consumers

15 Estate agents and salespersons are to inform consumers on the range of information set out at **Annex B**.

Advisory Message

16 The estate agents appointed by the developer/foreign estate agent shall provide a written advisory message to the consumers that they must conduct due diligence, drawing their attention that risks are involved for foreign property consumers and that the transaction is subject to foreign laws and to any change in policies and rules in the country where the property is located. The written advisory message shall also state the estate agents'/ salespersons' commitment if any, including commitment by the developer related to the project construction and payment schedule. If there is a salesperson representing the buyer, the salesperson will witness the buyer's acknowledgement of the understanding of the advisory message provided by the appointed estate agent.

Payment and Financing arrangements

17 Estate agents and salespersons shall explain clearly to consumers what are the payment and financing arrangements including the payment milestones and amounts involved. Estate agent and salespersons are to inform consumers whether there is any restriction imposed on loans for the property e.g. whether the developer or foreign law requires the loan to be secured from certain sources only. If loans are provided through banks in Singapore, estate agents and salespersons shall inform the consumer that such loans will be subject to relevant rules and restrictions such as the Total Debt Servicing Ratio (TDSR). Foreign currency exchange requirements and fluctuation having impact on financial commitment shall be highlighted to consumers. If payments made out by consumers are not going directly to the developers, the estate agent shall explain to the consumers to whom the payments are going to, its purposes and how it will be delivered to the developers. If the payment process is not a typical sale and purchase arrangement, the estate agent shall highlight the arrangements in writing to the consumers.

Entering into binding agreements

18 Estate agents and salespersons shall explain to consumers the arrangements for the signing of sales and purchase agreements and inform them that they should get a lawyer to explain the terms and conditions of the agreement before they sign it. Salespersons are to facilitate or arrange for signing of sales and purchase agreement or equivalent contract with the developer. If contracts or agreements are not in English, estate agents and salespersons shall advise the consumer to seek interpretation of the document before signing.

Dispute Resolution mechanism

19 Estate agents and salespersons shall explain to consumers the dispute resolution mechanism that will apply in the event of a dispute pertaining to the purchase. They shall inform the consumers under which jurisdiction the dispute will be resolved. If contracts are in both English and in a foreign language, estate agents and salespersons shall inform the consumers which version shall be the version to be used for the purposes of dispute resolution.

Unlicensed/ unregistered persons

20 Estate agents and salespersons are reminded that only CEA licensed estate agents and registered salespersons are allowed to conduct estate agency work in Singapore. They shall not allow or facilitate any unlicensed estate agents or unregistered salespersons to do estate agency work nor work alongside them.

Record Keeping

21 The estate agent shall keep documents and records that provide evidence of their compliance with the due diligence requirements and other requirements of this Practice Guidelines.

22 The estate agent shall keep transaction records, such as Sales & Purchase Agreement, Option to Purchase and/or related documents and contracts, of each property that they had sold. In addition, they shall keep payment records for any payment by consumers that is made to or through the estate agent, e.g. booking fee.

23 The training materials used for the training of salespersons in marketing foreign property and the list of salespersons trained are to be kept by the estate agent. The marketing materials used by the estate agent and salespersons in the marketing of the foreign property are also to be kept by the estate agent.

24 The documents and records shall be kept in accordance with paragraph 7 of the Code of Practice.

Conclusion

25 Purchase of foreign properties is not without risk. However, if estate agents and salespersons do their due diligence before they market an overseas project, and conduct themselves professionally when they market the foreign property, the risk on the estate agents, salespersons and consumers will lessen considerably. In the event of any disputes, estate agents and salespersons will also be clear of their rights and liabilities to their clients and the consumers.

ANNEX A**Pre-Marketing Checklist for Estate Agents and Salespersons****The Development / Site**

1. Address and Location Map
2. Site Plan and Floor Plan
3. Land or Property Tenure
4. Land Use Controls and Ownership Eligibility
5. Type of Title, Building Permits/Plan number and Development Permissions
6. Construction Schedule
7. Building Quality
8. Marketability Study
9. Statistics and Reports to Support Sellers' Claims
10. Site Inspection

The Developer & Foreign Estate Agent (if any)

- Verify against the official foreign land registry and ensure that the developer is the legal owner of the property and is legally entitled to market and develop the property
11. Business Registration Certificates and Licence Numbers, and their validity period (if any)
 12. Company's Track Records/ Completed Projects
 13. Background Checks for Directors and Shareholders
 14. Financial Standing
 15. Credibility of Architects, Designers and Contractors
 16. Written Marketing Agreement / Agency Agreement
 17. Marketing Budget and Schedule
 18. All Marketing Collateral
 19. Sale & Purchase Agreements / Lease Agreements
 20. Guarantee Agreement / Other Incentive Agreement
 - 21.

Contracts

- Written Agreement between Estate Agents and Foreign developer/ Foreign estate agent, to include in the Agreement that it shall comply with the Estate Agents Act and its Regulations
22. Written Agreement from Estate Agents if they are engaged by the Appointed Marketing Estate Agent to assist in Marketing the Foreign property
 - 23.

Project Specified Training

24. Foreign property detailed training provided, such as name of developer/ project, address of project, description of location, architect, development features and facilities, project features, payment schedule, financing package briefing by bankers, contract briefing by vendor/ vendor's solicitor, sales and purchase agreement, stamp duty calculations, taxation requirements etc.
25. Procedures and Guidelines on How to Purchase Foreign property
26. Sales and Marketing Dos and Don'ts that are in compliance with the Estate Agents Act
27. Training on overseas development laws and dispute resolution avenues

Others

28. Exhibitions and Advertisements to comply with CEA's Estate Agents Acts, and its Regulations and Practice Guidelines on Ethical Advertising
29. Useful Information on Property Market Trends and Insights likely to affect the Foreign property Purchase
30. Solicitor's details
31. Payment schedule details

ANNEX B**Information to be provided to Consumers**

1. **Building & other Regulatory Approvals**
Information on the building and other regulatory approvals obtained by the developer in the country where the property is located, such as approved building plan,
2. **Details of Property**
The property tenure, area, address, title deed, property features, amenities, transportation, building type, built-in area, furnishing, etc. The tenure in Singapore is commonly defined as 99 years leasehold or freehold. However, some countries may define the lease period differently from Singapore.
3. **Rules and Restrictions on Foreign Ownership**
Some countries may impose restrictions on the types of properties, minimum property price or location of the property which foreigners can buy. Some countries may impose restriction on reselling in the secondary market e.g. resell only to the locals (citizens and PRs).
4. **Financing and payments**
 - a) **Loan and mortgages**
 - b) **Payment stages and amounts**
Information on payment stages and amounts required at different stages. The typical payment stages include deposit, down-payment, total payment and progressive payments. Details such as timing for payment, payment to be made to which party and in what currency, and whether the project comes with progressive payments or with payment upon completion should also be made known to consumers. It is noted that some initial down-payment can be a very small amount, while the remaining amount are to be paid in subsequent instalment payments. Estate agents and salespersons have to explain the payment schedule and refund policy to the consumers before they commit to the transaction. .
 - c) **Taxation**
Some countries may levy taxes on foreigners to curb excessive speculations and to stabilise property prices. There may be taxes levied when buying and separate taxes levied when the buyer in turn wants to re-sell the property. There may be property taxes for owner occupation or when the property is rented out. Estate agents and salespersons should explain to the consumer the various categories of taxes such as stamp duties, capital gain tax, withholding tax, estate duty that may be imposed on their transaction
 - d) **Any other payments, fees and costs**

The additional costs, frequency, timeframe and amount involved in buying the foreign property such as fees and levies, maintenance fees, utilities bills, insurance required from consumers during acquisition and disposal process and to list out all mandatory and optional payments. Property management fees and costs associated with physical security arrangements may have to be considered. Insurance costs in areas prone to natural disasters may be high. In some areas, the availability and reliability of public utilities, e.g. electricity, water and sewerage services and the related costs may have to be considered.

5. Legal Advice

Prior to signing any agreement or document, the consumer has to know whether legal advice is arranged, or it has to be paid, or sourced by the consumer himself. If the service is arranged, the consumer should be informed if it is a foreign or Singapore lawyer acting in the interest of the consumer. Information of engaging a lawyer or tie up with appropriate persons to explain terms and conditions to buyers as well as attend to queries has to be made available to the consumer prior to entering an agreement to purchase a foreign property.

6. Dispute Resolution Avenue

Inform consumers the avenue(s) to seek recourse in the event there is a dispute involving the consumers.

Checklist on information to be provided to Consumers

1. Building & other Regulatory Approvals
2. Details of Property
3. Rules and Restrictions on Foreign Ownership
4. Loans and Mortgages/ Availability of Financing
5. Payment Schedule and Refund Policy
6. Tax Regulations (income tax, property tax, rental tax, tax rebates, capital gains tax, etc)
7. Any other payment, fees and cost, such as insurance during acquisition and disposal process, stamp duty, legal fees.
8. Avenues for Legal Advice
9. Dispute Resolution Avenue and jurisdiction