

Answer Guide for e-quiz – April 2012

Note :

1. This answer guide is prepared by the Professional Development Section of the Estate Agents Authority and provides the correct answers to the questions of the April 2012 e-quiz.
2. In this answer guide:
 - “the Authority” means the Estate Agents Authority;
 - “ the Ordinance” means the *Estate Agents Ordinance*;
 - “the Practice Regulation” means the *Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation*;
 - “the Licensing Regulation” means the *Estate Agents (Licensing) Regulation*; and
 - “the Code of Ethics” means the *Code of Ethics* issued by the Estate Agents Authority.
3. The copyright of the e-quiz, this answer guide and all supporting materials (collectively “the materials”) belongs to the Authority, and the materials may be reproduced by candidates for the purpose of attempting the questions only. No reproduction of the materials for any other purpose is allowed without the prior written consent of the Authority.

Question 1

1. Under the Ordinance, Mr. Master, in carrying out his estate agency business,
 - I. should not use any name other than the name specified in his licence
 - II. shall not employ any person as a salesperson who is not the holder of a licence
 - III. shall only employ someone who possesses university graduates qualifications;
 - IV. shall notify the Authority in writing of any change of his registered address within 14 days of the change
-
- A. I and II only
 - B. I and III only
 - C. I, II and IV only**
 - D. All of the above

Answer Guide:

Reference:

S. 55(2) of the Ordinance

A licensed estate agent or a licensed salesperson who, without reasonable excuse-

- (a) for or in connection with an estate agency business uses any name other than the name specified in his licence;
- (b) fails to comply with section 39(1);

commits an offence.

S 39(1) of the Ordinance

A licensed estate agent shall not employ or continue to employ as a salesperson any person who for the time being is not the holder of a licence.

S 14(3)(a) of the Ordinance

Where an address ceases to be the registered address of a licensee, the licensee shall within the period of 14 days beginning on such cesser, notify the Authority in writing of another address to which all communications and notices may be sent.

Using a business name other than that of the licensee's name specified in his licence or employing someone not licensed is a serious breach.

It is important that the licensee keeps the Authority informed of all change of particulars in relation to the practice in good time.

Therefore, the answer is C.

Question 2

2. Mr. Master should make his application for the renewal of his estate agent licence
- A. within 6 months before it is due to expire
 - B. within 1 month after the licence has expired
 - C. **not more than 3 months and not less than 1 month prior to the expiration of the licence**

Answer guide:

Reference:

S 23(1) of the Ordinance

A licensee may apply in the prescribed manner to the Authority to renew the relevant licence.

S. 13 of the Licensing Regulation

An application for the renewal of a licence shall be made not more than 3 months and

not less than 1 month prior to the expiration of the licence or within such shorter period prior to the expiration thereof as the Authority may in writing permit.

Therefore, the answer is C.

Question 3

3. By offering or giving expensive gifts to Ms. Beauty, what kind of rules and regulations might Mr. Agent have breached?

- I. Code of Ethics
- II. S. 9 of Prevention of Bribery Ordinance
- III. S 37 of the Ordinance (Accounts regulations)
- IV. S 12 of Practice Regulation (keeping of account of moneys held or paid by agent for client)

- A. I only
- B. I and III only
- C. II and III only
- D. I and II only**

Answer Guide:

Reference:

S 9 of the Prevention of Bribery Ordinance

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

Estate Agent Authority's Code of Ethics

3.1 Compliance with the law

3.1.1 Estate agents and salespersons shall refrain from activities during their practice which may infringe the law.

3.4 Ethical and moral standard during practice and responsibilities

Estate agents and salespersons, in engaging and accepting an appointment as an agent,

should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

Estate agents should be alerted with certain improper conduct such as offering advantages. S. 9(2) of the Prevention of Bribery Ordinance specifically deals with “without lawful authority, offering advantage to any agent.... as an inducement to or reward for the agent's doing any act in relation to his principal's affairs or business”. In this example, Ms. Beauty is the agent and her principal is Mr. Funny. Mr. Agent’s offering expensive gifts (though not in money terms) to her for introducing Mr. Funny’ clients to Mr. Agent without Mr. Funny’s authority may amount to a S. 9 offence. Likewise it would amount to a breach of the Code of Ethics. The answer is D.

Question 4

4. For the time being, Carl is not eligible to be granted an estate agent licence because:
- A. he has been convicted of the charge of littering
 - B. he has not reached the age of 18**
 - C. he has not been considered as fit and proper to be granted an estate agent licence

Answer Guide:

Reference:

S. 6 of the Licensing Regulation

An individual is not eligible to be granted or hold or continue to hold a licence unless he has attained the age of 18 years at the date of his application for the licence.

S.19 of the Ordinance

- (1) An individual shall not be eligible to be granted or hold or continue to hold an estate agent's licence unless-
- (a) he has attained the age which is for the time being prescribed for the purposes of this subsection;
- (2) In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to the following-
-
- (d) any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as

regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly; and

- (e) any conviction of the person under this Ordinance in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not.

For the time being, the only barrier to Carl's eligibility to be granted an estate agent's licence is the fact he is not of the age of majority (i.e. 18).

(Note: Carl has to pass the Estate Agents Qualifying Examination within 12 months immediately before the date of his application for the grant of the licence.)

Section 2(1B) of the Rehabilitation of Offenders Ordinance (Cap. 297) states that:

Where an individual pays or is ordered to pay a fixed penalty, or any additional penalty, under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap 240) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap 571), then-

- (a) subject to section 3(3) and (4), no evidence shall be admissible in any proceedings which tends to show that that individual has so paid or has been so ordered to pay;**
- (b) any question asked of that individual or any other person relating to, or any obligation imposed on that individual or any other person to disclose, that individual's previous convictions, offences, conduct or circumstances shall be treated as not referring to that payment or order to pay; and**
- (c) that payment or order to pay, or any failure to disclose it shall not be a lawful or proper ground for dismissing or excluding that individual from any office, profession, occupation or employment or for prejudicing him in any way in that office, profession, occupation or employment.**

The Public Health and Municipal Services Ordinance (Cap 132) covers offences including littering and spitting. With effect from 26 June 2003, any person in breach of the provisions will be liable to a fixed penalty of \$1,500.

By S.3(3) of Fixed Penalty (Public Cleanliness Offences) Ordinance, where a person has received a notice in respect of the littering offence and has paid the full amount of the fixed penalty shown in the notice, he shall not be liable to be prosecuted or convicted for the scheduled offence specified in the notice.

According to Schedule 1 of Fixed Penalty (Public Cleanliness Offences) Ordinance, the fixed penalty for depositing of litter in public places under Section 4(1) of Public Cleansing and Prevention of Nuisances Regulation is \$1500.

Carl’s admission to the littering charge will not amount to a prosecution or conviction if he pays the fixed penalty of HK\$1,500. Therefore Carl’s eligibility will not be affected in this way.

Therefore, the answer is B.

(Note: Apart from satisfying the requirements on “age” and “education level” and be a “fit and proper” person, according to section 7(1)(a) of the Licensing Regulation, an individual “has, within 12 months immediately before the date of his application for the grant of the licence, passed the relevant examination”.)

Question 5

5. In accepting Ms. Vivian’s appointment as her agent to sell the Property, what should Mr. Agent have done?
- I. entered into an estate agency agreement with Ms. Vivian
 - II. obtained from Ms. Vivian information about the repairs and renovations of the Property prescribed in Form 1
 - III. conducted a land search at the Land Registry .
- A. I and II only
 - B. I and III only
 - C. II and III only
 - D. All of the above

Answer guide:

Reference:

S 36(1) of the Ordinance

- (a) ...every licensed estate agent shall, as regards every property (whether situated in Hong Kong or elsewhere) in relation to which he has entered into an estate agency agreement-
- (i) if he acts for the vendor, then for so long as he so acts, have in his possession or under his control information prescribed for the purposes of this paragraph;

S 36(2) of the Ordinance

...information prescribed for the purposes of subsection (1)(a) in relation to any property situated in Hong Kong, being property in relation to which a particular licensed estate agent has entered into an estate agency agreement...may include the following-

- (a) particulars of current ownership and subsisting encumbrances in respect of the relevant property...
- (b) the total or entire area.....
- (c) where applicable, the year or period in which construction of the relevant property was completed
- (d) any restrictions on the user of the relevant property
- (e) the unexpired term of the relevant Government Lease.....
- (f) if a lease of the relevant property is to be granted, the term of the proposed lease;
- (g) a statement, made by the vendor in a manner prescribed for the purposes of this paragraph, containing-
 - (i) any information so prescribed and within the vendor's knowledge, ... relating to structural additions to or alterations of a building or other structure, whether already carried out or not; and
 - (ii) any information so prescribed and within the vendor's knowledge, being information relating to the following repairs or improvements-
 - (A) repairs or improvements which are required or proposed; and
 - (B) repairs or improvements for the cost of which a purchaser of such premises will be wholly or partly liable.

S 13 Practice Regulation

(4) A licensee acting for the vendor of a residential property shall, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property.

According to the Ordinance, the licensee should enter into an estate agency agreement with each of his/her customer for whom he/she agrees to act. Other than this, if the customer is a vendor, it is the licensee's duties to ascertain as accurate as possible all information in relation to the property. The Ordinance has prescribed the information such as renovations and repairs proposed for the building which the licensee is required to obtain from the vendor.

It is only prudent for all licensees to provide as much information as possible to

the intended purchaser; the provision of Form 1 and conducting an updated land search will be essential in discharging the licensee's duties. Therefore, the answer is D.

Question 6

6. As one of the joint tenants, what kind of papers which Ms. Vivian would need to produce to satisfy the purchaser that she is entitled to sell the Property in her sole name?
- I. Certified copy of Death Certificate of Mr. Hubby
 - II. Certificate of Exemption of Estate Duty or Payment of Estate Duty in respect of Mr. Hubby's estate
 - III. Power of Attorney from Mr. Hubby executed during his lifetime authorising Ms. Vivian to sell the Property on his behalf
- A. I only
B. I and II only
C. II and III only

Answer Guide:

Reference:

S.11 Conveyancing and Property Ordinance - Presumption of survivorship

- (1) after the commencement of this section, 2 or more persons die in circumstances rendering it uncertain that any one of them, or which of them, survived the other or others, such deaths shall, for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

By the doctrine of survivorship, where a property is held by 2 or more persons as joint tenants, upon the death of one of them, the interest in the property shall pass to the survivors (in equal share if more than 1).

The death certificate would serve as proof of the death of Mr. Hubby and hence Ms. Vivian being the sole survivor entitled to the entire interest in the Property.

According to the Revenue (Abolition of Estate Duty) Ordinance 2005 which came into effect on 11 February 2006, no estate duty is chargeable in respect of deaths occurring on or after that date.

Thus, the answer is A.

Question 7

7. Considering Mr. and Mrs. Best purchase the flat unit and car park by 2 separate Provisional Agreement for Sale and Purchase, what would be the total amount of stamp duty payable on the 2 Agreements for Sale and Purchase?

- A. HK\$200
- B. HK\$100
- C. HK\$33,600
- D. HK\$24,100**

Answer Guide:**Reference:****S. 29G Stamp Duty Ordinance**

..... an agreement for sale being certified at a particular amount mean that such agreement for sale contains a statement certifying that the transaction agreed to, or effected by, the instrument does not form part of a larger transaction or series of transaction in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds that amount.

Rates of Stamp Duty**On Sale or Transfer of Immovable Property in Hong Kong**

With effect from 1 April 2010, stamp duty on sale of immovable property in Hong Kong is charged at rates which vary with the amount or value of the consideration as follows:

[Where the stamp duty calculated includes a fraction of \$1, round-up the duty to the nearest \$1.]

Amount or value of the consideration		Rate
Exceeds	Does not exceed	
.	\$2,000,000	\$100
\$2,000,000	\$2,351,760	\$100 + 10% of excess over \$2,000,000
\$2,351,760	\$3,000,000	1.5%
\$3,000,000	\$3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,320	\$4,000,000	2.25%
\$4,000,000	\$4,428,570	\$90,000 + 10% of excess over \$4,000,000
\$4,428,570	\$6,000,000	3%
\$6,000,000	\$6,720,000	\$180,000 + 10% of excess over \$6,000,000
\$6,720,000	\$20,000,000	3.75%
\$20,000,000	\$21,739,120	\$750,000 + 10% of excess over \$20,000,000
\$21,739,120		4.25%

Note: (i) With effect from 1 April 1999, the exact amount or value of the consideration will be used to compute the stamp duty for property transfers. That is, round-up of the value or consideration to the nearest \$100 is no more required.

(ii) With effect from 31 January 1992, stamp duty at the same rates as conveyances of immovable property is chargeable on agreements for the sale and purchase of residential property. After the agreement has been so stamped, the related conveyance will be chargeable with a fixed stamp duty of

\$100 only.

Where a transaction is part of a larger or a series of transactions, such transaction will be subject to the rate of stamp duty falling within the range of the aggregate amount or value of the consideration. In this case, although taking the amount or value stated in the agreement for sale and purchase of the flat unit and for the car park individually, no stamp duty (other than HK\$100 each) would be payable. Since the parties to the 2 agreements are exactly the same, together they must be considered to form a larger or a series of transactions which in aggregate will amount to HK\$2,240,000 (HK\$1,990,000 + HK\$250,000) pursuant to S. 29G of the Stamp Duty Ordinance. Therefore the applicable rate shall be $\text{HK\$100} + 10\% \times (\text{HK\$2,240,000} - \text{HK\$2,000,000}) = \text{HK\$24,100}$. The answer is D.

Question 8

8. While also acting for the vendor, which of the following shall constitute a cause of action whereby Mr. and Mrs. Best's damages or any other relief or remedy may be recovered against Mr. Master?
- I. Mr. Master's failure to have in his possession or under his control prescribed information of the Property in the form of Form 1;
 - II. Mr. Master should be reasonably satisfied as regards the accuracy of information prescribed
 - III. Mr. Master having made a misrepresentation about the non-existence of the renovation notice
 - IV. Breach of estate agency agreement
- A. I, II and III only
 - B. II, III and IV only
 - C. I, III and IV only
 - D. All of the above**

Answer Guide:

Reference:

S 36 of Ordinance

- (1) (a) every licensed estate agent shall, as regards every property (whether situated in Hong Kong or elsewhere) in relation to which he has entered into an estate agency agreement-

- (i) if he acts for the vendor, then for so long as he so acts, have in his possession or under his control information prescribed for the purposes of this paragraph;
- (ii) be reasonably satisfied as regards the accuracy of information prescribed for the purposes of this paragraph;

(4) Where as regards a particular property a licensed estate agent fails to comply with a requirement of subsection (1) which applies to him and because of any such failure the relevant client suffers loss or damage, the failure shall constitute a cause of action whereby damages or any other relief or remedy may be recovered or obtained in legal proceedings.

S. 3 Misrepresentation Ordinance - Damages for misrepresentation

(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

Clause 5 of Estate Agency Agreement (FORM 3)

Property Information

The Agent shall provide to the Vendor the Property Information Form including the Vendor's Statement prescribed under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation duly completed and signed by the Agent.

Mr. Master's failure to keep the Property Information form (Form 1) and to be satisfied as to the accuracy of the enquiries of Mr. and Mrs. Best regarding the renovations and repairs proposed for the building should be a cause of action for damages under S. 36(4) of the Ordinance. This piece of information should have been readily obtained and verified only if Mr. Master had obtained the Form 1 and made enquiries with the vendor. The statement that he has given about the non-existence of the renovations and repairs which were already in place at the time the enquires were raised is obviously untrue and misrepresenting. This may again constitute a cause of action under the Misrepresentation Ordinance. Mr. and Mrs. Best should be entitled to claim against Mr. Master for the loss and damages suffered under these 2 Ordinances.

The answer is D.

Question 9

9. In relation to the keeping of account and records, which of the following statements are true?

- I. A licensed estate agent shall issue a receipt to a client for any moneys received within 7 days of such receipt.
- II. A licensed estate agent shall retain a copy of the receipt for not less than 3 years after it is issued.
- III. Any officer of the Authority authorised in writing by the Authority shall have the right to inspect the accounts as to moneys received or held by the licensed estate agent at any time during normal office hours without prior notice and to require the licenced estate agent to furnish any information during such inspection.

- A. I only
- B. II and III only**
- C. I and II only
- D. All of the above

Answer Guide:

Reference:

S. 12 Practice Regulation

- (1) (a) A licensed estate agent shall keep proper accounts as to moneys received or held, or paid by the agent, for or on account of clients.
- (b) Any officer of the Authority authorized in writing by the Authority for the purpose shall have the right to inspect the accounts kept under paragraph (a) at any time during ordinary office hours without prior notice.
- (2) A licensed estate agent shall-
- (a) issue a written receipt to a client immediately for any moneys received; and
- (b) retain a copy of the receipt for not less than 3 years after it is issued.

It is important that all licensees should adhere to and adopt a good accounting practice and know the right of the Authority in this regard. The answer is B.

Question 10

10. Where a complaint made has been considered by the Authority and the Authority is satisfied that the complaint is well-founded, the Authority may exercise which of the following powers against the estate agent or salesperson complained of?

- I. Suspend his or her licence for a period of more than 3 years
- II. Revoke his or her licence
- III. Impose a fine of HK\$1,000,000
- IV. Vary any condition to his or her licence
- A. I, II and III only
- B. I and III only
- C. II and III only
- D. II and IV only**

Answer Guide:

Reference:

S. 30(1) of the Ordinance

Where-

- (b) (i) a complaint made under section 29(1) or a submission made under section 29(2) is considered by the Authority or, as the case may be, a disciplinary committee; and

(ii) the Authority or, as the case may be, the disciplinary committee is satisfied that the complaint or submission is well-founded,

the Authority or, where appropriate, the disciplinary committee may, subject to this section, exercise such of the following powers as it considers appropriate-

- (i) admonish or reprimand the licensee concerned;
- (ii) attach specified conditions to the licence concerned;
- (iii) vary any condition already attached to such licence;
- (iv) suspend such licence for a specified period not exceeding 2 years;
- (v) revoke such licence;
- (vi) impose a fine of a specified amount not exceeding \$300000;

make such order as it thinks fit with regard to the payment of any 1 or more of the following, namely, the whole or part of its costs regarding the proceedings, or, where a recommendation referred to in paragraph (a) is made, the whole or part of the costs of the investigator by whom the recommendation was made, or the whole or part of the costs of a complainant under section 29 or of the licensee concerned.

This question serves as a reminder to the licensees of the possible consequences of an established complaint against a licensee. The answer is D.

Question 11

11. How should Mr. Master notify the Authority of the termination of Mr. Agent's appointment as M-Company's manager? By which time he should do so?

- A. By completing Form 9 and within 21 days of his terminating Mr. Agent's appointment as the manager
- B. By completing Form 10 and within 21 days of his terminating Mr. Agent's appointment as the manager
- C. By completing Form 10 and within 31 days of his terminating Mr. Agent's appointment as the manager**

Answer Guide:

Reference:

S. 40(3) of the Ordinance

Where a licensed estate agent-

- (a) appoints a person as a manager for the purposes of this Ordinance; or
- (b) terminates the appointment of such a manager,

the agent shall, before the expiration of the period of 31 days beginning on the date of the appointment or, where appropriate, the termination, notify the Authority in writing

of the appointment or termination.

All licensees should familiarize themselves with the reporting requirements and procedures. The answer is C.

FORM 10

ESTATE AGENTS ORDINANCE
(Chapter 511)
(Section 40(3))

NOTICE OF APPOINTMENT/TERMINATION OF APPOINTMENT* OF A
PERSON AS A MANAGER OF A LICENSED ESTATE AGENT

To: Estate Agents Authority
(address)

I/We*⁽¹⁾
of⁽²⁾
holder of estate agent's licence number: ⁽³⁾
hereby give you notice that I/we* appointed/terminated the appointment*
of⁽⁴⁾, holder of estate
agent's licence number: ⁽⁵⁾ as a
manager with me/us* at⁽⁶⁾
on⁽⁷⁾(D/M/Y)

.....
Date

.....
Signed by/on behalf of*
the licensed estate agent

- Note: (1) Name of the licensed estate agent.
(2) Registered address of the licensed estate agent.
(3) Licence number of the licensed estate agent.
(4) Name of the manager.
(5) Licence number of the manager.
(6) The place of business where the manager is in effective control of the estate agency business.
(7) Date of the appointment/termination of appointment.
* Delete if inappropriate.

Please file this Notice with the Estate Agents Authority before the expiration of the period of 31 days beginning on the date of the appointment or termination of appointment, as the case may be.

Question 12

12. As regards a licensed estate agent's conduct, which of the following statement is untrue?

- A licensee shall not exercise any undue influence on a vendor or purchaser for the purpose of inducing him to enter into an agreement for sale and purchase
- B. A licensee shall keep a written record of all offers in respect of a residential property;
- C. A licensee should give the purchaser advice on the value of the property for stamp duty purpose;**
- D. A licensee shall not cause a claim to be made of the existence of an offer from a purchaser, unless the offer exists.

Answer Guide:

Reference:

S. 11 of the Practice Regulation

A licensee shall-

- (a) not cause or permit a claim to be made of the existence of an offer from a purchaser unless the offer exists;
- (b) where information and comparables on residential property prices and rentals have been supplied to a client for reference or comparison, ensure that the information or comparables supplied do not misrepresent the value of the residential property concerned;
- (c) not exercise any undue influence on a vendor or a purchaser for the purpose of inducing him to enter into an agreement for sale and purchase or a lease;
- (d) keep a written record of all offers in respect of a residential property;
- (e) present an offer to a client for acceptance as soon as is practicable after receiving it;
- (f) subject to section 13(2)(b), inform a client of all offers received in the order he receives them and present them in an objective and unbiased manner.

It is not prudent of any licensee to give advice on areas which they are not qualified to do such as legal or tax issues. Besides, any ill advice will expose customers to irreparable damages resulted by breach of the law or other monetary loss. The answer is C.