

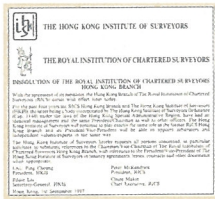
SURVEYING

測量師導報 VOLUME 6 ISSUE 7, SEPTEMBER 1997

CLOSURE OF THE RICS HONG KONG BRANCH

After nearly 33 years of operation, the Hong Kong Branch of The Royal Institution of Chartered Surveyors finally retired from service on 1st September 1997. From that moment onwards, The Hong Kong Institute of Surveyors (HKIS) became the sole representative body for all professional surveyors practising in the SAR.

RICS, concerning the closure of the Hong Kong Branch, was published in the major Chinese and English newspapers.



Later this year, the Hong Kong Branch Constitution is to be repealed by the RICS General Council, and an Affiliation Agreement entered into between the two institutes. The agreement shall encompass four major areas namely education, professional standards, finance and the promotion of the profession. It clearly spells out the right granted to the HKIS by the RICS, the obligations of the two institutes and the extent of mutual support. RICS members who have not joined the HKIS, shall receive support from the HKIS for a period of 12 months from the date of dissolution. For this reason, these members are encouraged to join the HKIS as soon as possible.

The dissolution of the Hong Kong Branch would be in accord with the RICS's international thinking. The decision to disband the branch was taken at a RICS General Council meeting in July 1996, when a paper reviewing the future of the branch was presented for endorsement. Later, in October 1996, the branch held an EGM to gauge members' views which turned out to be a positive one. The message was then conveyed to London to allow the proposal to be considered by the General Council at its meeting on 18th November 1996. Subsequently, the Branch Committee decided to adopt 1st September 1997 as the date for formal dissolution.

The Affiliation Agreement, when executed, will be fully published in the newsletter for members information.

On 1st September 1997, a joint notice issued by the HKIS and the



Swire House, Central, Hong Kong, housing the HKIS Secretariat



The RICS headquarters, Parliament Square, London



SURVEYING is the newsletter of the HKIS. It is distributed to members, students and friends of the surveying profession free of charge. Anyone wishing to receive a copy may contact the office of the Institute.

HKIS EXECUTIVE COMMITTEE 1996/97

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Quantity Surveying Division	Tommy Yim BA(Arch Studies) (Hons), B Building, FHKIS, FRICS, LicIQA
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Immediate Past President	C Y Leung BSc, FHKIS, FRICS, RPS(GP)
SECRETARIAT Secretary-General	Eddie S K Lai BSc, AHKIS, ARICS

Editorial Contributions

Surveying encourages article queries and submissions. Article submissions should include both hard (printed) copy and a diskette in Word format. Contributions should reach the editor Mr. S W Fong at the office of the Institute one month before the publication date.

Information & Contents

No part of this newsletter may be reproduced without the permission of the Institutes. Contents of the newsletter do not necessarily reflect the views or opinions of the Hong Kong Institute of Surveyors and no liability is accepted in relation thereto.

Advertising

All advertisements and small ads are welcome. SURVEYING is reaching over 4,500 readers. For detailed information & advertising rates, please contact Ms Margaret Yung of the Secretariat office at 25263679 OR Mr. Charles Yiu of Corporate Culture at 2802 6949.

The Hong Kong Institute of Surveyors

1934 Swire House, Chater Road, Central, Hong Kong.
Tel: 2526 3679 Fax: 2868 4612
<http://www.hkis.org.hk>



GOVERNMENT CIRCULARS

The following are available for inspection at the Secretariat Office.

BUILDINGS DEPARTMENT

Practice Note for Authorised Persons and Registered Structural Engineers

- PN 207 Provision of Better Lift Service
- PN 209 Maintenance and Replacement Works of Lift Installations
- PN 210 Amendments and Clarification to Code of Practice for the Provision of Means of Escape in Case of Fire 1996
- PN 211 Planning and Design of Drainage Works
- PN 212 Fire Safety (Commercial Premises) Ordinance

LEGAL ADVISORY AND CONVEYANCING OFFICE (LACO), LANDS DEPARTMENT

Circular memorandum no. 25 Lands Department Consent Scheme - Effect of Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997

The Land Registry

Street Index - Noter-up No. 16

Available for sale at the The Land Registry, Central Search Office, 19/F Queensway Government Offices, 66 Queensway, Hong Kong.

Contains details of amendments and additions made to the present (30th) edition of the Street Index during the period 1st July 1995 to 31st December 1996.

CONGRATULATIONS

The Hong Kong Institute of Surveyors Prize 1996/97

The HKIS Prize 1996/97 was awarded by the Board of Examiners, The University of Hong Kong, to Ms HO Ka Yan, Cannas. Ms Ho, a 1st year student of BSc Surveying, at the Faculty of Architecture, was awarded the prize for having the best results in the 1996/97 examinations.



SURVEYORS LUNCH

Guest Speaker: Mr. Dominic S W Wong, Secretary for Housing

Date: Thursday, 30th October 1997
Time: 12:30 for 1:00pm
Venue: The Ballroom, Sheraton Hotel, TST, Kowloon
Cost: HK\$245 per person

Reservation forms are obtainable from the HKIS Secretariat. Tel: 2526 3679.





BUILDING SURVEYING

NEWS FROM THE BUILDING SURVEYING DIVISION.

By Terence Y M Lam, Hon Secretary

13TH AGM (1997/98) & ANNUAL DINNER, HKIS BSD

You are cordially invited to attend these events which will be held together on Friday 26th September 1997 at the Hong Kong Football Club.

By now, you must have received the notice of the meeting. The existing BSD Council has served for 2 years. We need new members to participate and to input new ideas and momentum. Please submit your nominations and attend the AGM to elect your representatives.

The Building Surveyors Annual Dinner is the first that has ever been organised. Please come and join in this big social event..

STUDY TOUR TO SINGAPORE AND MALAYSIA

A study tour to Singapore and Malaysia on Building Surveying practices has been organised on 1st to 4th October 1997. The tour will visit the Institute of Surveyors, Malaysia, the Singapore Institute of Surveyors and Valuers and the Building Control of Public Works Department in Singapore. Site visits will be arranged. Of course, there will be plenty of time available for sight-seeing



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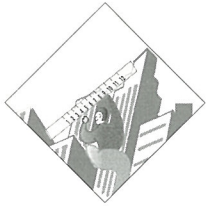
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RICS



QUANTITY SURVEYING

NEWS FROM THE QUANTITY SURVEYING DIVISION

When I took up office in November 1996, I said there were three areas which the Divisional Council would pay particular attention to :

Report from Tommy YIM, Chairman 1996/97

(1) Strengthening the communication with our counterparts in other countries

The Pacific Association of Quantity Surveyors (PAQS)

At the Annual General Meeting of PAQS held on 12 May 1997, HKIS was elected the 2nd Vice Chairman of the Association for a term of two years. The Association's membership includes QS associations in Australia, Japan, Malaysia, New Zealand, Hong Kong and Singapore. The increasing involvement of HKIS in the administration of the Association will certainly help Hong Kong QS make themselves better known in the Region.

The International Cost Engineering Council (ICEC)

HKIS has now become ICEC's accreditation body in Hong Kong for its members. HKIS QSD members can, through the membership of ICEC, more readily communicate with their counterparts not only in the Region, but also in USA and Europe. The relevant details and application procedures for 'Certified Cost Engineers, ICEC' are given below.

The China Association for the Management of Construction Costs (CAMCC), PRC

HKIS is now a member organisation of CAMCC. This will formalise communication between HKIS QSD and CAMCC, and will no doubt benefit both members of the Institute and the Association. This close relationship will also

enable QSD members to be more involved in the cost engineering profession of China.

(2) Improving the communication with the industry

Meetings with QS Associations of the Architectural Services Department and the Housing Department, and others

Such meetings set the beginning of letting members outside the Council know more about the work of the Council, and more importantly, let the Council know the needs of members and to encourage more involvement of members in the Institute's work.

Meetings with Representatives of Principals of QS Consultant Firms

Such meetings enable the Council to work together with major employers where most QS work, on issues relating to the QS profession.

(3) Reviewing the APC

A discussion forum was held on 24th March 1997 to brief candidates on the various aspects of the APC and the common deficiencies found in the submissions; and to hear comments from candidates on the APC so as to further improve it. The Council will continuously work on this important subject.

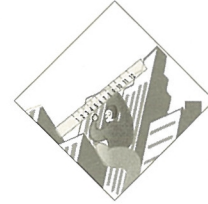
Achievement on other work of the Council is satisfactory. Work on the revised versions of the SMMs is being reviewed in order to further expedite its progress. Council members continue to represent the Institute at various committees of the government, quasi-government organisations and tertiary education institutes to forward views of the QS profession. 12 CPD events (8 talks and 4 site visits) have been organised to offer a variety of topics to members :

Month	Topic	Attendees (No.)
Jan	Logistics warehouse development in China	74
Feb	Visit new airport at Chek Lap Kok (1st visit)	37
Mar	Construction cost engineering development in the Special Economic Zones of China	70
Apr	Visit airport railway project gallery and the Hong Kong Station (1st visit)	19
	Visit new airport at Chek Lap Kok (2nd visit)	17
May	Construction 'Fung Shui'	85
	Visit airport railway project gallery and the Hong Kong Station (2nd visit)	20
	Construction law update	180
Jun	Tsing-Ma Bridge : from inception to completion	100
Jul	The role of QS in driving construction innovation	70
Sep	Management contracting as applied in the KCRC Kowloon Station renovation and extension project	*
	Architecture for the QS	*

* Not yet known at time of writing.

I would like to thank all Office Bearers and Members of the Council, and the staff of the Secretariat Office, for their support and hard work during the term, without which the above could never have been achieved. I would also like to thank those members who complained either directly or indirectly to us, on the work of the Council, so that we could review our system/procedures. I have full confidence that the new Council will try its very best to serve members, and I would take this opportunity to wish it every success in its term.

QUANTITY SURVEYING



Certified Cost Engineers, ICEC

By Adrian SMITH

The QS Divisional Council is pleased to announce that, following a detailed review, the Hong Kong Institute of Surveyors has been accredited by the International Cost Engineering Council (ICEC) as the body responsible for the certification of Cost Engineers in Hong Kong. ICEC is an international body based in the USA which aims to bring together quantity surveyors and cost engineers in all parts of the world. It has a large number of member Institutions in Europe, USA, Australia and Africa, and the designation of 'Certified Cost Engineer' is therefore widely recognised. You may also be aware that construction cost specialists in the PRC will be known as cost engineers and not quantity surveyors, and we therefore believe that this designation will be beneficial to our members.

The definition of cost engineering as adopted by the ICEC is a very broad one. The basic qualifications so far as Hong Kong is concerned are:-

- 1) Corporate membership of the HKIS Quantity Surveying Division; and
- 2) At least THREE YEARS approved post qualification experience in a job requiring competence in the measurement and valuation of construction work; and
- 3) Be currently employed in a 'main stream' quantity surveying role which requires expertise in the measurement and valuation of construction work.

Applications will be assessed by a Sub-committee of the Education and Membership Committee of HKIS. The certification is granted for a period of three years after which application for renewal has to be submitted. The major criterion for renewal is documented compliance with the Institute's CPD requirements.

Details of how to apply for Certified Cost Engineer status will be announced later.



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綠卡	100,000元	200元(原400元)
金卡	200,000元	325元(原650元)

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NEWS FROM THE SECRETARIAT

DATES FOR YOUR DIARY

25/9/1997

QSD AGM

Venue : World Trade Centre Club, Causeway Bay, Hong Kong

26/9/1997

BSD AGM and Annual Dinner

Venue : Hong Kong Football Club, Happy Valley, Hong Kong

9/10/1997

Territorial Development Conference

Time : 9:00 am - 5:30 pm

Venue : HKCEC

Enquiries to Miss Aileen Wong, Conference Secretariat c/o The Centre of Urban Planning & Environmental Management, The University of Hong Kong.

Tel : 2859 2721.

9/10/1997

QSD CPD - Financial Techniques in Analyzing Real Estate Investment Opportunities

Time : 6:30 pm - 8:30 pm

Venue : Rm 608, HKCEC

Speaker : Mr John Chen, Real Estate Investment Manager, Rodamco
Reservation details from the Secretariat.

9/10/1997

Community Chest Dress Casual Day

14-16/10/1997

GIS Asia Pacific 3rd Annual Conference & Exhibition

Venue: Jakarta Convention Centre, Jakarta, Indonesia

Enquiries to: Samantha Ledger, GIS Asia Pacific, Singapore

Tel (65) 323 6373, Fax (65) 323 4752

Email: gisap@pearson pro.com.sg

20-22/10/1997

Asian Real Estate Society Conference

Venue : The University of Hong Kong

Enquiries to Conference Secretariat, Asian Real Estate Society c/o Centre for Real Estate & Urban Economics, Dept. of Real Estate & Construction, the University of Hong Kong.

Tel. 2859 7986.

23-27/10/1997

HKIS Beijing and Shanghai Visit All members and their families are welcome. Please refer to circulars for full details. Further enquiries to the Manager, Surveyors Services Ltd.,

Tel. 2526 3679.

30/10/1997

Surveyors Lunch

Time : 12:30 pm

Venue : Sheraton Hotel, Tsimshatsui, Kowloon

Guest Speaker : Mr Dominic S.W. Wong, Secretary for Housing

1/11/1997

BS Conference 1997

Venue : Royal Plaza Hotel, Mongkok KCR Station, Kowloon

21/11/1997

Surveyors Annual Dinner

Time : 6:45 pm

Venue : Regent Hotel, Tsimshatsui, Kowloon.

Guest of Honour : Mr Tung Chee-Hwa, Chief Executive, HKSAR See separate entry for other information.

The following are available on a first come first served basis. Pick up a copy in person or make a request by sending a stamped and self addressed envelope, postage as indicated.

Environmental Protection Dept

PN 2/97 Handling of Asbestos Containing Materials in Buildings (A5 envelope, postage \$2.10)

Construction Industry Training Authority (CITA)

CITA Annual Report 1996 (A4 envelope, postage \$7.20)

Land Development Corporation

LDC News, August 1997, Issue No. 16 (the monthly newsletter of the Land Development Corporation) (A5 envelope, postage \$2.10).

SURVEYORS ANNUAL DINNER

Friday, 21st November 1997

The Chief Executive of the HKSAR, Mr Tung Chee-Hwa, has kindly agreed to be our Guest of Honour at the forthcoming Surveyors Annual Dinner. This biggest annual members function will be held at the Grand Ballroom, Regent Hotel, Kowloon. The cost per person is \$840 to include a-4 course dinner and a pre-dinner cocktail. Tables for 12 guests are available.

Kindly note that the event will commence at 6:45 pm which is earlier than previous years. The dress code is lounge suit. Please refer to circulars for details of reservation.



FEATURE

THE HONG KONG INSTITUTE OF SURVEYORS CODE OF CONDUCT AND ETHICS FOR ESTATE AGENCY

Introduction

The Government's decision to set up the Estate Agents' Authority to regulate the activities of property agents has been welcomed by the HKIS. A working party, comprising members of the General Practice Division, was subsequently set up to produce a set of rules aimed at members practising in the field of estate agency. The rules, known as "The HKIS Code of Conduct and Ethics for Estate Agency", is produced below. The General Council hopes to introduce the code on a mandatory basis, subject to members approval at an EGM.

- 1) Any member of the Hong Kong Institute of Surveyors ("the Institute") who practises in estate agency work shall be governed by this Code.
- 2) It is the duty of every Member practising estate agency ("Member") to render service to his client and to practise his profession with fidelity.
- 3) A Member shall act towards his client in all professional matters strictly in a fiduciary manner and shall keep confidential the results and other findings of his work and any report, until the transaction or proceedings for which the work or report was made have lapsed or been completed or as otherwise directed by his client.
- 4) a) A Member is expected to provide a level of competent service in keeping with the professional standards of the Institute.
b) A Member shall refer to the standards of practice as may be prescribed by the Institute from time to time as to the degree of competence that a client has a right to expect the Member to possess.
c) A Member shall not undertake to provide specialized professional services concerning a type of property or service that is outside his field of competence.
- 5) A Member shall keep himself informed on matters affecting real estate, such as law, proposed legislation, governmental regulations, public policies and current market conditions in order to be in a position to advise his clients properly.
- 6) It is the duty of a Member to protect the public against fraud, misrepresentation and unethical practices in real estate transactions.
- 7) a) A Member must inform his client of the nature of any business connections, interests or other affiliations he may have in connection with his service to the client.
b) A Member shall not undertake to provide professional services concerning a property or its value where he has a personal or contemplated interest unless such interest is specifically disclosed to all affected parties.
c) A Member shall not acquire an interest in or buy for himself, any member of his immediate family, his firm or any entity in which he has an ownership interest, any property listed with him, without making the true position known to the owner of the listed property; and in selling property owned by himself, any member of his immediate family, his firm or any entity in which he has an ownership interest, a Member shall reveal the facts of his ownership or interest to any prospective purchaser.
- 8) A Member shall not accept from a third party any commission, rebate or profit made on expenditures incurred on behalf of his client's without the client's knowledge and consent.
- 9) A Member shall, for the protection of all parties, see that financial obligations and commitments regarding real estate transactions are put in writing expressing the exact agreement for the parties and a copy of each such agreement shall be furnished to each party upon signing such agreement.
- 10) a) A Member shall not act for one party to a transaction while another Member from the same firm acts for any other party to the same transaction, except with the knowledge and consent of all the parties concerned.
b) A Member from a firm shall not act for one party in any one transaction while another Member from a related, associated or affiliated firm acts for any other party to the same transaction, except with the knowledge and consent of all the parties concerned.
- 11) A Member in employment shall not accept professional work on his own account, except with the knowledge and consent of his employer.

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12) Every Member shall maintain the high standards of his profession and may refer to the Institute any act or omission of a Member coming to his notice which may appear to bring discredit on the profession.

13) No Member shall knowingly prepare or certify any statement which is false, incorrect, misleading or open to misconception by reason of the mis-statement, omission or suppression of a material fact or otherwise.

14) Every Member shall put his name and signature on all proposals, reports and other documentation prepared by him indicating his status as a Member.

15) A Member shall carefully guard against the use of his name by, or personal association with, any enterprise or activity of a questionable character which may bring the Member or the profession into disrepute.

16) A Member who is a sole principal of a practice or a partner in a firm or a director of a company carrying on estate agency shall exercise due diligence to ensure all employees within such practice, firm or company comply with this Code when practising estate agency work.

17) A Member charged with unethical practice and asked to present evidence in any disciplinary proceeding or investigation shall place all pertinent facts before the Institute.

18) a) No advertisement made or to be made by a Member shall contain any of the following :-

- (i) an inaccurate or misleading statement of fact;
- (ii) an explicit comparison between the services offered by a firm or company with those of any other firms or companies.

b) No advertisement made or to be made by a Member shall be so designed in respect of wording, content, layout and arrangement as to bring the profession into disrepute or to undermine public confidence in the services provided by members of the Institute.

(I) LEGAL NOTES

1.1 Agency is the contractual relationship which exists in law when one person (the agent) is appointed to act as the representative of another person (the principal or the client). Normally upon the completion of the agency, a binding contract will have been created as a result of the agency between the principal and a third party under which the agent takes no personal benefit and upon which the agent is not personally liable.

1.2 Creation of agency

Four basic situations may arise :-

- a) Express creation eg by letter of appointment or upon acceptance of oral instructions from a client.
- b) In exceptional circumstances even when in fact no agency exists, a "principal" may not be allowed by the law to resile from arrangements entered into on his behalf by another person whom he has held out as his properly appointed agent or has allowed to represent himself to others as his properly appointed agent.
- c) In the event that the agent acts without in fact having been duly appointed, the principal on whose behalf the agent purported to act may accept what the agent has done whereupon a principal and agent relationship will be deemed by the law to have existed as if there had been a proper appointment from the beginning.
- d) Sole Agency agreements : In the absence of express agreement to the contrary the principal is entitled to appoint other agents to act for him in the same transaction.

1.3 Duties of the agent

- a) To act honestly in the interests of his client and not to accept bribes, secret discounts, or without the consent of his principal, commissions.
- b) To carry out the lawful instructions given to him by his client in accordance with terms of his contract of agency. The agent is not entitled to depart from his instructions even if the agent honestly takes the view that it would be in his client's best interest. Where, however, a property is placed on the market for sale and is given to an estate agent there is no general duty in law on the agent to take any particular steps to find a

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purchaser. But where estate agents hold a sole agency appointment their duty is to use their best endeavours to sell.

- c) To exercise reasonable care and skill in carrying out their instructions in accordance with the agency agreement. An estate agent must display the degree of diligence normally possessed by a reasonably competent member of his profession.
- d) To avoid any conflict of interest with his client, an agent should inform his client without delay of any matter which may create any possible conflict.
- e) Not to apply any information obtained in the course of carrying out his instructions on behalf of a particular client for the purpose of acting on his own or another client's behalf without the knowledge and consent of the client.
- f) Not to disclose to third parties information or documents given to the agent by his client unless authorised to do so for the purpose of the agency.
- g) Not to delegate the performance of his instructions to sub-agents without his client's knowledge and approval.
- h) To keep proper and separate accounts for his client.

1.4 Duties of the Principal

- a) To pay the agent the agreed remuneration upon the satisfactory completion by the agent of his instructions and to do nothing which prevents the agent from earning his remuneration in accordance with the contract of agency.
- b) To indemnify the agent against all liabilities reasonably incurred by the agent in the proper execution of his instructions.

1.5 Liability of agent to his principal and third parties

The general rule is that there is no liability in law placed upon the agent arising out of any contract which he may have been instrumental in bringing about and entered into between the agent acting on his client's behalf and a third party and within the scope of the agent's authority. The only parties to any such contract will be the principal and the third party. The principal will also be bound as a general rule even where his agent has been guilty of fraud or has acted contrary to his express

instructions, or corruptly, provided the third party was unaware of the circumstances.

1.6 Termination of the contract of agency

The contract between the estate agent and his client can be brought to an end in the following ways :-

- a) by agreement between them, either orally or in writing;
- b) by the completion of the purpose or purposes for which the agency was created;
- c) by repudiation by the client or the agent, whereby it is made clear by one to the other that he has no intention any longer to be bound by the terms of the contract of agency. Termination in this way may give rise to a claim for damages for breach of contract;
- d) by the death of the principal; and
- e) by the bankruptcy of the principal.

1.7 Client's money and Client's account

Any contract or pre-contract deposit received by an agent in respect for the acquisition of an interest in land or a connected contract is held by him in trust for the person entitled to call for it, or if he holds the money as stakeholder, in trust for the person who may become entitled to it.

The money received must be placed in a 'client account' marked as such and separate from the agent's other money. The account must be held at an authorised institution.

In certain circumstances the agent may have to account for interest on clients' money, being the interest that was or could have been earned by keeping the money in a separate deposit account.

1.8 Information to clients

Before the client enters into a contract with an agent under which the agent will perform 'estate agents work' the agent must give to the client :

- a) particulars of the circumstances in which the client will become liable to pay remuneration;
- b) particulars of the amount of the agent's remuneration or the manner in which it will be calculated;

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- c) particulars of any other payments for which the client may become liable; or
- d) how any such payments shall be calculated.
- e) particular of this circumstance in which the client or the agent may terminate the contract.

Similar particulars must be given in respect of any variations of the contract.

1.9 Personal interests

The agent must, before entering into negotiations for the acquisition or disposal of any interest in land in which he has a personal interest, disclose the nature and extent of that interest. A similar duty to disclose arises in respect of an interest in land to which the agent will become entitled as a result of the transaction.

(II) TYPES OF AGENCY

2.1 Sole Agency

Sole Agency is established when a client instructs only one agent to act as his “sole agent”, or two or more agents to act jointly as “joint sole agents”.

2.2 Multiple Agency

When a client instructs more than one agent to act directly for him, the agents practise as multiple agents.

2.3 Sub-agencies

Sub-agents can only be appointed with the specific authority and knowledge of the client.

2.4 General

It is recommended that Members should promote the sole agency system and make known to their potential clients the advantages of this system at the outset. The sole agency system demands more professional services be provided by an agent to his client, in that the agent would need to take extra care in the release and the accuracy of information as well as in giving out advice because he would solely be held responsible for all his services to the client in the transaction.



In order to better serve the client and to avoid potential conflicts of interest, single representation should always be practised. An agent should only represent a single party to a transaction and be remunerated for his services by this client. The arrangement can help to prevent the agent from potential allegations of malpractice, and promote a more professional relationship with the client in overseeing his best interests.

(III) METHODS OF DISPOSAL OF REAL PROPERTY

3.1 Private Treaty

The property can be widely advertised and there are no immediate time pressure upon either a vendor or a purchaser. Negotiations are private and opportunities exist to bargain until a relatively late stage.

3.2 Auction

The main feature of an auction is that the competition to buy is concentrated in time. There can be no previous statement or indication of price; the bidding only drives the price upwards and if there is a successful bidder the contract will be signed at the sale.

There are occasions when it is difficult to assess the value of a property; sale by auction may then be considered as a method of establishing the value.

An auction sale is usually subject to a reserve price with the property being withdrawn if this price is not reached. A declared reserve (sometimes known as an “Upset Price”) can be used where the price would be seen as the main attraction.

Auction particulars of sale are drawn up by the auctioneer whose counter-signature on the draft or proof should be obtained before final printing takes place. The vendor’s solicitor is responsible for providing the auctioneer with the conditions of sale (for inclusion within the particulars). Where additional information is supplied by the solicitor, the same precaution by means of counter-signing should be taken.

If in the auctioneer’s opinion the value of the property could be materially affected by the terms contained within leases, Ordinances, orders and legal obligations, he should require a note to be appended to the particulars or conditions of sale.

3.3 Tender

This method provides an opportunity to compare bids in private and, if

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necessary, to select the buyer; it is particularly suitable when the vendor wishes the bids or tenders to be kept confidential.

The essence of sale by tender is that every prospective purchaser submits an offer in writing (known as a “tender”) in a sealed envelope. On the day appointed for that purpose the tenders are opened and a decision is made as to which tender should be accepted.

When arranging a sale by tender it is important to give wide publicity and to publish detailed particulars.

(IV) TAKING INSTRUCTIONS

4.1 At the outset a potential client is given information as to what his liabilities might be, as outlined in Section 1.8 of this Practice Note. The client should therefore be informed of the circumstances in which he would be liable to pay commission, eg. on completion of the sale; how the commission would be calculated; and particulars of any additional payments which may be required, eg. advertising and other expenses. All these matters should be confirmed in writing.

4.2 Other matters that have to be discussed and agreed with the client are as follows :-

a) Method of Sale

It is useful to ascertain the reasons for sale, and the date when vacant possession could be given to a purchaser before determining the appropriate method of sale.

b) Asking Price

Having advised the client as to an opinion and market value, the asking price should be fixed with the approval of the client.

c) Nature of Agency

It is important to establish whether the agency is a sole agency, with or without sole selling rights, or whether it is the vendor’s intention to reserve the right to instruct other agents and whether or not there is any authority to instruct sub-agents. In case of sole agency, a specified period of appointment should be agreed with the client.

d) Expense

Expenses in addition to a set commission, permitted extent of advertising, etc; must be set out in a letter confirming instructions. Pre-payment of expenses, or stage payments

where appropriate should also be agreed.

e) Fixtures and Fittings

It is important to establish at the outset what is to be included in the sale of property.

f) Viewing Arrangements

These would cover arrangements with regard to the holding of keys and whether or not applicants are to be accompanied during inspections.

4.3 Other matters to be considered include the possible erection of a sale board, maintenance if the property is to be left vacant for any period and the agent’s responsibility for the security of the property under such circumstances.

It is useful at this early stage to ascertain the whereabouts of the deeds and the name and address of the client’s solicitors. If possible, instructions should be obtained to ask the solicitors to obtain the deeds and to prepare a draft contract.

After the inspection has been carried out and the instructions taken, they must be confirmed in writing. Such confirmation letter must reiterate the firm’s basis of charging and make it clear when any commission becomes payable. The instruction letter should be sent to the client for approval, and signature and be returned to the agent.

Other matters to be considered when taking instructions include the possibility of enhancing the value of the property to be sold (ie change of use, refurbishment, improvement and possibly demolition and redevelopment). The possibility of adjoining owners joining in to create a development opportunity should not be overlooked.

4.4 Preparation of Particulars

In the interests of both client and agent, particulars of sale must fairly and accurately describe the property to be sold, but must simultaneously encourage further enquiry and inspection. Care in preparation is vital.

a) Photographs

The use of illustrated particulars is always to be encouraged. Consistency is important. One should not illustrate only the very attractive areas. Where a photograph cannot be taken, an attempt should be made to describe the property by a “word picture”.