

Letting of subdivided units by licensed estate agents/salespersons



"Regulated tenancies" in respect of subdivided units ("SDU") under Part IVA of the Landlord and Tenant (Consolidation) Ordinance ("Ordinance") came into effect on 22 January 2022. The relevant practice circular (No. 22-01 (CR)) ("Circular") issued by the Estate Agents Authority providing guidelines for estate agents/salespersons to follow when handling SDU tenancies under the Ordinance also came into effect on the same day.

Major duties of licensed estate agents/salespersons in handling SDU tenancies

Disclose capacity in the transaction

- ◆ Inform prospective tenant in writing whether his/her estate agency company acts for:
 - the landlord only; or
 - the tenant only; or
 - both the landlord and the tenant.
- ◆ In the case of dual agency, disclose to the tenant and the landlord in writing the respective amount or rate of commission or remuneration to be received.
- ◆ If the licensee is the landlord or the appointed attorney/representative of the landlord, (i) must inform the prospective tenant of such fact in writing; and (ii) must **not** require the tenant to pay, or otherwise receive from the tenant, any commission or remuneration.

Inform requirements on security of tenure and rent regulation

Inform client that:

- ◆ the first term of tenancy shall be two years;
- ◆ tenant is entitled to be granted a second term of two-year tenancy, thus enjoying a security of tenure of four years in total;
- ◆ during the first or second term of the tenancy, rent can be reduced but **not** increased; and
- ◆ any adjustment in the amount of rent on renewal for the second term must not be more than the percentage calculated in accordance with the rent regulation mechanism under the Ordinance or 10%, whichever is lower.

Explain implied mandatory terms

Explain to client each implied mandatory term under Schedule 7 of the Ordinance; and provide client with a copy of the Annex to the Circular containing a summary of such implied mandatory terms.

Draw client's attention to the relevant offences and apportioned amounts

Inform client that it is **an offence** to:

- ◆ unlawfully deprive a tenant of occupation of the SDU;
- ◆ receive from the tenant monies **other than** rent, rental deposit, reimbursement of charges for utilities and services, and damages for tenant's breach of tenancy;
- ◆ require tenant to pay for utility and service charges for the SDU at a sum **exceeding** the apportioned amount as shown in the account in writing provided by the landlord to the tenant.*

(*Note: In this regard, the landlord must provide to the tenant with copies of the bills for utility and service charges for the SDU. Licensees may also refer client to the website of the Water Service Department (www.wsd.gov.hk) to understand its Pilot Scheme for Installation of Separate Water Meter for Subdivided Units.)

Stamping and submission of Notice of Tenancy

Unless landlord has indicated otherwise in writing, licensees who act for the landlord should:

- ◆ arrange to stamp the written tenancy agreement within 30 days after it is signed by the parties; and
- ◆ regardless of whether a written or oral tenancy agreement has been entered into, arrange to submit a completed Notice of Tenancy (Form AR2) to the Commissioner of Rating and Valuation within 60 days after the term of the tenancy (including a first term and a second term tenancy) commences.

If clients have any enquiries regarding the requirements under Part IVA of the Ordinance, licensees should refer them to the website of Rating and Valuation Department ("RVD") (www.rvd.gov.hk), call the RVD's hotline at 2150 8303 and/or consider seeking legal advice.

Please scan the QR code to read the Circular for details:

