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The legality of holding on to owners' details



Agents have the means of obtaining the list of owners and tenants of a building

Owners and tenants can inform agents by notice to stop using their data, says Tan



The real estate market is a competitive one, and one of the methods property agents have long practised to increase listings is cold-calling to enquire owners if their units are up for sale.

A property agent who declined to be named says a master list containing the unit numbers, owners' names and contact numbers of a particular development can be bought, although this list is sometimes not complete.

Agents will then go through the list and either call or send messages enquiring if their unit is up for rent or sale.

However, such use of personal information runs the risk of being in breach of Malaysia's Personal Data Protection Act 2010 (PDPA) which regulates the processing of personal data in commercial transactions.

Personal data refers to any information that can be used to identify a person such as his or her name, identity card number, address and bank account details, among others.

The Act applies to parties who process or have control or authority over the processing of such data. The federal and state governments are exempted.

Obtaining data

Cold-calling is widely accepted and practised in the real estate industry, not just in Malaysia but in other countries as well.

Various websites swear by the method as a great way to generate leads – especially for agents new to the industry – and even offer tips and advice on how to engage effectively with owners, including suggestions on what to say.

Apart from calling, several agents have also resorted to sending texts and emails, which some

- Real estate agents obtain list of owners and their details through various means, such as purchasing them or sharing among themselves
- The obtaining and possessing of such information is legal if consent is obtained



by Ang Hui Hsien

parties say are more effective as they are less intrusive and in line with how people are using their devices today.

In a study by lead tracking software provider InsideSales.com, about 5% to 10% of people pick up calls from real estate agents compared to a 20% open rate for emails. When it comes to texting, 90% of the recipients are found to have opened and responded within five minutes.

The question, however, remains; how do agents gain access to the contact details of the owners and tenants of a building? According to a source, one of the ways for them to get their hands on a list containing such information is to buy it.

"Based on my experience, the list is usually sold by an anonymous party. Once payment is made, the information is sent via email," he says.

Chur Associates founder and managing partner Chris Tan points out real estate agents would naturally have such a list in their possession if they are the appointed exclusive agent for the sale of the development.

"With regard to the list of tenants, this may be information available to them if the owner secured the tenants through the agent's services. It is also possible that this list is shared by the developer or other real estate agents," he says.

Legality of possession

The legality involved in possessing personal information of individuals depends very much on the consent of the owners and tenants who are defined under the PDPA as data subject.

Tan explains parties who collected the personal data – defined as data user – must inform the data subject "if their information is being processed by a third party

on behalf of the data user, the purpose of the collection of the information and the class of third parties to whom the data user may disclose the personal data."

Hence, data users – be they developers or real estate agents – have a responsibility to obtain the consent of the data subjects for the processing of the latter's information.

Having the consent is crucial in determining the legality of the practice of agents in calling up owners or tenants based on the list they have procured.

"If the data subject has previously consented to his personal information for this use, it is legal for the real estate agents to do so.

"If the data subject has not given the necessary consent, it is illegal for the real estate agents to do so or for the data user to have shared the information with the real estate agent," clarifies Tan.

Under the PDPA, data subjects also have the right to rectify their information or withdraw their consent to have their data processed.

They can also prevent the processing of data which can cause damage or distress to them, or for the purposes of direct marketing.

Taking action

Some owners deem frequently receiving enquiries about whether they have plans to sell or rent their units as intrusive, especially as most of these come in when they are at work.

Most of them choose to ignore such calls and texts, as they do not know how to stop agents from contacting them or which authority to approach.

Blocking the numbers is a temporary measure, as the callers usually have several numbers on hand. When questioned how they obtained the owners' contact details, they usually give vague responses or end the conversation.

Tan reveals that according to the provision under Section 43(1) of PDPA, these agents can be informed by notice not to use the personal data of the owners and tenants.

If the calls and texts persist, owners and tenants can exercise their rights as stated under Section 43(2) of the Act to send an application to the Personal Data Protection Commissioner to require the data user to comply with the notice.

"If the commissioner is satisfied with the application, he can require the data user to comply with such notice and any data user who fails to comply with the said notice commits an offence and is liable to a fine not exceeding RM200,000 or to imprisonment for up to two years, or both," explains Tan.

He adds that if owners and tenants are aware that their personal details were obtained by agents or developers or any third party without their consent, they can also file a report to the commissioner.

"If the data user is found guilty of buying the data subject's details from an insider, both the data user and insider will be liable to fines and jail terms," Tan says.