

紀律研訊個案分享 - 沒有採取合理及切實可行的步驟 以查核有關物業內曾否有死亡事件發生

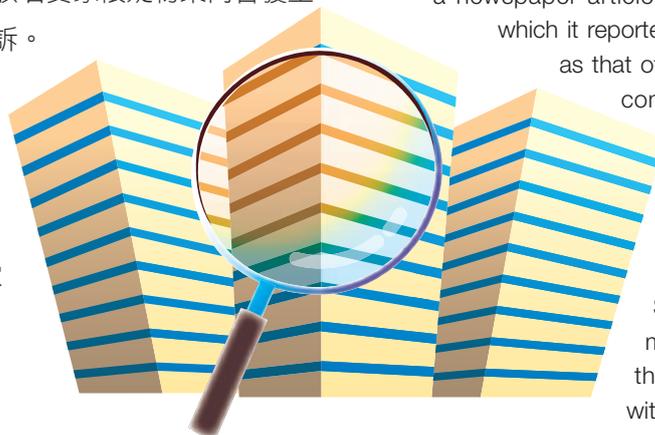
Inquiry hearing case - Failure to carry out reasonable and practicable steps to check whether any death incident had occurred in the flat

當有客人查詢擬購買或承租的物業內曾否有死亡事件發生時，從業員應採取合理及切實可行的步驟找出答案；否則，從業員有可能被視作沒有保障和促進客戶的利益。

一名從業員安排買家及其家人視察一所住宅物業。期間，他們向該從業員查問該物業內曾否發生死亡事件及有沒有「污糟嘢」，該名從業員回答該物業沒有問題。該名從業員於兩天後安排買家簽署臨時買賣合約（臨約）。買家於簽署臨約之前，再向該名從業員查詢有關物業內曾否發生死亡事件及「乾唔乾淨」，該名從業員同樣表示該物業沒有問題。

該名買家於物業成交後，發現了一則數年前於報章上刊載的報道，當中記述了一名與前業主姓名相似的男子在其住所自殺身亡，而且男事主的住址與該物業位於相同大廈及相同樓層。該名買家懷疑物業內曾發生自殺事件，遂向監管局投訴。

監管局在調查有關投訴時，發現該物業的土地查冊有一項備註，與前業主死亡有關。原來在買家



When a client asks a salesperson whether a death incident has occurred in a flat that he intends to purchase or rent, the practitioner should take reasonable and practicable steps to find out the answer. Failure to do so may amount to failure to protect and promote the interests of the client.

In this inquiry hearing case, an estate agency practitioner arranged for the purchaser and her family member to view a residential property. When the practitioner was asked whether any death incident or any “dirty things” had occurred in the property, the practitioner replied that there was no problem. Two days later, the practitioner arranged for the purchaser to enter into a provisional agreement for sale and purchase (PASP) of the property. Prior to her signing of the PASP, the purchaser asked the practitioner again whether any death incident had occurred in the property before and whether it was “clean”. The practitioner gave the same reply that the property had no such problem.

After completion of the transaction, the purchaser found a newspaper article published several years ago, in which it reported that a man with a similar name as that of the former owner of the property committed suicide in his residence.

The article also reported the address of the deceased, which was on the same floor and at the same building as the property bought by the purchaser. Suspecting that a suicide case might have occurred in the property, the purchaser lodged a complaint with the EAA.

簽訂臨約之前，從業員沒有告知買家土地查冊內載有關於前業主死亡的備註，也沒有向買家提供土地查冊文本。

監管局紀律委員會認為，該名從業員沒有採取合理及切實可行的步驟查核有關物業內曾否有死亡事件發生，沒有遵守《操守守則》第3.4.1段有關「地產代理和營業員應保障和促進客戶的利益」的規定。同時，該從業員也沒有按照《地產代理常規(一般責任及香港住宅物業)規例》第13(4)條所規定，在緊接臨約訂立之前，向買家提供有關土地查冊文本。紀律委員會決定向該從業員作出譴責，暫時吊銷其牌照1個月，以及在他的牌照上附加條件，要求他在兩年內取得監管局的持續專業進修計劃下的24個核心科目學分。

During the complaint investigation, it was found that the land search in respect of the property contained a registration of an entry relating to the death of the former owner of the property. Prior to signing of the PASP, the practitioner did not inform the purchaser of the entry about the death of the former owner of the property as revealed in the land search, nor did he provide a copy of the land search record to the purchaser.

The EAA Disciplinary Committee was of the view that the practitioner failed to carry out reasonable and practicable steps to check whether any death incident had occurred in the property, which was in breach of paragraph 3.4.1 of the Code of Ethics. The said paragraph states that "estate agents and salespersons should protect and promote the interests of their clients". In addition, the agent's failure to provide a copy of the land search in respect of the property immediately prior to the PASP was entered into also constituted a breach of section 13(4) of the Estate Agents Practice (General Duties of Hong Kong Residential Properties) Regulation. As a result, the practitioner was reprimanded, his licence was suspended for one month and a condition was attached to his licence, requiring him to obtain 24 points in core subjects under the Continuing Professional Development Scheme within two years.

地產代理人員協會主席何潔芝女士的意見

Views from Chairman of Property Agents Association Ms Rosanna Ho

地產代理同業之間應保持禮貌，互相尊重。其中一個案中兩名同業在客人面前以粗言穢語互相指罵，非但不尊重客人，也破壞行業的形象。

如買方曾經查詢有關物業曾否有死亡事件發生，從業員應該誠實地向買方披露載於土地查冊有關前業主死亡的備註，以便買方決定是否須要就該備註作進一步的核查，例如向大廈管理處作出查詢，否則，買方有可能在未能掌握有關資料的情況下，購買曾有死亡事件發生的物業而蒙受損失。

Estate agency practitioners should respect and be courteous to one another. In one of the cases, two practitioners' engaging in offensive arguments in the presence of clients not only demonstrated disrespect for their clients but also brought disrepute to the trade.

If purchasers asked whether any death accidents had occurred in the property, practitioners should honestly reveal the entry about the death of the former owner of the flat, which was registered in the record. As such, the purchaser can decide whether further checking should be done about the entry, for example, to make enquiries with the property management office. Otherwise, the purchaser might suffer from potential loss by acquiring a property with a record of death incidents.