

紀律研訊個案 — 提供不準確樓盤景觀資料

Inquiry hearing case — Providing inaccurate information of a development concerning its view

監管局曾就一手樓盤銷售發出執業通告，提醒地產代理從業員向準買家提供物業的相關資料時，須以有關發展商提供的售樓說明書及文件所載的資料為準，及採取一切合理步驟及盡一切應盡的努力核實有關資料，不得作出任何可能誤導準買家的陳述。

一名準買家到某新樓盤的銷售處參觀，被一間地產代理公司的兩名持牌人(甲及乙)游說購買單位。期間該準買家表示，得悉樓盤的前方將興建新的發展項目，特意詢問持牌人甲，哪個樓層的單位不會被新項目遮擋景觀，甲回答約25樓的單位已不會被遮擋。

準買家隨後再問持牌人乙相同的問題，並追問新項目的層數。乙答覆新項目應為16至30層高，所以購買30樓以上的單位就不會被新項目遮擋景觀。

然而，根據屋宇署的資料，新發展項目樓高16至33層，因此該樓盤25樓至33樓的單位仍有可能被遮擋景觀。該名準買家不滿兩名持牌人沒有提供準確的資料，遂向監管局投訴，並且呈交了在參觀樓盤期間，與該兩名持牌人的對話錄音作為證據。

監管局紀律委員會就上述個案進行紀律研訊。紀律委員會認為，該兩名持牌人在向客戶提供樓盤的景觀資料時，沒有盡量小心和盡一切應盡的努力查核所提供的資料是否準確，未有遵守《操守守則》第3.5.1段中所述「地產代理和營業員在履行職務時必須盡量小心和盡一切應盡的努力」的守則，故決定暫時吊銷兩名持牌人的牌照七天，並在他們的牌照上附加條件，要求他們在一年內取得12個持續專業進修計劃核心科目的學分。

The EAA has issued practice circulars on the sale of first-hand residential properties to remind estate agents not to make any representation that would mislead prospective purchasers. When providing property information to their clients, practitioners should do so only on the basis of the information contained in the sales brochure and documents provided by the developer, and only after they have taken all reasonable steps and exercised all due diligence to verify the information.

Two licensees (A and B) persuaded a prospective purchaser to make a purchase at the sales office of a development. The prospective purchaser was aware that there would be a new development project in front of the development for sale. He specifically asked licensee A whether the view of flats above certain level would not be blocked by the new development. Licensee A replied that the flats at 25th floor and above would not be affected by the new development.

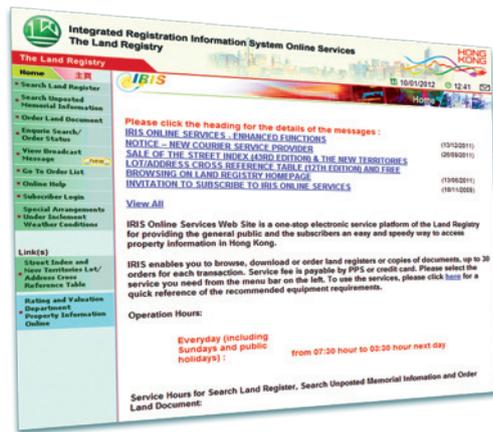
The prospective purchaser then asked licensee B the same question and further inquired about the building height of the new development. Licensee B told him that the building height of the new development would range from 16 to 30 storeys and the new development would not block the view of flats located above the 30th floor.

However, according to the information from the Buildings Department, the building height of the new development would range from 16 to 33 storeys. There was therefore a possibility that the view of flats from the 25th to 33rd floors of the development for sale would be blocked. The prospective purchaser was disappointed with both licensees' failure to provide accurate property information, so he lodged a complaint with the EAA. He also submitted a voice recording of his conversation with the two licensees as evidence.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Disciplinary Committee was of the view that the two licensees did not exercise due care and due diligence to verify the information when providing their client with information about the view of flats of the development. The licensees did not comply with paragraph 3.5.1 of the Code of Ethics, which stated that they should exercise due care and due diligence in fulfilling their duties. The Committee decided to suspend the licensees' licences for seven days and a condition was attached to their licences, requiring them to obtain 12 points under the Continuing Professional Development Scheme within one year.



紀律研訊個案 — 沒有在緊接買賣協議訂立之前進行土地查冊 Inquiry hearing case — Failure to carry out a land search immediately before entering into an agreement for sale and purchase



土地查冊載有重要的物業資料，持牌人在處理住宅物業交易時，應在緊接買賣雙方訂立臨時買賣合約（臨約）之前，就有關物業進行土地查冊，並向買方提供土地查冊結果的文本。

一名持牌人在一宗住宅物業交易中為買賣雙方行事。買賣雙方在某天黃昏簽訂臨約，該名持牌人在簽約前就物業進行土地查冊，並向買方提供土地查冊結果的文本。

不過，該名持牌人是在簽訂臨約之前一天進行查冊，而他向買方提供查冊結果文本上的日期亦正是簽訂臨約的前一天。

監管局紀律委員會認為，該持牌人沒有在緊接該物業的買賣協議訂立之前，就該物業進行土地查冊，並向該物業的買方提供一份土地查冊結果的文本，未有遵守《地產代理常規（一般責任及香港住宅物業）規例》（《常規規例》）第13(4)條的規定。因此，紀律委員會決定對該名持牌人作出譴責，罰款港幣\$2,000，並在其牌照上附加條件，要求他在一年內取得持續專業進修計劃的12個核心科目的學分。

A land search contains important property information. In the sale and purchase of a residential property, estate agency licensees should, immediately before a Provisional Agreement for Sale and Purchase (PASP) is entered into, carry out a land search in respect of the property concerned and provide a copy of the land search to the purchaser.

In one case, a licensee was acting for both the vendor and the purchaser in a residential property transaction. Both the vendor and the purchaser signed the PASP late in the afternoon. The practitioner had conducted a land search before the signing of the PASP and supplied a copy of it to the purchaser.

However, the land search was conducted by the licensee one day before the PASP was entered into, as shown by the date on the land search.

According to the EAA Disciplinary Committee, the licensee did not carry out a land search and supply a copy of it to the purchaser immediately before the sale and purchase agreement was entered into as required by section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("Practice Regulation"). The Disciplinary Committee decided that the licensee should be reprimanded and fined \$2,000. A condition was also attached to his licence, requiring him to obtain 12 CPD points in the core subjects of the CPD Scheme within one year.

紀律委員會主席馬豪輝先生的意見

Comments from the Chairman of the EAA Disciplinary Committee Mr Ma Ho-fai

物業的土地查冊內載有重要的物業資料，包括物業的擁有權及有效的產權負擔。因此，根據《常規規例》第13(4)條的規定，從業員必須在緊接買賣雙方訂立買賣協議前，就物業進行土地查冊，換句話說，持牌人必須在買賣雙方訂立買賣協議之前，向買方提供**最新**的查冊結果。否則，有可能會導致客戶無法得知有關物業的最新資料，後果可以十分嚴重。

目前，土地註冊處於每天早上七時半更新土地登記冊所載的物業資料。除非有相反的證據支持，否則，持牌人所提供的土地查冊紀錄如能顯示(1)物業的土地登記冊的日期是與買賣協議的日期一致；及(2)所載物業的資料是買賣協議訂立當天早上七時半更新的該物業資料；即被視為已遵守《常規規例》第13(4)條內就有關物業進行土地查冊的規定。

就上述的個案而言，有關的持牌人雖然是在買賣雙方簽訂臨約之前就物業進行土地查冊，但查冊是在簽約前一天進行。因此，查冊結果所載的資料，並非在簽臨約前可取得的最新的物業資料，因為土地登記冊上有關該物業的資料在簽約當天早上七時半應會再度更新。因此，監管局認為該持牌人沒有遵守《常規規例》第13(4)條的規定而向他施以紀律處分。



A land search contains important property information, including the ownership and the subsisting encumbrances affecting the property. As a result, the time requirement of carrying out a land search “immediately before” an agreement for sale and purchase is entered into as prescribed in section 13(4) of the Practice Regulation is that licensees should carry out and provide the purchaser with the **most up-to-date** copy of the land search of the property before the purchaser enters into an agreement with the vendor. Otherwise, the client may not be able to know about the most up-to-date information about the property, which could lead to serious consequences.

At present, the Land Registry updates the register information of properties at 7:30am everyday. Subject to contrary evidence, a licensee shall be considered to have complied with the requirement of carrying out a land search under section 13(4) of the Practice Regulation if he is able to produce a land register bearing the same date of the agreement for sale and purchase and showing that the information of the property contained therein is updated to 7:30am of that day.

In this particular case, although the licensee conducted a land search before the sale and purchase agreement was entered into, it was carried out one day before the agreement was signed. As such, the land search did not show the latest information of the property immediately before the agreement was entered into, as the information in the land register would have been updated by the Land Registry at 7:30am on the day of the signing of the agreement. Therefore, the EAA imposed disciplinary sanctions on the licensee for failing to comply with section 13(4) of the Practice Regulation.