

專業天地 HORIZONS

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監管局

2012年上半年工作回顧 與下半年展望

地產代理監管局(監管局)於2012年7月31日舉行新聞發布會,由主席陳韻雲女士及署理行政總裁韓婉萍女士回顧監管局在上半年工作及簡介下半年工作重點。

陳韻雲女士表示,為推動地產代理向客戶提供準確清晰的物業資料,監管局於今年5月發出新執業通告,要求地產代理由2013年1月1日起,就二手住宅物業向客戶提供物業樓面面積資料時,必須提供從差餉物業估價署取得或首次轉讓的買賣協議中述明的實用面積。

為了協助業界達到通告內的要求,監管局正循多個途徑教育業界,包括教育性巡查、持續專業進修計劃講座、與前線地產代理的聚焦小組會議,及編製一套相關『問與答』刊於監管局網站內的專頁。同時,監管局正詳細審閱《一手住宅物業銷售條例》內容,如有需要,會考慮發出相關執業通告,以協助地產代理遵守法例。

韓婉萍女士表示,監管局將於今年11月慶祝成立15周年紀念,會推出公眾教育活動,包括出版新的消費者小冊子、在不同地區舉辦巡迴展覽,並推出電視及電台廣告,推廣有關置業和實用面積的知識。

陳韻雲女士亦回顧了監管局的上半年的常規工作。她表示，今年上半年的資格考試考生人數雖比去年同期大幅減少四成，但牌照數目仍維持高水平，而監管局收到的投訴數字則較去年同期略為減少。

另外，今年較早前，有持牌人涉嫌在內地網站上發布違規的本港一手樓盤廣告，就此監管局已開立檔案跟進。陳韻雲女士重申，不論廣告刊登的網站公司所在地，凡涉及持牌人宣傳香港樓盤的廣告，

監管局都會監察及跟進懷疑違規的情況。監管局亦會與網站保持緊密溝通，確保網上物業廣告符合規定。

另外，監管局與廉政公署延續「誠信管理計劃」，今年3月出版《優質執業手冊》，鼓勵業界提供優質專業的服務，並舉辦了相關的講座，超過400人次參加。在今年下半年，監管局亦會致力優化持續專業進修計劃，以鼓勵從業員不斷進修增值。



監管局主席陳韻雲女士(左)和署理行政總裁韓婉萍女士於新聞發布會上回顧局方在2012年上半年的工作，並簡介下半年的工作重點。

EAA Chairman Ms Vivien Chan (left) and Acting Chief Executive Officer Ms Ruby Hon review the EAA's work in the first half of 2012 and introduce its initiatives for the second half at the press conference.

EAA reviews its work in the first half of 2012 and plans ahead

The Estate Agents Authority (EAA) held a press briefing on 31 July 2012 in which EAA Chairman Ms Vivien Chan and Acting Chief Executive Officer Ms Ruby Hon reviewed the EAA's work in the first half of the year and introduced its work for the second half.

According to Ms Vivien Chan, in order to encourage estate agents to provide accurate and clear property

information, the EAA issued in May a new practice circular. The circular requires estate agents to provide the saleable area information of a second-hand residential property when providing floor area information to their clients starting from 1 January 2013. The saleable area information must be obtained either from the Rating and Valuation Department or the agreement for sale and purchase of the first assignment of the property.



To assist the trade in meeting the requirements in the circular, the EAA has been conducting educational visits to estate agency shops and holding CPD seminars and focus group meetings with frontline estate agents to educate them. In addition, the EAA has published a set of relevant “Questions and Answers” available to the trade and public on its designated webpage. Ms Vivien Chan also pointed out that the EAA was reviewing the “Residential Properties (First-hand Sales) Ordinance” in detail and may issue a new practice circular to assist the trade in complying with the law if necessary.

Ms Ruby Hon said that the EAA will celebrate its 15th Anniversary in November this year. The EAA will launch a series of consumer education initiatives to promote the points to note on property transactions and saleable area. The initiatives include publishing a new consumer education booklet, organising roving exhibitions in various districts and launching related TV and radio advertisements.

Ms Vivien Chan also reviewed the EAA’s regular work in the first half of the year. Despite a significant 40% year-on-year drop in the number of qualifying examination candidates in the first half of 2012, the number of licences remained at a high level. The number of complaint cases received, on the other hand, showed a slight decrease over that of the first half of 2011.

Moreover, earlier this year, the EAA noticed that some licensees were suspected to have published non-compliant advertisements for some Hong Kong first-hand residential properties on a Mainland website. The EAA had opened files to look into the cases. Ms Vivien Chan reiterated that the EAA would monitor all advertisements promoting Hong Kong properties published by licensees and follow up any non-compliant cases, regardless of the geographical location of the website service providers. The EAA would also liaise closely with the website service providers to ensure the compliance of online property advertisements.

In addition, the EAA and the Independent Commission Against Corruption jointly published a *Best Practice Checklist* in March this year as part of the Integrity Management Programme launched earlier. The *Checklist* is aimed at encouraging the trade to provide quality professional services. Related seminars have been held with a total attendance of over 400. In the latter half of 2012, the EAA will launch a series of initiatives to enhance the CPD Scheme in order to encourage practitioners to keep up to date.



有關實用面積的持續專業進修講座及「問與答」

有關提供二手住宅物業實用面積的執業通告(編號12-02(CR))將於2013年1月1日正式生效。為了協助業界達到通告的要求，監管局在6月至8月共舉辦了四場相關的持續專業進修講座，向地產代理講解通告的內容和要求，並解答他們的相關疑問。

講座分別以粵語及英語進行，共有逾600名地產代理出席。監管局代表向參加者詳細講解該執業通告的內容，提醒他們由明年1月1日起，在銷售及出租二手住宅物業時，須向客戶提供該物業的實用面積，如在廣告內載有物業樓面面積資料，則須在廣告內提供該物業的實用面積。

監管局未來會再舉辦相關講座，至於已舉行的講座錄影及講義，已上載到監管局網站以下位置：持續專業進修計劃>持續專業進修活動精選影片重溫

另外，監管局亦編製了一套相關的「問與答」供業界及公眾人士參考，刊於監管局網站的專頁內。
(<http://www.eaa.org.hk/WhatsNew/SaleableArea/tabid/758/language/zh-HK/Default.aspx>)



監管局舉行「提供二手住宅物業樓面面積的資料」新指引講座。

The EAA holds a seminar on the new practice circular about the provision of floor area information for second-hand residential properties.

有關二手住宅物業實用面積的執業通告及「問與答」的網頁。
Webpage about the practice circular on saleable area of second-hand residential properties and "Q&A".



Q. & A.



CPD seminars and Q&A on saleable area

The practice circular (12-02(CR)) on the provision of saleable area information for second-hand residential properties will be effective from 1 January 2013. In order to facilitate the trade to comply with the requirements of the practice circular, the EAA held four CPD seminars in June to August to explain the circular's content to frontline practitioners and answer their queries.

Conducted in Cantonese and English, the seminars attracted over 600 participants. During the seminars, representatives of the EAA explained the details of the circular to the participants. They also reminded the trade to provide the saleable area of a property in the sale and purchase and leasing of second-hand residential properties. The saleable area information must be

provided if the advertisement for the property contains floor area information.

More relevant seminars will be held in the future. The videos and handouts of the seminars held have been uploaded to the EAA website. Licensees may view the materials on the website at: CPD Scheme > CPD Seminars Highlights

Moreover, the EAA has prepared a set of "Questions and Answers" on the practice circular for the trade's and the public's reference. The Q&As are available to the trade and the public on the EAA website: <http://www.eaa.org.hk/WhatsNew/SaleableArea/tabid/758/language/en-US/Default.aspx>

第一期互認計劃的註冊證書申請截止

內地與香港地產代理專業資格互認計劃之下的首屆培訓課程及考試已於去年舉行。通過考試的香港地產代理申請在內地執業的註冊證書已於2012年8月31日截止。

截至該日為止，共有212名合資格的香港地產代理及37名合資格內地經紀遞交申請。監管局已將香港持牌人的申請轉交中國房地產估價師與房地產經紀人學會(中房學)審核申請。中房學審批香港持牌人的申請後，會批出註冊證書，並由監管局代中房學轉交給持牌人。至於第二屆培訓課程及考試的詳情，請留意監管局稍後的公布。

Applications for the certificate of registration under the first phase of the mutual recognition scheme closed

The first training course and examination of the scheme of mutual recognition of professional qualifications of estate agents in the Mainland and Hong Kong were completed last year. Applications for the certificate of registration to practice in the Mainland by qualified Hong Kong estate agents closed on 31 August 2012.

By the deadline, a total of 212 qualified Hong Kong licensees and 37 qualified Mainland agents had submitted their applications. The applications of the Hong Kong licensees have been forwarded to the China Institute of Real Estate Appraisers and Agents (CIREA) by the EAA. Once the CIREA has approved the applications, it will issue a certificate of registration for the EAA to pass on to the Hong Kong licensees. As regards to the details of the second phase of the training course and examination, please stay tuned for the EAA's announcements later.

誠信守法 專業典範

地產代理從業員在執業的過程中，必須謹守誠信，小心避免墮入貪污舞弊陷阱。以下是廉政公署為今期《專業天地》的撰文，通過兩個處境舉例，闡述一些容易被忽略的貪污罪行，藉此提醒從業員提高警惕。

（一） 攤分佣金 互惠互利

地產代理阿傑的好友嘉明於鐘錶集團任職業務拓展經理，負責店舖租賃。由於鐘錶集團計劃於年內加開多家分店，嘉明須要在短時間內物色商舖。為省時省力，嘉明委託阿傑協助搜尋舖位。阿傑遂提議向嘉明提供部份的代理佣金，以表感謝。

法例重點：

根據《防止賄賂條例》，嘉明若沒有自己公司的同意，收受阿傑提供的利益，以答謝他委託對方物色舖位，嘉明與阿傑同時會觸犯該條例。為免觸犯貪污罪行，地產代理不應在處理業務時向客戶的代表提供利益。

（二） 違法所得 得不償失

地產代理麗沙與銀行按揭部職員志偉是舊同學。志偉在一次聚會中得悉麗沙正努力儲蓄預備結婚，提出自己可於樓按客戶的申請表格上，加上麗沙為轉介人，好讓她能賺取銀行發放的客戶轉介費。同時，志偉要求麗沙於協助處理一宗自己的物業交易時免收佣金。

法例重點：

根據《防止賄賂條例》，「利益」包括金錢、禮物、貸款、服務及免卻付款等。免卻「地產代理服務」佣金屬於利益。志偉在沒有銀行的准許下，接受麗沙提供的免費地產代理服務，以作為他在樓按客戶的申請表格上加上麗沙為轉介人的報酬，他倆均會觸犯貪污罪行。即使志偉沒有接受任何利益，他和麗沙的行為也會構成詐騙罪行。而志偉蓄意利用載有虛假、錯誤或欠妥陳述的申請表格欺騙銀行，亦會觸犯《防止賄賂條例》。

防貪服務

誠信專業的團隊能幫助公司建立良好的商譽。廉政公署為地產代理業界提供多元化的防貪服務，包括編製防貪資料、協助地產代理公司制定誠信守則、提供免費防貪顧問服務及培訓課程等。如地產代理公司有興趣安排以上服務，歡迎致電2587 9812或電郵hkcdcc@crd.icac.org.hk與廉政公署香港道德發展中心聯絡。





Integrity & Law Compliance — The Key to Professionalism

It is important for estate agency practitioners to adhere to the principles of integrity and beware of possible corruption pitfalls to avoid inadvertent breaches in the course of estate agency work. The Independent Commission Against Corruption (ICAC) contributed the following article, through two scenarios, to remind estate agency practitioners to stay vigilant against some easily overlooked corruption offences.

(A) Commission sharing for mutual benefit

Gary, a good friend of Kenneth who is an estate agent, is working in a watch corporation as business development manager and responsible for shop leasing matters. As the watch corporation plans to open a number of branch stores this year, Gary is required to find shop premises within a short period of time. In order to save time and effort, Gary asks Kenneth to look for suitable shop premises for the corporation. In return, Kenneth proposes to share part of his commission with Gary.

Salient law points:

According to the Prevention of Bribery Ordinance (PBO), both Gary and Kenneth commit bribery offences if Gary, without the permission of the watch corporation, accepts an advantage from Kenneth as a reward for his commissioning the latter to locate shop premises. To avoid breaching the law, an estate agent shall not offer any advantage to his client's representative in relation to his business.

(B) Ill-gotten gains cannot make up for the loss

Lisa, an estate agent, and Chi Wai, a mortgage staff working for a bank, are old acquaintances. In one of their gatherings, Chi Wai learns that Lisa is making ways to save money for her

wedding plans. He then offers to help her obtain the bank's client referral fees by putting her name, in capacity of referrer, on the forms submitted by mortgage loan applicants. In return, Chi Wai asks Lisa to waive his commission when handling the transaction of his own property.

Salient law points:

According to the PBO, "advantage" means any money, gift, loan, service and waiver of payment, etc. The waiver of commission for "estate agency services" is therefore an advantage. Both Chi Wai and Lisa commit corruption offences if Chi Wai, without the permission of the bank, accepts Lisa's free estate agency service as the reward for putting her name on clients' mortgage application forms as referrer. Their acts might have constituted a deception offence even though Chi Wai has not accepted any advantages. Furthermore, Chi Wai shall be guilty of an offence under the PBO for using application forms which contain false, erroneous or defective statements with an intent to deceive the bank.

Corruption Prevention Services

A company with an honest and professional team would definitely help building up its goodwill. The ICAC provides a wide range of corruption prevention services to the estate agency trade, including the production of anti-corruption publications, assistance in formulating codes of conduct and provision of free corruption prevention advisory services and training courses etc. Estate agency companies interested in the above services are welcome to contact the Hong Kong Ethics Development Centre of the ICAC by phone at 2587 9812 or by email hkedc@crd.icac.org.hk.

紀律研訊個案—沒有兌現回贈承諾

從業員在向客戶銷售一手樓盤時，如果承諾會給予任何形式的優惠，便須以書面形式向準買家具體列明優惠的條款及形式，並應按條款兌現承諾，否則可能會被監管局紀律處分。

一名從業員游說一位客戶透過他購買一個新樓盤單位，並口頭承諾會將一半佣金回贈給他。客戶翌日透過該從業員買入新樓盤一個單位，並催促他書面確認回贈佣金安排，從業員聲稱正在處理。他其後數次致電該從業員追問，但他都推說正在跟進。該客戶後來致電該從業員所屬的公司追問，但公司職員表示，該從業員聲稱從未承諾回贈佣金，故該公司不會向他提供回贈。該客戶隨後向監管局投訴。

監管局調查該投訴時，曾多次致函該從業員，要求他就投訴作出解釋，但他一直沒有回覆，並辯稱沒有收到相關信件，但收到寄往相同地址的研訊通知書及文件。

監管局紀律委員會在考慮過研訊上提出的證據之後，認為該從業員沒有兌現他對其客戶的承諾，沒有遵守《操守守則》第3.7.2段，做出對地產代理行業信譽及／或名聲受損的行為。同時，考慮到該從業員在調查過程中態度不合作，對違規行為沒有悔意，紀律委員會決定暫時吊銷其牌照兩個月。

Inquiry hearing case — Failure to honour the promise of a rebate

If a practitioner offers any incentives to his clients when promoting a first-sale development project, he must set out in writing clearly the terms and format of the incentives and honour the promise accordingly. Otherwise, the practitioner may be subject to disciplinary action by the EAA.

When persuading a client to purchase a unit of a new development, a practitioner promised verbally that he would give the client a rebate equivalent to half of his commission. On the following day, the client purchased a unit of the new development through the practitioner. He also urged the practitioner to set out the arrangement of rebate in writing but the practitioner replied that he was preparing it. The client urged the practitioner repeatedly but the practitioner kept using the excuse that he was still following up the matter. The client then asked the estate agency company of which the practitioner was an employee for the rebate. An employee of the company replied that the practitioner denied making such a promise and therefore the company would not give him any rebate. The client then lodged a complaint with the EAA.

During the investigation, the EAA wrote to the practitioner many times for response to the complaint but the practitioner did not reply. He argued that he did not receive the letters from the EAA but he received the notice of inquiry hearing and the bundle of documents the EAA sent to him at the same address.

The EAA Disciplinary Committee, after considering the evidence presented at the hearing, found that the practitioner did not honour his promise to his client. The practitioner therefore did not comply with paragraph 3.7.2 of the Code of Ethics, as he brought discredit and/or disrepute to the estate agency trade. Taking into consideration that the practitioner was uncooperative during the investigation and had no remorse for his misdeed, the Disciplinary Committee decided to suspend the practitioner's licence for two months.



紀律研訊個案一 網上刊登不真確成交資料

隨着互聯網普及，不少地產代理從業員會在網上向消費者發布樓盤的資訊。倘若地產代理發放未經核實的物業資料，不但有機會令消費者蒙受損失，更會被監管局紀律處分。

一間公司的董事閱讀某報章網頁時，發現有關其公司名下商舖物業已經出售的報道，並列出其成交價，稱資料來自某地產代理公司。該董事向監管局投訴，表示其公司沒有出售有關商舖，指有關地產代理公司向報章提供虛假成交資料。

監管局展開調查，發現有關商舖的土地查冊紀錄上並沒有相關轉讓記錄。至於被投訴的地產代理公司，雖否認曾向報章提供相關資料，但其公司網頁上卻刊登了與該報道內容相同的成交資料。該地產代理公司解釋，有關資料是參考其他報章報道所得；然而，這些報道只提及該物業獲買家「積極洽購」，並未落實成交。

監管局紀律委員會認為，該地產代理公司沒有盡量小心及盡一切應盡的努力，查核有關物業的成交資料的真確性，便將資料刊登在其公司網頁上，沒有遵守監管局發出的《操守守則》第3.5.1段。該公司結果被譴責及罰款港幣\$10,000。

Inquiry hearing case — Publishing untrue transaction information online

With the popularity of the Internet, practitioners in the estate agency trade disseminate property information to consumers online. Failing to verify the information prior to releasing it may not only cause a loss to consumers, but would also result in the estate agent being subject to disciplinary action by the EAA.

When reading a newspaper online, a director of a company found a news report about the transaction of a shop owned by the company. It reported that the shop had been sold and quoted its transaction price. It also claimed that the source of information was an estate agency company. The director lodged a complaint with the EAA alleging the estate agency company had provided untrue transaction information to the newspaper because his company had not sold that shop.

During the investigation, the EAA found that there was no relevant transaction record for the shop from the record of search conducted in the Land Registry. Although the estate agency company denied having provided the relevant information to the newspaper, it published the same transaction information on its own website. The estate agency company explained that the information had been obtained from some other newspapers' reports. However, the reports only mentioned that there were negotiations between potential buyers and the owner of that shop but no deal had been reached.

At the conclusion of the hearing, the EAA Disciplinary Committee found that the estate agency company has failed to comply with paragraph 3.5.1 of the Code of Ethics — it failed to exercise due care and due diligence in ascertaining the accuracy of the transaction information before publishing it online. As a result, the estate agency company was reprimanded and fined HK\$10,000.

活動紀要

Events and activities



2012年7月10日

由法律教育基金有限公司組織的內地法律大學生訪問團到訪監管局，以了解監管局的規管工作。

10 July 2012

A delegation of Mainland law students organised by the Legal Education Fund visits the EAA to learn more about its regulatory work.



2012年8月21日

監管局舉辦第六次從業員「聚焦小組」，與持牌人就執業的情況交流意見。

21 August 2012

The EAA organises the sixth focus group meeting with licensees and exchanged views with them on their practice.



統計數字 Statistics

考試 Examinations

考試及考試日期

Examination and date

參加人數

No. of candidates

合格率

Pass rate

地產代理資格考試

Estate Agents Qualifying Examination

16/2/2012

1,009

41.2%

8/6/2012

1,754

41.6%

營業員資格考試

Salespersons Qualifying Examination

17/2/2012

719

51.0%

20/4/2012

1,135

49.9%

22/6/2012

1,496

42.8%

牌照數目 (於2012年7月31日計算) Number of licences (as at 31/7/2012)

營業員牌照 Salesperson's Licence:

19,451

地產代理(個人)牌照 Estate Agent's Licence (Individual):

+15,705

個人牌照總和 Total no. of individual licences:

35,156

地產代理(公司)牌照 Estate Agent's Licence (Company):

2,836

營業詳情說明書 (於2012年7月31日計算) Number of statements of particulars of business (as at 31/7/2012)

合夥經營 Partnerships:

266

獨資經營 Sole proprietorships:

+1,619

有限公司 Limited companies:

+4,195

總數 Total:

6,080

接獲的投訴 (2012年1月至6月): Number of complaint cases received (January to June 2012)

241



已處理的投訴個案結果* (2012年1月至6月)

Results of completed complaint cases* (January to June 2012)



指稱成立 Substantiated

指稱不成立 Unsubstantiated

資料不足 Insufficient information to pursue

其他 (例如投訴人撤回投訴或因其他原因而終止調查)
Others (include cases withdrawn or curtailed because of some other reasons)

* 部分是往年接獲的個案 Some cases were carried over from previous years



巡查次數 (2012年1月至6月)

Number of compliance inspections (January to June 2012)

| | |
|--|-----|
| • 一手樓盤 First-sale sites: | 539 |
| • 代理商舖 Agency shops: | 732 |
| • 網上物業廣告 Online property advertisements: | 325 |



巡查發現主動調查的個案 (2012年1月至6月)

Number of cases arising from self-initiated investigations during inspections (January to June 2012)

| | |
|--|----|
| • 主動調查的個案 : | |
| Cases arising from self-initiated investigations | 80 |
| • 主動調查而指稱成立的個案* : | |
| Cases completed from self-initiated investigations and were substantiated* | 35 |

* 部分是往年展開調查的個案 Some cases were carried over from previous years



向持牌人或前持牌人採取的行動 (2012年1月至6月)*

Actions taken against licensees or ex-licensees (January to June 2012)*

| | |
|---|-----|
| 有關的持牌人或前持牌人人數 No of licensees or ex-licensees | 199 |
| 行動 Actions taken | |
| 訓誡／譴責 Admonishment/reprimand | 100 |
| 罰款 Fine | 33 |
| 於牌照附加／更改條件 Attachment/alteration of conditions to licence | 117 |
| 暫時吊銷牌照 Suspension | 22 |
| 撤銷牌照 Revocation | 0 |

* 向持牌人或前持牌人作出的行動是根據《地產代理條例》而作出的判決，當中有部份可能屬於紀律性質，包括在發牌時或在其他情況下於牌照上附加條件。

* These actions were taken pursuant to powers under the EAO. Some actions may be disciplinary in nature and others not, and they include the attachment of conditions to licences whether upon issuance or otherwise.