

紀律研訊個案一 不應向客戶聲稱可保證取得物業按揭貸款

置業涉及龐大的金錢投資，買家一般都會向銀行申請按揭貸款，作為專業的地產代理，當客戶查詢有關按揭貸款的資料時，不應隨便向客戶保證可取得有關物業的按揭貸款，也不得就按揭貸款的條款作出任何保證。

一對夫婦透過一名資深地產代理購入一個一手樓盤住宅物業。在訂立臨時買賣合約前，這對夫婦曾向該代理表示，他們是退休人士，擔心申請按揭貸款有困難，同時他們必須獲得樓價七成的按揭，才有能力支付首期及供款。當時該代理聲稱，該樓盤是優質物業，保證準買家必可向銀行取得樓價七成、甚至九成的按揭貸款。該對夫婦其後向多間銀行申請按揭，但均只獲提供樓價五成的按揭。該對夫婦隨後向監管局投訴。

事實上，監管局曾發出執業通告，規定從業員在促銷一手樓盤時，不可向準買家作出有關按揭條款的保證。個案中該名地產代理因違反監管局發出的「操守守則」第3.2.1段，被監管局紀律委員會譴責及暫時吊銷牌照七天，並在其牌照上附加條件，要求她在12個月內取得12個持續專業進修計劃核心科目的學分。

其實，香港金融管理局不時會因應市況而修訂物業按揭貸款的指引；而貸款機構在審批按揭貸款時也可能就申請者的收入來源及經濟狀況等作出不同考慮；因此，從業員不應向準買家就物業按揭貸款事宜上作出任何保證，而應建議客戶直接向貸款機構查詢。

Inquiry hearing case — Do not make any statements to assure a client that he will obtain a mortgage loan to finance his purchase of a property

Purchasing a property is a big investment requiring a large amount of money. Most buyers will therefore apply for a mortgage loan to finance their purchase from a bank. When a client asks about a mortgage loan, a professional estate agency practitioner should neither make any assurances to the client that he/she will obtain a mortgage loan nor make any assurances on the mortgage terms.

A couple bought a first-hand residential property through an experienced estate agent. Before entering into the provisional agreement for sale and purchase, the couple told the estate agent that they were retired and thus worried it would be difficult for them to acquire a mortgage loan. They also expressed that they must obtain a mortgage of 70% of the property's purchase price to afford the down payment and installments. At that time, the estate agent told them that the property was of high quality and assured the couple that the bank would approve a mortgage loan of 70%, or even 90% of the property's price. The couple subsequently applied for a mortgage to a number of banks, but they were only offered a loan of 50% of the property's price. The couple then lodged a complaint with the EAA.

According to the practice circular issued by the EAA, practitioners must not make any assurances to prospective buyers on mortgage terms when they are handling first-hand property transactions. In this case, the estate agent failed to comply with paragraph 3.2.1 of the Code of Ethics issued by the EAA. The Disciplinary Committee decided to reprimand the estate agent, suspend her licence for seven days and attach conditions to her licence, requiring her to obtain 12 points from the core subjects under the CPD Scheme within 12 months.

The Hong Kong Monetary Authority revises its guidelines on mortgage loans from time to time in light of market conditions. Lending institutions may also consider a number of factors, such as the applicant's income sources and economic conditions, when vetting a mortgage loan application. Thus, practitioners should not make any assurances to prospective buyers on mortgage loans and should advise their clients to inquire with lending institutions directly.

紀律研訊個案一 未得客戶同意下使用其個人資料作直接促銷

從業員在業務過程中需要經常收集和處理客戶的個人資料。監管局提醒從業員，在處理客戶的個人資料時，必須謹慎及遵守《個人資料(私隱)條例》(《私隱條例》)，否則不但可能被監管局紀律處分，更可能因違反《私隱條例》而被法庭定罪。

某地產代理公司曾經替一位客戶購入物業，因而取得其個人資料。在交易完成後，該客戶要求地產代理公司不要使用他的個人資料作直接促銷，但仍然收到該地產代理公司的直接促銷電話。

該客戶其後向香港個人資料私隱專員公署及該地產代理公司的一位董事作出投訴。該董事向他表示，

其公司的職員不會再致電他，並已將他的資料列入「拒絕服務名單」。然而，其後該地產代理公司一位從業員仍繼續致電該客戶作直接促銷。該客戶遂向警方報案。

監管局後來就事件作出調查。監管局紀律委員會認為，地產代理公司和從業員在客戶要求停止使用其個人資料後，仍然致電客戶作促銷活動，並因而違反《私隱條例》而被法院定罪，未有遵守《操守守則》第3.1.1段中所述「地產代理和營業員在執業時必須避免從事可能觸犯法律的活動」。委員會決定對該公司作出譴責及罰款\$30,000，並對該從業員作出譴責及暫時吊銷其牌照七天。

Inquiry hearing case — Using a client's personal data for direct marketing without consent

Practitioners collect and handle personal data of their clients in the course of carrying out estate agency work. The EAA would like to remind practitioners that they must be prudent and abide by the Personal Data (Privacy) Ordinance (PDPO). Failure to do so may not only result in disciplinary action by the EAA but also a court conviction for contravention of PDPO.

An estate agency company handled a property purchase for a client and obtained her personal data. The client requested the company not to use her personal data for direct marketing upon completion of the transaction. However, she still received direct marketing calls from the company.

The client then lodged a complaint with the Office of the Privacy Commissioner for Personal Data and with a director of the estate agency company. The director told the client that the staff of the company would not call her

again and the company had also put the client's personal data in the "opt-out list". However, a practitioner working for the company still called the client for direct marketing. The client therefore made a report to the Police.

The EAA instigated an investigation into the case. Despite the client's request to stop using her personal data, the estate agency company and the practitioner still made direct marketing calls to the client and were convicted by the court for contravening the PDPO. The EAA Disciplinary Committee found the company and the practitioner did not comply with paragraph 3.1.1 of the Code of Ethics, which states that "estate agents and salespersons shall refrain from activities during their practice which may infringe the law". The EAA Disciplinary Committee reprimanded the company and imposed a fine of \$30,000, and reprimanded the practitioner and suspended her licence for seven days.