

## 紀律研訊個案一 沒有履行向買方提供物業建築面積證明的承諾

由2013年1月1日起，地產代理向客戶推銷二手住宅物業時，須提供實用面積。在此之前，單位面積的宣傳通常只靠建築面積表述，欠缺統一標準，容易惹來爭拗。

2010年某日，一位準買家收到某地產代理公司的宣傳單張後，看中單張上介紹的一個420平方呎單位，遂聯絡該公司一名從業員安排視察。該準買家在視察時發覺單位很小，但從業員聲稱單位的建築面積是420平方呎，而實用面積只有285平方呎。該準買家遂要求從業員提供單位建築面積的證明文件，從業員表示會稍後提供，並安排該準買家與業主簽訂臨時買賣合約。

其後該準買家多次向從業員索取有關建築面積證明，但從業員卻無法提供。該準買家因未能取得單位的建築面積證明，遂終止交易，並向監管局投訴。

### Inquiry hearing case — Failure to honour the promise of providing to purchaser the proof of a property's gross floor area

Starting from 1 January 2013, estate agents are required to provide information on saleable area when promoting second-hand residential properties. Before then, floor area information was usually presented in terms of gross floor area, of which there was no standard definition. Disputes sometimes arose from such information.

In 2010, a prospective buyer received a promotional leaflet from an estate agency. Interested in a property of 420 sq ft listed on the leaflet, the prospective buyer contacted a practitioner of the agency to arrange an inspection. At the inspection, the prospective buyer found the property very small. The practitioner claimed that the flat's gross floor area was 420 sq ft and its saleable area was 285 sq ft. The prospective buyer requested the practitioner to provide her with proof of the gross floor area. The practitioner replied that he would later provide the proof and arranged for the prospective buyer to enter into a provisional agreement for sale and purchase with the vendor.

The prospective buyer later repeatedly asked the practitioner to provide her with the proof of the gross floor area but he failed to do so. As the prospective buyer could not obtain the proof, she later terminated the transaction and lodged a complaint with the EAA.

監管局紀律委員會認為，從業員向客戶表示單位的建築面積為420平方呎，並承諾提供證明文件，但最後未能履行承諾，沒有遵守《操守守則》第3.4.1段所述「保障和促進客戶的利益，並對交易各方公平公正」。委員會決定譴責該從業員，並在其牌照上附加條件，要求他在12個月內取得6個持續專業進修計劃核心科目的學分。

該從業員其後就有關裁決提出上訴，結果被上訴審裁小組駁回。審裁小組同時注意到，地產代理公司未必有證據證明所提供的樓盤資料的準確性。審裁小組就此提醒業界，向客戶提供的資料必須合乎事實及證據支持，以提升地產代理業界的專業水平。

The EAA Disciplinary Committee held the view that although the practitioner informed the client that the gross floor area of the property was 420 sq ft and promised to provide documentary proof, he did not fulfill his promise. Hence, the practitioner had failed to comply with paragraph 3.4.1 of the Code of Ethics, in that he did not protect and promote the interests of his client and act in an impartial and just manner to all parties involved in the transaction. The Committee decided to reprimand the practitioner and attach conditions to his licence, requiring him to obtain six points from the core subjects under the CPD Scheme within 12 months.

The practitioner appealed against the decision, which was dismissed by the Appeal Tribunal. The Appeal Tribunal also noticed that some estate agencies might not possess proof to show the accuracy of the property information they provide. The Appeal Tribunal would like to remind the trade that the information they provide to clients must be factual and supported by evidence, so that the professional standard of the estate agency trade can be enhanced.

## 紀律研訊個案一沒有保障和促進買方的利益

在一宗住宅物業買賣中，一名從業員代表買賣雙方行事。該從業員安排買賣雙方訂立物業的臨時買賣合約，但其後得知買方的律師對該物業的業權提出質詢，但賣方的律師並無回覆，以致該物業的成交日期可能延後。儘管如此，該名從業員為了盡快完成交易，仍安排買方簽署一份文件，確認買方知悉該物業的管理公司涉及訴訟，而該文件可能影響買方就該業權的潛在瑕疵提出質詢的權利。

由於該物業的成交日期有可能延後，買方未能及時取得該物業的鎖匙進行裝修。雖然該從業員知悉買方律師曾提出意見，指由於交易最終可能無法完成，買方提早收取該物業的鎖匙存在風險，但她仍建議買方在成交日前先向賣方借用該物業的鎖匙及租用該單位以便進行裝修，並向買方保證該物業的樓契沒有問題。

### Inquiry hearing case — Failing to protect and promote the interests of purchaser

An estate agency practitioner acted for both the purchaser and the vendor in a residential property transaction. The practitioner arranged for both parties to sign a provisional agreement for sale and purchase, but subsequently she knew that the lawyer representing the vendor had not replied to requisitions on the title of the property raised by the lawyer representing the purchaser. The completion date of the transaction might be postponed due to the title issue. Nevertheless, in order to expedite the transaction, the practitioner arranged for the purchaser to sign an acknowledgement to confirm her awareness of the legal proceedings involving the property management company of the building of which the property was formed part, thus exposing the purchaser to potential risk of being unable to raise requisitions on potential title defects.

Moreover, as the completion date might be postponed, the purchaser was not able to obtain the key to the property in time for its renovation. Although the practitioner was aware of the legal advice given by the purchaser's lawyer on the risks to which the purchaser would be exposed by obtaining the key before completion as the transaction might not be completed,

最後，由於買賣雙方的律師未能就業權爭議達成共識，買方沒有如期完成交易，並因此損失了租用單位和裝修的費用。買方隨後向監管局投訴。

紀律委員會就該個案進行紀律研訊。委員會認為，該名從業員在得悉賣方律師未妥善答覆買方律師對該物業的業權質詢的情況下，仍安排買方簽署該確認文件，又罔顧買方提早收取該物業的鎖匙的風險，提議買方成交前取匙裝修，未能保障買方的利益，沒有遵守《操守守則》第3.4.1段，被委員會譴責及暫時吊銷牌照14天，並在其牌照上附加條件，要求她在兩年內取得12個持續專業進修計劃核心科目的學分。

she advised the purchaser to borrow the key to the property and rent the property for renovation before the completion date, and assured the purchaser that the title of the property was good.

Subsequently, the lawyers representing the purchaser and the vendor failed to resolve the dispute over the property's title. The purchaser did not complete the transaction as scheduled and suffered loss regarding rental and renovation expenses. The purchaser then lodged a complaint with the EAA.

The practitioner arranged for the purchaser to sign the acknowledgement despite the dispute over the title of the property. She also disregarded the risks concerned and advised the purchaser to borrow the key to the property for renovation before the completion date. The practitioner therefore failed to comply with paragraph 3.4.1 of the Code of Ethics in that she failed to protect the purchaser's interests. The Disciplinary Committee decided to reprimand the practitioner, suspend her licence for 14 days and attach conditions to her licence, requiring her to obtain 12 points from the core subjects under the CPD Scheme within two years.