

紀律研訊個案一處理物業轉租前沒有核實分租限制

從業員在處理分租物業時，應先審視物業業主與主租客簽訂的原租約中有否分租限制，及／或是否須先獲得業主同意才可安排分租。否則，從業員有可能被監管局紀律處分。

一名從業員在一宗住宅物業的租賃交易中，為主租客安排將物業轉租予一名分租客，並為雙方訂立租約。不過，業主與主租客之間所訂立的原租約訂明有不可分租的條款，從業員亦沒有核實主租客是否已獲得業主的同意。

其後，業主發現物業被轉租，遂以違反租約為由向土地審裁處申請收回該物業的管有權。分租客其後向監管局投訴該名從業員。

監管局紀律委員會就該個案進行紀律研訊。委員會認為，該從業員在安排主租客與分租客訂立租約之前，未有核實原租約有否任何限制分租、轉租或部分轉租的條款，或有關安排是否得到業主的同意，未能遵守由監管局發出的相關指引，因此沒有遵守《操守守則》第3.2.1段：「地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、操守守則，以及由監管局不時發布的所有其他指引。」該從業員因而被譴責、罰款\$1,000及在牌照上附加條件，要求他必須在24個月內取得持續專業進修計劃下核心科目的12個學分。

Disciplinary hearing case – Failing to ascertain subletting restrictions before handling subletting of properties

Practitioners handling subletting properties should review the head lease between the landlord and the head tenant to see if there is any restriction on subletting and whether prior consent for subletting has to be obtained from the landlord. Otherwise, practitioners may be subject to disciplinary actions by the EAA.

In a leasing transaction of a residential property, a practitioner arranged for the head tenant to sublet the property to a sub-tenant and also arranged for both parties to sign a tenancy agreement. However, there were restrictions on subletting in the head lease between the landlord and the head tenant. The practitioner had not ascertained whether the head tenant had obtained the consent from the landlord.

The landlord subsequently discovered that the property had been sublet. He then applied to the Lands Tribunal for the recovery of the exclusive possession of property from the head tenant as the latter had breached the tenancy agreement. The sub-tenant later lodged a complaint with the EAA against the agent who arranged the subletting.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the practitioner had not ascertained whether there was any restriction on subletting and whether the landlord's consent had been sought prior to the arrangement. The practitioner thus failed to comply with paragraph 3.2.1 of the *Code of Ethics* which states that practitioners and salespersons should be fully conversant with the EAO, its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice. The practitioner was reprimanded, fined HK\$1,000 and his licence was attached with conditions, requiring him to obtain within 24 months 12 points in the core subjects under the CPD Scheme.