



✈️ 紀律處分新計劃

地產代理監管局(「監管局」)一向致力確保持牌人守法循規。為了提高持牌人對違規情況的警覺性，長遠改善業內的違規情況，監管局推出一項紀律處分新計劃(「新計劃」)以處理違規個案。該新計劃已於2014年1月1日起生效。

計劃簡介

監管局紀律委員會經審視業內的違規問題後，發現部分常見的違規個案的性質屬比較簡單的類別。因此，委員會討論後通過推出一項新計劃以處理上述情況。新計劃涵蓋違反《地產代理條例》(「《條例》」)及其附屬法例內八項特定要求的違規事項。該八項「指明違規事項」的詳細內容請閱讀本文最後一部分。

在新計劃下，由生效日起計，倘若持牌人被發現首次違反一項或多於一項指明違規事項，而他／她承認案情概要及指稱，並選擇以新計劃處理其個案的話，則他在符合新計劃的條款的情況下，將不會被紀律處分。倘若該持牌人在其後兩年內，再度觸犯任何違規事項(無論是否屬於指明違規事項)，則紀律委員會在決定該再次違規的處分時，會同時考慮其參加了新計劃及在首次違規後沒有被處分的事實，相應地，有關處分難免較高。

倘若持牌人選擇以新計劃處理其個案，則其已承認的違規事項，將會紀錄在「違規備忘錄」(「備忘錄」)內。備忘錄內每項紀錄只會在本局的網站上刊登兩年。不過，有關紀錄連同持牌人的紀律處分紀錄會被一併保存，作為紀律委員會日後就其他違規考慮處分的因素。

自2014年1月1日起未因任何違規而被紀律處分的持牌人，均有資格選擇新計劃。至於不選擇新計劃的持牌人，其違規個案則會按照一貫的紀律程序處理。

八項指明違規事項

新計劃涵蓋違反《條例》、《地產代理常規(一般責任及香港住宅物業)規例》(「《常規規例》」)及《地產代理(發牌)規例》(「《發牌規例》」)內八項特定要求的違規事項。

八項指明違規事項詳列如下：

1. 沒有管有訂明資料(《條例》第36(1)(a)(i)條)
2. 沒有與客戶訂立地產代理協議(《常規規例》第6(1)及6(2)條)
3. 沒有按照表格內所指明的指引及指示填寫表格；沒有在表格附同表格內所指明的文件(《常規規例》第3(2)(a)及3(2)(b)條)
4. 沒有自以下事項發生起計的31天內將該事通知監管局：
 - (i) 終止從事地產代理工作；
 - (ii) 僱用或終止僱用任何營業員；
 - (iii) 委任《條例》下的經理或終止其委任；
 - (iv) 獲委任為持牌地產代理公司的董事或終止擔任公司的董事；及
 - (v) 成為或終止作為某持牌地產代理合夥的成員及該合夥進行或擬進行地產代理工作(《條例》第40(1)至(40)(5)條)
5. 沒有備存(i)一份其所收取的住宅物業放盤的紀錄及(ii)所訂立的地產代理協議的文本不少於三年的期間(《常規規例》第8(2)(a)條)
6. 沒有書面通知監管局其登記地址的變更(《條例》第14(3)(a)條)
7. 沒有保留向客戶所發出的收據的副本最少三年(《常規規例》第12(2)(b)條)
8. 沒有在其發出的文件上說明其牌照號碼或營業詳情說明書的號碼、營業名稱及營業地點(《發牌規例》第14(1)(b)條)；及沒有在其發出的廣告上說明其牌照號碼或營業詳情說明書的號碼及營業名稱(《發牌規例》第14(1)(c)條)

如欲了解計劃的詳情及相關的常見問答，請瀏覽監管局網站(www.eaa.org.hk)。

New Scheme for Disciplinary Cases

The Estate Agents Authority (“EAA”) attaches great importance to ensuring compliance in the estate agency trade. To heighten the estate agency trade’s vigilance against non-compliances and improve their compliance in the long run, the EAA has launched a New Scheme (“the Scheme”) for handling disciplinary cases with effect from 1 January 2014.

Introduction of the Scheme

Upon reviewing the non-compliance in the trade, the EAA Disciplinary Committee found that a number of cases commonly breached by the trade were relatively straight forward in nature. In this connection, the Committee has recently endorsed the Scheme to address the issue. The Scheme covers eight specified breaches of requirements under the Estate Agents Ordinance (“EAO”) and its subsidiary legislation. The details of the specified breaches are listed in the last section of this article.

Under the Scheme, if a licensee commits any of these specified breaches for the first time (with effect from 1 January 2014), he/she will not be, subject to the terms of the Scheme, disciplined if he/she opts for the Scheme and agrees to the facts and allegations. If the licensee is found to have breached any requirements again (irrespective of whether it is one of the specified breaches or not) in the following two years, and the fact that he/she has opted for the Scheme and has not been punished in the first time will be taken into consideration in deciding the sanction for the subsequent breach. Accordingly, the sanction for the subsequent breach would inevitably be higher.

If the licensee has opted for the Scheme, every admitted breach will be entered into a “Memorandum of Admitted Breaches” (“the Memorandum”). Each record in the Memorandum will only be shown at the EAA’s website for two years. However, such a record will be retained together with the licensee’s disciplinary record for sentencing purposes in the future cases.

Any licensee who has not been disciplined for any breaches from 1 January 2014 is eligible to opt for the Scheme. For licensees who do not opt for the Scheme, their breaches will be handled in accordance with the usual disciplinary procedures.

The Eight Specified Breaches

The Scheme covers breaches of eight specified requirements under the EAO, Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“PR”) and Estate Agents (Licensing) Regulation (“LR”).

The eight specified breaches are as follows:

1. Failure to possess prescribed information (EAO s.36(1)(a)(i))
2. Failure to enter into an estate agency agreement with client (PR ss.6(1) & 6(2))
3. Failure to complete form in accordance with the directions and instructions specified in the form; Failure to accompany form by documents specified in the form. (PR ss.3(2)(a) & 3(2)(b))
4. Failure to give notice to the EAA within 31 days of
 - (i) ceasing to be engaged in estate agency work;
 - (ii) employment of salespersons or termination thereof;
 - (iii) appointment of managers for the purposes of the Estate Agents Ordinance or termination thereof;
 - (iv) appointment of directors or termination thereof; and
 - (v) the becoming or ceasing to become a member of a partnership engaged in estate agency work (EAO ss.40(1) to 40(5))
5. Failure to keep (i) a record of all listings received and (ii) a copy of all estate agency agreements entered into for not less than three years (PR s.8(2)(a))
6. Failure to notify the EAA in writing of a change of registered address (EAO s.14(3)(a))
7. Failure to retain a copy of receipt issued to clients for not less than three years (PR s.12(2)(b))
8. Failure to state the number of licence or statement of particulars of business, the business name and place of business in any document (LR s.14(1)(b)); and
Failure to state the number of licence or statement of particulars of business and the business name in advertisement (LR s.14(1)(c))

Details of the Scheme and the relevant frequently asked questions and answers are available at the EAA’s website (www.eaa.org.hk).