

紀律研訊個案一 向一手住宅物業買家提供誤導性資訊

從業員向一手住宅物業的買家提供資訊時，必須以賣方所提供最新版本的售樓說明書、價單及相關文件內所載列的資訊為基準，並避免作出失實陳述。否則，從業員可能會被監管局紀律處分。

一名從業員在推廣一個新住宅樓盤的單位時，向一位準買家保證她能獲得銀行批出相等於單位售價80%的按揭貸款。從業員並再三游說該準買家，聲稱發展商正提供樓價5%的折扣優惠，而且只有透過他所屬的地產代理公司購買該樓盤的人士，才能享有該項優惠，而當日更是該優惠的最後一天。

基於該從業員提供的上述資訊，該名買家決定購入單位，並在該從業員協助下簽署臨時買賣合約，支付相等於樓價10%的訂金。然而，買家後來發現她未能取得相等於樓價80%的按揭貸款，更得悉發展商並

無向任何一間地產代理公司提供獨家折扣優惠，而事發當天亦不是該優惠的最後一天。買家遂向監管局投訴。

監管局紀律委員會認為，該從業員向買家提供誤導性的資訊，包括關於按揭及發展商提供優惠的資料，該從業員因此未有遵守《操守守則》第3.7.2段所述「地產代理和營業員應避免做出可能令地產代理行業信譽及／或名聲受損的行為」。紀律委員會決定譴責該名從業員，並暫時吊銷他的牌照三個月。

上述個案發生於《一手住宅物業銷售條例》（「該條例」）生效之前。監管局提醒持牌人，自該條例於2013年4月底生效後，持牌人在推銷一手住宅物業時如果作出可能誤導準買家的陳述，有可能同時觸犯該條例。因為根據該條例，任何人作出具欺詐性或罔顧實情的失實陳述，以誘使另一人購買物業，即屬犯罪。

Disciplinary hearing case — Providing misleading information to purchasers in the first-sale of residential properties

When providing information to purchasers in the sale of first-hand residential properties, practitioners must do so only on the basis of the latest information contained in the sales brochure, price lists and documents provided by the vendor. They must also refrain from making any misrepresentation. Otherwise, practitioners may be subject to disciplinary actions by the EAA.

When promoting a flat of a new residential development, a practitioner assured a prospective purchaser that she could definitely obtain a mortgage loan amounting to 80% of the purchase price. To further persuade the prospective purchaser, the practitioner also told her that the developer provided a 5% discount on the purchase price, and claimed that the incentive was provided exclusively to those who bought the flat through the estate agency company that the practitioner worked for. He also claimed that it was the last day the developer offered the incentive.

Based on the above information provided by the practitioner, the purchaser decided to purchase the flat. With the help of the practitioner, the purchaser signed a provisional agreement for sale and purchase and paid a deposit equivalent to 10% of the purchase price. However, the purchaser later found out that she could not obtain an 80% mortgage. She also learnt that the discount was not offered exclusively to any estate agency company, and the day that the incident happened was not the last day of the offer. She then lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the practitioner provided misleading information to the purchaser, including misrepresentation on the mortgage information and incentives offered by the developer. He thus failed to comply with paragraph 3.7.2 of the Code of

Ethics, which states that estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade. The Disciplinary Committee decided to reprimand the practitioner and suspend his licence for three months.

The case had taken place before the Residential Properties (First-hand) Sales Ordinance ("the Ordinance") came into effect in late April 2013. After the Ordinance has taken

effect, licensees may at the same time breach the Ordinance if they make any misrepresentation that may mislead prospective purchasers when promoting first-hand residential properties. Under the Ordinance, any person who makes a fraudulent or reckless misrepresentation for the purpose of inducing another person to purchase any residential properties may commit an offence.



紀律研訊個案一 沒有告知客戶住宅物業存在違建工程

從業員在處理住宅物業租賃時，應該採取步驟以確認有關物業是否涉及違例建築工程，並要告知準租客相關的事實和風險，否則有可能被紀律處分。

一名從業員在一宗住宅物業租賃中擔任雙邊代理。在安排準租客視察物業兩次之後，該從業員安排準租客簽署臨時租約(臨約)。在簽訂租約前，該從業員沒有就物業進行土地查冊，亦沒有向準租客提供查冊結果的文本。

準租客在簽署臨約並支付訂金之後，其友人就該物業進行土地查冊，才發現該物業的查冊紀錄上註冊了由建築事務監督發出的要求拆卸／改動違建工程命令，而該命令未獲遵從。準租客擔心違建工程帶來

的風險，遂要求與業主取消交易及取回訂金，但遭拒絕，於是向監管局作出投訴。

監管局紀律委員會就該個案進行紀律研訊。委員會認為，該名從業員受業主委託放租物業，並沒有遵照相關的執業通告規定，查核該物業的土地查冊是否已獲遵從，也沒有告知客戶有關事實。此外，該名從業員並沒有在緊接該物業的租約訂立之前，就該物業進行土地查冊，並向租客提供一份土地查冊結果，因而違反了《常規規例》第13(4)條的規定。因此，紀律委員會決定譴責該名從業員及罰款港幣3,000元，並在牌照上附加條件，要求該從業員在兩年內取得持續專業進修計劃下24個核心科目的學分。

Disciplinary hearing case — Failing to inform the client of the existence of unauthorised building works in a residential property

When handling the leasing of residential properties, practitioners should take steps to ascertain whether unauthorised building works are involved and inform prospective tenants of the relevant facts and risks. Otherwise, practitioners may be subject to disciplinary actions by the EAA.

A practitioner acted for both sides in a lease transaction of a residential property. After arranging for the prospective tenant to inspect the property twice, the practitioner arranged for the tenant to sign a provisional tenancy agreement (PTA). Before the signing of the PTA, the practitioner had not conducted a land search in respect of the property, and hence did not provide a copy of the land search to the prospective tenant.

After the prospective tenant signed the PTA and paid a deposit for renting the property, his friend conducted a land search in respect of the property. From the land search, the tenant discovered that a building order for the demolition/alteration of unauthorised building work had been registered against the property and it had not been complied with. Worried of the risks involved in the unauthorised building works, the tenant requested to

cancel the deal with the landlord and claim back the deposit through the agent but was rejected. He then lodged a complaint with the EAA.

The Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the practitioner failed to inform the tenant that a building order for the demolition/alteration of unauthorised building works had been registered against the property and whether the order had been complied with, thus failing to comply with the guidelines of a relevant practice circular. The practitioner also failed to carry out a land search in respect of the property immediately before the PTA was entered into and supply a copy of the land search to the tenant and that breached section 13(4) of the Practice Regulation. Hence, the practitioner was reprimanded and fined HK\$3,000. A condition was also attached to the licence, requiring the practitioner to acquire 24 points in core subjects of the CPD Scheme in two years.

