紀律研訊個案：向一手住宅準買家提供貸款

就着持牌人推銷一手住宅物業的執業手法及操守的問題，監管局已發出執業通告（編號13-04（CR）），為業界提供詳細指引。持牌人必須留意並遵守相關指引，否則可能會被監管局紀律處分。

一名營業員在推銷一手住宅樓盤時，在商場內主動向兩名準買家招攬生意，邀請兩人前往參觀該新樓盤的示範單位，並游說他們入票登記抽籤認購該新樓盤的單位。儘管準買家即場表示沒有足夠資金，但該名營業員卻聲稱她所屬的地產代理公司可向準買家提供貸款並代他們入票，以參與抽籤認購該樓盤的單位。

監管局紀律委員會就該個案進行紀律研訊。委員會認為該營業員違反了執業通告中的指引，包括：在未獲得有關商場或屋苑管理處准許的情況下，不可以在商場或屋苑或入口處招攬生意或派發單張；不得向準買家提供或提出提供貸款，即使該準買家表示沒有足夠金錢作即場交付訂金，不論是否用以游說準買家簽訂臨時合約或作任何其他用途，即使該準買家向他們提出有關要求。

因此，該營業員沒有遵守《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」。該營業員因而被譴責、罰款合共港幣7,000元及在牌照上附加條件，並必須在12個月內取得持續專業進修計劃下核心科目的12個學分。

至於僱用該名營業員的地產代理公司，紀律委員會認為該公司沒有妥善監督前線員工，違反了《地產代理常規（一般責任及香港住宅物業）規例》第15條的規定，即未有設立妥善的程序或制度以監督和管理其地產代理工作的業務，以確保其僱員或其轄下的人遵守《地產代理條例》的條文。該公司因而被監管局譴責及罰款港幣60,000元。

Disciplinary hearing case: Offering loans to prospective purchasers of a first-hand residential development

The EAA has issued a Practice Circular (No.13-04(CR)) setting out detailed guidelines on licensees' practices and conduct in promoting first sale of residential properties. Licensees must observe and comply with such guidelines. Failure to do so will be subject to disciplinary action by the EAA.

When promoting a first-hand residential development, a salesperson actively solicited business at a shopping mall and invited two prospective purchasers to inspect the show flat. She also persuaded the prospective purchasers to submit a casher's order to join the lot drawing for purchasing a property of the development. Although the prospective purchasers told her that they did not have sufficient money for the payment on the spot, she responded that the estate agency company which employed her could offer a loan to them and issued a casher's order for them to join the lot drawing for purchasing the property.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the salesperson was in breach of the relevant Practice Circular. Firstly, the Practice Circular stipulates that licensees must not solicit business at shopping malls or housing estates without the requisite permission. Moreover, licensees must not offer or make loans to a prospective purchaser, even if the prospective purchaser states that he does not have sufficient money for the payment of the deposit on the spot, whether in order to persuade a prospective purchaser to sign a preliminary agreement for sale and purchase or for any other purpose, and even if a prospective purchaser requests licensees to do so.

Therefore, the salesperson failed to comply with paragraph 3.2.1 of the *Code of Ethics*: "estate agents and salespersons should be fully conversant with the Estate Agents Ordinance, its subsidiary legislation, *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 salesperson was reprimanded and fined a total amount of HK$7,000. A condition was also attached to her licence, requiring her to obtain 12 points in the core subjects of the CPD Scheme in 12 months.

As to the estate agency company employing the salesperson, the Disciplinary Committee was of the view that it did not supervise its frontline employees properly, thus in breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, which states that a licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Estate Agents Ordinance. The concerned estate agency company was reprimanded and fined HK$60,000.

紀律研訊個案：沒有告知買方物業涉及無償轉讓契及相關風險

購買涉及送讓契／無償轉讓契的物業可能涉及風險，例如難以向銀行申請足夠按揭貸款。因此持牌人在處理有關的物業交易時，應提醒買方物業涉及送讓契／無償轉讓契，並提醒買方應徵詢法律意見，否則有可能被紀律處分。

一名持牌人在一宗住宅物業交易中擔任雙邊代理。他曾就物業進行土地查冊，紀錄顯示該物業涉及無償轉讓契。然而，他沒有就此事告知買方，亦沒有建議買方徵詢法律意見，隨後更安排買賣雙方簽訂臨時買賣合約。

其後，買方透過律師知悉該物業可能涉及無償轉讓契，購入該物業可能會承擔風險，此外，該持牌人在緊接簽訂臨約前，並沒有向他提供該物業的土地查冊文本。買方遂向監管局投訴。

監管局紀律委員會就該個案進行紀律研訊。委員會認為該持牌人沒有遵守監管局發出的《操守守則》第3.4.1段，即持牌人應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。

此外，該持牌人因沒有在緊接買賣雙方簽訂臨約前向買方提供土地查冊結果文本，亦違反了《地產代理常規（一般責任及香港住宅物業）規例》第13(4)條。委員會決定譴責該持牌人，罰款合共港幣$4,000，並在其牌照上附加條件，要求他在12個月內取得持續專業進修計劃之下的核心科目12個學分。

Disciplinary Hearing Case: Failure to inform purchasers that the property involved assignment at nil consideration and related risks

Buying properties involving a deed of gift/assignment at nil consideration may involve risks, such as difficulties in obtaining sufficient mortgage loan from the bank. Therefore, licensees handling related property transactions should inform purchasers that the property involves a deed of gift/assignment at nil consideration and advise them to seek legal advice. Otherwise, licensees may be subject to disciplinary action by the EAA.

A licensee acted as a dual agent in a residential property transaction. He conducted a land search in respect of the property and the result showed that the property involved an assignment at nil consideration. However, he did not inform the purchaser of the relevant fact, nor did he advise the purchaser to seek legal advice. He then arranged for the vendor and the purchaser to sign the provisional agreement for sale and purchase (PASP).

The purchaser later learned through his lawyer that the property might involve an assignment at nil consideration and the risks involved in buying the property. He also found that the licensee did not provide him with a copy of the property's land search result. Hence, he lodged a complaint with the EAA.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the licensee failed to comply with paragraph 3.4.1 of the *Code of Ethics* which states that licensees should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

Moreover, as the licensee did not provide a copy of the land search result to the purchaser immediately prior to signing the PASP, he also breached section 13(4) under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. The Committee decided to reprimand the licensee, fined him HK$4,000 in total, and also attached a condition to his licence, requiring him to acquire 12 points in core subjects under the CPD Scheme within 12 months.