

有關一手住宅物業銷售的操守問題

置業是不少市民的人生大事，尤其是購買未落成新樓，近期更是成為市場關注熱點，不少地產代理都有參與銷售。而較早前，消費者委員會就發表了一份「一手住宅物業銷售研究報告」，當中發現有地產代理涉嫌違規。地產代理監管局（「監管局」）對此極度關注，希望再次提醒各持牌人，必須遵守監管局指引行事；同時，監管局正研究稍後發出新指引，以提高地產代理公司在這方面的企業管治。

不可「代客墊支」

根據監管局就地產代理參與一手住宅物業銷售而發出的執業通告（編號13-04(CR)），持牌人在銷售一手住宅物業時，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買賣合約或作任何其他用途，即使該準買家向持牌人提出有關要求。

上述規定能讓準買家在作出決定前，冷靜審慎考慮清楚，避免一時衝動購入物業，或在其後才發覺超出負擔能力；這項規定能減少買家日後因後悔而引起的爭拗或巨大的金錢損失（例如「撻訂」），對代理和消費者都有好處。

必須「清機過數」

倘若準買家因沒有銀行本票參與抽籤買樓，要求地產代理公司為他提供本票，並以信用卡向該地產代理公司繳付同等金額的話，則持牌人絕不可向客戶表示其信用卡將不會被「過數」，反而應在接受客戶以信用卡付款後即日「清機過數」，否則便有可能構成「代客墊支」，違反監管局指引。

申報入票

另外，監管局早前亦與社會關注團體會面，討論到有關地產代理在參與銷售一手樓盤的同時，入票參與抽籤該樓盤的情況。監管局認為，雖然個別地產代理對有興趣的樓盤入票抽籤屬無可厚非，但倘若地產代理公司有份參與該樓盤的銷售，而其僱員又參與入票的話，則難免令人覺得有利益衝突。

根據監管局發出的執業通告（編號08-03(CR)），持牌人應避免利益衝突的情況，及須向客戶披露涉及物業的個人利益。因此，基於同一原則，同時為了提升地產代理公司的企業管治，監管局正研究要求有份入票的地產代理作出申報，但有關細節須留待監管局執業及考試委員會詳細討論再作決定。而監管局在2015年1月6日舉行的與業界聯絡會議中，亦已將此構思與各主要業界商會分享，商會代表都普遍認同。稍後當有關指引內容落實後，監管局會再作公布。

最後，監管局再次提醒持牌人，如被證實違反執業通告內的指引，有機會被監管局紀律處分，最嚴重的處分為撤銷牌照。另外，如違反《一手住宅物業銷售條例》的規定，則屬刑事罪行，可處的最高刑罰為罰款五百萬元及監禁七年。持牌人應細閱執業通告及《一手住宅物業銷售條例》全文，以進一步了解及遵守相關規定。



Conduct in the sale of first-hand residential properties

To most people, home buying is one of the biggest decisions in life. Buying first-hand residential properties is especially a focus of public concern and many estate agents participate in the sale of such properties. Recently, the Consumer Council issued a report on “Study on the Sales of First-hand Residential Properties” which revealed suspected malpractice of estate agents. The Estate Agents Authority (“EAA”) is concerned about the issue and would like to remind licensees that they must comply with all the guidelines issued by the EAA. The EAA is considering issuing new guidelines to enhance the corporate governance of estate agency companies.

Do not offer loans to prospective purchasers

According to the Practice Circular on the subject of First Sale Of Residential Properties (No. 13-04(CR)), 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 Provisional Agreement for Sale and Purchase, or for any other purpose, and even if a prospective purchaser requests licensees to do so.

The above requirement enables prospective purchasers to think carefully before making any purchase decision. It is beneficial to both the estate agents and the consumers as it could reduce disputes due to purchasers’ subsequent regret over their purchase decision or due to substantial monetary loss (such as forfeiture of their deposit) and prevents them from making impulsive purchase which they may not be able to afford.

Must debit the prospective purchaser’s credit card on the same day

Licensees should note that if a prospective purchaser does not have a cashier order to participate in the lot drawing for purchasing the property and thus requests the estate agency company to offer him a cashier order in return for his payment of the same amount of money to the estate agency company by credit card, licensees must not express to the prospective purchaser that they will not debit the latter’s credit card. On the contrary, licensees should debit the prospective purchaser’s credit card on the same day after accepting the credit card payment. Otherwise, it might be construed that the licensee has offered a loan to a prospective purchaser and thus might violate the EAA’s guidelines.

Declare when submitting registration of intent

The EAA has recently met with representatives of a concerned group and discussed the issue of licensees who are involved in the sales of the first-hand residential properties, and at the same time submit registration of intent of purchasing such properties themselves. The EAA understands that licensees may submit registration of intent if they themselves are interested in buying that property, but nevertheless it may give people an impression that there may be a possible conflict of interest if that licensee works for an estate agency company which is also involved in the sale of such property.

According to the Practice Circular (No. 08-03(CR)) issued by the EAA, licensees are under a duty to avoid conflict of interest and they must make a disclosure of interests in the property concerned to their clients. Therefore, based on the same principle and also in a bid to enhancing the corporate governance of estate agency companies, the EAA is currently studying on requiring licensees who are involved in the sales of first-hand residential properties, and who at the same time submit registration of intent themselves to make a declaration. However, details and the feasibility of such a requirement are pending for discussion at the EAA’s Practice and Examination Committee before any conclusion could be reached. In fact, the EAA had conveyed such a proposal at the liaison meeting with estate agency trade representatives on 6 January 2015 and the trade representatives were supportive of the proposed requirement generally. The EAA will announce details of such requirement upon confirmation in due course.

Last but not the least, the EAA would like to remind licensees again that they may be subject to disciplinary actions by the EAA if they fail to comply with the guidelines set out in the Practice Circular on first sale of residential properties. The most severe sanction will be licence revocation. Also, contravention of the Residential Properties (First-hand Sales) Ordinance is a criminal offence and is liable to a maximum penalty of a fine of \$5,000,000 and imprisonment for seven years. Licensees should read the related Practice Circular and the full version of the Residential Properties (First-hand Sales) Ordinance carefully for a better understanding of and compliance with the requirements.