

何謂「釘契」?

E FOR “ENCUMBRANCE”

「釘契」是指因為物業的土地登記冊上載錄了某些註冊文件(例如法庭命令、押記令、欠交管理費備忘錄等)，使物業的業主難以放售有關物業。由於這類物業的業權欠妥，交易有可能被取消，故持牌人在處理這些被「釘契」的物業的交易時，應該格外小心，在客戶決定交易前，向其解釋清楚物業被「釘契」的詳情及有關風險，避免發生無謂爭拗。

物業被「釘契」的原因有很多，其中較為常見的，包括因業主拖欠銀行、財務公司、管理公司或其他私人債務而被債權人循法律途徑追討及凍結資產；或因物業違反《建築物條例》如附有僭建物或未有遵循維修令；又或因物業違反大廈公契條款而被業主立案法團或其他業主提出申索等等。

持牌人須知道，代表賣方的持牌人，要在緊接物業的買賣合約訂立之前，就該物業進行土地查冊及向該物業的買方提供該份土地查冊的文本。倘若持牌人在土地查冊中發現該物業被「釘契」，必須如實告知客戶。不論該客戶是賣方或買方，也應提醒有關買賣該物業所涉及的風險，並建議客戶在繼續有關買賣前，先尋求法律意見。

Certain encumbrances might be registered against a property. For example, when certain kinds of documents such as Court Orders, Charging Orders, Memorandum of outstanding management fees, etc., have been registered against the property, the sale of the property could be difficult. Due to the defective title of this kind of properties, their transactions might be cancelled by the purchaser. Therefore, in order to avoid any disputes, licensees should be very careful when handling the transaction of properties with subsisting encumbrances, and they should inform their clients of the details of encumbrances and the related risks before the transaction.

Common causes for registering encumbrances against a property include the property owner's failure to make repayments to a bank, financial institution, management company or other personal debts and thus being sued by creditors; breaches against the Buildings Ordinance due to the existence of unauthorised building works or not complying with any building orders; violating the deed of mutual covenant and being sued by the incorporated owners or other owners of the building etc.

Licensees should bear in mind that the licensee who acts for the vendor must conduct a land search and provide a copy of the land search of the relevant property to the purchaser immediately before an agreement for sale and purchase is entered into. If licensees discover the above mentioned encumbrances registered against the property through a land search, licensees should inform clients honestly, reminding them (no matter whether they are vendors or purchasers) of the related risk in that property transaction and advise them to seek legal advice before proceeding with the transaction.

