

紀律研訊個案：發出違規廣告

DISCIPLINARY HEARING CASE: NON-COMPLIANCE IN ISSUING ADVERTISEMENTS

引言

持牌人不可發放具誤導性陳述或錯誤資訊的廣告，並須遵守發布廣告的相關法例及規定，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees must not issue any advertisements with misleading or wrong information and must comply with the relevant law and regulations regarding the issuance of advertisements. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理在其網上個人博客上發布數則一手住宅物業的廣告，並提及包括建築面積、實用面積及售價等資訊，惟該等新盤的發展商尚未把售樓說明書上載至一手住宅物業銷售監管局的網頁。

監管局接獲有關報告後展開調查。該地產代理承認，該些樓盤資料是她於《一手住宅物業銷售條例》實施前，取自於發展商的網頁。然而，在該條例正式生效後，她並沒有更改或移除其博客上的該些過期資訊。同時，在發布這些廣告前，她也沒有取得僱用她的地產代理公司的同意。

INCIDENT

An estate agent had issued several advertisements of various first-hand residential properties on her personal blog with information including the gross floor area, the saleable floor area and the selling price before the developers of those properties uploaded the sales brochures to the website of the Sales of First-hand Residential Properties Authority.

The EAA received a report on it and conducted an investigation. The estate agent admitted that the information was retrieved earlier from the developers' websites before the Residential Properties (First-hand Sales) Ordinance took effect. After the Ordinance had taken effect, she neither made amendments nor removed the outdated information from her personal blog. Moreover, she issued those advertisements without seeking approval from the estate agency company she worked for.



研訊結果

監管局紀律委員會認為，該地產代理沒有遵守執業通告(編號13-04(CR))內的指引，當中規定除以物業的實用面積作為基準外，就一手住宅物業銷售進行推廣活動及提供物業資料的廣告不得以其他基準表達該物業的面積或單位售價的資料。此外，除代產代理公司外，其他持牌人不得發出任何廣告或宣傳物品。

在考慮個案的性質及持牌人的違規紀錄後，該名地產代理被委員會譴責及罰款6,000元。

RESULT

The EAA Disciplinary Committee was of the view that the estate agent had failed to comply with the guidelines set out in Practice Circular 13-04(CR), which stipulates that an advertisement for a first-hand residential property must not give information on the size or unit price other than by reference to the saleable area of the property. In addition, no advertisement or promotional material shall be issued by licensees other than estate agency companies.

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to reprimand the estate agent and fine her \$6,000.



香港專業地產顧問商會榮譽會長
汪敦敬先生

Mr Lawrence Wong Dun-king
Honorary President of Hong
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業界回應

《一手住宅物業銷售條例》實施到現在已經超過了兩年，一手住宅物業銷售監管局及地產代理監管局在推廣上也做得不錯，相信大部份地產代理都掌握到及不會發放違規的廣告，但是，由於一些社交網站均被視為只是私人分享經驗的平台，因此對網上的活動守法意識便較為薄弱，而實際上一些欠根據的內容有可能會誤導公眾，發放這類樓花訊息必須要確保正確，否則任何人也有機會抵觸法例或監管局的相關規定，對持牌地產代理來說，便應更加審慎。

COMMENT FROM TRADE

The Residential Properties (First-hand Sales) Ordinance has been in operation for more than two years already. With the effort of the Sales of First-hand Residential Properties Authority and the Estate Agents Authority, I believe that most of the licensees are familiar with the Ordinance and will comply with it. However, they may be less cautious with their online activities as social media or mobile apps may give a false impression of “private sharing”. Any unfounded content may mislead the public and hence it is necessary to ensure that the information of any new development issued is correct so as to avoid breaching the law or EAA’s relevant regulations. Licensed estate agents must be more careful in this aspect.

紀律研訊個案：沒有進行土地查冊

DISCIPLINARY HEARING CASE: FAILING TO CONDUCT LAND SEARCHES

引言

持牌人必須在緊接物業的買賣協議或租約訂立之前，就該物業進行土地查冊，並向買方/租客提供該土地查冊結果的文本，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees shall carry out a land search in respect of the property and supply a copy of the land search to the purchaser/tenant immediately before a provisional agreement for sale and purchase or a provisional tenancy agreement is entered into by the parties. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員在一宗住宅物業租賃中擔任雙邊代理。在安排租客簽訂租約前，該營業員並沒有於緊接租約訂立之前，向該租客提供物業的土地查冊結果的文本。而在他安排租客簽約時，該租約上的部分條款被遮蓋着。同時，該營業員曾向租客承諾會於租約簽訂後30天內，代其辦理加蓋印花手續及繳交印花稅。然而，該營業員最終未能兌現承諾，更延至兩個月後才為客人繳付印花稅。租客對此感到憤怒，遂向監管局作出投訴。

INCIDENT

A salesperson represented both the tenant and the landlord in a leasing transaction of a residential property. He failed to provide a copy of the land search of the relevant property to the tenant immediately before the tenancy agreement was entered into. Also, part of the terms and conditions of the tenancy agreement was covered when the salesperson arranged for the tenant to sign on it. Moreover, though the salesperson promised the tenant that he would submit the tenancy agreement for stamping and pay the stamp duty within 30 days after the agreement was signed, he failed to do so as he only paid the stamp duty after 2 months. Feeling angry, the client lodged a complaint against him.

研訊結果

監管局紀律委員會認為，該營業員違反監管局發出的《操守守則》第3.4.1段，以及《地產代理常規(一般責任及香港住宅物業)規例》。結果，該營業員被譴責及罰款合共6,000元。

RESULT

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with paragraph 3.4.1 of the *Code of Ethics* issued by the EAA and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. As a result, the salesperson was reprimanded and fined \$6,000 in total.



香港地產代理商總會主席
謝順禮先生

Mr Calvin Tse Shun-lai
Chairman of Hong Kong Real
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業界回應

上述個案中，該名持牌人除沒有在緊接物業的租約訂立之前進行土地查冊外，同時安排租客簽署部分條款被遮蓋的租約，實屬不當。此外，該名持牌人更沒有兌現承諾在30天內代客人辦理租約印花稅，有可能因過期繳付印花稅導致須付過期罰款。此等行為均沒有保障客戶權益並容易引起糾紛，作為專業的持牌人，必須引以為戒。

COMMENT FROM TRADE

In the above case, the licensee failed to carry out a land search and supply a copy of it to the tenant immediately before the tenancy agreement was entered into. In addition, part of the terms and conditions of the tenancy agreement was covered. Moreover, his failure to pay the stamp duty on behalf of his client on time might give rise to payment of penalty for late stamping. His behaviour not only failed to protect the interest of his client, but could also easily lead to disputes. A professional licensee should learn a lesson from this case.