



小心推銷境外物業

BE CAREFUL WHEN PROMOTING NON-LOCAL PROPERTIES

近年，本港樓價高企，部分境外物業的項目標榜高回報率且售價較本地物業容易負擔，吸引不少港人購買。加上政府早前調高住宅物業交易的從價印花稅稅率至劃一15%，本地住宅物業成交萎縮，不少地產代理從業員為另覓出路，紛紛參與推銷境外物業。

然而，基於境外物業涉及外地法例並且受當地制度所限，加上稅制複雜，地產代理容易在銷售過程中誤導客戶或作出失實陳述，結果引起爭拗或被投訴。持牌人在決定參與銷售境外物業前，需謹慎考慮清楚自身的經驗和知識能否應付。

相關規管

根據《地產代理(豁免領牌)令》，若任何人純粹處理香港以外地方的物業，並在其所有信件、帳目、收據、單張、小冊子及其他所有文件內及在任何廣告中，清楚述明其本人並無處理位於香港的任何物業的牌照，可獲豁免領取監管局發出的牌照。

As local property prices continue to remain high, more Hong Kong people are attracted to non-local properties due to their higher yields and more affordable prices. Transactions in the local residential property market have become even more stagnant after the increase of the ad valorem stamp duty rates for residential property transactions to a flat rate of 15%. Under these circumstances, some estate agents have been looking for other business opportunities and engaging in the sale of non-local properties.

However, as non-local property transactions are conducted under different regulatory regimes and tax systems, the likelihood for estate agents to mislead their clients or make misrepresentations leading to disputes or complaints is high. Hence, licensees should consider thoroughly whether they have equipped themselves with sufficient experience and knowledge before deciding to participate in the sale of non-local properties.

RELEVANT REGULATIONS

According to the Estate Agents (Exemption From Licensing) Order, if a person engages in estate agency work exclusively in relation to properties outside Hong Kong, and states in all his letters, accounts, receipts, pamphlets, brochures and other documents and in any advertisement that he is not licensed to deal with any property situated in Hong Kong, he shall be exempted from the requirement for obtaining an estate agent's licence or a salesperson's licence from the EAA.

焦點話題 IN FOCUS

一般情況下，純粹處理境外物業交易的代理工作並不屬監管局的規管範圍。然而，若該人同時從事香港境內及境外物業的代理工作，則必須持有監管局發出的有效牌照，並受到監管局監管。倘若持牌地產代理在銷售境外物業時的操守出現問題，監管局亦會作出跟進。

容易引發問題

監管局在2016年首11個月，共接獲21宗涉及境外物業的投訴，比去年同期大幅增加19宗，主要指稱代理作出失實陳述及涉及有關項目工程未能完成（即俗稱「爛尾」）。

事實上，若然參與銷售的代理對物業的發展商或所在地的情況了解不足，又或對當地的法例及稅制不熟悉，例如不清楚境外人士購買/轉售/出租物業有否限制，再加上僅靠網上找來的資料便向客戶宣傳的話，便容易出現誤導客戶或向客戶作出失實陳述的機會。



根據監管局發出的《操守守則》第3.3.1段，即「持牌地產代理必須秉持誠實、忠誠和嚴正的態度向客戶提供服務，並保障客戶在地產交易中不因欺詐、失實陳述或不合專業操守的行為而受損。」

為免造成任何誤導或產生誤會，代理在編製及發放相關宣傳物品前，應先取得賣方的書面批署。



Generally speaking, carrying out estate agency work exclusively in relation to properties outside Hong Kong is not regulated by the EAA. However, if the persons engage in estate agency work in relation to properties both in Hong Kong and outside Hong Kong, they are required to hold a licence issued by the EAA and their practices are regulated by the EAA. The EAA will follow up on cases against licensed estate agents' malpractice in the sale of non-local properties.

PROBLEMS ARISING

In the first 11 months of 2016, the EAA received 21 complaints concerning non-local properties, a sharp increase of 19 complaints when compared to those in the same period last year. Major allegations concern misrepresentation made by estate agents, and cases of failing to complete the construction of the relevant development.

In fact, it would be easy for estate agents to mislead their clients or make misrepresentations when promoting non-local properties if they do not have sufficient understanding of the property developer, the legal and tax system of the country that the development is located (such as whether there are any restrictions for non-local persons to purchase, resell or lease the properties), or if they just rely on the information from the Internet.

According to paragraph 3.3.1 of the *Code of Ethics*, "estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions."

To avoid any misunderstanding or making any misrepresentation, estate agents should obtain written consent from the vendor before preparing or issuing any relevant promotional materials.



持牌人應留意，倘若持牌地產代理在銷售境外物業時違反上述守則，可能會被監管局紀律處分，屆時不單聲譽受損，連帶本地生意也可能受牽連；更甚者有可能面臨買方的法律申索，追討賠償。

境外物業交易並不簡單

其實，監管局不時都有透過傳媒提醒消費者，在跨境置業前，應衡量有關交易所涉及的風險，尤其是購買海外樓花或可獲得發展商的額外優惠，但樓花項目所涉風險亦相對較高，要小心項目有可能出現「爛尾」。

監管局亦有提醒消費者，最好親身到物業所在地視察，了解清楚發展商的背景、物業周邊環境、配套等，同時要了解當地對境外人士購買或出租物業的規管、遺產法例及稅制問題等，才作出購買的決定。

跨境置業始終牽涉不同地區或國家的法規，其中所涉及的問題十分複雜和廣泛。持牌人在推銷境外物業時要謹言慎行，倘若對物業資料或相關法例、制度存疑時，切勿輕率回應及誤導買家。另外，須建議買家諮詢獨立的法律意見，以了解清楚投資海外物業當中的風險。

Licensees should note that if licensed estate agents are in breach of the aforementioned *Code of Ethics* in the sale of non-local properties, they may be disciplined by the EAA. Not only their reputation will then be damaged, their business of local properties may also be affected. Worse still, the purchaser may also take legal action against them for compensation.

IT'S COMPLICATED

The EAA has consistently reminded consumers of the risks of purchasing non-local properties. Consumers should consider the risks involved especially when purchasing uncompleted non-local developments. Although the incentives could be high, the risks are also high as the developer of those properties may fail to complete their construction.

The EAA also recommends that consumers should visit the site of the property, carry out research on the developer, the environment of the property and the surrounding transportation network. Consumers are also advised to, before making a purchase, to learn more about the regulations of that country's purchasing laws concerning non-residents, reselling or leasing of properties, the laws and practice on conveyancing and estate taxes etc.

Purchasing non-local properties is complicated as it involves different regulatory regimes. Licensees should also be very careful when promoting non-local properties. If licensees are uncertain about any property information or relevant regulations they should not advise their clients hastily or mislead them. Furthermore, licensees should advise purchasers to seek independent legal advice in order to gain a better understanding of the risks involved.