

工廈不可當住宅

Proper Use of Industrial Buildings



目錄

CONTENTS

- P.3** 觀點視野
A Perspective
- P.4** 新聞速遞
News Flash
- P.9** 焦點話題
In Focus
- P.12** 人物誌
Portrait
- P.14** 誠信與你
Integrity in Focus
- P.17** CPD重溫
CPD Recap
- P.18** 執業問與答
Practice Q&A
- P.19** 顧名思義
ABC in Estate Agency
- P.20** 活動紀要
Events and Activities
- P.22** 統計數字
Statistics



監管局行政總裁韓婉萍

Ruby Hon

Chief Executive Officer of the EAA

“若證實地產代理因疏忽而導致買方有所損失，地產代理有可能要負上責任及被買方追討。”

“If it is proven that the purchasers suffer a loss due to the negligence of the estate agents, estate agents might be held liable and sued by the purchaser.”

保障客戶及自身利益

PROTECT YOUR CLIENT AND YOURSELF

近期在地產代理之間最熱門話題，想必是有騙徒冒充住宅業主並騙取近300萬元訂金的新聞報道。這宗個案引起了社會及監管局的極大關注。

專業的地產代理有責任保障及促進其客戶的利益。而作為整個物業交易過程中的第一關，地產代理無可避免地會被期望成為核實業主身分的把關者之一。至於其他有份置身交易過程其中的人士，同樣也須擔起把關者的角色，不可置身事外。為保障公眾及自身利益，所有參與物業交易過程的各方，應檢視可以做些甚麼去避免日後同類欺詐事件再次發生，以及應採取什麼預防措施去盡力核實賣方身分。

我們明白這類騙案不能百分百杜絕。然而，若證實地產代理因疏忽而導致買方有所損失，地產代理有可能要負上責任及被買方追討。因此，地產代理應盡其百分百努力去打擊這類騙案。

是次騙案中，不單買方遭受損失，牽涉其中的持牌人亦上了寶貴一課。其實，這類個案並非沒有先例，亦正因如此，監管局曾於2009年發出執業通告(編號09-08(CR))，提醒持牌人核實賣方身分。

鑑於發生這宗新個案(希望不會接踵而至)，我們即將會更新上述這張現有的執業通告，有待執業及考試委員會審議後，為業界提供更詳細的指引。而在新修訂的執業通告發出前，我們已於5月中就有關議題向所有持牌人廣發電郵函件。我強烈建議所有持牌人認真對待此事，並到監管局網頁細讀有關函件以及上述現有的執業通告。

The hottest topic among estate agents lately is possibly the news report of a man impersonating the vendor of a residential property and swindling a deposit of nearly three million dollars. This case has aroused much community concern and, of course, caught the EAA's attention.

It is clear that professional estate agents have the responsibility to protect and promote the interests of their clients. Being the first party involved in the chain of a property transaction, estate agents are unavoidably expected to be one of the gatekeepers in verifying the identity of the vendors. That said, all other parties who participate in the chain are similarly expected to take up the gatekeeper role and cannot stand aloof from this responsibility. In the interest of the public as well as themselves, all parties in the chain should thus review what can be done by them for future prevention of similar fraud cases and what precautionary steps could be taken to verify the identity of vendors with due care and diligence.

We all understand that there will not be any 100% guarantee to stop such fraud cases, but if it is proven that the purchasers suffer a loss due to the negligence of the estate agents, estate agents might be held liable and sued by the purchaser. Hence, estate agents should be seen as making their 100% effort in combating such fraud.

In this fraudster case, not only the purchaser suffered a loss, the licensees involved would have also learnt a big lesson. That said, this case was not unprecedented and in fact the EAA did issue a Practice Circular (no. 09-08 (CR)) in 2009 to remind licensees to verify the identity of the vendors.

With this new case (hopefully not a trend) surfacing, we are going to update and revise this existing practice circular very soon. More detailed guidelines will be provided to the trade after the endorsement from the Practice and Examination Committee. Before the issuance of the revised circular, we have already emailed a letter to all licensees in Mid-May on this subject. The letter, as well as the abovementioned existing practice circular, is available on the EAA's website. I strongly advise all licensees to read it carefully and take it seriously.

有關「遵守《競爭條例》」的新執業通告 NEW PRACTICE CIRCULAR TITLED “COMPLIANCE WITH THE COMPETITION ORDINANCE”

為協助地產代理公司在經營其地產代理業務時，遵守《競爭條例》(「《條例》」)，監管局於2016年4月1日發出一份題為「遵守《競爭條例》」的新執業通告(編號16-01(CR))，新通告已於同日生效。

根據該通告，地產代理公司不得與競爭對手訂立或執行以妨礙、限制或扭曲競爭為目的或效果的協議，例如就佣金、折扣或回贈作出協議。

他們應就業務作出獨立的商業決定，以及不得參與有可能會達成或討論反競爭協議的會議。因此，地產代理商會應避免就佣金率向其會員作出任何指示或建議，而其會員亦不應執行商會發出的可能會損害競爭的指引或建議。

另外，具有相當程度的市場權勢的地產代理公司，不得藉從事以妨礙、限制或扭曲競爭為目的或效果的行為而濫用該權勢。

為加強地產代理公司對新執業通告的了解，監管局已把相關的「問與答」上載至監管局網頁(www.eaa.org.hk)供業界參考，並於6月份舉辦相關的持續專業進修講座。

The EAA issued a new Practice Circular (No.16-01 (CR)) titled “Compliance with the Competition Ordinance” on 1 April 2016 to assist estate agency companies to comply with the Competition Ordinance (“the Ordinance”) when carrying out their estate agency business. The new Circular became effective on the same date.

According to the Practice Circular, estate agency companies must not enter into or give effect to agreements which have the object or effect of preventing, restricting or distorting competition with their competitors, such as agreeing on commission, discounts or rebates.

They should make commercial decisions for their business independently and should not participate in meetings where anti-competitive agreements are likely to be reached or discussed. In this regard, estate agency associations should refrain from setting guidelines or making recommendations to members on rates of commission, and their members should not give effect to the guidelines or recommendations of estate agency associations which may harm competition.

Furthermore, estate agency companies with a substantial degree of market power must not abuse their market power by engaging in conduct which has the object or effect of preventing, restricting or distorting competition.

In order to enhance estate agency companies understanding of the new Circular, the EAA has uploaded a set of relevant “Questions and Answers” on the EAA’s website (www.eaa.org.hk) for the trade’s reference. Related CPD seminars have also been held in June already.

監管局持續專業進修計劃的優越嘉許獎章設計比賽頒獎典禮 PRIZE PRESENTATION CEREMONY OF THE EAA'S PREMIUM CPD ATTAINMENT SYMBOL DESIGN COMPETITION

為表揚持牌人持續參與持續專業進修計劃以提升其專業知識，監管局早前舉辦「金章」及「銀章」的優越嘉許獎章設計比賽。

評審以參賽作品的原創性、啟發性及實用性為準則，選出冠、亞、季軍得獎作品。冠軍作品的設計概念源自成功之鑰匙，喻意持牌人透過持續參與持續專業進修計劃及達到學分要求後，可豐富他們在物業交易方面的知識。

自2013年10月1日至2014年9月30日的進修時段開始，若持牌人連續在三個或五個進修時段達到學分要求(即12個學分)，將可分別獲頒發優越嘉許獎章的「銀章」或「金章」。因此，首批「銀章」預期將於今年稍後時間頒發給合資格的持牌人。

To recognise licensees' continuous effort in enhancing their knowledge through participation in the Continuing Professional Development ("CPD") Scheme, the EAA organised a design competition for the "Gold" and "Silver" Premium CPD Attainment Symbols.

By evaluating the level of creativity, originality, sophistication and practicality of the submission entries, three winning designs have been selected for a champion, a first runner-up and a second runner-up. The concept behind the champion design is about the key to success. Through continuous participation in the CPD scheme and achieving the CPD attainment target, licensees can enrich their knowledge of the property business.

The Premium "Silver" Symbols and "Gold" Symbols will be awarded to the licensees by the EAA upon their achievement of the CPD attainment target (i.e. obtaining 12 CPD points) for three and five consecutive CPD periods respectively, with effect from the CPD period commencing 1 October 2013 and ended 30 September 2014. Hence, the first batch of "Silver" Symbols will be awarded to the eligible licensees later this year.



(左起) 監管局行政總裁韓婉萍女士、監管局專業發展委員會主席余惠偉先生，JP及監管局主席梁永祥先生，BBS，JP與三位得獎者合照。

(From left) EAA Chief Executive Officer Ms Ruby Hon, Chairman of the EAA Professional Development Committee Mr Yu Wai-wai, JP, and EAA Chairman Mr William Leung Wing-cheung, BBS, JP, have a group photo with the three winners.

監管局獲頒發「同心展關懷」標誌及獲嘉許為「人才企業」 THE EAA AWARDED THE “CARING ORGANISATION” LOGO AND ACKNOWLEDGED AS A “MANPOWER DEVELOPER”

監管局非常榮幸獲香港社會服務聯會頒發2015/16年度「同心展關懷」標誌，以表揚局方實踐關懷精神。

此外，監管局亦獲僱員再培訓局嘉許為「人才企業」，表揚局方在人才培訓及發展方面的卓越表現。

The EAA is honoured to be awarded the “Caring Organisation” logo by the Hong Kong Council of Social Service for 2015/16 in recognition of demonstrating a caring spirit.

In addition, the EAA was also acknowledged as a “Manpower Developer” by the Employees Retraining Board for its outstanding achievements in manpower training and development.



監管局服務總監張秀成先生代表監管局接受「人才企業」獎座。

Mr Cavan Cheung, Director of Services of the EAA, receives the “Manpower Developer” Award on behalf of the EAA.

監管局電子服務接受網上個人牌照續牌申請 THE EAA'S E-SERVICES NOW ACCEPT ONLINE APPLICATIONS FOR INDIVIDUAL LICENCE RENEWAL

隨着監管局的電子服務系統提升，由2016年5月4日起，個人牌照持有人可透過監管局網站遞交其續牌申請。

已註冊電子服務賬戶的地產代理(個人)牌照或營業員牌照持有人，均可使用此項網上申請服務。同時，他們須持有信用卡(Visa或萬事達卡)或繳費靈賬戶及其網上密碼，以完成網上付款程序。

有興趣的持牌人可瀏覽監管局網頁了解更多詳情及觀看示範短片，或致電監管局熱線2111 2777查詢。

With the newly enhanced electronic services provided by the EAA, individual licensees can submit their licence renewal applications through the EAA's website starting from 4 May 2016.

Holders of an estate agent's licence or salesperson's licence who have registered an e-service account at the EAA's website are eligible to use this new online application service. They must have a credit card (Visa or MasterCard) or a PPS account and its Internet password in order to complete the online payment process.

Interested licensees may visit the EAA's website for more details and a demonstration, or contact the EAA's hotline at 2111 2777 for any enquiry or assistance.

新小冊子－《住宅物業開門7件事》 NEW LEAFLET ON “KEY INFORMATION OF RESIDENTIAL PROPERTIES”

為宣傳地產代理向客戶提供正確及法例訂明的物業資料的重要性，監管局出版了一本名為《住宅物業開門7件事》的新小冊子，提醒地產代理及大眾在進行物業交易時，須向客戶提供／應從地產代理取得哪些重要的物業資料。

新小冊子設計為可放於口袋呎吋，並附有磁石封面及封底。公眾可於監管局網頁上瀏覽該小冊子，或親臨監管局辦事處索取。

In order to promote the importance of estate agents' providing accurate and prescribed property information to clients, the EAA has published a leaflet of “Key Information of Residential Properties” to remind both licensees and the public of the certain key property information they should provide to clients/obtain from estate agents during residential property transactions.

The leaflet is pocket-size with magnetic front and end covers and is available at the website and the EAA office.



郵費不足致延誤送遞 INSUFFICIENT POSTAGE DELAYS DELIVERY

根據香港郵政的政策，若郵件郵資不足，有關郵件須繳付欠資及相關費用，而有關郵件的處理及派遞亦會受到阻延。郵資不足的郵件也可能會被退回予寄件者。

因此，監管局強烈建議持牌人及公眾人士在投寄郵件予監管局前，先檢查並確保該郵件已支付足夠郵資。如因郵件郵資不足而導致延誤派遞，可能導致監管局的服務延誤，以致本局未能於服務承諾的時限內完成有關處理。另外，由於監管局並沒有責任承擔郵資差額，我們有可能要求寄件人先補付相關費用後始處理其事項。

為免不必要的延誤，監管局鼓勵持牌人及公眾人士採用其他方式如電郵或傳真，以聯絡或傳遞資料予本局。

According to the policy of Hongkong Post, mail items bearing insufficient postage are subject to surcharge and delay in delivery to the addressees. Insufficient postage could also result in the mail items being returned to the sender.

Licensees and the public are thus strongly advised to check and ensure that mail items to the EAA bear sufficient postage before posting. Should there be a delay in the delivery of mail items bearing insufficient postage, the EAA's services could be delayed and we may not be able to achieve the time target of the related performance pledge. Furthermore, the EAA is not obliged to absorb the insufficient postage and we may request the sender to repay the surcharge to the EAA before processing his/her request.

To avoid unnecessary delay in the processing of requests, licensees and the public are encouraged to use other ways of communication to contact or send any information to the EAA, such as email or fax.

關於業主繳納差餉及／或地租的建議 **ADVICE TO PROPERTY OWNERS ON RATES AND/ OR GOVERNMENT RENT LIABILITY**

差餉物業估價署(「估價署」)提醒各持牌人，在物業交易之前，須提醒客戶有關繳納差餉及／或地租的責任，以及查閱並繳清所累欠的差餉及／或地租。任何逾期未繳納的差餉及／或地租均會被徵收附加費，政府也可採取法律行動追收欠款。

此外，持牌人也應提醒客戶於完成交易後，儘快通知估價署有關更改任何登記繳納人的資料。

如欲了解更多資訊，請致電2152 0111與估價署聯絡，或瀏覽該署網頁(www.rvd.gov.hk)。

The Rating and Valuation Department (“RVD”) reminds licensees to remind their clients of the liability of rates and/or Government rent and to check and clear any outstanding balance of rates and/or Government rent prior to the transaction of the property. Any outstanding balance of rates and/or Government rent will be imposed as a surcharge for late payment and the Government may take legal action to recover the outstanding amount.

In addition, licensees should also remind clients to inform the RVD of any changes in the registered payer’s particulars as soon as possible after the transaction has been completed.

For any further information, please contact the RVD at 2152 0111 or visit its website at (www.rvd.gov.hk).

恐怖分子或與恐怖分子有聯繫者的更新資料 **UPDATING OF SPECIFICATION OF TERRORIST AND TERRORIST ASSOCIATES**

監管局不時接獲保安局通知，有關聯合國安全理事會委員會發出的恐怖分子或與恐怖分子有聯繫者的更新名單。持牌人應採取措施協助打擊洗黑錢活動，及留意更新名單。

請留意，聯合國已於2016年4月29日發出恐怖分子或與恐怖分子有聯繫者的更新名單，相關公告已刊於政府憲報內。有關詳情，持牌人可參閱政府的憲報資料(www.gld.gov.hk/egazette/pdf/20162017/cgn201620172358.pdf)。

監管局提醒所有持牌人，如發現任何懷疑洗黑錢個案，應向聯合財富情報組(www.jfiu.gov.hk)舉報。

The EAA is notified by the Security Bureau regularly on the updates of the list of terrorists and terrorist associates from the United Nations Security Council Committees. Licensees should adopt measures to help combat money laundering activities and pay attention to the updated list.

Please note that the United Nations has issued an updated list of terrorists and terrorist associates and a notice was published in the Gazette on 29 April 2016. Licensees may read the notice at the Government’s Gazette for more details (www.gld.gov.hk/egazette/pdf/20162017/egn201620172358.pdf).

The EAA reminds all licensees that any suspicious cases of money laundering should be reported to the Joint Financial Intelligence Unit (www.jfiu.gov.hk).

工廈不可當住宅

PROPER USE OF INDUSTRIAL BUILDINGS

近年，香港住宅單位的租金持續偏高。為解決住屋問題，部分市民不惜以較低的租金租住工廈單位，在供求關係下，這類非法居住的工廈單位似乎越來越多。

雖然租金便宜，但擅自更改土地或物業用途，把工廈改裝成住宅，除了可能違反地契條款而被政府採取執法行動，亦可能對住客構成危險，而釀成意外的新聞亦時有聽聞。持牌地產代理應謹記，保障客戶的利益十分重要，不可提供錯誤或具誤導性的物業資料（例如物業用途）予其客戶，亦切勿作出任何陳述令準買家或準租客誤以為有關單位可以用作居住，否則除了可能導致客戶遭受損失，更可能因違反《操守守則》而被監管局紀律處分。

今期《專業天地》會與讀者探討居住於工廈的風險，以及地產代理在處理工廈單位的交易時要注意的事項。

租住工廈 安全成疑

近年有不少工廈業主把單位包裝成裝修別緻、設備齊全的「工作室」作招徠，標榜設有獨立洗手間、熱水爐、煮食設備、二十四小時出入的電子門鎖等。這些所謂「工作室」，租金因較住宅便宜，加上設備齊全，吸引不少人冒險租住。然而，住在這些表面看似與普通住宅單位無異的工廈單位，潛藏的風險很大。

As the rents for Hong Kong residential properties have increased in recent years, more and more people are now residing in industrial building units due to their lower rental costs. Under the law of supply and demand, the number of such illegal residences is on the rise.

Though the rent of these units is attractive, changing the use of industrial building units into residential use without prior government approval could violate the land lease conditions. In addition to possible government enforcement of the law and/or the land lease conditions, living in industrial units could also be dangerous. News of accidents is common. Licensed estate agents are reminded that protecting the interests of clients is important and they should not provide any false or misleading property information (such as the permitted use) to clients. They should not make any misleading representations to prospective purchasers or tenants that the relevant units can be used for residential purposes. Otherwise, the clients may suffer a loss and licensees may be subject to disciplinary action by the EAA for breaching the *Code of Ethics*.

In this issue of *Horizons* we will look at the risks of residing in industrial buildings and remind estate agents the points-to-note when handling the transactions of industrial building units.

LIVING IN INDUSTRIAL BUILDINGS PUTS SAFETY AT RISK

Some owners of industrial buildings have converted their units into decent-looking and well-equipped “studio flats” or so called “working studios” in recent years. Self-contained washrooms, water heaters, cooking appliances and 24-hour electronic locks etc. are available. As the rent for these “studios” is lower than for residential units, they have attracted many people. However, there are many potential risks in living in this kind of “look-alike residential unit”.

焦點話題 IN FOCUS

首先，工廈的照明及通風系統、樓宇結構，以至走火通道、消防設施等，均有別於一般住宅大廈的要求。此外，某些工廈單位甚至於分間成多個獨立單位（「劏房」），卻只有一條走廊及入口供進出，一旦發生火警，後果堪虞。翻查過往新聞資料，我們不難發現部分工廈的梯間放置不少雜物，而部分逃生出口甚至被上鎖，一旦發生火警根本逃生無門。同時，有些工廈的部分樓層，可能仍有工業活動進行或被用作存放危險及易燃物品，對住客構成危險。

擅改用途 保險不賠

其次，把工廈當成住宅還涉及保險賠償問題。即使住客已購買水險、火險或者第三者責任保險，一旦發生意外，也可能因單位用途被擅自更改，令住客隨時有可能不獲保險公司賠償。

謹慎處理 切勿違規

作為地產代理，在處理工廈物業交易時應要特別小心，例如，在向準租客或準買家介紹有關單位時，不可向客戶明示或暗示該等單位可供居住，例如說「有不少人都住在樓上樓下」等等。其實，如有客戶向代理問及單位是否可當作住宅時，代理應向客戶重申物業的許可用途屬工業用途，絕不可以誤導客戶。

Firstly, the regulations for the lighting and ventilation systems, building structures, fire exits and fire safety measures for industrial buildings are different from those for residential buildings. Moreover, some industrial building units are even subdivided into numerous individual small flats (“subdivided flats”) with a single corridor and entrance only. In case of fire, the consequences would be disastrous. It is not difficult to find old news reports of cases where staircases were obstructed in industrial buildings and the emergency exits were locked in some cases, blocking the way out in case of fire. Furthermore, some units in industrial buildings may still have industrial activities going on or might be used for storage of dangerous and inflammable goods, both of which increase the risks for the occupants.

UNAUTHORISED CHANGE IN PERMITTED USE WILL AFFECT INSURANCE COMPENSATION

In addition, living in industrial buildings may also affect insurance compensation. Because of the unauthorised change of use of the units, occupants might not get any compensation from the insurance company even when insurance against fire, flood and third party liability has been bought.

BE CAUTIOUS TO AVOID MALPRACTICE

Estate agents should be extremely cautious when handling transactions for industrial properties. They should not advise or imply to their prospective purchasers or tenants that these units can be used for residential purposes, for example, by saying that “many people are also living in the same building”. If the clients ask whether the units can be used for residential purposes, estate agents must not mislead them and should reiterate that the permitted use of the property is industrial.

事實上，物業的「入伙紙」會註明有關物業的許可用途，而政府租契及大廈公契內亦可能有條款，表明大廈不同部分或不同層數的用途。假如任何人士違反該用途限制，有可能導致物業管理人、業主立案法團或其他業主提出申索，令買家或租客有所損失。

再者，如違反政府地契條款，擅自更改物業用途，也會產生業權問題，其客戶有機會蒙受損失。地政總署亦可能採取行動，向住客或業主發出警告信，要求改正違反地契之用途，甚至收回相關單位。

基於以上風險，作為一個負責任的專業地產代理，在處理有關工廈單位交易時，應提醒客戶（包括業主、準買家或租客）切勿違反地契上的有關條款，並應當清晰向客戶反映違反這些條款的風險及後果，以保障其利益。其實，地政總署亦不時提醒持牌人在發出物業廣告時，不應明示或暗示這些單位可供居住，而須列明其實際許可用途。

總括來說，地產代理介紹工廈單位給客戶居住，固然違規；而住客冒險入住亦隨時蒙受損失；至於業主，也可能面對被收樓，各方都不應冒險違法及違反地契條款，否則隨時得不償失。

The permitted use of the property is specified in the occupation permit. The government lease and the Deed of Mutual Covenant may also contain terms and conditions which stipulate the permitted use of different parts or floors of the building. Any breach of the user restrictions may lead to claims from the property management company, the owners' corporation or other owners. Thus, the purchaser or tenant may suffer a loss.

Furthermore, changing the permitted use of a property and breaching the terms of the government lease may cause a defective title of the property and a possible loss for the client. The Lands Department may also initiate lease enforcement action by issuing warning letters to the occupants or owners, or even exercise its right of re-entry.

In view of all the above risks, a responsible and professional estate agent when handling transactions for industrial building units should remind their clients (including the property owners, prospective purchasers or tenants) not to breach the conditions of the relevant leases, and tell them clearly the risks and consequences in case of a breach, in order to protect their interests. As a matter of fact, the Lands Department often reminds licensees not to express or imply that these units can be used for residential purposes in related advertisements, and instead they should clearly set out the permitted use of such units.

By and large, estate agents must not introduce industrial building units to clients for residential purposes. Occupants of these units may not be protected, while at the same time owners of these units may face a vesting order. All parties might suffer a loss and thus should not put themselves at risk by breaking the law and the terms and conditions of the land lease.





廖玉玲太平紳士
Ms Elaine Liu Yuk-ling, JP

- 大律師
Barrister-at-law
- 稅務上訴委員會副主席
Deputy Chairman, Board of Review
(Inland Revenue Ordinance)
- 牌照上訴委員會副主席
Vice Chairman, Licensing Appeals Board
- 區域法院規則委員會會員
Member, District Court Rules Committee

監管局副主席及 紀律委員會主席 廖玉玲太平紳士

MS ELAINE LIU YUK-LING, JP, EAA VICE-CHAIRMAN AND CHAIRMAN OF THE DISCIPLINARY COMMITTEE

本期《專業天地》專訪了監管局副主席及紀律委員會主席廖玉玲太平紳士，了解一下她對監管局工作的看法，以及該委員會的工作。

In this issue of *Horizons*, we interview Ms Elaine Liu Yuk-ling, JP, EAA Vice-chairman and Chairman of the Disciplinary Committee, about her thoughts on the EAA's work and also the work of the Committee.

問： 你自2008年起出任監管局成員後，曾參與不同委員會的工作，並於兩年前出任監管局副主席。可否和《專業天地》的讀者分享一下，作為監管局成員多年的感受？

Q: You have been a Board member of the EAA since 2008 and have served on a number of committees. Two years ago, you were appointed the EAA Vice-chairman. Could you share with the readers of *Horizons* your feelings on serving on the EAA Board over these years?

答： 八年時光轉眼飛逝，監管局的工作一點也不輕，我投放了不少時間，全情投入地完成這些任務。我很榮幸於兩年前獲委任為副主席，與主席及其他董事局成員共事。他們對監管局工作投入，並各有真知灼見。我深信監管局及業界在董事局的帶領下，定必獲益良多。地產代理行業講求分秒必爭，在瞬息萬變的市場環境中，大部分持牌人都能靈活敏捷地適應不同的市況。作為監管局的一分子，我和局方都必須時刻保持警覺，密切關注業界的執業情況，避免他們步向歪途。

A: Eight years have passed by quickly without much notice. The works at the EAA are plenty and took up considerable time of mine. I undertake these tasks rapturously. I was honoured to be appointed as the Vice-chairman two years ago and am privileged to work together with the Chairman and other Board members whom displayed much dedication and insights in their works at the EAA. I trust that the EAA and the trade must have benefited under such guidance. The pace in the estate agency industry is fast and the market environment fluctuates. Many of our licensees are flexible and are able to quickly adapt to different market conditions. The EAA, and myself as a member of it, shall stay alert, be apprised of their practice and work to seeing that the licensees would not take on the wrong paths.

問： 你自2012年起出任紀律委員會主席至今，在這四年期間，你認為業界在守法循規上表現如何？

答： 我出任紀律委員會主席至今已有四年時間。在此之前，我曾出任牌照委員會及第28條調查小組的主席。透過在這些委員會的工作，我對業界的情況有更深的認識。大概因為我本身任職大律師，我經常處理監管局有關規管及紀律方面的工作，並主持過為數不少的紀律研訊。我注意到，雖然大部份違規個案的性質比較簡單直接，但也有些複雜的個案需要較多資源及較長時間調查和進行研訊。猶幸委員會成員及監管局員工盡心盡力，以專業態度克盡己職，落力和謹慎地處理每個個案。我們盡力確保研訊公平公正，並向違規的持牌人作出適當並具阻嚇力的處分。我相信，公正公開的紀律研訊能大大提升整個行業的專業水平。

問： 你認為現時業界的專業水平及地位如何？

答： 業界的專業水平及地位在近年已較過往有所改善。不單紀律研訊的數字有所減少，因違規而被懲處的持牌人人數亦然。當然偶爾仍有些違規代理妄顧客戶利益，或走捷徑以致業界聲譽受損，這些行為在市道較差時尤見明顯。事實上，要進一步提升業界的社會地位，單靠監管局對違規人士處分，以及透過專業培訓活動教育持牌人並不足夠，業界的共同努力是不可或缺的。即使前路漫漫，但我相信，只要監管局與業界對持續提高持牌人的水平，令地產代理發展成備受尊重之專業的目標一致，地產代理成為備受公眾尊重的專業之路將不遠矣。

Q: You took up the Chairmanship of the Disciplinary Committee in 2012. During these four years, what do you think of the trade's performance on their compliance?

A: I have been serving as the Chairman of the Disciplinary Committee for four years by now. Prior to my taking up the chair of the Disciplinary Committee, I have also chaired the Licensing Committee and the Section 28 Investigation Panel. I came to know more about the trade through my works in these committees. Probably because of my profession as a barrister, I was often tasked to deal with the regulatory and disciplinary aspects at the EAA. I have chaired a substantial number of inquiry hearings on disciplinary matters. While most of the breaches committed by the licensees are straight forward in nature, there are many cases with much complexity and require more effort and longer period of time to investigate as well as to carry out the inquiry hearing. We have a team of committee members and EAA staff who are committed and performed their works with professionalism. Each case is well handled with diligence and prudence. We have worked our best to ensure that disciplinary actions are conducted fairly, appropriate sanctions with deterrent effect are ordered against those who have committed breaches. We will continue to do so. I trust that with fair and open inquiry hearings in place, the standard of the trade as a whole will be much enhanced.

Q: What do you think of the trade's professional standard and status nowadays?

A: These are much improved over the years. The decrease in the number of inquiry hearings and disciplined non-compliant licensees are telling. Now and then, there are some offenders who risk their client's interest, take the shortcut and bring disrepute to the trade, particularly in difficult times. That said, to further raise the social status of the trade in the society, it is not sufficient to only have the EAA's continuous effort in sanctioning the non-compliance and educating the licensees at large by organising professional training activities and others, it also requires the trade's unified effort and commitment. The road in the front of us may still be long but I believe both the EAA and the trade share the same goal to uphold the high standard of our licensees and maintain the estate agency as a respectable profession. With these common goals, we shall be there in not too far the future.

紀律研訊個案：失實陳述導致客戶損失 DISCIPLINARY HEARING CASE: MISREPRESENTATION LEADING TO LOSS FOR CLIENT

引言

持牌人應保障客戶的利益，不應作出任何失實陳述，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should protect the interests of their clients and should not make any misrepresentation to them. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名客戶打算租用物業經營零售生意，一名地產代理向她介紹一座商業大廈的「樓上舖」。雖然該客戶從其他代理口中得知，該單位的許可用途為辦公室，但該名地產代理卻向她稱，該座商業大廈的大廈公契中並沒有註明該單位不可作零售用途，而且辦公室和零售皆屬商業性質。

由於得到該地產代理的保證，客戶遂決定承租該物業。後來，管理公司不允許該物業被用作零售用途，單位的裝修圖則亦因不符合該物業的大廈公契及佔用許可證中註明的「辦公室及其作非住宅用的附屬地方」用途而不獲管理公司批准。該租客最終只好提前退租，並向監管局作出投訴。

INCIDENT

A client was interested in renting a property for retail business and an estate agent introduced to her an “upstairs shop” in a commercial building. Though she heard from other estate agents that the permitted use of the said premises was for office purposes, she was told by this estate agent that there was no stipulation on the Deed of Mutual Covenant that the property was not allowed for retail use, and the use of “office” and “retail business” were both commercial in nature.

After being ensured by this estate agent, the client confirmed the leasing of the unit. Later on, the property management company refused to allow the property to be used for retail purpose, and rejected the renovation plan of that unit as it failed to comply with the Deed of Mutual Covenant and the occupation permit, which states that the premises is for “offices with ancillary accommodation for non-domestic use” only. The tenant therefore had to terminate the tenancy agreement and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該名地產代理沒有提醒租客在訂立臨時租約前，尋求法律意見，也沒有事先通知租客將該單位用作零售的風險，她因而違反了《操守守則》第3.4.1段：「地產代理和營業員應保障和促進客戶的利益。」

考慮個案性質及該名地產代理的違規紀錄後，紀律委員會決定譴責她及罰款3,000元，並吊銷其牌照21日，以及要求她在12個月內取得持續專業進修計劃下的12個核心科目學分。

RESULT

The EAA Disciplinary Committee found that the estate agent failed to remind the tenant to seek legal advice before entering into the provisional tenancy agreement, or to inform the tenant in advance of the risk of using the unit for retail use. Hence, she was in breach of paragraph 3.4.1 of the *Code of Ethics* which stipulates that “Estate agents should protect and promote the interests of their clients.”

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to reprimand her, impose a fine of \$3,000 and suspend her licence for 21 days. She was also required to obtain 12 points in the core subjects of the CPD Scheme within 12 months.



香港新界地產代理商聯會永遠會長
廖志明先生
Mr Liu Chi-ming
Life-long President of H.K.N.T.
Estate Agents & Merchants
Association

業界回應

不少地產代理因過分依賴自身經驗，或對自己過分自信而沒有建議客戶諮詢法律意見。地產代理應憑本身在地產方面的知識和經驗向客戶提供服務和意見，並且應盡責地建議客戶按需要尋求法律意見。

COMMENT FROM TRADE

Many estate agents rely too much on their own experience and hence do not advise their clients to get legal advice. Estate agents should not only provide services and opinions based on their knowledge and experience in the real estate business, but should also advise their clients to seek legal advice, if necessary, in a responsible manner.

紀律研訊個案：沒有提醒賣方有關額外印花稅 DISCIPLINARY HEARING CASE: FAILING TO BRING SPECIAL STAMP DUTY TO THE VENDOR'S ATTENTION

引言

持牌人應充分掌握有關物業市場的政府措施，以盡責地向客戶提供建議。例如，倘若有關物業交易會涉及額外印花稅，則持牌人應在訂立任何臨時買賣合約前提醒客戶。否則，他們有可能被監管局紀律處分。

INTRODUCTION

Licensees should be conversant with the Government's measures for the property market so as to advise clients in a responsible manner. For example, licensees should bring to their clients' attention before entering into any Provisional Agreement for Sale and Purchase ("PASP") if the disposal of the property is subject to Special Stamp Duty ("SSD"). Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員在一項住宅物業交易中同時代表買賣雙方。在簽訂臨時買賣合約前，該營業員並沒有提醒賣方，由於是次交易是賣方在購入該物業的36個月內進行，故是次該單位的交易將須繳納額外印花稅。其後，賣方接獲稅務局通知須繳納額外印花稅，不滿之下遂向監管局作出投訴。調查期間，同時揭露了該營業員曾向賣方聲稱購買該物業的買家是其姪女，但事實上買方是其女兒。

INCIDENT

A salesperson represented both the purchaser and the vendor in a residential property transaction. Prior to the signing of the PASP, the salesperson failed to bring to the attention of the vendor that the sale of that property was within 36 months of the vendor's acquisition, and as such, the sale would be subject to SSD. Later on, the vendor was told by the Inland Revenue Department that she would be liable to pay the SSD. Feeling aggrieved, the vendor lodged a complaint with the EAA. During investigation, it was also revealed that the salesperson had told the vendor that the purchaser was her niece but in fact it was her daughter.

研訊結果

該營業員承認未有留意有關額外印花稅的事宜。監管局紀律委員會認為她在執業時未能熟悉並遵守《地產代理條例》、其附屬法例、《操守守則》及其他由監管局發出的指引，因而違反了《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、本操守守則，以及由監管局不時發布的所有其他指引。」另外，由於她向賣方表示買家是其姪女，但實際上買方是其女兒，她同時違反了《操守守則》第3.7.2段，即「地產代理和營業員應避免做出可能令地產代理行業信譽及/或名聲受損的行為。」

在考慮個案的性質及所涉及的金額後，紀律委員會決定譴責該營業員及暫時吊銷其牌照14天，並在其牌照上附加條件，要求她在24個月內須取得持續專業計劃下的24個核心科目學分以作為上述兩項違規事項的整體懲處。

RESULT

The salesperson said that she was not aware of the SSD. The EAA Disciplinary Committee was of the view that she had failed to be fully conversant with the EAO, its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA, thus she was in breach of paragraph 3.2.1 of the *Code of Ethics* which states: “estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this *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”. In addition, as she had told the vendor that the purchaser was her niece but in fact it was her daughter, she was also in breach of paragraph 3.7.2 of the *Code of Ethics*, which provides: “estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade”.

Having considered the nature of the case and the amount of money involved, the Disciplinary Committee reprimanded the salesperson, suspended her licence for 14 days, and attached a condition to her licence, requiring her to obtain 24 points in the core subjects of the CPD Scheme in 24 months as the total sanctions for the two breaches.



地產代理管理協會會長
葉國雄先生

Mr Ivan Ip
President of Estate Agents
Management Association

業界回應

地產代理有責任保障客戶利益，在處理交易過程中，向客戶提供專業意見。從業員亦必須經常留意政府及監管局發出有關物業買賣的法規與指引，並在執業時秉持誠實和嚴正的態度，真實無誤地向客戶披露一切有潛在利益影響的事項，發揮價值，提高行業專業認受性。

COMMENT FROM TRADE

When handling property transactions, estate agents have obligation to protect the interests of clients, as well as to provide professional advices.

Estate agents shall keep themselves informed of all property transaction regulations and guidelines issued by the Government and Estate Agents Authority from time to time. In the course of business, agents should provide services to clients with honesty and integrity, as well as disclosure of all potential issues that may cause impact to the interest of clients, so as to demonstrate one's professionalism and establish industry recognition.

持續專業進修講座

CPD SEMINAR

企業管理與內部控制 — 概述及於地產代理業的實施

CORPORATE GOVERNANCE AND INTERNAL CONTROL – AN OVERVIEW AND APPLICATIONS FOR THE ESTATE AGENCY INDUSTRY



In order to enhance estate agency practitioners' knowledge regarding corporate governance and internal control, the EAA organised a seminar on the subject on 22 April 2016.

Representatives of Ernst & Young were invited to brief licensees on the basic concept of corporate governance, the relevant policies and principles.

為了提升地產代理從業員就企業管治和內部控制的認識，監管局於2016年4月22日舉辦了相關的講座。

是次講座由安永會計師事務所的代表擔任主講嘉賓，為持牌人講解企業管治的基本概念、相關的政策和原則。

席間，安永會計師事務所的代表為持牌人詳細解釋內部控制和企業管治的基本原則、地產代理就設立有效制度的責任、訂立妥善程序和清晰的員工指引的重要性及有效監察員工操守的實務，並就有關防止洗黑錢、舞弊和合謀，保障個人私隱及申報利益的措施舉例說明，讓參加者更容易瞭解有關的概念以便應用於日常工作。

講座深受從業員歡迎，有近110名持牌人出席，參加者均對講座給予正面評價。

At the seminar, the representatives of Ernst & Young provided detailed explanations to licensees on the basic principles of internal control and corporate governance, responsibilities of estate agents in establishing an effective system, the importance of establishing procedures and clear guidelines for staff to follow and practical ways in monitoring staff conduct effectively. Furthermore, the speakers also quoted a number of examples and illustrative cases relating to the measures in the prevention of money laundering, malpractices and complicity, protection of personal privacy, and declaration of interest to help participants understand the related concepts and apply them in their daily work.

The seminar was well received by about 110 licensees and many participants commented that they highly valued the informative session delivered by the professional speakers.



執業問與答

PRACTICE Q&A

**在《專業天地》內，我們會解答與持牌人執業息息相關的一些常見提問。
In Horizons, we will answer selected enquiries commonly raised
by licensees concerning estate agency practice.**

問： 地產代理可否安排客人與持有物業的有限公司訂立股權轉讓協議？

Q. Can estate agents arrange for their clients to enter into an agreement for the sale and purchase of shares in a limited company which holds a property?

答： 持牌人在沒有法律意見之下安排客人訂立股權轉讓協議是不適當及高風險的。尚若要充分保障買賣雙方的權益，一份全面的法律文件是必須的。有別於一般的臨時買賣協議，股權轉讓協議是一份複雜的法律文件，買家可能在股份轉讓的同時，接管了該有限公司的債務和責任。

持牌人應建議客戶在簽訂這些股份轉讓協議前，先諮詢法律意見，以免因交易而遭受任何損失。

A. It is inappropriate and highly risky for licensees to arrange for clients to enter into an agreement involving a transfer of shares without legal advice. If the parties' interests are to be adequately protected, comprehensive legal documentation is required. Unlike the usual Provisional Agreement for Sale and Purchase, an agreement for the sale and purchase of shares is a complicated legal document. Purchasers may take over the debts and liabilities of a limited company at the same time with the transfer of the shares.

Licensees should recommend their clients to seek legal advice before entering into any agreement for transfer of shares in order to prevent them from suffering any loss resulting from the transaction.

問： 銀行估價時提供的單位實用面積，尤其是一些舊式住宅單位的實用面積，有機會與「物業資訊網」顯示的有所出入。持牌人應以哪個來源為準？

Q. The saleable area of a unit according to the valuation of banks may be different from that shown on the Property Information Online, especially for old residential units. Which source should licensees refer to?

答： 差餉物業估價署(「估價署」)的「物業資訊網」是一個查詢住宅物業資訊的平台。由於早期並沒有一套統一的準則去計算物業的實用面積，故不同的來源所得出來的實用面積或會有所差別。

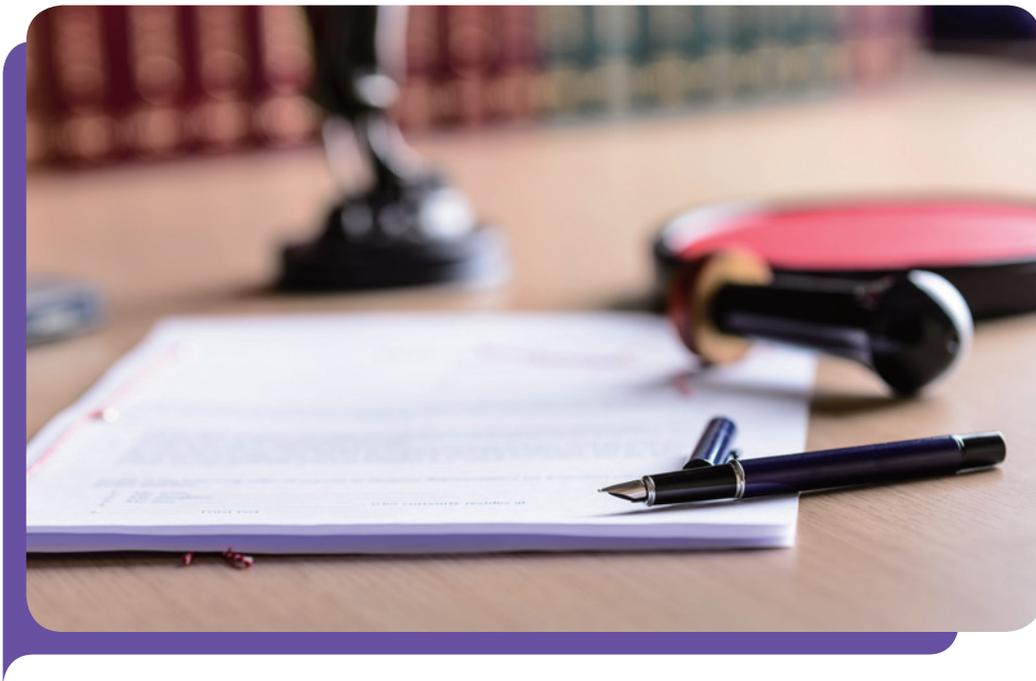
根據《地產代理常規(一般責任及香港住宅物業)規例》，持牌人應採用從估價署或於土地註冊處註冊的首次轉讓的買賣協議所取得的實用面積，因為這兩者才是訂明來源。而且，持牌人及市民均容易從此兩項來源取得相關資料。

A. “Property Information Online” provided by the Rating and Valuation Department (“RVD”) is the platform for enquiry on the information of residential property. Since there was no consistent standard or criteria in calculating the saleable area of properties available in earlier decades, the saleable areas provided by other sources may differ.

According to the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, licensees should adopt the saleable area information obtained from the RVD or the agreement for sale and purchase of the first assignment of the property registered in the Land Registry, as both are the prescribed sources of information. These two sources can be easily accessed by both licensees and the public.

何謂「可供出售證明書」？

“CERTIFICATE OF AVAILABILITY FOR SALE”



「可供出售證明書」是指由房屋委員會（「房委會」）發給居者有其屋（「居屋」）計劃或租者置其屋計劃（「租置計劃」）單位業主的文件，准許他們在居屋第二市場出售其單位而毋須向房委會繳付補價。

根據《房屋條例》，居屋及租置計劃的單位均設有轉售限制。單位由首次售出日起計第三年起，業主可把單位在居屋第二市場轉售。

持牌人在處理居屋第二市場轉售的單位的交易前，應提醒客戶須向房屋署的租約事務管理處遞交所有必須的文件及取得「可供出售證明書」，方可在居屋第二市場放售其單位。持牌人亦應不時瀏覽房委會的網頁，以獲取最新資訊。

A “Certificate of Availability for Sale” is a document issued by the Housing Authority (“HA”) to the flat owners of the Home Ownership Scheme (“HOS”) or the Tenants Purchase Scheme (“TPS”) who would like to sell their flats in the HOS Secondary Market without payment of a premium to the HA.

Under the Housing Ordinance, flats under the HOS and TPS have alienation restrictions. Owners may sell their flats in the HOS Secondary Market from the third years onwards from the date of first assignment.

Before handling the sale of any flats under the HOS Secondary Market, licensees should remind their clients to submit the necessary documents to the District Tenancy Management Office of the HA and obtain the “Certificate of Availability for Sale” before listing the property for sale in the Secondary Market. Licensees should also check the website of the HA to retrieve the most updated information from time to time.

活動紀要

EVENTS AND ACTIVITIES

2016年3月12日舉辦之公開講座

PUBLIC SEMINAR HELD ON 12 MARCH 2016

繼去年9月舉辦首次公開講座反應熱烈後，監管局於2016年3月12日舉辦了第二場公開講座，名為「精明置業系列：住宅租賃知多啲」。

Following the overwhelming response to the EAA's first public seminar held in September last year, a second public seminar titled "Learn more about the tenancy matters of residential properties" was held on 12 March 2016.



講座由前新聞主播方健儀女士擔任主持，邀請了四位來自不同專業範疇的講者，包括黃元山先生、楊文佳測量師、江玉歡律師及陳汝傲律師。席上他們分享對樓市走勢的見解、租客揀選「筍盤」的要訣、租賃上常見的法律糾紛，以及委託地產代理處理住宅租賃時需注意的事項。

The seminar, hosted by former news anchor Ms Akina Fong, had invited four speakers from different professions, including Mr Stephen Wong, Sr Gary Yeung, Ms Doreen Kong and

Mr Chan U-keng. They shared insights on the property market trend, useful tips for tenants on choosing the "perfect" flat to rent, common legal disputes on residential tenancy and the important points-to-note when appointing estate agents to handle residential tenancy respectively.

是次講座吸引了超過300位觀眾。監管局未來會繼續就其他議題舉辦更多公開講座。

An audience of over 300 attended the seminar. The EAA will continue to hold public seminars on other topics in the near future.



2016-03-21

監管局主席梁永祥先生，BBS，JP(前排右四)及行政總裁韓婉萍女士(前排右六)，出席香港新界地產代理商聯會舉辦的春節聯歡晚會。

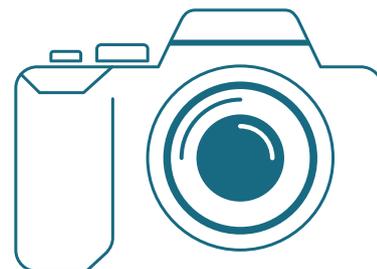
Chairman of the EAA, Mr William Leung Wing-cheung, BBS, JP, (fourth from right on the front row) and the EAA's Chief Executive Officer, Ms Ruby Hon Yuen-ping (sixth from right on the front row), attend the annual dinner of H.K.N.T. Estate Agents & Merchants Association.



2016-03-23

監管局於柴灣區舉辦持牌人「聚焦小組」會議，與出席的持牌人就執業的情況交流意見。

The EAA organises a focus group meeting with licensees at Chai Wan District and exchanges views with the attending licensees on their practice.



統計數字

STATISTICS

考試 EXAMINATIONS

地產代理資格考試 ESTATE AGENTS QUALIFYING EXAMINATION

考試日期
Examination date
21/03/2016



營業員資格考試 SALESPERSONS QUALIFYING EXAMINATION

考試日期
Examination date
26/04/2016



牌照數目 (截至2016年5月31日) NUMBER OF LICENCES (AS AT 31/05/2016)

營業員牌照 Salesperson's Licence

20,050

地產代理 (個人) 牌照 Estate Agent's Licence (Individual)

17,135

個人牌照總和 Total no. of individual licences

37,185

地產代理 (公司) 牌照 Estate Agent's Licence (Company)

3,265

營業詳情說明書 (截至2016年5月31日) NUMBER OF STATEMENTS OF PARTICULARS OF BUSINESS (AS AT 31/05/2016)



接獲的投訴 (2016年1月至5月) NUMBER OF COMPLAINT CASES RECEIVED (JANUARY TO MAY 2016)

1,852

已處理的投訴個案結果* (2016年1月至5月) RESULTS OF COMPLETED COMPLAINT CASES* (JANUARY TO MAY 2016)



*部分是往年接獲的個案 some cases were carried over from previous years

巡查次數 (2016年1月至5月)

NUMBER OF COMPLIANCE INSPECTIONS (JANUARY TO MAY 2016)



巡查發現主動調查的個案 (2016年1月至5月)

NUMBER OF CASES ARISING FROM SELF-INITIATED INVESTIGATIONS DURING INSPECTIONS (JANUARY TO MAY 2016)



*部分是往年展開調查的個案 some cases were carried over from previous years

向持牌人或前持牌人採取的行動 (2016年1月至5月) *

ACTIONS TAKEN AGAINST LICENSEES OR EX-LICENSEES (JANUARY TO MAY 2016)*

有關的持牌人或前持牌人人數
No of licensees or ex-licensees



142

作出的處分或行動 ACTIONS TAKEN



* 向持牌人或前持牌人作出的行動是根據《地產代理條例》而作出的判決，當中有部份可能屬於紀律性質，包括在發牌時或在其他情況下於牌照上附加條件。

* These actions were taken pursuant to powers under the EAO. Some actions may be disciplinary in nature and others not, and they include the attachment of conditions to licences whether upon issuance or otherwise.

這些個案由牌照委員會裁定。理由是持牌人不符合適當人選要求，因而不適合繼續持有牌照。

These cases were decided by the Licensing Committee on the ground that the licensees concerned were considered not fit and proper to continue to hold a licence.



香港灣仔皇后大道東183號合和中心48樓
48/F, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong