

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.

