



地產代理監管局
ESTATE AGENTS AUTHORITY

專業天地 HORIZONS

www.eaa.org.hk

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宣傳越容易
違規會更易？

The Easier To Promote,
The Easier To Breach The Rules ?



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監管局行政總裁韓婉萍
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“非本地物業的銷售比你想像中複雜，當中有太多未知數是你掌握不到的。”

“... selling non-local properties is more complicated than you could imagine due to the too many unknown factors beyond your knowledge and control.”

響起警號

THE ALARM HAS GONE OFF

在七月舉行記者會時，我們公布了2016上半年接獲的投訴數字錄得84%的顯著按年升幅。這不論對監管局和業界來說，都是一個警號。雖然我們為過去共同努力建立的專業水平而感到驕傲，但未來仍需繼續改進。

細閱相關數字，在最常見的投訴類別當中，有93宗關於「提供不準確或具誤導性的物業資料」，佔了248宗整體投訴的38%，所佔比例最高。

構成這方面數字飈升的部份原因，是在這93宗個案中，有50宗即逾一半是銷售商場舖位的投訴，而當中又有48宗涉及同一個商場。

另外，也有10宗非本地物業的投訴(去年同期僅2宗)，當中6宗涉及同一個英國樓盤。

以上提及的60宗個案，均非傳統的住宅交易。

由於住宅成交減少，行內競爭激烈，持牌人轉而發掘其他生意機會是無可厚非的。然而，假如處理不好這些生意，會產生相當風險。

世上沒有不勞而獲，做任何生意都需要付出汗水和勞力，太易促成的生意反而令人難以置信。舉例說，消費者可能很容易被吸引購買價格較低但有高回報「保證」的物業，惟最終結果可能未如理想，甚至有可能「爛尾」化為烏有。只有明智的決定和謹慎的交易，才對消費者及持牌人有利，相反，倉促輕率的決定，往往容易引來糾紛。

正如監管局經常提醒消費者，作決定前要深思熟慮，我也希望提醒持牌人，緊記小心駛得萬年船。俗語有云「做生意唔熟唔做」，推銷一些你不熟悉的物業，一知半解下容易造成失實陳述。非本地物業的銷售比你想像中複雜，當中有太多未知數是你掌握不到的。

說到底，倘若交易最終發生問題，不但消費者可能要賠上積蓄，連帶促成有關交易的持牌人，其聲譽受損之餘，牌照也有可能受到影響。

At the half-year review press conference in July we announced that the first half of 2016 had recorded a huge year-on-year increase (84%) in the number of complaints. This is alarming to the EAA and I believe the trade too. Although we should be proud of our past concerted efforts in building up the professional standard of the trade, we must always strive for further improvement.

Let's look at the figures more closely. Amongst the most common types of complaints, there were 93 cases of "providing inaccurate or misleading property information to clients", amounting to 38% (the biggest part) of all 248 complaint cases.

In these 93 cases, there were 50 cases (i.e. over half) concerning the sale of shopping malls, which has contributed considerably to the upsurge in the complaints figure. What's more, 48 out of these 50 cases were related to the same single shopping mall.

In addition, there were also 10 cases concerning non-local properties (there were only two in the same period last year), six of which were about the same development in England.

All of the abovementioned 60 cases were not conventional residential property transactions.

It is not surprising that due to the downturn in the residential property market and fierce competition, licensees would explore other business opportunities. However, diving into such businesses might have risks attached if they are not handled properly.

There is no shortcut to success in any business without sweat and hard work. Selling something too easily might be too good to be true. For instance, consumers might be attracted to purchase less expensive properties with a higher "guaranteed" profit forecast, but the results might not be promising and sometimes even disastrous. Only well-informed and careful decisions in property transactions are safe for both consumers and licensees, while on the other hand, hasty decisions will easily lead to disputes.

Just like the EAA has always reminded consumers to look before they leap, I would also like to remind licensees that prudence is the better part of valour. Selling something that you do not know well could easily lead to misrepresentation. A little understanding of the subject is a dangerous thing since selling non-local properties is more complicated than you could imagine due to the too many unknown factors beyond your knowledge and control.

After all, it is not only the consumer's savings that could be at risk if things go wrong, but also the reputation and licence of the agents who handle the transactions.

有關一手樓盤銷售地點的秩序的執業通告於9月1日生效 NEW PRACTICE CIRCULAR ON THE ORDER AT FIRST-SALE SITES CAME INTO EFFECT ON 1 SEPTEMBER

監管局十分關注地產代理於一手住宅物業銷售處的秩序，尤其重視有否非持牌人士參與推廣活動。因此，監管局發出一份題為「一手住宅樓盤銷售 — 一手樓盤銷售地點的秩序事宜」的新執業通告（編號16-02(CR)），並已於2016年9月1日生效。

該新通告涵蓋的其中一個新範疇與地產代理人公司調派非持牌員工於新盤銷售處參與推廣活動有關。地產代理人公司應就非持牌員工可從事及不能從事的工作定立明確的指引。此外，非持牌員工應戴上由地產代理人公司僱主備製的名牌，名牌上需清晰顯示其姓名、照片及其僱主名稱。地產代理人公司也須同時委派最少一名持牌員工擔任「導師」，以監督及監察非持牌員工在一手樓盤銷售點的工作。

此外，通告也再次提醒地產代理，在進行銷售活動時不可有過分推銷的行為，例如阻礙行人，即使途人表明沒興趣購買該物業，仍然不斷游說及向其招攬生意等。

為加強地產代理人公司對新通告的了解，監管局已上載一套相關的「問與答」及範本至監管局網頁（www.eaa.org.hk）供業界參考。

The EAA is very concerned about the order of estate agents at the sale sites of first-hand residential properties, especially the participation of non-licensed persons in the promotional activities. Hence, the EAA issued a new Practice Circular (No. 16-02 (CR)) titled "First Sale of Residential Properties – Order at First-sale Sites" and it has become effective on 1 September 2016.

One of the new areas covered in the new Circular is about the activities of non-licensed staff deployed by estate agency companies in first-sale sites. Estate agency companies should set out clear guidelines for non-licensed staff on the type of work that they can and cannot undertake. Moreover, non-licensed staff should wear a name tag prepared by their estate agency employer, which shows his/her name, photograph and the employer he/she worked for. Estate agency companies are also required to assign at least one licensed staff as "mentors" to supervise and monitor the non-licensed staff at first-sale sites.

In addition, the Circular also reminds estate agents again that they must not be over-aggressive when conducting promotional activities, such as standing in the way of passers-by, stalking and persistent solicitation despite indication by the passers-by that they are not interested in making any purchase.

In order to enhance estate agency companies understanding of the new Circular, the EAA has uploaded a set of relevant "Questions and Answers" and samples of the required documents on the EAA's website (www.eaa.org.hk) for the trade's reference.

監管局舉行新聞發布會回顧上半年工作 THE EAA HOLDS A PRESS CONFERENCE FOR ITS HALF-YEAR REVIEW

監管局於2016年7月20日舉行新聞發布會，由主席梁永祥先生，SBS，JP及行政總裁韓婉萍女士，回顧監管局在2016年上半年的工作，並簡介下半年的工作重點。

梁主席指出，監管局在2016年上半年共接獲248宗投訴個案，比去年同期增加約84%。其中兩項最常見的投訴性質是「發出違規廣告」及「提供不準確或具誤導性的物業資料」。投訴個案數字大幅上升，相信與物業市場放緩、行業競爭激烈及與個別從業員面對巨大壓力有關。

監管局也在2016年上半年共對182位持牌人採取行動或作出處分，並撤銷了26個牌照及暫時吊銷了18個牌照。另外，資格考試考生人數及個人牌照數字在2016年上半年均錄得跌幅，惟公司牌照數字則微升並錄得新高至3,266個。

踏入2016年下半年，監管局會繼續密切監察地產代理銷售不同類型物業時的操守。至於有關近期發生的假冒業主個案，局方將會儘快更新相關的執業通告。

The EAA held a press conference on 20 July 2016 at which its Chairman, Mr William Leung Wing-cheung, SBS, JP, and Chief Executive Officer, Ms Ruby Hon Yuen-ping, reviewed the EAA's work in the first half of 2016 and introduced its initiatives for the second half.

Mr Leung pointed out that the EAA received a total of 248 complaints in the first half of 2016, which was a year-on-year increase of 84%. "Issuing non-compliant advertisements" and "providing inaccurate or misleading property information" are the two most common categories of complaints. Significant increase in the number of complaints might be due to the economic downturn in the property market, fierce competition among the trade and the enormous pressure faced by some individual practitioners.

The EAA has also taken action or imposed sanctions on a total of 182 licensees in the first half of 2016. A total of 26 licences were revoked and 18 licences were suspended. Separately, the number of qualifying examinations candidates and individual licensees dropped in the first half of 2016 while there was a slight increase in the number of company licences, which has amounted to a record high of 3,266.

In the second half of 2016, the EAA will reinforce its effort on monitoring estate agents' practice in the sale of various types of properties. Besides, regarding the recent cases of fake property vendors, the EAA will update the existing related practice circular in the near future.



地產代理監管局實務證書課程 EAA'S CERTIFICATE PROGRAMME IN PRACTICE

為協助持牌人充分掌握地產代理有效執業所需的法律知識及實用技巧，監管局將在2016年10月推出全新的結構性課程 – 地產代理監管局實務證書課程。課程將以講座／研討會形式進行，配以過往違規案例作分析，並加入情景研討、現場活動和課堂練習等，以增加學員與導師的互動性。

課程專為幫助新入職或年資淺的持牌人打好基礎而設計，也有助年資深的持牌人溫故知新。為配合大多數持牌人的學習需要，此課程現階段將以廣東話授課，監管局將在日後根據反應檢討以英語授課的可行性。

Aiming at enabling the licensees to master the necessary legal knowledge and practical skills in effective estate agency practice, the EAA will launch in October 2016 a new structured programme titled EAA's Certificate Programme in Practice. In order to increase interactions between the participants and instructors, this programme will be formatted as seminars, complemented with analyses on non-compliance cases, scenario discussions, class activities and exercises.

This programme is designed to lay a solid foundation for the less experienced licensees. It will also help the more experienced licensees refresh their knowledge and skills. To meet the learning needs of most practitioners, the programme will be conducted in Cantonese at this stage. The EAA will study the feasibility of conducting the programme in English later.



課程分為下列三個單元，共十個課堂，每堂3小時：

The programme is structured into the following three modules formed by ten 3-hour classes:

單元一（3個課堂） Module One (3 classes)

專業操守及誠信 PROFESSIONAL ETHICS AND INTEGRITY

- 地產代理的責任 – 恰當及誠信行為
- Responsibilities of Estate Agents – Act Properly and Ethically
- 優質客戶服務與正向思維
- Quality Customer Services and Positive Thinking
- 違規的可能後果
- Possible Consequences of Non-Compliance with Regulations

單元二（3個課堂） Module Two (3 classes)

地產代理法律與規則 ESTATE AGENCY LAW AND REGULATIONS

- 《地產代理條例》及其附屬法例
- Estate Agents Ordinance and its Subsidiary Legislations
- 監管局《操守守則》及執業通告
- EAA's Code of Ethics and Practice Circulars
- 其他與地產代理工作相關的法律及實務
- Other Laws Relating to Estate Agency Work

單元三（4個課堂） Module Three (4 classes)

地產代理實務與實用知識 ESTATE AGENCY PRACTICE AND KNOWLEDGE IN PRACTICAL USE

- 物業轉易須知
- Essential Knowledge on Conveyancing Practices
- 物業租賃實務知識
- Practical Knowledge on Tenancy Matters
- 掌握土地查冊
- Mastering Land Searches
- 理解物業產權負擔
- Understanding Encumbrances

參加者可在完成每個單元內之課堂後參加相關的單元測驗。完成課程及於所有單元測驗取得合格或以上成績的參加者均可獲監管局頒發證書。在單元測驗取得卓越成績的參加者的名單亦會經參加者同意下載列於監管局網頁及／或監管局的相關刊物。

詳情請瀏覽監管局網頁：www.eaa.org.hk 或致電2111 2777（持續專業進修計劃）查詢。

At the end of each module there will be a module-end test. Those participants who completed the programme and passed all the tests will be awarded a certificate. A list of the participants who obtained a distinction grade at module-end tests will also be published at the EAA website and/or relevant publications subject to participants' consent.

For details, please refer to the EAA website: www.eaa.org.hk or call 2111 2777 (Continuing Professional Development Scheme).

有關「港人港地」措施的簡介會 BRIEFING SESSION ON THE “HONG KONG PROPERTY FOR HONG KONG PEOPLE” MEASURE

由地政總署舉辦的「港人港地」措施簡介會已於2016年8月17日舉行，主要大型地產代理公司及業界商會均派代表出席。

有關於新九龍內地段第6516號和新九龍內地段第6517號的賣地條件中的特別條件第(16)(a)條的同意書細則，以及申請取得地政總署署長的書面同意，以轉讓有關由賣地條件日期起計30年期限屆滿前的住宅單位的運作安排，已於地政總署的網頁上列出。

為讓持牌人更加了解以上措施，相關持續專業進修講座已於2016年9月12日舉行。本局建議持牌人到地政總署網頁(www.landsd.gov.hk)閱讀有關措施的更多詳情。

A briefing session on the “Hong Kong Property for Hong Kong People” measure organised by the Lands Department was held on 17 August 2016. Representatives from the major estate agency companies and the trade associations have been invited to attend the said briefing.

Details of consent under Special Condition No. (16)(a) of the Conditions of Sale of New Kowloon Inland Lot No. 6516 and New Kowloon Inland Lot No. 6517 and the operational arrangements for application to the Director of Lands for prior written consent for alienation of residential units within a period of 30 years from the date of the Conditions of Sale are set out in the website of the Lands Department.

To facilitate licensees to understand more on the subject, a related CPD seminar was held on 12 September 2016. Licensees are also advised to read more information about the measure at the website of the Lands Department (www.landsd.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 TERRORISTS 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9月2日發出恐怖分子或與恐怖分子有聯繩者的更新名單，相關公告已刊於政府憲報內。持牌人可參閱政府的憲報資料(www.gld.gov.hk/egazette/pdf/20162035/cgn201620354941.pdf)，以了解有關詳情。

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 2 September 2016. Licensees may read the notice at the Government’s Gazette for more details (www.gld.gov.hk/egazette/pdf/20162035/egn201620354941.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).

宣傳越容易 違規會更易？

THE EASIER TO PROMOTE, THE EASIER TO BREACH THE RULES?

近年，五花八門的網上物業平台、社交網站等大行其道，為地產代理行業提供了不少新媒介作宣傳推廣之用。除沿用傳統的貼街招或刊登報章廣告外，不少地產代理現時也會透過不同網站發布物業廣告。某些廣告雖然引人注目，但持牌人要同時留意，在刊登任何物業廣告時，必須提供真確的物業資料，並如實反映樓盤狀況。

網上宣傳 同受監管

利用網絡進行宣傳推廣，不但方便快捷，而且接觸層面廣泛，符合「低成本、高效能」的經濟效益。因此，不少地產代理選擇於網上發布廣告，並透過網上物業平台、社交網站（如facebook、Instagram、微博等），甚至手機通訊APP（如whatsapp）發布廣告。最近，有些網站更以擴增實境（Augmented Reality）技術製作物業單位的短片，全方位展示物業面貌，冀取代傳統的睇樓模式。

其實，不論持牌人以何種模式宣傳物業或發布廣告，同樣受監管局規管。局方會不時就網上廣告進行抽查，並密切監察網上物業平台，所以，在發出廣告前先要核實清楚物業資料。

Nowadays online platforms for property transactions and social networking websites are getting more and more popular and provide new promotion channels for the estate agency trade. In addition to traditional newspaper advertisements and street advertising, many estate agents also issue property advertisements online now. Although some of these advertisements may be eye-catching and attract people's attention, licensees should note that they must provide accurate property information when issuing property advertisements online.

ONLINE ADVERTISING IS ALSO REGULATED

Online promotion is convenient, far-reaching and cost-effective. Therefore, many estate agents choose to issue advertisements via online property platforms, social networking websites (such as facebook, Instagram and Weibo) and even mobile messaging apps (e.g. WhatsApp). Recently, some websites have claimed that they can use augmented reality technology to produce videos to showcase properties in an attempt to replace the traditional way of inspecting flats.

Regardless of the medium or format of advertising, all advertisements issued by licensees for promoting properties are regulated by the EAA. The EAA conducts cyber patrols from time to time and monitors online property platforms closely. Hence, it is important for licensees to verify the property information before issuing any advertisements.

焦點話題 IN FOCUS

《地產代理條例》及其附屬條例中有關發布廣告的規定，同樣適用於網上廣告，部分主要規定如下：首先，在發出任何住宅物業廣告前，持牌人必先取得業主的書面同意，並必須以客戶所指示的價格或條款宣傳該物業。此外，所提供的物業資料必須正確無誤，例如物業位置、落成年份、單位景觀及樓面面積等。

另外，持牌人在使用物業照片時必須小心謹慎。即使兩個單位屬同一屋苑，擁有相同面積和間隔，但由於位處不同樓層，持牌人切記不可把物業甲的照片用作宣傳物業乙之用。

同時，持牌人應註明廣告的發布日期，並不時更新其廣告所載的有關資料。而在有關住宅物業不再可供出售或出租後，或有關的地產代理協議終止後，持牌人須在切實可行的範圍內盡快移除相關廣告。

一手廣告 小心犯例

近年，不少地產代理轉戰一手住宅物業市場，惟在發布一手住宅物業廣告時，有關廣告須符合《一手住宅物業銷售條例》的規定，否則有機會觸犯刑事罪行。

All the requirements which licensees must comply with for advertising under the Estate Agents Ordinance and its subsidiary legislations are also applicable to online advertisements. Some of the relevant requirements are: the vendor's written consent must be obtained prior to the issuance of advertisements for residential properties. Likewise, licensees shall not advertise the residential property at a price or on terms different from those instructed by the vendor. In addition, the property information provided in the advertisement (such as the address of the property, year of completion, property view and floor area) must be accurate.

Furthermore, licensees must exercise due care and due diligence in the use of photographs in advertisements. For example, photographs of property A must not be used to advertise property B, even if the two properties belong to the same development with the same property area and layout but are on different floors.

Licensees should also specify the date when the advertisement was issued and must verify the information from time to time in order to ensure it is up-to-date. Advertisements must be removed as soon as is practicable after the residential property concerned is no longer available for sale or leasing, or upon the termination of the estate agency agreement concerned.

BE MINDFUL WHEN ISSUING FIRST-SALE ADVERTISEMENTS

With an increasing number of estate agents participating in the sale of first-hand residential properties, estate agents must be aware that the relevant advertisements must comply with the Residential Properties (First-hand Sale) Ordinance. Otherwise, estate agents may commit a criminal offence.

例如，在某新盤價單尚未公布前，持牌人切勿向外發放該樓盤的「意向呎價」；事實上，在樓盤未取得預售樓花同意書前，是不得作任何宣傳的；而地產代理公司在發出任何宣傳物品前，也必須先取得發展商書面同意等。

另外，當編制有關宣傳物品時，地產代理公司須採取合理步驟核實廣告所載資料的準確性，並就所載資料的準確性及完整性，取得賣方的明確書面批署。還有一點要注意，就是除了以物業的實用面積作為基準外，廣告不得以其他基準表達該物業的面積或呎價的資料。

按掣之前 再三核對

現代生活與智能手機和互聯網已幾乎無法分割，相比起傳統媒體，利用手機或互聯網發布廣告，實在是更為方便快捷，十分適合需要靈活應變的地產代理行業。然而，也正因如此，持牌人容易掉以輕心，忽略了確保資料真確的重要性。

按動手機掣或電腦鍵盤掣十分容易，但按掣之前，必須再三確保資料無誤。追上時代步伐固然重要，但作為專業的地產代理持牌人，應時刻遵守相關條例，始能善用網絡媒體廣收宣傳之效。

For example, licensees must not issue the “intended unit price” of any first-sale development before the issuance of the price list. In fact, no advertising is allowed before the consent to sell of that development has been obtained. Estate agency companies must also seek the written consent from the developer before issuing any related advertisements or promotional materials.

When preparing any related promotional materials, estate agencies must take all reasonable steps to verify the accuracy of the information contained in such advertisements and seek the vendor's endorsement in writing of the accuracy and completeness of the information contained before issuance. Furthermore, only the saleable area of the property can be adopted as the basis for quoting the floor area information and unit price of the property in the advertisement.

VERIFY AGAIN BEFORE PUBLISHING

Smartphones and the Internet are indispensable in our modern lives. Compared with the traditional medium, issuing advertisements by mobile phones or on the Internet is much more convenient and flexible, which fits the fast-paced nature of the estate agency business. Nevertheless, such convenience may cause licensees to neglect the importance of ensuring the accuracy of the information in the advertisement.

Pressing the “send” or “upload” button on mobile phones or the computer keyboard is easy. What counts is to verify the accuracy of the information before pressing the button. While capitalising on modern trends is important, a professional estate agent should always comply with the regulations or else no good publicity will come from it.



人物誌 PORTRAIT



黃鳳嫻女士
Ms Gilly Wong Fung-han

- 消費者委員會總幹事
Chief Executive, Consumer Council
- 競爭事務委員會委員
Member, Competition Commission
- 消費者訴訟基金管理委員會當然成員
Ex Officio Member, Management Committee of the Consumer Legal Action Fund
- 旅遊代理商諮詢委員會委員
Member, Advisory Committee on Travel Agents

執業及考試委員會 副主席黃鳳嫻女士

AN INTERVIEW WITH **MS GILLY WONG FUNG-HAN, VICE-CHAIRMAN OF THE PRACTICE AND EXAMINATION COMMITTEE**

本期《專業天地》專訪了監管局執業及考試委員會副主席黃鳳嫻女士，了解一下她對該委員會工作以及業界表現的看法。

問： 你自2012年起出任監管局成員和執業及考試委員會副主席。在加入監管局前，你熟悉地產代理行業嗎？可否和《專業天地》的讀者分享一下，作為監管局成員的感受？

答： 我出任監管局成員已近四年。很高興能夠與監管局和執業及考試委員會的成員共事，他們都很能幹，並努力不懈熱心服務社會。加入監管局前，我和普通消費者一樣，對於地產代理業界的工作只有基本認識；現在，我對他們的執業、要遵守的條例，以至行業生態都有更深入了解。他們的工作既複雜亦講求靈活性，需要同時滿足買賣雙方的要求。因此，這行業要求高度專業水準，包括充分掌握實務知識、勤奮、毅力，以及優質的客戶服務。

In this issue of *Horizons*, we interview Ms Gilly Wong Fung-han, Vice-chairman of the EAA's Practice and Examination Committee, about her thoughts on the work of the Committee and the trade's performance.

Q: You have been a Board member of the EAA and served as the Vice-chairman of the Practice and Examination Committee ("PEC") since 2012. Were you familiar with the real estate business before joining us? Could you share with the readers of *Horizons* your feelings on serving on the EAA Board?

A: I have served on the EAA Board for almost four years. It is good to work with the fellow Board members and PEC members as they are all talented people dedicated to public services. We all share the same enthusiasm. Before joining the EAA, I, like any other ordinary consumer, only had a basic idea of what the estate agency trade does for a living. Now I understand more about their practices and, of course, the regulations put on them and the nature of their businesses. Their work is complex and in fact very dynamic in meeting the need of buyers and sellers. This profession requires expertise, including strong technical knowledge, diligence, persistence and quality customer services.

問：過去三、四年間，監管局發出多份執業通告，致力提升業界的水平。你認為，與數年前的情況相比，現時地產代理業界的專業水平如何？

答：在我出任執業及考試委員會副主席這段期間，我們曾就不同主題發出了多份執業通告，並為業界提供指引。有些是因應政府推出的政策或措施，有些則是回應當時的行業生態。透過監管局的規管，以及持續不斷的教育工作，業界的專業水平提高了不少，從業員對守法循規的意識亦有所提升。然而，我明白業界現時正面對艱辛的經營環境，對於經驗豐富的從業員來說，我深信他們能適應樓市的起伏，但新入行的從業員則可能需要更多的提醒和教育，不單是來自監管局，聘用他們的地產代理公司也要提供培訓。地產代理公司應珍視年青員工為其重要資產，而非一隻棋子而已。有見及此，監管局發出不少指引均旨在加強地產代理公司對前線員工的妥善管理。

問：作為消委會的總幹事，你對消費者的各式各樣投訴均非常熟悉。可否與我們分享一下，如何平衡消費者的期望及業界的業務需求？

答：消費者對於地產代理服務的期望與日俱增。而隨着地產代理業漸趨成熟，從業員也同樣精明靈活。因此，我相信倘若業界能做好本份，消費者對交易也感到滿意時，便能達至多贏。在各方面包括監管局的共同努力下，大家的關係不應該是非勝則敗。一方面，一個既小心及明智的置業決定對健康的物業市場來說非常關鍵，故此持續的消費者教育十分重要；另一方面，業界也應時刻醒覺提升其專業水平，以減少爭拗及糾紛。總括而言，我相信監管局將會繼續擔任監督和守護的角色，維持業界的專業水平，以保障業界及消費者雙方的利益。

Q: In the past three to four years the EAA has issued many practice circulars to enhance our requirements on the trade's practice. What do you think of the current professional standard of the estate agency trade, compared to a few years ago?

A: During the years I served on the PEC there were a number of practice circulars issued to provide guidelines on various subjects to the trade, either issued in light of new government measures or due to emerging business trends or issues. Through such regulatory work, as well as the continuous educational work of the EAA, the trade has a higher professional standard and an increased awareness of compliance. However, I understand that the trade is currently experiencing a difficult business environment. While I believe most of the experienced players in the trade are able to deal with the ups and downs, the newcomers need to be reminded and educated about their duties more consistently, not only by the EAA but also by their employers, the estate agency companies. Companies should value and nurture their young staff as potential assets, not as dispensable pieces on a chessboard. In this regard, many of our guidelines have strengthened the responsibilities of estate agency companies to manage their frontline staff properly.

Q: As the Chief Executive of the Consumer Council you are familiar with all sorts of consumers' complaints. Could you share with us your thoughts on how to balance consumers' expectations with the trade's business needs?

A: Consumers' expectations for the services offered by estate agents have been increasing over time. The estate agency trade is maturing and our tradesmen are both flexible and smart. As such, I believe there could be multi-win solution for all, where the trade could do good business and consumers could also have a good deal. It should not be a zero-sum game and every party including the EAA should continue to chip in their effort. On one hand, continuous education for consumers is important as well-informed and careful home-buying decisions are critical to a healthy property market. On the other hand, the trade needs to be reminded to elevate their practice standard, so that there will be fewer arguments and disputes. That said, I believe the EAA will continue to be both the watchman and the guardian at the same time, upholding the professional standards of the trade to benefit both the trade and consumers.

紀律研訊個案：沒有披露利益衝突

DISCIPLINARY HEARING CASE: FAILING TO DISCLOSE A CONFLICT OF INTEREST

引言

持牌人應向客戶就處理其物業時所涉及的利益衝突作出全面披露，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should make a full disclosure of any conflict of interest to their clients in relation to the properties they handle. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

兩名地產代理受一名業主委託放售其店舖物業，並安排該業主與買方簽訂臨時買賣合約（「臨約」）。買方為一間有限公司，由該兩名地產代理在幕後共同擁有及控制，而該公司的唯一董事其實是其中一名地產代理的姪女，但業主對此並不知情。不久後，該物業再由同一間地產代理公司的另一名代理代表該公司以高於買入價\$4,500,000轉售予另一名新買家。業主在得悉該兩名地產代理與該買方公司的真正關係及有關轉售後，覺得被騙，遂向兩名地產代理追討賠償及向監管局作出投訴。

INCIDENT

Two estate agents were appointed by a vendor of a shop property and arranged for the vendor to sign a Provisional Agreement for Sale and Purchase with a purchaser. The purchaser was a limited company which was beneficially owned and actually controlled by the two estate agents, despite the fact that the sole director of the limited company was the niece of one of the estate agents. However, the vendor was not informed of this. Shortly after, the property was resold to another purchaser through another agent of the same estate agency company at the price of \$4,500,000 on top of the original purchase price. The vendor discovered the identity of the estate agent's niece and the resale. Feeling deceived, he claimed compensation against both agents and lodged a complaint with the EAA.

研訊結果

經紀律研訊後，監管局紀律委員會認為，該兩名地產代理沒有就該物業交易披露利益衝突，違反了《操守守則》第3.7.2段：「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。」

RESULT

The EAA Disciplinary Committee was of the view that the two estate agents failed to disclose the conflict of interest in the property transaction. They were 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".

考慮個案性質及所涉金額後，紀律委員會決定譴責這兩名地產代理，並暫時吊銷其牌照6個月，以及要求他們在24個月內取得持續專業進修計劃下的24個核心科目學分。

Having considered the nature of the case and the amount of money involved, the Disciplinary Committee reprimanded the two estate agents, suspended their licences for six months, and required them to obtain 24 points in the core subjects of the CPD Scheme in 24 months.

另外，業主透過民事訴訟追討損失，最終高等法院頒令該兩名地產代理需向業主作出賠償。

Regarding the compensation claim by the vendor in a civil litigation against the two estate agents, the High Court decided that the two estate agents were liable to pay compensation to the vendor of the property.



香港房地產代理業聯會主席
郭德亮先生
Mr Tony Kwok
Chairman of Hong Kong
Property Agencies Association

業界回應

作為專業地產代理，持牌人在處理物業交易時應向客戶全面披露所涉及的任何利益衝突。當有準買家出價給業主時，持牌人應向業主交代準買家的身份及詳細披露其與持牌人的關係。另外，持牌人可考慮為業主出售的物業作出專業估值，例如透過測量師行或銀行所作之估價，或收集同類單位的成交紀錄，提供予業主作為出價之參考。

COMMENT FROM TRADE

A professional estate agent should fully disclose to his/her client any conflict of interests in relation to the property handled by him/her. Licensees should provide the vendor with the identity of the prospective purchaser and disclose in details their relationship with the prospective purchaser. Besides, licensees may consider conducting a property valuation by surveyors or banks, or checking the transaction record of similar properties. Such information can be provided to the vendor as reference when setting the list price.

紀律研訊個案：沒有核實「購買資格證明書」 DISCIPLINARY HEARING CASE: FAILING TO VERIFY THE “CERTIFICATE OF ELIGIBILITY TO PURCHASE”

引言

持牌人應保障和促進客戶的利益，包括核實清楚於居屋第二市場放售的單位交易所需的有關文件是否有效，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should protect and promote the interests of their clients, including verifying the validity of the documents required in the transaction of flats under the Home Ownership Scheme (“HOS”) Secondary Market. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名居屋業主委託一名營業員在居屋第二市場放售其單位。該營業員在安排業主簽署臨時買賣合約（「臨約」）前，向該業主表示已核實買家已取得有效的「購買資格證明書」，並把買家的訂金交予該業主。

INCIDENT

A HOS home owner appointed a salesperson to list his property for sale in the HOS Secondary Market. Before arranging for the vendor to enter into the Provisional Agreement for Sale and Purchase (“PASP”), the salesperson told the vendor that he had verified that the purchaser had a “Certificate of Eligibility to Purchase” (“CEP”) and he then gave the vendor the deposit paid by the purchaser.

However, the vendor was informed by the salesperson later that the CEP held by the purchaser was issued by the Hong Kong Housing Society for the Flat-for-Sale Scheme and it was not applicable for purchasing his property. As a result, the vendor cancelled the transaction, but the purchaser commenced a civil action to claim for the deposit as well as other compensation against the vendor. The salesperson explained that all the information on the PASP had been filled in when he arranged for the vendor to enter into the agreement and he believed that the salesperson appointed by the purchaser had verified the CEP beforehand. Thus, he did not ask for the CEP to be verified.

研訊結果

監管局紀律委員會認為，該營業員不應因代表買家的營業員聲稱已確認其「購買資格證明書」便沒有作出獨立的查核，他因而違反了《操守守則》第3.4.1段的規定，即「地產代理應保障和促進客戶的利益」。

在考慮個案的性質及該名代理的違規記錄後，紀律委員會決定譴責該營業員，罰款\$2,000及暫時吊銷其牌照七天，並要求他在12個月內須取得持續專業進修計劃下的12個核心科目學分。

至於受買家委託的另一名營業員，因未有遵守《操守守則》第3.2.2段的規定，即「地產代理和營業員應掌握有關的一切法律、政府規例，及地產市場的重要事實和發展」，亦被紀律委員會判以相同的處分。

RESULT

The EAA Disciplinary Committee found that the salesperson should have verified the validity of the CEP himself even though the other salesperson appointed by the purchaser claimed that he had verified the document. Thus, he 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 him, impose a fine of \$2,000 and suspend his licence for seven days. He was also required to obtain 12 points in the core subjects of the CPD Scheme within 12 months.

On the other hand, the other salesperson appointed by the purchaser also failed to comply with paragraph 3.2.2 of the *Code of Ethics*, which stipulates that “estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market.” The same sanctions were imposed on him by the Disciplinary Committee.



香港專業地產顧問商會會長
鄺志輝先生
Mr Gorman Kwong
President of Hong Kong
Chamber of Professional
Property Consultants

業界回應

《地產代理條例》、其附屬法例及《操守守則》俱有為處理住宅物業的買賣流程中需要的注意事項提供了清晰指引。從業員只要遵循指引及守則，便可保障買賣雙方及自己。個案中的營業員，對程序並不熟識。雖然他只代表業主一方，卻沒有核實買家的「購買資格證明書」。作為專業的地產代理，應以保障客戶利益為先。

COMMENT FROM TRADE

Estate Agents Ordinance, its subsidiary legislations and the *Code of Ethics* have provided clear guidelines on the points-to-note for practitioners when handling residential property transactions. Practitioners should follow such guidelines to protect both the vendor and purchaser. The salesperson in the case is not conversant with the procedures. Though he only acted for the vendor, he failed to verify the CEP. One of the most important duties of a professional estate agent is to protect the interest of his/her clients.

持續專業進修講座 CPD SEMINAR

遵守《競爭條例》 COMPLIANCE WITH THE COMPETITION ORDINANCE

《競爭條例》已於2015年12月14日全面生效，旨在禁止妨礙、限制或扭曲在香港的競爭的行為。《競爭條例》適用於各行業，包括地產代理業。有鑑於此，監管局就遵守《競爭條例》發出執業通告。有關通告載列若干指引，以協助地產代理從業員在從事地產代理業務時遵守《競爭條例》。

為加深持牌人對《競爭條例》及監管局相關執業通告的認識，監管局於2016年6月21日及6月22日邀請競爭事務委員會的代表主講兩場分別以廣東話及英語授課的講座。

在講座期間，競爭事務委員會代表為參加者概括講解《競爭條例》，而監管局法律顧問亦為持牌人解釋監管局就持牌人遵守《競爭條例》所發出的指引。

兩場講座深受持牌人歡迎，合共有173位從業員參與。

The Competition Ordinance, the objective of which is to prohibit conduct that prevents, restricts or distorts competition in Hong Kong, has come into full effect as from 14 December 2015. It applies to all sectors of the economy, including the estate agency industry. In light of this, the EAA issued a practice circular which sets out certain guidelines to assist estate agency practitioners to comply with the Competition Ordinance when carrying out their estate agency business.

In order to enhance the licensees' understanding of the Competition Ordinance and the EAA's relevant practice circular, representatives of the Competition Commission were invited to speak at two sessions of seminar on the Competition Ordinance on 21 June 2016 (Cantonese session) and 22 June 2016 (English session).

During these two seminars, participants were given an overview of the Competition Ordinance and the EAA's Legal Counsel also explained the EAA's guidelines on compliance with the Competition Ordinance in a bid to enhance licensees' knowledge in this respect.

These two sessions of seminar were well received by 173 participants.



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：我可否在二手住宅物業的廣告中，提及有關樓盤的賣方於其售樓說明書內所提供的實用面積資料？

Q. Can I provide in an advertisement the saleable area information of a second-hand residential property provided by the vendor of the development in a sales brochure?

答：根據執業通告(編號12-02 (CR))的規定，只要持牌人在廣告內已提供從差餉物業估價署，或在土地註冊處註冊的首次轉讓物業的買賣協議中取得的二手住宅物業實用面積，他們可同時提供樓盤的賣方過往在其售樓說明書內就有關物業所提供的實用面積。然而，持牌人須清楚述明所提供的每個實用面積的資料來源。

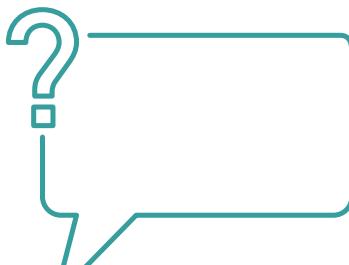
A. According to the requirement in Practice Circular No. 12-02(CR), if the saleable area of the second-hand residential property provided by the Rating and Valuation Department or the agreement for sale and purchase of the first assignment of the property registered in the Land Registry has already been provided in the advertisement, the saleable area information of the property previously provided by the vendor of the development in a sales brochure may also be provided. However, licensees should clearly specify the source of information for each of the saleable areas.

問：地產代理根據賣方指示，為二手樓盤的叫價設定範圍。就設定叫價範圍的幅度上，會否有任何限制？

Q. Is there any limitation on setting the negotiation range for the list price of a second-hand residential property instructed by the vendor?

答：地產代理可就樓盤叫價範圍與賣方討論，以便與買家商議。然而，持牌人須留意，除非取得賣方的書面指示，否則廣告中所標示的叫價必須與賣方於地產代理協議中所指示的叫價相同。

A. Estate agents may discuss the price range of the list price with the vendor to facilitate negotiation with purchasers. However, licensees should be reminded that the advertised list price can only be varied from the list price instructed by the vendor in the estate agency agreement with written instructions of the vendor.



何謂「大廈公契」？

D FOR “DEED OF MUTUAL COVENANT”



「大廈公契」通常是大廈發展商、發展商就管理大廈而委任的經理人及大廈單位的首名買家以契據形式訂立的合約。公契載有大廈管理和公用地方保養的詳細規定，並列明管理大廈的經理人的權力及職責。

公契對所有業主及其業權繼承人具有約束力，即使業權繼承人並非公契的一方，亦不例外。出售大廈的單位時須受公契的規限，並享有該公契的利益。

A “Deed of Mutual Covenant” (“DMC”) is a contract in the form of a deed usually entered into by the developer of the building, the manager appointed by the developer and the first person to purchase a unit in the building. It contains detailed provisions for the management of the building and maintenance of the common parts and sets out the powers and duties of the manager.

A DMC is binding on all owners and their successors in title, even though the latter are not parties to it. The units of the building are sold subject to and with the benefit of the provisions of the DMC.

活動紀要

EVENTS AND ACTIVITIES

2016-07-08

監管局接待來自青海省工商行政管理局的代表團，向他們介紹監管局的主要職能及監管工作。是次交流反應熱烈，代表團對香港的一手住宅物業銷售深感興趣。

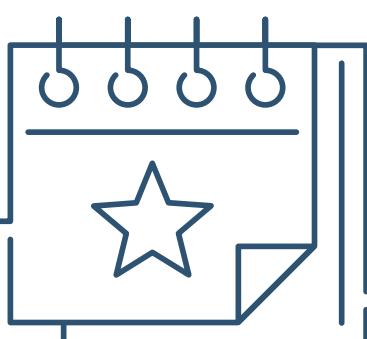
The EAA receives a delegation from the Qinghai Province Administration for Industry to introduce the key functions and the regulatory work of the EAA. The exchange was well received and the participants were interested in the sale of first-hand residential properties in Hong Kong.



2016-07-29

監管局接待由法律教育基金有限公司舉辦的學生交流團，包括46名來自香港及內地多間大學的法律系師生。一眾學生對地產代理在本港物業交易中扮演的角色甚感興趣，並於問答環節中踴躍發問。

The EAA receives a student delegation organised by the Legal Education Fund Limited comprising 46 law students and teachers from various universities in the Mainland and Hong Kong. The students show great interest in the role of estate agents in property transactions in Hong Kong and ask well-thought questions during the Q&A session.



2016年9月10日舉辦之公開講座 PUBLIC SEMINAR HELD ON 10 SEPTEMBER 2016

繼去年9月及今年3月舉辦公開講座反應熱烈後，監管局於2016年9月10日舉辦了另一場公開講座，名為「精明置業系列：住宅物業開門七件事」。

Following the overwhelming response to the EAA's first and second public seminar held in September 2015 and March 2016, another public seminar titled "Key Information of Residential Properties" was held on 10 September 2016.



講座由新城財經台主持林潔瑩女士擔任主持，邀請了專欄作家胡孟青女士、香港測量師學會上任會長何鉅業，JP、監管局成員蕭澤宇律師，BBS，JP及監管局投訴部高級經理陳汝微律師擔任講者。席上他們分享對樓市走勢的見解、介紹「開門七件事」的重點如「政府租契年期」、「產權負擔」及「用途限制」等，以及透過地產代理處理交易時應注意的事項。

The seminar, hosted by Metro Finance Radio programme host Ms Grace Lam, had invited

renowned columnist Ms Agnes WU, the immediate past President of the Hong Kong Institute of Surveyors Sr Vincent HO, JP, together with EAA member Mr Simon SIU, BBS, JP, and EAA Senior Manager (Complaints) Mr CHAN U-keng, both solicitors, as speakers. They shared insights on the property market trend, key Information of Residential Properties such as "Terms of Government Lease", "Encumbrances" and "User Restrictions", as well as important points-to-note when appointing an estate agent to handle property transaction respectively.

是次講座吸引了超過200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 200 attended the seminar. The EAA will continue to hold public seminars on other topics in the near future.

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
14/06/2016



營業員資格考試

SALESPERSONS QUALIFYING EXAMINATION

考試日期
Examination date
22/08/2016



牌照數目 (截至2016年8月31日)

NUMBER OF LICENCES (AS AT 31/08/2016)

營業員牌照 Salesperson's Licence

19,937

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

17,107

個人牌照總和 Total no. of individual licences

37,044

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

3,275

營業詳情說明書 (截至2016年8月31日)

NUMBER OF STATEMENTS OF PARTICULARS OF BUSINESS (AS AT 31/08/2016)

合夥經營
Partnerships

213

獨資經營
Sole proprietorships

1,616

有限公司
Limited companies

4,626

總數
Total

6,455

接獲的投訴 (2016年1月至8月)

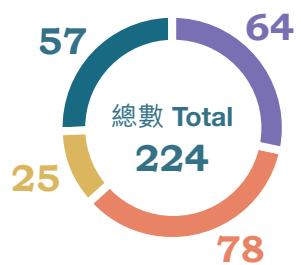
NUMBER OF COMPLAINT CASES RECEIVED (JANUARY TO AUGUST 2016)



已處理的投訴個案結果* (2016年1月至8月)

RESULTS OF COMPLETED COMPLAINT CASES*

(JANUARY TO AUGUST 2016)



指稱成立 Substantiated

指稱不成立 Unsubstantiated

資料不足 Insufficient information to pursue

其他 (例如投訴人撤回投訴或因其他原因而終止調查)

Others (include cases withdrawn or closed because of other reasons)

*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8月)

NUMBER OF COMPLIANCE INSPECTIONS (JANUARY TO AUGUST 2016)

一手樓盤銷售處
First-sale sites

923

代理商舖
Estate agency shops

1,156

網上物業廣告
Online property advertisements

436

巡查發現主動調查的個案 (2016年1月至8月)

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

52

主動調查的個案
Cases arising from self-initiated investigations

39

主動調查而指稱成立的個案*
Cases completed from self-initiated investigations and were substantiated*

*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8月) *

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

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



230

作出的處分或行動 ACTIONS TAKEN

訓誡／譴責
Admonishment/reprimand
136

於牌照附加
更改條件
Attachment/alteration of conditions to licence
128

撤銷牌照
Revocation
27*

罰款
Fine
92

暫時吊銷牌照
Suspension
22

* 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 Estate Agents Ordinance. 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.



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