

紀律研訊個案：提供誤導性物業資料予客戶 DISCIPLINARY HEARING CASE: PROVIDING MISLEADING PROPERTY INFORMATION TO CLIENT

引言

持牌人不得向客戶提供有關任何可能屬於違例建築工程的誤導性資料，並應建議客戶尋求法律及專業意見，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees must not provide misleading information to their clients about any possible unauthorised building works and should advise their clients to seek legal and professional advice. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理於一宗物業的租賃交易中，為業主及租客雙方行事。租客在視察物業期間，曾向該地產代理查詢，該物業內的閣樓是否已獲批「入則」，該代理表示該物業並沒有任何違例建築工程。然而，在訂立正式租約後，該客戶發現從屋宇署取得該物業的圖則內並沒有顯示物業內存有閣樓，及該閣樓是僭建物。該客戶最終取消交易，並向監管局作出投訴。

INCIDENT

An estate agent acted for both the tenant and the landlord in a leasing transaction. During the inspection of the property, the tenant client asked the estate agent whether the cockloft inside the property was duly authorised. The agent replied that the property did not have any illegal structure. After entering into the formal tenancy agreement, the client found out that the floor plan of the property retrieved from the Buildings Department did not reveal the existence of the cockloft and the cockloft was an illegal structure. The client cancelled the transaction finally and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該地產代理沒有正確告知客戶該物業內存有僭建物，亦沒有提醒客戶就該物業的違例建築工程所涉及的風險及建議其客戶在繼續進行交易之前，先尋求法律意見。

另外，在調查期間，紀律委員會也發現該地產代理並沒有採取任何步驟，以確認公司租客的代辦已獲妥善授權以簽署正式租約，因而違反了《操守守則》第3.4.1段：「作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益」。

考慮到個案的性質、持牌人的違規紀錄及同類個案的罰則，紀律委員會決定譴責該地產代理及罰款1,000元、暫時吊銷其牌照七天，並在其牌照上附加條件，要求她在24個月內取得持續專業進修計劃下的24個學分。

RESULT

The EAA Disciplinary Committee was of the view that the estate agent misrepresented to the client that the property did not have any illegal structure and failed to inform the client to seek legal advice about the risk of unauthorised building works of the property before arranging the client to proceed with the transaction.

Also, during the investigation of the case, the Committee found out that the estate agent failed to ensure that the representative of the corporate tenant was duly authorised to sign the Tenancy Agreement on behalf of the corporate tenant. Hence she failed to comply with paragraph 3.4.1 of the *Code of Ethics*: “estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients”.

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the estate agent, the Committee reprimanded the estate agent and fined her \$1,000, suspended her licence for seven days and attached a condition to her licence requiring her to obtain 24 points under the EAA's Continuing Professional Development Scheme in 24 months.



地產代理(從業員)
總公會主席吳元興先生
Mr Evan Ng Yuen-hing
Chairman of Estate
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業界回應 COMMENT FROM TRADE

地產代理接受客戶的放盤委託後，必須查閱土地查冊，查清物業資料；當買家客戶視察物業時，我們必須披露物業資料及單位現有狀況，如是否有僭建物的存在及其相關的風險，並提醒客戶在決定購買前先向專業人士諮詢購買物業的法律意見。

After being appointed to handle the sale of the property, estate agents should conduct a land search and verify the property information. During purchaser client's inspection of the property, we should inform the client of the property information and the current situation of the property, such as whether there is any unauthorised building works and the risks involved, and remind the client to seek legal advice before purchasing that property.

紀律研訊個案：銷售一手住宅物業時作出失實陳述 DISCIPLINARY HEARING CASE: MISREPRESENTATION IN FIRST SALE OF RESIDENTIAL PROPERTY

引言

持牌人在銷售一手住宅物業時，不得向客戶作出任何失實陳述，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should not make any misrepresentation to clients in the sale of first-hand residential properties. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員安排一位準買家及其未婚夫視察一個一手住宅物業的示範單位。當商討有關遞交該樓盤的購樓意向登記事宜時，該營業員向準買家表示，因她與其未婚夫仍未結婚，他們必須各自遞交購樓意向登記。同時，他們也不能聯名購買有關單位。

其後，該買家於律師樓訂立正式買賣協議時，要求律師加入其未婚夫的名字。經律師提醒，買家才發現該營業員的陳述並不正確。該樓盤的賣方沒有限制一對未婚夫婦不能以聯名方式遞交該樓盤的購樓意向登記。該準買家不滿被營業員誤導，遂向監管局作出投訴。

INCIDENT

A salesperson arranged for a prospective purchaser and her fiancé to inspect a show flat of a first-hand residential development. When discussing the submission of registrations of intent of that development, the salesperson told the purchaser that she and her fiancé had to submit separate registrations of intent since they had not yet married. Also, she said that they could not purchase the property in joint names.

Later, when the purchaser entered into an agreement of sale and purchase of a property of that development, she requested the solicitor to include the name of her fiancé into the formal agreement. Through the solicitor, she discovered that the representation made by the salesperson was not true. According to the vendor of the development, there was no restriction on unmarried couples submitting registrations of intent in joint names. Feeling misled by the salesperson, the purchaser lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該營業員就遞交購樓意向登記一事上對客戶作出失實陳述，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。」

考慮到個案的性質、該營業員的違規紀錄及同類個案的罰則，委員會決定譴責該名營業員，罰款3,000元，並在其牌照上附加條件，要求她在12個月內取得持續專業進修計劃下的12個學分。

RESULT

The EAA Disciplinary Committee found that the salesperson had made a misrepresentation to the client on the submission of registration of intent. Thus, she was in breach of paragraph 3.7.2 of the *Code of Ethics* issued by the EAA, which stipulates: “estate agents and salespersons should avoid any practice which may bring discredit and/or dispute to the estate agency trade”.

Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Committee decided to reprimand the salesperson, fine her \$3,000 and attach conditions to her licence requiring her to obtain 12 points under the EAA’s Continuing Professional Development Scheme in 12 months.



地產代理人協會主席
何潔芝女士
Ms Rosanna Ho
Chairman of Property
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業界回應 COMMENT FROM TRADE

作為專業地產代理，除了要有一定的專業知識外，亦要持守着嚴謹的專業操守。地產代理即使在行內如何經驗豐富或知識廣博，亦總有遇上自己不懂解決的難題的時候，遇到不懂回答的問題時，若是不知道或不懂的，就直言不諱，然後向人虛心下問。不論是新入行或是有經驗的同業們，應該持續報讀由地產代理監管局或公司內部舉辦的各種持續進修課程。因為時代不斷進步，要不斷為自己增值，才不會被社會所淘汰。

Being a professional estate agent, he should uphold high moral standards as well as possessing professional knowledge and competence. Even when estate agents are experienced or knowledgeable, they will encounter difficult problems or issues. When they do not have the answers to the questions, they should be honest and humbly ask others for advice. Both newcomers and experienced practitioners should participate in training programmes organised by the EAA or their estate agency company in order to cope with the ever changing market.

