

誠信與你

INTEGRITY IN FOCUS

紀律研訊個案：提供貸款予準買家 DISCIPLINARY HEARING CASE: PROVIDING LOANS TO PROSPECTIVE PURCHASER

引言

地產代理不得向一手住宅物業的準買家提供或提出提供貸款，而地產代理公司的管理層亦必須設立妥善的程序或制度以監督和管理其地產代理工作的業務，以確保其公司的僱員遵守《地產代理條例》的條文。否則，地產代理及其公司兩者有可能被監管局紀律處分。

INTRODUCTION

Estate agents must not offer or make loans to prospective purchasers of first-hand residential properties. In this regard, the management of an estate agency company must establish proper procedures or systems to supervise the company's estate agency work, and to ensure the employees comply with the provisions of the Estate Agents Ordinance. Otherwise, both estate agents and the company may be subject to disciplinary action by the EAA.

事件經過

一名地產代理於某一手樓盤銷售地點向一名準買家介紹一個單位。由於該準買家並未帶備支票支付訂金，地產代理遂向客人表示，其公司可先為他開出一張100,000元的本票及臨時訂金餘款154,850元的支票。於是，該買家其後便透過信用卡及自動櫃員機，合共支付了100,000元予地產代理公司以換取一張等額的本票，該公司並以其支票替該買家支付了訂金餘款154,850元。

而該地產代理在安排買家簽訂臨時買賣合約（「臨約」）後，該買家由於獲悉他未必能夠取得足夠的按揭貸款，遂決定取消該臨約，該筆訂金254,850元因而遭發展商沒收。該買家感到不憤，遂向監管局作出投訴。

INCIDENT

An estate agent introduced a first-hand residential property to a prospective purchaser at a first-sale site. The estate agent offered a cashier order of \$100,000 and a cheque of \$154,850 to the purchaser as the purchaser said he had not brought with him any cheque to pay for the deposit. Later on, the purchaser paid a total of \$100,000 to the estate agency company that the estate agent worked for by credit card and ATM in exchange for the said cashier order. The remaining deposit of \$154,850 was paid by the estate agency company by issuing a cheque for the purchaser.

The estate agent then arranged for the purchaser to enter into a provisional agreement of sale and purchase ("PASP"). However, as the purchaser found out that he would not be able to obtain a sufficient mortgage loan, he therefore cancelled the PASP, and the deposit of \$254,850 was forfeited to the developer. Feeling aggrieved, the purchaser lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該地產代理公司沒有遵守執業通告（編號13-04(CR)）的指引，即持牌人不得向準買家提供或提出提供貸款，以及違反《操守守則》第3.2.1段。

另外，該公司授權其地產代理可同時處理及批核訂金支票，制度上缺乏

RESULT

The EAA Disciplinary Committee was of the view that the estate agency company had failed to comply with the guidelines set out in Practice Circular (No.13-04(CR)), which stipulates that licensees must not offer or make loans to a prospective purchaser. It was in breach of paragraph 3.2.1 of the *Code of Ethics*.

In addition, as the company authorised the estate agent to approve and handle cashier orders and cheques without implementing any effective check and balance procedures to prevent its staff from

監管與制衡，從而引至其地產代理提出提供貸款予準買家，即未有設立妥善的程序或制度以監督和管理其地產代理業務，以確保其僱員遵守《地產代理條例》、其附屬法例、監管局發出的《操守守則》及其執業通告等，因而違反《地產代理常規（一般責任及香港住宅物業）規例》第15條。

考慮到個案的性質、同類個案的罰則，以及該持牌地產代理公司的違規紀錄，該公司最終被譴責及罰款100,000元。

offering loans to prospective purchasers, it had therefore failed to establish proper procedures or systems to supervise and manage its business in order to ensure its employees comply with the provisions of the Estate Agents Ordinance, and its subsidiary legislation, the *Code of Ethics*, practice circulars and guidelines issued from time to time by the EAA. Thus, it was in breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the estate agency company, the company was reprimanded and fined \$100,000.



業界回應 COMMENT FROM TRADE

作為地產代理從業員，絕不能向準買家提供貸款或承諾買家其貸款保證一定成功。此外，從業員亦應建議其客戶向銀行查詢有關貸款的事宜，以保障其利益。

Practitioners must not offer or make loans to prospective purchasers. In order to protect clients' interest, estate agents should not make any assurance on the amount or the terms of the mortgage, but remind the clients to contact the banks directly for the information on relevant mortgage plan.

香港房地產代理業聯會第一副主席李景亮先生
Mr Lee King-leong, First Vice Chairman of Hong Kong Property Agencies Association

紀律研訊個案：違例建築工程損害客戶利益 DISCIPLINARY HEARING CASE: UNAUTHORISED BUILDING WORKS PREJUDICE CLIENT INTEREST

引言

持牌人在處理住宅物業的租賃時，須採取措施核實物業是否涉及違例建築工程，並如實告知客戶相關事實及風險。持牌人亦須提醒客戶在進行交易前，應先尋求法律意見。否則有可能被監管局紀律處分。

INTRODUCTION

When handling the leasing of residential properties, licensees should take steps to ascertain whether there are unauthorised building works on the property and if so, inform their clients of the risks and consequences involved. Licensees should also remind their clients to seek legal advice before proceeding with the transaction. Otherwise, they may be subject to disciplinary actions by the EAA.

事件經過

一名營業員安排一位租客視察一間設有天台搭建物的村屋。該營業員已知悉該搭建物屬違例建築物，但並沒有就該違

INCIDENT

A salesperson arranged for a tenant to inspect a village house with an enclosed rooftop structure. The salesperson had actual knowledge that the rooftop structure is an unauthorised

例搭建物所涉及的風險提醒租客先尋求法律意見，才繼續該物業的租賃交易。

在訂立臨時租約及正式租約後，該租客接獲律師通知，該搭建物屬違例建築物及並未獲屋宇署批准。該租客遂向監管局作出投訴。

building work. However, he did not alert the tenant to the risks involved and remind the tenant to seek legal advice before proceeding with the transaction.

After signing the Provisional Tenancy Agreement and the Tenancy Agreement, the tenant learnt from his solicitor that the rooftop structure is an unauthorised building work and did not have the approval of the Buildings Department. The tenant then lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該營業員沒有提醒租客在進行租賃交易前，就租住附有違例建築的物業所涉及的風險尋求法律意見，未有遵守執業通告（編號10-01(CR)）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。」

此外，該營業員在臨時租約及正式租約上錯誤填寫該物業的地址，違反了《操守守則》第3.5.1段：「地產代理和營業員在履行職務時必須盡量小心和盡一切應盡的努力。」

考慮到個案的性質、持牌人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，並在其牌照上附加條件，要求他在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 found that the salesperson had failed to remind the tenant to seek legal advice regarding the risks involved in renting a property with unauthorised building works before proceeding with the lease transactions. Thus, he failed to comply with Practice Circular (No. 10-01(CR)). He was in breach of paragraph 3.2.1 of the *Code of Ethics* issued by the EAA, which stipulates: “*estate agents and salespersons should be fully conversant with the Estate Agents Ordinance, 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, he failed to insert the correct address of the property in both the Provisional Tenancy Agreement and the Tenancy Agreement. He was therefore in breach of paragraph 3.5.1 of the *Code of Ethics* which states that estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence.

Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Committee decided to reprimand the salesperson and attach conditions to his licence requiring him to obtain 24 points under the EAA’s Continuing Professional Development Scheme in 24 months.



業界回應 COMMENT FROM TRADE

地產代理在處理租賃時，有責任就該物業進行土地查冊，以核實物業是否涉及違例建築工程，並如實告知準租客相關事實和風險。另外，如物業附有違例建築工程，則須建議客戶在進行租賃程序前，先尋求法律意見，以保障客戶利益。

Estate agents have the responsibility to conduct a land search of the relevant property in order to verify if any unauthorised building works (“UBW”) are involved when handling tenancy. Besides, to protect the interest of the clients, estate agents should remind their clients to seek legal advice before proceeding with the tenancy if the property involves UBW.

香港地產代理專業協會會長郭昶先生
Mr Anthony Kwok Chong, President of Society of Hong Kong Real Estate Agents Ltd.