

# 誠信與你

## Integrity in Focus

### 紀律研訊個案 Disciplinary hearing case

## 未有通知買方物業附有未解除建築命令及購買該物業的風險 Failing to inform purchaser about undischarged building orders of the property and the risk of purchasing it

#### 引言

持牌人應通知買方有關物業附有的建築命令、購買該物業的風險，以及提醒買方在簽署臨時買賣合約（「臨約」）前先諮詢法律意見，否則有可能被監管局紀律處分。

#### Introduction

Licensees should inform the purchaser about undischarged building orders of the property, the risk of purchasing such property and to remind the purchaser to seek legal advice prior to signing the Provisional Agreement for Sale and Purchase ( "PASP" ). Otherwise, they may be subject to disciplinary action by the EAA.

#### 事件經過

一名地產代理在安排一名準買家視察物業期間，即使她已知悉該物業的土地查冊中附有四項建築命令，但並沒有告知準買家。準買家在簽署臨約前，查閱該物業的土地查冊發現該四項建築命令，遂向地產代理查詢。該代理回應稱，有關命令只涉及普通的樓宇維修命令。然而，事實上，其中的一項命令指出，有關物業已被列為「危險建築物」。同時，該代理並沒有告知準買家購買該物業的風險，或提醒他在購買該物業前應先諮詢法律意見。其後，買家從律師中獲悉真相，遂向監管局作出投訴。

#### Incident

During the viewing of a property with a prospective purchaser, the estate agent did not inform the client that the property had four undischarged building orders registered in the Land Register even though she knew about it. Prior to signing the PASP, the prospective purchaser read the land search record and found the four undischarged building orders. He asked the agent about them and in response, the agent told him that they were about general building maintenance. However, one of the orders was actually about the property being classified as a "Dangerous Building". Moreover, the agent also neither informed the prospective purchaser about the risk of purchasing this property with these building orders nor advised him to seek legal advice before signing the PASP. Later on, the purchaser found out the truth from his lawyer and then 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違反了監管局制定的《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、按照地產代理協議執行客戶的指示，並對交易各方公平公正。」

#### Result

The EAA Disciplinary Committee found that the estate agent failed to comply with paragraph 3.4.1 of the *Code of Ethics* issued by the EAA, which stipulates: "Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction."

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考慮到個案的性質及該營業員的違規紀錄，委員會決定譴責該名地產代理、向她罰款 10,000 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，當中至少 3 個學分須透過參加土地查冊科目的講座或研討會而獲取。

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent and impose a fine of \$10,000 on her. A condition was also attached to her licence requiring her to obtain 12 points of the CPD in 12 months, at least 3 CPD points shall be acquired from seminars or lectures on the land search subject.



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## 業界意見 Comment from trade

地產代理如知悉物業附有產權負擔，如押記令、建築令等，他們有責任如實告知客戶，並提醒準買家購買該物業的相關風險。

地產代理應充分掌握查閱土地查冊的技巧，從業員也可參與監管局開辦的相關課程，以溫故知新。

If estate agents know about the encumbrances of the property, such as charging order and building order etc, they are responsible to inform their clients accordingly and should also remind prospective purchasers of the risks of purchasing such a property.

Estate agents should be skilled at checking and reading a land search. Practitioners should participate in related seminars offered by the EAA to keep their knowledge up-to-date.

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### 有關按揭資料的失實陳述

### Misrepresentation on mortgage information

#### 引言

持牌人不得向準買家就按揭條款作出任何失實陳述或承諾，否則有可能被監管局紀律處分。

#### Introduction

Licencees should not make any misrepresentation or promises to prospective purchasers on mortgage terms. Otherwise, they may be subject to disciplinary action by the EAA.

#### 事件經過

一名營業員向一名準買家介紹一個一手住宅物業，並以該項目其中一個售價逾 6,000,000 元的單位作為例子，向準買家解釋按揭計劃的計算方法。該營業員向準買家表示，可透過香港按揭證券有限公司推出的按揭保險計劃，向銀行取得樓價八成的按揭貸款。

#### Incident

A salesperson introduced a first-hand residential property to a prospective purchaser and used one of the units of that development with a listing price of over \$6,000,000 as an example to explain to her the calculation of a mortgage plan. The salesperson told her that she could obtain a mortgage loan of 80% of the purchase price from a bank under the Mortgage Insurance Programme ("MIP") launched by The Hong Kong Mortgage Corporation Limited.