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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."

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

Licensees 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.

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基於以上資訊，該買家決定以 6,851,000 元購買其中一個單位，並簽訂臨時買賣協議。其後，她向多間銀行查詢，卻被告知因該物業的樓價超過 6,000,000 元，所以不獲批出八成的按揭貸款。

結果，她只能取得樓價六成的按揭貸款，需向家人借款才能夠完成交易。該買家深感不滿，遂向監管局投訴。

Based on the above information, the purchaser decided to purchase one of the units at a price of \$6,851,000 and entered into the provisional agreement of sale and purchase. However, she was then informed by different banks that she was unable to obtain an 80% mortgage loan as the property price was over \$6,000,000.

As a result, the purchaser could only obtain a mortgage of 60% of the property price and had to borrow money from her family in order to complete the transaction. Feeling aggrieved, she 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按揭資料向客戶作出失實陳述。根據按揭保險計劃，八成按揭成數上限只適用於樓價 6,000,000 元或以下的物業。

因此，他違反了監管局發出的《操守守則》第 3.2.2 段：「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」。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營業員、罰款 8,000 元，並在其牌照上附加條件，要求他在 12 個月內取得持續專業進修計劃下的 12 個學分，當中至少 2 個學分須透過參加一手住宅物業科目的講座或研討會而獲取。

Result

The EAA Disciplinary Committee found that the salesperson had made a misrepresentation to his client on mortgage information. According to the MIP, a mortgage loan of up to 80% loan-to-value ratio is applicable to property values up to \$6,000,000 only.

Therefore, he was in breach of paragraph 3.2.2 of the *Code of Ethics* which stipulates: “Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market”. Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Committee decided to reprimand him, impose a fine of \$8,000 and attach a condition to his licence requiring him to obtain 12 points under the EAA’s Continuing Professional Development Scheme in 12 months, at least 2 CPD points shall be acquired from seminars or lectures on the first-sale residential property subject.



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業界意見 Comment from trade

地產代理應緊記，失實言詞有違專業操守。消費者也應留意寫在臨時買賣合約上的物業成交價及成交日期，並先到銀行查詢樓宇按揭預先批核及物業估值才簽署合約，以策安全。

Estate agents should bear in mind that misrepresentation is against professional conduct. At the same time, consumers should pay attention to the price and the date of transaction stated in the preliminary agreement for sale and purchase (“PASP”), check with banks on the valuation of the property and seek prior approval on mortgage before signing the PASP to play safe.