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Integrity in Focus

紀律研訊個案 Disciplinary hearing case

香港境外未建成物業的違規廣告 Non-compliant advertisement of uncompleted properties situated outside Hong Kong

引言

持牌人就香港境外未建成物業發出廣告時，須遵守監管局發出的相關指引，否則有可能被監管局紀律處分。

Introduction

Licensees are required to comply with the relevant guidelines issued by the EAA when issuing advertisements for uncompleted properties situated outside Hong Kong. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

監管局職員在進行報刊廣告巡查時，發現一則由持牌地產代理公司發出、關於英國一個未建成物業發展項目的廣告。該廣告沒有符合執業通告（編號 17-03(CR)）的其中兩項要求，清楚述明發展許可證或批文編號、發出以上文件的有關當局的名稱；以及買方是否將取得土地權益、建於該土地上的樓宇權益及/或使用和佔用樓宇內的物業的權利。

該持牌地產代理公司承認，因在發出該廣告時疏忽及未有仔細閱讀有關執業通告而違規，表示往後會遵守相關指引。

Incident

During an inspection on printed advertisements, the EAA staff discovered that an advertisement of an uncompleted property development in the United Kingdom issued by a licensed estate agency company did not comply with the requirements under the practice circular (No. 17-03(CR)). It did not state clearly the development permit or approval numbers, name of the relevant authority which issued such documents, and whether or not purchasers are acquiring an interest in the land, the building to be erected, and/or a right to use and occupy the properties in the building.

The licensed estate agency company admitted their negligence and that they did not read the related practice circular carefully. They said that they would comply with the relevant guidelines in the future.

研訊結果

監管局紀律委員會認為，該地產代理公司在發出物業廣告時沒有遵守執業通告（編號 17-03(CR)）的指引，因而違反監管局制訂的《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。」

Result

The EAA Disciplinary Committee found that the estate agency company failed to comply with the guidelines of practice circular (No. 17-03(CR)). Hence, it 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."

考慮到個案性質及該地產代理公司的違規紀錄，紀律委員會決定譴責該地產代理公司及罰款 3,000 元。

Having considered the nature and gravity of the case and the disciplinary record of the estate agency company, the Committee decided to reprimand the estate agency company and imposed a fine of \$3,000 on it.



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業界意見 Comment from trade

各處鄉村各處例，地產代理在處理境外物業銷售時要份外小心，並應採取一切合理步驟了解樓盤資料，對客戶的財務安排作出妥善提醒，要留意有沒有涉及證券及期貨條例下的集體投資計劃，並應取得相關盡職審查報告及諮詢當地執業律師的意見。

Since regulatory regimes of other locations are different from Hong Kong, estate agents should take extra caution when handling the sales of properties situated outside Hong Kong. They should take all reasonable steps to study the information of the developments and remind their clients of their financial arrangement appropriately. They should also be careful whether any Collective Investment Scheme under the Securities and Futures Ordinance is involved, obtain a due diligence report, and legal opinion by a lawyer practising in the place where the property is located.

紀律研訊個案 Disciplinary hearing case

處理不可出租的牌照屋

Handling licensed squatter structures which cannot be leased

引言

持牌人在處理位於鄉郊土地的物業交易時，必須小心查證有關物業的業權及是否可供轉讓或出租，否則有可能令客戶蒙受損失，因而被監管局紀律處分。

Introduction

When handling property transactions on rural land, licensees should verify the ownership of the property carefully and check whether it is allowed to be resold or leased. Otherwise, their clients may suffer loss and they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理在處理一棟位於新界鄉郊的搭建物的租賃事宜中代表租客行事。她安排一名自稱為該搭建物的業主與租客簽訂臨時租約及正式租約，並向租客聲稱搭建物位於私人土地上。事實上，該搭建物屬於不能出租予他人的政府牌照屋，而那位

Incident

An estate agent acted for a tenant in renting a squatter structure located on rural land in the New Territories. She arranged for a man who claimed to be the landlord of the structure to enter into the provisional and formal tenancy agreements with the tenant. She informed the tenant that the structure was located on private land. In fact it was a Government licensed structure which cannot be leased

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自稱為該物業的業主的人，只是物業所位處政府土地的牌照持牌人。租客其後接獲寮屋管制組的人員通知，指該搭建物位處於政府土地上，並不可以出租，租客遂向監管局作出投訴。

and the man who claimed to be the landlord was only the licensee of the land. Later, the tenant was informed by officials of the Squatter Control and Clearance Office that the structure was located on Government land and could not be leased. The tenant then lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該名地產代理沒有事先核實該搭建物的業權，也沒有確保該物業是一個可以被租用作住宅用途的物業，便安排其客戶簽訂租約，違反了《操守守則》第 3.4.1 段，即「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」。

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定譴責該名地產代理，罰款 \$5,000、暫時吊銷其牌照 14 天及附加條件於其牌照上，要求她於 12 個月內取得持續專業進修計劃下有關「合規及有效管理」類別的講座或研討會共 12 個學分。

Result

The EAA Disciplinary Committee was of the view that the estate agent had failed to verify the ownership of the structure and whether the structure could be leased as a residential property before arranging for her client to enter into a tenancy agreement. Therefore, she was in breach of paragraph 3.4.1 of the *Code of Ethics*, 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."

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, impose a fine of \$5,000 and suspend her licence for 14 days. A condition was also attached to her licence requiring her to obtain 12 points of the "Compliance and Effective Management" courses/seminars under the Continuing Professional Development Scheme in 12 months.



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業界意見 Comment from trade

牌照屋出租很有可能涉及非法利用官地，有關部門會作出適當的管制甚至乎清拆及檢控有關人士。作為地產代理應盡力向業主及有關署方確認物業資料，處理牌照屋的交易時如有疑問，應諮詢法律意見以保障各方權益。

Leasing of licensed squatter structures may involve unlawful occupation of Government land, relevant departments may take enforcement action and clearance exercise of the structures. Persons involved may also be prosecuted.

When handling the transaction of licensed squatter structures, estate agents should seek legal advice for any query in order to protect the interests of all parties.