



以電子方式簽立 地產代理協議要留神

Be careful when entering into an estate agency agreement by electronic means

監管局一向關注市場最新動向，最近留意到市面上推出了一些網上平台及智能電話應用程式，聲稱可協助地產代理以電子方式與客戶簽立地產代理協議。對不少人而言，這看來既可減少用紙又方便；然而，監管局提醒持牌人，以電子方式簽立地產代理協議時不可掉以輕心，以免違反法例或規例。

The EAA always keeps an eye on the latest market trends and noticed that some online platforms and mobile apps recently launched in the market claimed to help estate agents and clients enter into estate agency agreements by electronic means. Whilst using less paper and being more convenient sounds good to many of us, the EAA would like to remind licensees to be very careful when using electronic means to enter into estate agency agreements to avoid breaching any laws and regulations.

焦點話題

In Focus

不應貪快而忽略重要步驟

Not to skip important steps for the purpose of saving time

首先，持牌人應緊記，無論是以紙張形式還是電子方式與客戶簽立地產代理協議，都必須遵守《地產代理條例》及其附屬法例，特別是《地產代理常規（一般責任及香港住宅物業）規例》（簡稱《常規規例》）及監管局發出的相關指引。

根據《常規規例》，持牌人須向並非由律師代表的客戶解釋地產代理協議的條款及條件。即使持牌人以電子方式與客戶簽立地產代理協議時可能無法與客戶會面，他們仍須遵守相關的規定。

此外，持牌人不可將額外條款預印在訂明的地產代理協議內（不論是紙張還是電子形式），並須確保客戶可分辨由持牌人加入的資料與法律訂明的內容；任何額外條款必須先向客戶解釋清楚，並獲得客戶同意才可加上。

First of all, licensees should remember that whether they use paper format or electronic format to enter into an estate agency agreement with clients, they need to comply with the Estate Agents Ordinance, its subsidiary legislation, in particular the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”) and other relevant guidelines issued by the EAA.

According to the Practice Regulation, licensees should explain to their clients the terms and conditions of the estate agency agreement when their clients are not legally represented. Even though licensees and their clients may not be meeting face-to-face when they enter into the estate agency agreement by electronic means, licensees must bear in mind that they are still required to comply with the relevant requirement.

Moreover, licensees must not pre-print any extra terms on the prescribed estate agency agreement (whether in paper or electronic format) and they need to ensure that their clients are able to distinguish any additional information inserted by licensees in the agreement from the contents prescribed by the law. Any extra terms, in the agreement must also be clearly explained to and accepted by clients.

小心行事以保障雙方利益

Play safe to protect the interests of both parties

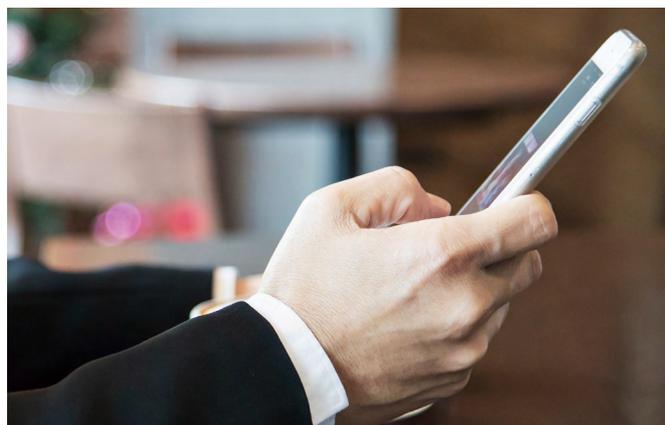
倘若持牌人以傳真或電郵形式向客戶傳送地產代理協議，以便客戶可列印該協議於紙張上，然後簽署並傳真或電郵該份已簽名的協議予持牌人，局方建議他們在隨後與客戶見面時（但無論如何在訂立物業買賣/租賃協議前），安排客戶在該協議的印刷版本上加簽，以確認其傳真或電郵版本上的簽署，這可避免客戶的簽署因以前述簽署形式傳送而產生其真確性的爭議。

If licensees transmit the estate agency agreement to their clients through fax or email so that the agreement may be printed on paper, signed physically by their clients and faxed or emailed back to the licensees first before they meet, licensees are advised to arrange for their clients to countersign on the hard copy of the agreement to endorse the scanned signature as soon as they meet and in any event, before any agreement for sale and purchase/lease of the property is entered into. This can help prevent disputes on the authenticity of the client's signature sent through the aforementioned means.

另外，持牌人也要小心處理客戶的個人資料。持牌人以電子形式向客戶傳送協議或其他電子檔案前，應採取適當的保安措施（例如設定密碼或加密），以減低客戶個人資料外洩或被更改的風險。他們亦應採取預防措施，以保障所收集的個人資料免遭遺失、受未獲授權或意外的查閱、處理或刪除。同時，持牌人亦要留意，載有個人資料的文件/紀錄於使用後必須妥善處理。



Separately, licensees must also be vigilant when handling client's personal data. Licensees are advised to impose security measures (e.g. password protection or encryption) on the agreement and other electronic files before transmitting them to clients through electronic means to reduce the risk of alteration or leakage of data. They should also take precautionary measures to ensure that the personal data collected is protected against any loss, unauthorised or accidental access, processing or erasure. Licensees are also reminded to dispose of the documents/records containing personal data properly after use.



沒有百分百保證 No 100% guarantee

在閱讀此文章後，持牌人不難發現，對於以電子方式與客戶簽立地產代理協議是否妥當或安全這個問題，沒有一個簡單而直接的答案。就如傳統紙張形式一樣，倘若持牌人在處理地產代理協議時不夠小心，便有機會出現欠妥的情況。作為規管香港地產代理行業的法定機構，監管局是不會評論或認可任何由個別地產代理公司或商會推出的商業產品或服務。因此，持牌人及消費者均應注意，市面上並沒有任何所謂獲監管局批准、認可或接受的产品（包括電子服務）。

無可否認，電子商貿是各行各業的大勢所趨，監管局亦明白，電子應用能為持牌人及其客戶帶來便利。然而，物業交易所涉及的金額通常鉅大，值得持牌人與消費者花多些時間留意細節，以策萬全。

After reading this article, licensees should understand that there is no simple or straightforward answer as to whether it is proper or safe in using electronic means to enter into an estate agency agreement. Just like the traditional paper format, there is always a chance of mishandling an estate agency agreement if licensees are not careful enough. Being a statutory body tasked to regulate the estate agency practice in Hong Kong, the EAA will not comment on, or even endorse, any commercial product or service launched by individual estate agency companies or trade associations. Hence, both licensees and consumers should note that there is no such product (including electronic service) in the market which is so called approved, recognised or accepted by the EAA.

That said, as e-commerce is the major trend in various sectors of business, the EAA understands that the use of electronic applications will certainly provide licensees and their clients more convenience. However, licensees and consumers should bear in mind that since property transactions usually involve a large sum of money, it deserves spending more time on paying extra attention to the details to play safe.