

# 誠信與你

## Integrity in Focus

### 紀律研訊個案 Disciplinary hearing case

#### 有關安排訂金託管的失實陳述

#### Misrepresentation on the stakeholding arrangement for the deposit

##### 引言

持牌人在執業期間不可向客戶作出任何失實陳述，當中包括不得向客戶提供關於付款安排的錯誤資訊，否則有機會被監管局紀律處分。

##### Introduction

Licensees must not make any misrepresentation to their clients in the course of their practice, including that, they must not provide clients with any inaccurate information on the payment arrangement. Otherwise, they may be disciplined by the EAA.

##### 事件經過

一名地產代理向一對夫婦介紹一個位於香港境外的未建成物業。在簽署預訂表格以購買該項目其中一個單位前，該地產代理告訴他們所支付的首期訂金會由律師託管或以信託形式保管，而正式買賣合約中將有條款訂明上述安排。該地產代理更向他們保證，倘若物業最終未能竣工，可要求律師退回訂金。

##### Incident

An estate agent introduced an uncompleted property situated outside Hong Kong to a couple. Before they signed the reservation form for purchasing a unit of the development, the estate agent told them the initial deposit they paid would be stakeheld by the solicitor or held in trust, and such arrangement would be stipulated in the formal agreement for sale and purchase. The estate agent further assured them that if the property failed to be completed, they could request a refund of the deposit from the solicitor.

然而，該對夫婦其後獲賣方律師證實，買賣合約上並沒有訂明有關訂金託管的安排，有關訂金將會直接交付賣方。兩人最終決定取消交易，並向監管局作出投訴。



However, the couple later verified the information with the vendor's solicitor and found out that there was no provision in the agreement for sale and purchase regarding the stakeholding arrangement for the deposit. The deposit would be paid to the vendor directly. The couple cancelled the deal and lodged a complaint to the EAA.

## 研訊結果

監管局紀律委員會認為，該地產代理向該對夫婦就訂金託管安排作出失實陳述，違反了《操守守則》第 3.7.2 段，即「地產代理和營業員應避免做出可能令地產代理行業信譽及 / 或名聲受損的行為」。

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，向他罰款 5,000 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 6 個學分。

## Result

The EAA Disciplinary Committee was of the view that the estate agent made a misrepresentation on the stakeholding arrangement of the deposit to the couple, hence in breach of paragraph 3.7.2 of the *Code of Ethics*, which stipulates: “estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.”

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand him, impose a fine of \$5,000 and attach a condition to his licence, requiring him to obtain six points under the EAA’s Continuing Professional Development Scheme in 12 months.



周業德先生  
地產代理（從業員）總公會副主席  
Mr Chou Yip-tak  
Vice-Chairman of  
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## 業界意見 Comment from trade

地產代理向客戶提供有關訂金託管的資訊前，必須與發展商核實清楚相關條款，切勿輕率向客戶作出任何保證。倘若因失實陳述而留下違規紀錄，不但失去客戶信任，亦有損從業員的聲譽。

Before informing clients about the stakeholding arrangement of the deposit, estate agents must verify the relevant terms with the developer and must not hastily make any assurance to clients. In case the practitioner is disciplined due to misrepresentation, his disciplinary record will cost him his client's trust and his own reputation.

# 誠信與你

## Integrity in Focus

### 未有確定泊車位有否使用限制

Failure to ascertain whether there is any restriction on the use of a car parking space

#### 引言

在處理泊車位的買賣時，持牌人應確定該泊車位有否任何使用上的限制，並於訂立任何買賣合約前告知買方，否則有機會被監管局紀律處分。

#### Introduction

Licensees are required to ascertain whether there is any restriction on the use of a car parking space and if so, inform the purchaser before arranging for the purchaser to enter into any agreement for sale and purchase. Otherwise, they may be subject to disciplinary action by the EAA.

#### 事件經過

一名持牌營業員知悉其客戶欲購買一個私人屋苑的泊車位作出租用途，於是該營業員向該客戶介紹某私人屋苑的一個泊車位。於簽署臨時買賣合約前，客戶向營業員重申，購買該泊車位的目的為出租予非該屋苑的住客，而營業員當時並沒有向其提及有關該泊車位的任何使用限制。

其後，該客戶透過其律師知悉，她所購買的泊車位是有使用限制的。根據大廈公契，有關車位只供該私人屋苑的住客及其訪客使用，因此，她不能出租該泊車位予非該屋苑的住客使用，否則便會違反大廈公契。客戶覺得被該營業員誤導，遂向監管局作出投訴。

#### Incident

A salesperson was aware that a client would like to purchase a car parking space of a private housing estate for leasing out purpose and introduced a car parking space of a private housing estate to the client. Before signing the provisional agreement for sale and purchase (PASP), the client reiterated that her purpose of purchasing the car parking space was to rent it to non-residents of that private housing estate. At that time, the salesperson did not mention to her whether there was any restriction on the use of the car parking space which he introduced to her.

Later, the client was informed by her solicitor that according to the Deed of Mutual Covenant (DMC), the use of the car parking space she purchased was limited to the residents of that private housing estate

and their bona fide visitors only. Hence, she could not rent the car parking space to non-residents of that private housing estate as it would be in breach of the DMC. Feeling misled by the salesperson, the client lodged a complaint to the EAA.



## 研訊結果

監管局紀律委員會認為，該營業員違反了執業通告（編號 15-05(CR)）。他未有查核大廈公契以確定該泊車位有否任何使用限制，亦沒有於訂立臨時買賣合約前，把該使用限制告知買方。因此，他違反了《操守守則》第 3.2.1 段，即「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、操守守則，以及由監管局不時發布的所有其他指引」。

考慮到個案的性質及該名營業員的違規紀錄，紀律委員會決定譴責該名營業員，向他罰款 5,000 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。

## Result

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with the guidelines set out in the Practice Circular No. 15-05(CR). He neither checked the DMC to ascertain whether there was any restriction on the use of the car parking space nor did he inform the purchaser on such restriction before arranging for the purchaser to enter into the PASP. Hence, he was in breach of paragraph 3.2.1 of the *Code of Ethics*, which stipulates: “Estate agents and salespersons should be fully conversant with the EAO, 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”.

Having considered the nature and gravity of the case, and the disciplinary record of the salesperson, the Committee decided to reprimand him and impose a fine of \$5,000. A condition was also attached to his licence requiring him to obtain 12 points under the EAA’s Continuing Professional Development Scheme in 12 months.



## 業界意見 Comment from trade

持牌人有責任將公契對車位使用的限制如實向客人說明。個案中有關持牌營業員明顯違規，被紀律委員會判罰款及進修 12 個學分，合情合理。

Licencees are responsible for informing their clients of the restrictions on the use of car parking space as stipulated in the DMC. The licensed salesperson in this case was obviously in violation and it is reasonable for the Disciplinary Committee to impose a fine on him and require him to obtain 12 points under the CPD scheme.

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