

在《專業天地》內，我們會解答持牌人的一些常見提問。

In *Horizons*, we will answer questions commonly asked by licensees.

問 地產代理可否接受其中一個買家客戶提供額外的佣金，作為不向賣方客戶披露其他要約的報酬？

答 倘若地產代理接受額外佣金，作為不向賣方客戶披露其他準買家的要約的報酬，他/她便有可能觸犯《防止賄賂條例》及《地產代理常規（一般責任及香港住宅物業）規例》（「《常規規例》」）。

根據《防止賄賂條例》第 9(1)條，「任何代理人無合法權限或合理辯解，索取或接受任何利益，作為他作出以下行為的誘因或報酬，或由於他作出以下行為而索取或接受任何利益，即屬犯罪：

- (a) 作出或不作出，或曾經作出或不作出任何與其主事人的事務或業務有關的作為；或
- (b) 在與其主事人的事務或業務有關的事上對任何人予以或不予，或曾經予以或不予優待或虧待」。

地產代理於物業交易中代表賣方行事，其賣方客戶便是其主事人。如地產代理在未得到其主事人(即其賣方客戶)的允許下，接受一名準買家的「額外報酬」（即是一種利益），作為不將其他準買家的要約提交給賣方客戶的報酬，該地產代理便可能因而觸犯《防止賄賂條例》第 9(1)條。

此外，該地產代理沒有將從準買家接獲的所有要約提交給賣方客戶，他亦可能因此違反了《常規規例》第 11(e)條，即「持牌人在接獲任何要約後，須在切實可行的範圍內盡快將該要約向客戶提交，以供客戶接受」。

Q Could an estate agent receive extra commission offered by one of his purchaser clients for not disclosing other offers to his vendor client?

A If an estate agent accepts extra commission as a reward for not disclosing offers of other prospective purchasers to the vendor, he/she might have breached the Prevention of Bribery Ordinance (“PBO”) and the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (“Practice Regulation”).

According to Section 9(1) of the PBO, “Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal’s affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal’s affairs or business, shall be guilty of an offence”.

When an estate agent acts for a vendor client in a property transaction, the vendor client is his principal. If the estate agent, without the permission of his principal (i.e. his vendor client), accepts any “extra commission” (which is an advantage) from a prospective purchaser for not disclosing the offers of other prospective purchasers to the vendor client, the estate agent may commit an offence under Section 9(1) of the PBO.

Furthermore, by failing to present all the offers received from prospective purchasers to his vendor client, the estate agent may be in breach of section 11(e) of the Practice Regulation which states that “a licensee shall present an offer to a client for acceptance as soon as practicable after receiving it”.