

研訊結果

監管局紀律委員會認為，該地產代理公司於網上發出載有虛假牌照資料的廣告，因而違反了《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公司的違規紀錄，紀律委員會決定譴責該地產代理公司及向其罰款30,000元。

Result

The EAA Disciplinary Committee was of the view that the estate agency company issued an advertisement on the internet which contained false licence information. Hence, it failed to comply with paragraph 3.7.2 of the *Code of Ethics*, which states that “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 that company, the Disciplinary Committee decided to reprimand the estate agency company, and impose a fine of \$30,000.



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業界意見 Comment from trade

地產代理就物業發出廣告前，須先取得賣方/業主的書面同意，並採取一切合理步驟核實廣告所載資料的準確性，所有廣告均須真實及不具誤導性，以保障消費者的利益。此外，廣告中亦應列明物業編號及廣告的刊登日期。

Prior to issuing a property advertisement, estate agents must obtain written consent from the vendor/landlord and take all reasonable steps to verify the accuracy of the information contained in the advertisement. All advertisements must be real and not misleading so that consumers' interests are protected. In addition, the property number and the date of the advertisement should also be stated in the advertisement.

紀律研訊個案 Disciplinary hearing case

未有告知客戶物業涉及無償轉讓契

Failure to inform a client that a property involved an assignment at nil consideration

引言

倘若有關物業涉及遺產分配協議及/或無償轉讓契，持牌人在與客戶訂立臨時買賣合約（「臨約」）之前，必須告知客戶有關事實，並應建議客戶尋求獨立的法律意見。否則，持牌人有機會被監管局紀律處分。

Introduction

Before arranging for clients to enter into the provisional sale and purchase agreement (“PASP”), licensees must inform the purchaser(s) if the relevant property involves a Deed of Family Arrangement and/or an assignment at nil consideration and advise them to seek independent legal advice. Otherwise, licensees may be subject to disciplinary action by the EAA.

事件經過

於一項物業買賣交易中，一名營業員安排買家訂立臨約。然而，該買家其後獲律師通知，該

Incident

In a property transaction, a salesperson arranged for the purchaser to enter into a PASP. However, the purchaser was later informed by his

物業因涉及遺產分配協議，有機會影響其按揭申請。

及後，買家向不同銀行作出的所有按揭貸款申請均被拒絕。買家最終要取消交易，而有關訂金亦被沒收。買家不滿該營業員未有告知他有關物業於土地註冊處註有遺產分配協議，也未有向其指出購入該物業所帶來的潛在風險，遂向監管局作出投訴。

solicitor that the property involved a Deed of Family Arrangement which might affect his mortgage application.

Subsequently, all the purchaser's mortgage applications from different banks were rejected. As a result, he cancelled the transaction, and his deposit was forfeited. Feeling dissatisfied that the salesperson did not inform him that the property had a Deed of Family Arrangement registered at the land registry, nor of the potential risks relating to the title of the property, he lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該營業員未有告知準買家有關物業涉及遺產分配協議及/或無償轉讓契，亦未有於訂立臨約前向其建議先尋求法律意見。

因此，該營業員違反了《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營業員的違規紀錄，紀律委員會決定譴責該營業員，向他罰款8,000元及要求他在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 inform the prospective purchaser that the property involved a Deed of Family Arrangement and/or an assignment at nil consideration and failed to advise the prospective purchaser to seek legal advice before arranging for him to enter into the PASP.

Hence, the salesperson was in breach of paragraph 3.4.1 of the *Code of Ethics*, which states that “Estate agents and salespersons 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 salesperson, the Disciplinary Committee decided to reprimand him, and impose a fine of \$8,000 and require him to obtain 12 points in the Continuing Professional Development Scheme within 12 months.



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業界意見 Comment from trade

從業員在處理交易時應向客戶清楚解釋土地查冊上所有細節，若發現有關物業涉及遺產分配協議及/或無償轉讓契時更應份外小心，除了對準買家作出提醒外，亦可提供補充附件讓準買家清楚知道物業業權有可能受到影響及/或無法取得該物業的按揭貸款等風險。同時，從業員亦應建議準買家在簽署臨約前先諮詢獨立法律意見。

Practitioners should explain the details of the land search to clients when handling property transactions. If a Deed of Family Arrangement and/or an assignment at nil consideration is involved, they should take extra precautions and alert the prospective purchaser about the risks. They could also provide a supplementary document to ensure that the prospective purchaser understands clearly that the title of the property may be affected and/or the risk of failing to obtain a mortgage for the property. Moreover, practitioners should advise the purchaser to seek independent legal advice before entering into the PASP.