

# 地產代理被判入獄一對所有參與一手住宅物業銷售的持牌人的警號

## Estate agent sentenced to jail – a warning to all licensees who participate in first-hand sale of residential properties



最近一名地產代理因傳布一則相當可能會誘使另一人購買指明住宅物業的虛假或具有誤導性的資料，觸犯《一手住宅物業銷售條例》（「《條例》」）而被判處監禁。這宗個案是對地產代理行業一個衝擊和警號。因此，監管局希望再三向持牌人強調，在參與一手住宅物業銷售時應小心謹慎，避免作出失實陳述，否則有可能被判處監禁，並可能被監管局認為不是持牌的適當人選及被監管局處分。

An estate agent was recently sentenced to imprisonment for contravening the Residential Properties (First-hand Sales) Ordinance (“Ordinance”) by disseminating a piece of information which was likely to induce another person to purchase a specified residential property and the information was false or misleading. This case was a shock and warning to the estate agency trade and therefore the EAA would like to reemphasise to all licensees that they should be prudent and avoid misrepresenting any facts when participating in the sale of first-hand residential properties, otherwise it could lead to imprisonment, and they might not be considered as fit and proper persons to hold their licence and be disciplined by the EAA.

為遵從良好的銷售作業方式，以防誤墮法網，在參與銷售一手住宅物業時，持牌人應熟悉《條例》及監管局發出的相關指引。本期《專業天地》將簡述有關一手住宅物業銷售的執業通告（編號13-04(CR)）（「執業通告」）的重點，作為對持牌人的一個提醒。

### 首次有地產代理因觸犯《條例》被判即時監禁

一名地產代理分別於2019年12月6日及8日，佈一則有關一個發展項目的指明住宅物業的樓底高度的資料，該資料相當可能會誘使另一人購買指明住宅物業，而該資料在某事關重要的事實方面是屬虛假或具誤導性的，而該代理知道此事或罔顧該資料是否如此，因而違反《條例》第78條而被一手住宅物業銷售監管局檢控。在2023年4月14日，該地產代理在觀塘裁判法院被裁定違反《條例》，兩項控罪各被判監禁兩個月，同期執行，即時監禁。這是《條例》自2013年4月29日實施以來，首次有地產代理被定罪。

### 在銷售一手住宅物業時遵守所有相關指引

上述個案是對所有持牌人的嚴正提醒，持牌人在參與銷售一手住宅物業時必須遵從《條例》及所有相關指引。持牌人應緊記，違規的後果不但有可能被監管局紀律處分，並有可能銀鑊入獄。

當《條例》在2013年生效時，監管局曾發出執業通告，就進行一手住宅物業銷售活動及提供物業資料制定操守指引。以下是有關執業通告的重點內容，作為對持牌人的提醒。

當持牌人向準買家提供物業的相關資料，須(a)以由賣方提供的售樓說明書及文件所載的資料為準；及(b)採取一切合理步驟及盡一切應盡的努力核實有關資料。持牌人不得作出任何可能誤導準買家的陳述。

此外，持牌人須建議準買家在訂立任何買賣協議前查閱最新版本的售樓說明書、價單、

To comply with good practice and avoid inadvertently contravening the law, licensees should familiarise themselves with the Ordinance and the relevant guidelines when they participate in first-hand sale of residential properties. In this issue of *Horizons*, we will highlight the important points-to-note in the Practice Circular on first sales of residential properties (No. 13-04 (CR)) as a reminder to licensees.

### First estate agent sentenced to immediate imprisonment for contravening the Ordinance

On 6 and 8 December 2019, an estate agent disseminated a piece of information concerning the ceiling height of a specified residential property of a development that was likely to induce another person to purchase a specified residential property and the information was false or misleading as to a material fact and the estate agent knew that, or was reckless as to whether, such information was false or misleading as to the material fact. Hence, this contravened section 78 of the Ordinance. As a result, the estate agent was prosecuted by the Sales of First-hand Residential Properties Authority. On 14 April 2023, the estate agent was convicted at the Kwun Tong Magistrates' Courts and was sentenced to two months' immediate imprisonment for each offence, to be served concurrently. This is the first conviction of an estate agent since the Ordinance came into force on 29 April 2013.

### Complying with all relevant guidelines when promoting first-hand residential properties

The above case serves as a stern reminder to all licensees that they must comply with the Ordinance and all relevant guidelines when promoting first-hand residential properties. Licensees should bear in mind that the outcome of any non-compliance might not only lead to disciplinary actions by the EAA but also imprisonment sentenced by the court.

When the Ordinance came into force in 2013, the EAA issued a Practice Circular (No. 13-04 (CR)) ("Circular") setting out guidelines on the conduct of promotional activities and the provision of property information for the first sale of residential properties. Here we will highlight some major points in the Circular to serve as a reminder to all licensees.

When providing information to prospective purchasers, licensees must do so: (a) only based on the latest information contained in the sales brochure and documents prepared and provided by the vendor; and (b) only after they have taken all reasonable steps and exercised all due diligence to verify the information. Licensees must not make any representation that may mislead prospective purchasers.

銷售安排及載有發展項目成交資料的紀錄冊（因賣方可能就前述資料作出修改/更新）、大廈公契（草擬本）及政府租契。持牌人須提醒準買家留意售樓說明書內列明的單位實際尺寸，而非倚賴從觀看示範單位所得的單位面積的觀感。

地產代理公司亦須採取一切合理措施，確保其員工熟悉有關發展項目的資料和所有相關指引。在進行相關推廣活動前，地產代理公司須提供或安排銷售前簡介會予將參與促銷該發展項目推廣活動的員工，簡介會須包括發展項目的資料，執業通告所載的指引，以及由監管局不時發出的其他相關通告所載的指引。只有已參加簡介會的持牌人方可從事相關發展項目的推廣活動。

以上重點只是執業通告的部分內容，持牌人應查閱監管局網站，閱讀執業通告的全文（規管 > 執業通告）。

### 成為「5A」代理

作為專業的地產代理，不單在銷售一手住宅物業時應保持謹慎，在處理所有物業交易時都同樣要時刻謹言慎行。持牌人應努力成為具備「三言兩語」特質（即「言出必行」、「言之有物」、「言而有信」、「與時並進」及「與客同行」）的「5A」代理。

要提升地產代理的專業水平及公眾形象，持牌人的努力不可缺少。一宗負面新聞，都可能嚴重損害行業聲譽。因此，持牌人應時刻熟習所有相關的知識及指引，緊記遵守指引的重要性，共同努力為行業建立正面及專業的形象。



Furthermore, licensees must advise prospective purchasers to consult the latest version of the sales brochures, price list, sales arrangements and the register containing information of the transactions for a development (as the information therein may be revised/updated by the vendor), the (draft) deed of mutual covenant and Government Lease before they enter into any agreement for sale and purchase. Licensees must also remind prospective purchasers to pay attention to the dimensions of the units as stated in the sales brochure, and not to rely on their perception on the unit size formed from the viewing of show flats.

Estate agency companies must take all reasonable steps to ensure that their staff are familiar with the information about the development and all relevant guidelines. Before conducting any promotional activity, estate agency companies must provide or cause to be provided a pre-sale briefing to their staff to be involved in such activity and such briefing must include information about the development and also the guidelines set out in the Circular and other related circulars as may be issued by the EAA from time to time. Only licensees who have attended such pre-sale briefing(s) may participate in the promotional activities.

The above are only some important points of the Circular and licensees should read the full version of the Circular which is available at the EAA website (Compliance > Practice Circulars).

### Be a "5A" agent

As a professional estate agent, not only when selling first-hand residential properties, licensees should always be prudent when handling all property transactions. Licensees should strive to become a "5A" agent with the attributes of "Adherence", "Ability", "Accountability", "Advancement" and "Affinity".

Enhancing the professionalism and public image of the estate agency trade requires the effort of licensees. One piece of negative news will greatly discredit the trade. Hence, licensees should always familiarise themselves with all the relevant knowledge and guidelines, be aware of the importance of compliance, and make a concerted effort to establish a positive and professional image for the industry.