

Paragraph 3.7.2 of the *Code of Ethics*

Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.

Illustration (1)

Fighting in Public Places

An estate agent saw a female employee of a rival estate agency removing the publicity leaflets that the agent's company had placed on windshields of vehicles in a parking lot and replacing them with flyers belonging to the rival company. The agent retaliated by removing them from the cars. Both sides traded insults. The female agent claimed that the agent in question had slapped her on the face. The agent was subsequently charged with common assault and was convicted. He was fined \$1,000 and ordered to pay costs of \$2,000.

Commentary and Suggestion:

Although the agent submitted that he was only trying to protect himself from being attacked by the rival estate agent, he had indeed slapped the rival estate agent on the face in the midst of verbal altercations in a public place. The agent's behaviour was considered improper and injurious to the reputation of the trade, and he had breached paragraph 3.7.2 of the *Code of Ethics*.

Licensees should not quarrel or fight with other estate agents, salespersons or passers-by. Licensees should note that according to section 39 of the Offences Against the Person Ordinance, any person who is convicted of an assault occasioning actual bodily harm shall be guilty of an offence triable upon indictment and shall be liable to imprisonment for three years. Licensees should also note that under section 40 of the same ordinance, any person who is convicted of a common assault shall be guilty of

an offence triable either summarily or upon indictment and shall be liable to imprisonment for one year.

Licensees should always act in a professional manner with dignity and avoid any practice which may bring disrepute to the estate agency trade.

Illustration (2)

Failing to Honour a Promise of a Cash Incentive

A licensee was working for an agency company that was appointed by a developer to promote the sale of units in a new development. The licensee offered to provide to a customer a cash incentive equivalent to 1.5% of the purchase price if the customer were to purchase one through the licensee's company. He however failed to honour the promise of a cash incentive.

Commentary and Suggestion:

Luring potential clients into engaging a licensee's service by the promise of a cash rebate and then subsequently reneging on the promise would undermine confidence in and bring disrepute to the estate agency profession. The licensee failed to observe paragraph 3.7.2 of the *Code of Ethics*.

According to the Practice Circular (No. 13-04 (CR)), licensees must inform prospective purchasers of the details of any incentive schemes which may be offered to purchasers and state clearly whether the incentives are offered by the vendor or their estate agency company. Licensees must set out in writing any promise of incentives, including any gifts, discounts or rebates they have made to prospective purchasers, and stipulate clearly the terms and format of the incentives offered.

Estate agency companies must issue clear guidelines on the offer of incentives to prospective purchasers, maintain close supervision of their staff to ensure adherence to the guidelines, and establish proper procedures for fulfilling the incentives promised.

Illustration (3)

Improper Handling of Client Money

A licensee arranged for a prospective purchaser to sign a provisional agreement for sale and purchase ("PASP"), and to pay a provisional deposit of \$10,000 in cash. The next day, before the vendor accepted his offer, the purchaser informed the licensee that he had decided not to buy the property and demanded the return of his deposit money. However, the licensee demanded the purchaser to sign a document admitting that the PASP was unilaterally cancelled by the purchaser, or otherwise the licensee would not return the deposit money. The purchaser disagreed. Finally, the licensee only returned the deposit money with the intervention of the police.

Commentary and Suggestion:

The licensee in the above case had no right to withhold his client's deposit money or to make him sign any inequitable document. His behavior harmed the professional image of the trade, bringing disrepute to the trade as a whole, thus failing to comply with paragraph 3.7.2 of the *Code of Ethics*.

Licensees may sometimes handle cash or cheques drawn in favour of their company which they receive or hold on behalf of their clients, e.g. funds from a prospective purchaser/tenant for transfer to the owner of a property as initial deposit once an agreement is reached. At common law, a trust relationship arises when the owner of the funds entrusts his funds to a trustee for managing the same. A licensee, as trustee, owes fiduciary duties to the owner of the funds, i.e., the client on whose behalf he is

holding the funds. Under section 12(3) of the Practice Regulation, a licensed estate agent shall deposit all moneys received or held for or on account of a client in a trust account maintained at an authorised institution (a bank, restricted licensed bank or deposit-taking company as defined in the Banking Ordinance). This is to prevent an estate agent from mixing its client's moneys with its own moneys. Licensees are liable to repay to their clients moneys received or held on behalf of their clients and must not use the moneys from a trust account to pay for the company's expenses or for other purposes. They must not deduct or withhold part or all of such moneys to set off any commission.

Illustration (4)

Acquisition of Old Buildings

A licensee approached flat owners of an old building for a discussion on the acquisition of the building for redevelopment but one of the flat owners repeatedly declined the licensee's offer. The licensee later issued a letter to that owner, claiming that 85% of the owners of the building had entered into an agreement to sell their units. In fact, only 60% of the undivided shareowners had sold their units in the building when the letter was issued.

Commentary and Suggestion:

The statement in the licensee's letter was made without proper basis. The licensee made an exaggerated statement in order to induce the flat owner to sell his flat. The licensee's conduct harmed the professional image of the trade, bringing disrepute to the trade as a whole, thus failing to comply with paragraph 3.7.2 of the *Code of Ethics*.

Licensees must not exercise any undue influence on a vendor when soliciting the vendor to sell his flat or when negotiating with the vendor on the terms for the sale of his flat. Licensees must not conduct themselves in any way which may cause annoyance to the vendor: for example, persistent solicitation despite the vendor's express indication that he is not interested in selling his flat. Licensees must not harass the vendor or use any other improper tactics, such as pestering the vendor with persistent phone calls at unreasonable hours to exert pressure on

the vendor to sell. Where the vendor is an elderly person, licensees must advise the vendor that he should be accompanied by a family member or close relative when negotiating for the sale of his flat. Such advice must be recorded in writing.

In recent years, there has been an increase in the number of acquisitions of flats in old buildings. Licensees engaging in such activities must comply with the *Code of Ethics* and the relevant Practice Circulars. Non-compliance of the above may be subject to disciplinary actions.

Illustration (5)

Insulting Another Estate Agent in a Public Place

Agent A from estate agency Company A accompanied his clients to view a property. After that, they passed by the shop of estate agency Company B. Agent B of Company B came out to approach the clients and attempted to hand them some advertising leaflets. An argument between Agent A and Agent B thus ensued and then escalated. Agent B scolded Agent A with abusive and foul language in front of the clients.

Commentary and Suggestion:

The dispute in the case took place in a public place and in the presence of the clients. The abusive and foul language used by Agent B gave an unpleasant impression to the public that there is a lack of courtesy and mutual respect in the estate agency trade. Their behavior not only demonstrated disrespect for their clients but also brought disrepute to the trade. The licensees therefore had not complied with paragraph 3.7.2 of the *Code of Ethics*.

Competition amongst licensees is always intense, and in particular, for those working in adjacent shops. Licensees should pay attention to the public image of the trade and should show mutual respect by avoiding offensive arguments in a public place and in the presence of clients.

Licensees shall bear in mind that they should not only raise their competence, but also enhance their standards of ethics and conduct so as to earn the respect of fellow practitioners and the general public.