

### **Paragraph 3.3.1 of the *Code of Ethics***

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

## **Illustration (1)**

### **Subletting without a Landlord's Consent**

A licensee acted for the landlord, Tenant A and Tenant B. He arranged for Tenant A to sublet a property to Tenant B. Tenant B subsequently found that the subletting was in breach of the non-alienation clause of the tenancy agreement entered into between the landlord and Tenant A, and without the consent of the landlord. The licensee admitted to Tenant B that he was in fact aware that the landlord objected to the subletting. The landlord later applied to the Lands Tribunal and recovered possession of the property. Both Tenant A and Tenant B were evicted from the property before the expiry of the terms of the tenancy agreement and the sub-tenancy agreement.

#### **Commentary and Suggestion:**

In this case, the licensee was aware that the landlord objected to the subletting. He nevertheless arranged for Tenant A to sublet the property to Tenant B. His behaviour resulted in all his three clients suffering loss. He thus failed to provide services to clients with honesty, fidelity and integrity.

Licensees handling subletting properties should review the tenancy agreement between the principal landlord and the principal tenant to see if there is any restriction on subletting and whether prior consent for subletting has to be obtained from the principal landlord. Apart from that, licensees should also pay attention to the following:

- The terms of the sub-tenancy agreement between the principal tenant and the sub-tenant shall be subject to the terms of the tenancy agreement between the principal landlord and the principal tenant. The tenancy period under the sub-tenancy agreement shall not exceed that under the original tenancy agreement;
- In Part C of the Leasing Information Form (Form 2), enter the details of the original tenancy agreement including the parties thereto, the rental period and any other information the sub-tenant should know such as the area for subletting; and
- Comply with section 9 of the Practice Regulation when issuing advertisements for subletting properties including:
  - (a) Not to advertise at a rental or on terms different from those instructed by the principal tenant;
  - (b) To state expressly in the advertisement that the property is to be sublet; and
  - (c) To remove all advertisements as soon as is practicable after the property is no longer available for subletting, or when the relevant estate agency agreement is terminated (whichever is earlier).

## **Illustration (2)**

### **Deceiving a Client to Enter into a Tenancy Agreement**

A licensee acted for both the landlord and the tenant. Despite rounds of negotiation, the landlord refused to accede to the tenant's request that a dishwasher be provided. Being anxious to close the deal, the licensee in the name of the landlord bought a dishwasher for the tenant out of his own pocket. However, he did not seek the landlord's approval beforehand. He then swapped certain pages of the tenancy agreement before arranging for the landlord and the tenant to sign two different versions of the tenancy agreement forms. The one signed by the tenant stipulated that the landlord was responsible for supplying a dishwasher but the one signed by the landlord did not have such a provision. Later on, the tenant found that the dishwasher was not working and needed repair. The licensee's misconduct came to light when the tenant asked the landlord to repair the dishwasher.

#### **Commentary and Suggestion:**

In this case, it was obvious that because the licensee was eager to conclude the deal, he not only bought the dishwasher out of his own pocket but he also swapped pages of the tenancy agreement and arranged for the landlord and the tenant to sign the tenancy agreement in two different versions. He thought that this would not be found out. Actually this was indeed a serious mistake which might cause loss and damage to his client.

Licensees should provide services to clients with honesty and fidelity. They should not act fraudulently in a bid to conclude the deal expeditiously. The licensee concerned should discuss frankly with the transacting parties. Even if he wishes to buy the dishwasher out of his own pocket, he should seek the transacting parties' consent beforehand. Otherwise, he would suffer from serious consequences when the matter comes to light.

Furthermore, a tenancy agreement is a legally binding document. The terms and conditions of a tenancy agreement should clearly reflect the intent of both parties and the agreement should be signed only after both parties understand and agree to the terms and resolve any disagreement through negotiation. In arranging for the parties to sign the tenancy agreement in duplicate (i.e. two copies of the tenancy agreement), the licensee should ensure that the terms in the two copies which are to be kept respectively by the landlord and the tenant are the same so as to avoid any dispute arising from any discrepancy between the two copies of the tenancy agreement.

## Illustration (3)

### Passing a False Offer to a Client

A licensee falsely told the vendor that the purchaser offered to purchase a property for \$1,330,000. The licensee suggested to the vendor that if the purchaser was willing to buy the property for \$1,350,000, the vendor would pay \$10,000 to the licensee as remuneration, on top of the original commission of \$13,500. In fact, the purchaser had offered to purchase the property at \$1,350,000 all along, and had never made any offer of \$1,330,000.

### Commentary and Suggestion:

In this case, the licensee passed a false offer to his client for his own commission benefit. He thus failed to provide services to clients with honesty, fidelity and integrity, contrary to the paragraph 3.3.1 of the *Code of Ethics*.

The licensee had not conveyed the offer of the purchaser immediately and accurately to the vendor and, therefore, had also breached section 11(e) and 11(f) of the Practice Regulation. Section 11(e) states that a licensee shall “present an offer to a client for acceptance as soon as is practicable after receiving it”, while section 11(f) stipulates that a licensee shall “inform a client of all offers received in the order he receives them and present them in an objective and unbiased manner”.

Besides, in this case, the licensee asked for extra commission from the vendor client. As the agent of his employer, the licensee who, without lawful authority or reasonable excuse, solicits or

accepts any advantage as a reward for doing or forbearing to do any act in relation to his principal's affairs, may commit an offence under section 9 of the Prevention of Bribery Ordinance (cap.201). The penalty is a fine and imprisonment.

Licensees should bear in mind not to exploit advantages in a deal at the expense of a client's interests, or he would be subject to legal liability.

## **Illustration (4)**

### **Misrepresentation on Permitted User**

An elderly woman wanted to purchase a home for herself with her savings. She was introduced by a licensee to a property which contained a toilet as well as bathing and cooking facilities. The licensee assured her that the property could be used as domestic accommodation although he knew that it was a commercial unit. The licensee arranged for the woman to sign a provisional agreement to purchase the property.

In fact, the property was not a domestic unit. The occupation permit restricted its permitted use to “office for non-domestic use”.

#### **Commentary and Suggestion:**

In this case, the licensee was aware that the permitted user of the property was “office for non-domestic use”. He however told the client that the property could be used for domestic purposes. This was certainly a misrepresentation. The licensee failed to provide services to his client with honest, fidelity and integrity and to protect his client against fraud, misrepresentation or any unethical practices in connection with real estate transactions. The licensee thus failed to comply with paragraph 3.3.1 of the *Code of Ethics*.

Licensees should provide property information to clients with honesty and fidelity.

To verify the permitted user of a property, licensees can examine the occupation permit by conducting a land search through the Land Registry and/or obtaining the same from the Buildings Department. For residential properties, they may also obtain such information from the Property Information Online (PIO) service provided by the Rating and Valuation Department. The PIO provides property information such as saleable area, age and permitted occupation purposes for most of the residential properties in Hong Kong.

## Illustration (5)

### Failing to Advise a Purchaser on a Confirmor Sale

A licensee acted for both parties in a sale and purchase transaction. The purchaser was a first-time home buyer and appeared to be very nervous about the transaction. To avoid creating unnecessary anxiety which might upset the transaction, the licensee, knowing that the vendor was only selling the property as a confirmor, told the purchaser that the vendor was the property owner. The licensee did not provide the purchaser with any land search of the property. Nevertheless, the purchaser later found out that the owner was not the property owner, and was selling the property only as a confirmor.

#### Commentary and Suggestion:

The licensee in this case concealed to the purchaser the fact that the vendor was actually selling the property as a confirmor although he was aware of it. This is obviously a misrepresentation. He thus failed to provide services to clients with honesty and fidelity, contrary to the provision stipulated in paragraph 3.3.1 of the *Code of Ethics*.

When handling transactions where a property is sold by a confirmor, licensees should carry out a land search of the relevant property before arranging for the confirmor and the sub-purchaser to enter into a sub-sale agreement. The agreement for sale and purchase entered into between the vendor and the confirmor should also be examined to determine the terms of the

agreement, including but not limited to any restriction on sub-sale. Besides, licensees should also pay attention to the following:

- The sub-purchaser would normally have no opportunity to inspect the relevant property before he/she enters into the sub-sale agreement. Licensees should alert the sub-purchaser to the risks of no inspection and try to arrange for an inspection before completion.
- Licensees should explain to the sub-purchaser that the terms of the sub-sale agreement are subject to those of the original agreement for sale and purchase. For example, if the confirmor has accepted any structural alteration in the original agreement, the sub-purchaser has to accept the same under the sub-sale agreement. Attention should be paid to whether the balance of purchase price payable by the sub-purchaser is sufficient to cover the balance of purchase price payable by the confirmor under the original agreement.
- Licensees should explain to the sub-purchaser that if the confirmor is unable to complete, the transaction may be delayed or fall through. In such an event, the sub-purchaser will not be able to purchase the property and may have to resort to legal proceedings to obtain the refund of the deposits and any damages.
- The sub-purchaser may request the confirmor to execute an irrevocable power of attorney so that in the event that the confirmor is unable to complete, the sub-purchaser may complete the transaction as the attorney of the confirmor. The sub-purchaser should be advised to seek legal advice.