

代理須披露利益

Disclosure of interests by agent

根據普通法，代理人對其客戶有受信責任[受信責任 (fiduciary duty) 是指受託人對受益人的一種高度誠實、忠誠及盡力維護其利益的責任]。由於代理人與委託人之間的關係以誠信為基礎，所以代理人不應該讓任何個人利益(包括代理人本身或其近親的利益)與其對客戶的責任存有衝突。如有任何潛在衝突的情況出現，代理人必須向客戶全面披露所有相關的事實，讓客戶有機會自行決定是否繼續完成擬進行的交易，或繼續委任該名代理人。否則，該代理人便違反了對客戶的受信責任，並須向客戶交出從是項交易中所得的利潤。此外，客戶還可以就該代理人的違責向其追討其他補償。

一般而言，除非地產代理與其客戶達成任何協議前，已向其客戶全面披露所有有關事實，並在客戶知情和同意的情況下進行交易，否則地產代理不可購買或租住其客戶的物業，亦不可以將自己的物業售賣或出租予客戶。

《地產代理條例》第36(1)(a)(vi)條及第36(3)條規定地產代理或有關營業員向客戶披露以下全部詳情：該地產代理或營業員對有關物業所擁有的任何金錢上的或其他實質的利益，以及該物業獲處置後，該地產代理或營業員在該物業方面可以得到的任何利益，包括任何佣金或任何種類的權益（不論是金錢上的或是其他形式的）。

《地產代理常規（一般責任及香港住宅物業）規例》第3(2)(a)條亦規定，地產代理須按照協議內所指明的指引及指示填寫地產代理協議。地產代理協議規定代表地產代理公司簽署協議的人士須披露以下各方對有關物業擁有金錢上的或其他實質利益：

Under common law, an agent owes a fiduciary duty to his client. Since the agency relationship is one of trust and confidence, the agent must not allow any personal interest (including the interest of the agent himself or that of his close relatives) to conflict with his duties to the client. Where any potential conflict arises, the agent should make a full disclosure to the client of all relevant facts, so as to give the latter an opportunity to decide whether to continue with the proposed transaction or with the appointment of the agent. Otherwise, he will be in breach of his fiduciary duty and is liable to account for any profit that he has made from such transaction in addition to other remedies available to the client for the agent's breach of duty.

Generally, an agent may not purchase or rent property from his client, and he may not sell or let his own property to his client unless he has made a full disclosure of all the relevant facts to his client before entering into any agreement with his client and has obtained his client's informed consent to such a transaction.

Sections 36(1)(a)(vi) and 36(3) of the Estate Agents Ordinance (EAO) require the estate agent or salesperson concerned to disclose to a client full particulars of any pecuniary or other beneficial interest which such estate agent or salesperson has in the property concerned, together with particulars of any benefit, including any commission or any interest of any kind whatever in such property, whether monetary or otherwise, which will accrue to such estate agent or salesperson should the property be disposed of.

Moreover, section 3(2)(a) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation) requires completion of the relevant estate agency agreement in accordance with its directions and instructions. Various prescribed estate agency agreements require the person signing the agreement on behalf of the estate agency to disclose the pecuniary or other beneficial interest which the following person or estate agency has in the property concerned:

1. 該名人士或其代名人；或
2. 該名人士的親屬（指配偶、父母、子女、兄弟或姊妹）或該等親屬的代名人；或
3. 該名人士所屬的地產代理公司或該地產代理公司的任何僱員／大股東／合夥人／董事。

如有利益的話，地產代理須在有關協議中申報詳情。

此外，根據《操守守則》第3.6.1段及第3.6.2段，地產代理和營業員應避免就本身有利益的物業提供服務。同時，在有可能／潛在利益衝突的情況下（例如同時代表賣家和買家），營業員必須向客戶表明是雙邊代理，以及向各方詳盡披露因該物業而獲得的金錢或其他實質利益。

1. him or his nominee; or
2. his specified relative (meaning his spouse, parent, child, brother or sister), or any nominee of his specified relative; or
3. the estate agency or any employee/substantial shareholder/partner/director of the estate agency.

Particulars of such interests (if any) must be specified in the schedule to the agreement.

Furthermore, under Paragraphs 3.6.1 and 3.6.2 of the Code of Ethics, estate agents and salespersons should avoid accepting an appointment involving a property in which they have a beneficial interest and they shall, in the event of possible or potential conflict of interest such as dual agency, disclose to their clients that they are acting for both sides. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned.

新指引 New practice circular

資訊保安以妥善儲存資料

information security for privacy protection

發生連串互聯網個人資料外洩事故後，資訊保安已成為社會關注的焦點。監管局促請從業員，採取適當的資訊保安措施。

地產代理管理層要考慮有關本身業務可能涉及的資訊保安風險，訂定恰當的政策和程序，以減低相關風險。

如從業員未有採取措施確保資訊安全，而導致其客戶個人資料外洩，則該從業員可能違反《個人資料（私隱）條例》。此外，未有採取妥善的保安措施確保資訊安全，可能被視為未有建立管理業務的妥善制度，因此可能構成違反《地產代理常規（一般責任及香港住宅物業）規例》第15條，並可能引致監管局採取紀律行動。

Information security has become a major issue of concern following a series of incidents involving leakage of personal data on the Internet. EAA urges practitioners to take necessary information security measures to protect data privacy.

Management of estate agencies should put in place risk-based policies and procedures to reduce information security risks arising from their estate agency work.

If a practitioner is found to have failed to put in place measures to safeguard information security and such failure results in a leak of his clients' personal data, he may be in breach of the Personal Data (Privacy) Ordinance. In addition, failure to put in place proper security measures to safeguard information security may be seen as not having established a proper system to manage a business and may therefore amount to a breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, giving rise to disciplinary action by the Authority.