



紀律研訊個案分享 — 分拆樓契 Inquiry hearing case — Deed partitioning

分拆樓契所涉及的程序並不簡單，而且物業交易有機會因為過程中的困難而受到阻延。地產代理不應輕率地建議客戶採取這種方法，應該建議就分拆樓契的可行性諮詢法律意見。

一名地產代理在一宗村屋交易中為買賣雙方行事，而買方是一對夫婦。有關的村屋共有三層，該名代理建議買方夫婦簽訂兩份買賣合約，分層購入村屋，並表示以上的安排涉及分拆該物業的樓契，有關程序需時約7至10天。

於是，該名代理安排買方妻子先與賣方就該物業的一樓和二樓與賣方單位訂立臨時買賣合約，亦於同日安排買方丈夫與賣方就物業的地下單位訂立臨時買賣合約。

後來，由於該物業未能於兩份臨約訂明的成交日期前完成分拆樓契的程序，因此兩份臨約均不能如期完成交易。買賣雙方須透過律師另行簽訂一份由夫婦向賣方購入該整幢物業的買賣合約。該物業交易也延遲完成。

紀律委員會認為該名代理沒有遵守《操守守則》中第3.4.1段，未有保障和促進客戶的利益，並對交易各方公平公正，因此向他作出訓誡，並且在牌照上附加條件，要求他在一年內取得持續專業進修計劃下的12個學分。

Deed partitioning is not a simple process, and there is always the risk of the sale and purchase being delayed by difficulties encountered in the process. Hence, estate agents should not lightly advise clients to enter into sale and purchase arrangements which necessitate deed partitioning.

In this inquiry hearing case, an estate agent acted for both purchaser (a couple) and vendor in a transaction involving a three-storey village house. The agent proposed to the couple to enter into two separate agreements for sale and purchase in respect of different floors. The agent further advised that this arrangement involved deed partitioning, which required 7 to 10 days for a solicitor to handle.

The agent arranged for the purchaser to enter into two provisional agreements for sale and purchase (PASP) of the property, one with the husband for the ground floor and one with the wife for the first and second floors.

However, the deed partitioning could not be completed in time, resulting in the postponement of the completion of the sale and purchase of the property. Eventually, the couple entered into a new agreement for the sale and purchase of the property as one block.

The Disciplinary Committee was of the view the agent concerned had not complied with paragraph 3.4.1 of the Code of Ethics, in that he had failed to protect and promote the client's interests and to be fair to every party involved in the transaction. Hence, he was admonished and a condition was attached to his licence, requiring him to obtain 12 points under the Continuing Professional Development Scheme within a year.

紀律研訊個案分享 — 沒有妥善保管客戶信用卡 Inquiry hearing case — Failure to safeguard a client's credit card

地產代理在推銷一手住宅樓盤時，如須應發展商的要求向準買家提出交出其身份證及／或信用卡的要求，必須向準買家清楚說明其索取有關身份證及／或信用卡的用途及有關要求是發展商提出的，並且要小心保管這些證件，免被誤用。

一名地產代理陪同一準買家參觀某新樓盤的示範單位。該名地產代理向準買家表示，他必須向發展商提供準買家的身份證及信用卡，才可取得該樓盤的價格資料。該名代理也向準買家表示，由於他並無簽署任何文件，因此他的信用卡並不會被扣賬。準買家於是將他的身份證及信用卡交給該代理，以便取得該樓盤的價格資料。

該代理其後向準買家提供該樓盤部分單位的售價。準買家對該批單位沒有興趣，並要求取回他的身份證及信用卡。然而，當準買家取回他的信用卡時，發現他的信用卡已分別就三宗交易被扣賬數十萬元。該名代理解釋，其同事誤以為準買家有意購買該樓盤的單位，故安排有關的扣賬交易。其後，準買家獲退回該筆款項。

紀律委員會認為，該名代理沒有妥善保管準買家交付的信用卡，沒有盡量小心和盡一切應盡的努力履行其職務。由於該名代理沒有遵守《操守守則》第3.5.1段，故決定譴責他及在其牌照上附加條件，要求他在一年內取得在持續專業進修計劃之下的12個學分。

另一方面，該名代理所屬的地產代理公司，沒有設立妥善的程序或制度以監督和管理它所僱用的地產代理的工作，違反《地產代理常規（一般責任及香港住宅物業）規例》第15條，被紀律委員會譴責及罰款2萬元。

When estate agents ask a prospective purchaser to provide his identity card and/or credit card at the request of the developer in promoting the first-hand residential properties, they must state clearly the purposes for which the identity card and/or credit card will be used and also properly safeguard the cards to prevent their misuse.

In this inquiry hearing case, an estate agent arranged for a prospective purchaser to view the show flats of a development. The agent told the prospective purchaser that in order to enable him to obtain the price list of the units in the development, he had to provide the developer with the identity card and credit card of the prospective purchaser. The agent also assured the prospective purchaser that no amount would be debited against his credit card since he had not signed any document to that effect. The prospective purchaser, therefore, gave both his identity card and credit card to the agent in order to obtain the list.

The agent subsequently provided the prospective purchaser with the prices of some of the units. The prospective purchaser was not interested in the units and requested the return of his identity card and credit card. However, after collecting his credit card, he discovered that several hundred thousand dollars had been charged to it in three transactions. The agent explained that his colleague had misunderstood the situation, thought that the prospective purchaser would purchase a unit, and swiped the credit card for payment of the deposit. The prospective purchaser subsequently obtained a refund of the amount that had been charged to his credit card.

The EAA Disciplinary Committee was of the view that the agent had not properly safeguarded the prospective purchaser's credit card and failed to discharge his duties with due care and due diligence. As he had failed to comply with paragraph 3.5.1 of the Code of Ethics, he was reprimanded and a condition was attached to his licence which required him to obtain 12 points under the Continuing Professional Development Scheme within a year.

Furthermore, the Disciplinary Committee found that the estate agency company concerned had failed to establish proper procedures or systems to supervise or manage its frontline staff, and was thus in breach of Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. The Disciplinary Committee decided that the company should be reprimanded and fined \$20,000.



香港新界地產代理商聯會主席邱慶新先生的意見

Views from Chairman of the H.K.N.T. Estate Agents and Merchants Association **Mr Yau Hing-sun**

「分拆樓契」牽涉複雜的程序，需要由專業律師處理，而且不屬於地產代理的專業知識範圍之內，因此地產代理應建議客戶諮詢律師的意見，不應輕率向客戶提出建議。



至於另一宗個案中的地產代理未得客戶的授權使用他的信用卡扣賬，反映他的專業水平非常不足，也令人懷疑他沒有誠信。作為專業的地產代理，處理客戶的信用卡要十分小心，也必先要取得客戶的授權，才可用客戶的信用卡繳付訂金。

“Deed partitioning” involves complicated procedures and should be handled by a professional solicitor. Such procedures are not part of the professional knowledge expected of estate agents. When estate agents come across issues relating to “deed partitioning”, they should advise their clients to seek legal advice and must not make any suggestion rashly.

Regarding the estate agent who failed to properly safeguard his client’s credit card, his professional standard was far from satisfactory and his integrity questionable. A professional estate agent should exercise due care in handling his client’s credit card and seek his client’s authorisation before arranging for payment by credit card.

地產代理（從業員）總公會主席吳元興先生的意見

Views from Estate Agent Association Chairman **Mr Evan Ng**

如果準買家有意就物業進行分契，地產代理應建議客戶交由律師處理，並且提醒客戶，分契有可能會令物業交易延遲完成，讓客戶考慮是否進行該程序。



信用卡是客戶重要的財物，個案中的地產代理向客戶取得信用卡後，沒有採取適當步驟去保管，欠缺了認真和專業的態度。監管局已經發出指引，要求地產代理從業員在替客戶以信用卡交付訂金或其他任何款項前，須特別取得客戶的書面同意，建議加強教育業界，確保從業員遵行該指引。

If a client intends to enter into a sale and purchase arrangement which involves deed partitioning, the estate agent should advise his client that the partitioning be handled by a solicitor. He should also remind his client that the property transaction may be delayed due to difficulties which may be encountered in the process of deed partitioning, so that his client may consider whether to proceed or not.

In another case, an estate agent did not follow proper procedures to safeguard his client’s credit card, which is an important document. He failed to demonstrate the professional attitude expected of an estate agent. The EAA has recently issued a practice circular, which, amongst others, requires practitioners to specifically obtain the written approval of the prospective purchaser before any arrangement could be made to use the purchaser’s credit card for the payment of deposits or other purposes. The training of practitioners should be stepped up to ensure compliance.