



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.