

二零零七年十一月  
November 2007  
www.eaa.org.hk

## 「偷盤」行為或導致「三違反」

### Unauthorised transfer of clientele may lead to breaches of 3 regulations

地產代理監管局(監管局)曾於今年六月，就「偷盤」和「射單」等問題發出執業通告，提醒從業員不應在未得僱主同意或知悉的情況下，把原屬公司的客戶，安排透過其他代理公司跟進交易，或者是鼓勵別家公司的營業員私下轉介客戶或轉盤。

最近，業界商會代表再次向監管局反映，行業內「偷盤」和「射單」等問題仍然嚴重。

監管局提醒從業員，每名僱員在普通法下應對其僱主忠誠及誠實。若違反該等職責，僱員可能被其僱主起訴，追討損失。地產代理從業員未得其僱主的允許，把屬於其僱主的客戶或放盤資料轉移至另一家地產代理公司，不論該地產代理公司是否由該從業員擁有，該從業員都可能涉及「三違反」：

The Estate Agents Authority (EAA) issued a practice circular regarding the unlawful transfer of clientele in June, reminding practitioners not to transfer clients or listings belonging to their employer to another estate agency for follow-up without their employer's permission or knowledge, and not to encourage salespersons of other estate agencies to transfer clients or listings to them.

Recently, representatives of the trade associations have advised EAA that unlawful transfer of clientele remains a serious problem in the trade.

EAA would like to remind estate agency practitioners that an employee owes a duty of loyalty and fidelity to his employer under common law, and may be sued for damages by his employer for breach of these duties. In transferring clients or listings belonging to his employer to another estate agency (whether or not owned by him) without his employer's permission, a practitioner may have breached the law or other regulations in the following ways:

第一，觸犯《盜竊罪條例》下的刑事罪行；第二，視乎個案的情況而定，該受僱的從業員亦可能觸犯《防止賄賂條例》內的罪行；第三，有可能違反監管局《操守守則》第3.1.1段(執業時避免從事可能觸犯法律的活動)，以及《操守守則》第3.7.2段(避免作出任何可能令地產代理行業信譽及/或名聲受損的行為)的守則。從業員因觸犯涉及不誠實、貪污/賄賂的罪行而被定罪，或未能遵守《操守守則》，會遭受監管局紀律制裁。

由2003年至今，監管局共接獲11宗涉及「偷盤」或「射單」的投訴。其中三宗投訴涉及的三名地產代理從業員被法庭裁定詐騙或串謀行騙罪名成立，最高被判處監禁六個月。此外，監管局的紀律委員會亦對該三名從業員行使紀律制裁，其中兩名從業員被撤銷牌照，另一名則被暫時吊銷牌照。

監管局重視有關從業員的操守問題，並會密切留意情況，與其他執法機構保持緊密聯繫，致力打擊「偷盤」或「射單」等不法行為。

Firstly, the practitioner will have committed a criminal offence under the Theft Ordinance. Secondly, depending on the circumstances, the employee practitioner may have also committed an offence under the Prevention of Bribery Ordinance. Thirdly, practitioners may have also breached Paragraph 3.1.1 of EAA's Code of Ethics (to refrain from activities during their practice which may infringe the law), and Paragraph 3.7.2 of the Code of Ethics (to avoid any practice which may bring discredit and/or disrepute to the estate agency trade).

Practitioners who are convicted of offences involving dishonesty, corruption/bribery or fail to adhere to the Code of Ethics are liable to disciplinary action by EAA.

Since 2003, EAA has received 11 complaint cases involving allegations of unlawful transfers of clientele. Three estate agency practitioners involved in three of the cases were convicted of fraud or conspiracy to defraud, and the highest punishment was imprisonment for six months. In addition, the Disciplinary Committee also meted out disciplinary sanctions to these three practitioners, two of whom had their licence revoked, and the other had his licence suspended.

EAA places great importance on the ethics of practitioners and will continue to monitor the situation, keeping in close contact with other law enforcement organizations in order to fight the unlawful transfer of clientele.