

有關買賣雙方使用同一律師的問題

The issue of both sides of a transaction using the same solicitors

一般而言，物業交易中的買賣雙方須聘用不同的律師代表。然而，倘若買賣雙方是有「聯繫」(associated parties)、或樓價不超過一百萬元及該買賣沒有利益衝突、或有關買賣是樓花或建成單位的首次交易，買賣雙方則可聘用同一名律師。

根據監管局發出的《操守守則》，地產代理從業員有責任保障客戶的利益。因此，地產代理從業員應提醒買家和賣家客戶，若選擇聘用同一名律師處理成交價低於一百萬元的樓宇買賣，當發生利益衝突時，該名律師未必能夠保障其客戶的利益。

Generally speaking, the vendor and the purchaser of a property transaction should engage different solicitors. Nevertheless, the vendor and the purchaser may use the same solicitor either if they are associated parties, or if the transaction price does not exceed \$1 million and the transaction does not involve conflict of interest, or if the transaction involves the first sale of a property.

The Code of Ethics issued by EAA demands estate agents to protect the interests of clients. Estate agency practitioners must remind vendor and purchaser clients that if they decide to use the same solicitor to represent them in a transaction of not more than \$1 million, the solicitor may not be able to protect his interest when conflict of interest arises.

違例建築工程

Unauthorised building works

監管局向從業員發出執業通告，提醒從業員須告知客戶有關買賣附有違例建築工程的物業的風險，及尋求法律意見。

未經建築事務監督事先批准的樓宇增建或改動均可能構成《建築物條例》下的違建工程。根據《建築物條例》第24條，建築事務監督可指令附有違建工程的物業業主於指定期限內，清除違建工程。如業主未有遵從根據《建築物條例》第24條發出的命令，建築事務監督有權進行必須的拆卸／改動，並向業主追討有關費

EAA has issued a practice circular to remind practitioners that they should notify their clients of the risks involved in the sale and purchase of properties with unauthorised building works (UBW) and the need to seek legal advice.

Additions or alterations to buildings made without the prior approval of the Building Authority may constitute UBW under the Buildings Ordinance. Under Section 24 of the Buildings Ordinance, an owner of a property with UBW may be ordered by the Building Authority to remove the UBW within a specified period. If an owner fails to comply with an order issued under

用。有關命令亦會就有關物業於土地註冊處登記，構成該物業的第一押記，給予建築事務監督出售該物業的權利。

鑒於建建工程可能影響物業的安全及可能導致物業業權出現問題，因此，當買賣物業時，從業員應採取下列行動以保障客戶利益：

土地查冊

- 從業員應就有關物業進行土地查冊並仔細查閱物業的土地查冊記錄，以確定是否有建築事務監督對物業發出的拆卸 / 改動令登記；如有，則須確定有關命令是否已獲遵從。從業員亦應在物業資料表格(表格一) (適用於香港住宅物業的買賣)第一部分內註明有關命令的詳情。從業員應相應將土地查冊結果告知客戶，無論該客戶是賣方或買方。

表格一的賣方陳述

- 表格一第二部分的賣方聲明規定，住宅物業的賣方須提供物業任何結構上的加建或改動的詳情。作為確定物業是否附有違建工程的第一步，從業員應盡力督促賣方客戶提供表格一第二部分規定的資料。

提醒客戶涉及的風險

- 若從業員實際知悉某買賣物業附有違建工

Section 24 of the Buildings Ordinance, the Building Authority has the right to carry out the necessary demolition/alteration works and claim costs from the owner. The order will also be registered at the Land Registry against the property concerned creating a first charge on the property entitling the Building Authority to sell the property.

In view of the fact that UBW may affect the safety of a property and may render the title defective, practitioners should do the following to protect their clients' interests when dealing with properties:

Land search

- Practitioners should carry out land searches against the properties concerned and the land search records should be carefully checked to see if any order issued by the Building Authority requiring demolition/alteration of UBW has been registered and, if so, whether the order has been complied with. Practitioners should also specify the particulars of such an order in Part 1 of the Property Information Form (Form 1) used in the sale and purchase of residential properties in Hong Kong. Clients, vendors and purchasers should be informed of the results of the land search accordingly.

Vendor's statement in Form 1

- The vendor's statement (Form 1, Part 2) makes provision for the vendor of a residential property to supply particulars of any structural additions or alterations to the property. As a first step to ascertain whether a property contains any UBW, practitioners should try their best to urge their vendor clients to provide the information requested in Form 1, Part 2.

Remind clients of risks involved

- If a practitioner has actual knowledge of the existence of UBW in a property to be sold and purchased by his client, the

程，從業員便應提醒買方客戶有關買賣該物業所涉及的風險。該風險包括政府行使收回土地權導致物業業權出現問題的風險；政府發出命令要求業主於指定期限內清除違建工程及當業主未有執行時，政府代為拆卸／改動，並出售物業以追討拆卸／改動費用的風險；及難以取得任何或足夠銀行按揭貸款來完成交易的風險。

- 另一方面，從業員亦應提醒賣方客戶，除非買賣協議另有協定，由於違建工程可導致業權出現問題，買方可取消買賣並追討違約損失賠償。
- 基於以上所涉及的風險，從業員亦應提醒買賣雙方須先諮詢法律意見，方可繼續有關買賣及簽署臨時買賣合約。

假若不管物業附有違建工程及從業員在提醒客戶以上風險後，客戶仍然堅持繼續有關買賣及簽署臨時買賣合約(不論是否已經取得法律意見)，為了保障從業員自己的利益，從業員宜向客戶取得一份書面確認，說明 (i) 從業員已經向客戶解釋買賣附有違建工程的物業所涉及的風險及曾建議客戶諮詢法律意見；及 (ii) 客戶已知悉違建工程及所涉及的風險(及未有取得法律意見(如適用))，但仍然決定繼續有關買賣及簽署臨時買賣合約。

practitioner should remind his client of the risks involved in the purchase of such property. Such risks would include the risk of the Government exercising its right of re-entry hence rendering the title of the property defective; the risk of the Government issuing an order requiring the owner to remove the UBW within a specified period and, on the owner's failure to do so, carrying out the demolition/alteration works required and forcing a sale of the property to recover the cost of works; and the risk of not being able to obtain any or sufficient bank mortgage loan to complete the purchase of the property.

- On the other hand, the practitioner should remind his vendor client that unless otherwise agreed in the agreement for sale and purchase of the property, the purchaser is entitled to rescind the purchase and claim damages for breach of contract on the ground that UBW may render the title defective.
- In view of the risks involved, practitioners should remind their vendor and purchaser clients to seek legal advice before proceeding with the transaction to sign a provisional agreement for sale and purchase (PASP).

If, despite the existence of UBW in the property and after being reminded by a practitioner as stated above, the client still insists on proceeding with the transaction and signing the PASP (with or without obtaining legal advice), it would be desirable for the practitioner to protect his own interests by obtaining a written acknowledgement from his client that states (i) that his client has been fully advised by him of the risks involved in the sale or purchase of property with UBW and of the need to seek legal advice; and (ii) that his client is aware of the UBW and the risks involved (and (if applicable) that no legal advice has been obtained), but his client has nevertheless decided to proceed with the transaction to sign the PASP.

