

紀律研訊個案分享—— 欠缺土地查冊

Inquiry hearing case — Failure to do a land search



土地查冊文本載有多項重要的物業資料。地產代理從業員在處理住宅樓宇買賣交易時，應在緊接買賣雙方訂立臨時買賣合約（臨約）之前，就有關物業進行土地查冊，並向準買方提供查冊結果的文本。

一對夫婦委託一名從業員購買住宅物業，該從業員以雙邊代理的身分，處理有關物業交易。期間，女方向該名從業員作出清晰指示，要求他查核是否有人曾在該物業死亡，並重複提出物業是否曾有人死亡的疑問，從業員都表示該物業從未有人死亡。事實上，該物業的土地登記冊登記了一名前業主的死亡登記紀錄，顯示他於數年前在該物業自殺身亡。

有關從業員在緊接物業的臨約訂立之前，未有遵守《地產代理常規（一般責任及香港住宅物業）規例》第13(4)條的規定，就物業進行土地查冊和向買方提供土地查冊結果的文本。另外，他在履行職務時，未有根據買方的指示，查核該物業是否曾有人死亡，他因而未有遵守《操守守則》第3.5.1段中「地產代理和營業員在履行職務時必須盡量小心和盡一切應盡的努力」的守則。

監管局紀律委員會就上述個案進行紀律研訊。紀律委員會判處暫時吊銷該名從業員的牌照一個月，並在其牌照附加條件，要求他在兩年內取得24個持續專業進修計劃核心科目的學分。

A land search contains important property information. In the sale and purchase of a property, estate agency practitioners should, immediately before a Provisional Agreement for Sale and Purchase (PASP) is entered into, conduct a land search in respect of the property concerned and provide a copy of the land search to the prospective purchaser.

In one case, a couple appointed an estate agency practitioner to help them purchase a residential property. The practitioner acted for both the vendor and the purchaser in the transaction. During the process, the wife clearly instructed the practitioner twice to check whether there had ever been a death at the property. The practitioner told her nobody had ever died at the property. In fact, the death certificate of a former landlord of the property was registered in the land register of the property indicating that the landlord had committed suicide at the property a few years earlier.

The practitioner did not conduct a land search and supply a copy of the land search to the purchaser immediately before the PASP was entered into, and thus failed to comply with section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. In addition, he did not verify whether there had been a death at the property according to the purchaser's instruction when fulfilling his duties, and therefore failed to observe the regulation in paragraph 3.5.1 of the Code of Ethics stating that "estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence".

The EAA Disciplinary Committee conducted an inquiry hearing into the case, and suspended the practitioner's licence for one month and attached a condition to his licence, requiring him to obtain 24 CPD points in core subjects of the CPD Scheme within two years.