

紀律案例選錄

A SELECTION OF DISCIPLINARY CASES

未有營業詳情說明書繼續營業

Carrying on Business Without a Statement of Particulars of Business

監管局定期巡查各區，巡查事項包括確保商舖沒有違反《地產代理(發牌)規例》第10條，必須申領營業詳情說明書始能營業的規定。

在一次巡查中，監管局職員發現某地產代理(個人)牌照持有人，以獨資經營方式經營的地產代理商舖正在開門營業。該店舖的光管招牌亮著，廚窗上貼滿樓盤廣告，門外更有大量樓盤宣傳單張供市民取閱。

紀錄顯示，獨資經營者持有有效地產代理(個人)牌照，但其營業詳情說明書則在去年年底屆滿，持牌人並沒有就有關商舖續領營業詳情說明書。

監管局職員向店內的持牌人查詢，持牌人出示有效的商業登記証及失效的營業詳情說明書。他承認並未就有關商舖續領營業詳情說明書，並辯稱正在與業主商討該商舖的續租事宜，未達成協議，所以未決定是否繼續經營該地產代理商舖。

監管局職員向持牌人解釋《地產代理(發牌)規例》第10條的規定，及後將事件提請紀律委員會審議。紀律委員會經考慮案情及持牌人的申述後，裁定持牌人在某地點以特定營業名稱經營地產代理業務前未申領營業詳情說明書，違反《地產代理(發牌)規例》第10條的規定，委員會鑑於持牌人在巡查翌日立即遞交申請，決定向持牌人予以譴責及判處罰款三千元。(罰款金額交政府庫房)。

For the purpose of the enforcement of the Estate Agents Ordinance and its subsidiary legislation, officers of the Estate Agents Authority conduct compliance visits at various locations from time to time. Part of the purpose of such checks is to ascertain that a licensee has applied for a Statement of Particulars of Business before carrying on estate agency business at a particular place, in compliance with section 10 of the Estate Agents (Licensing) Regulation.

During one of such visits, it was uncovered that an estate agency shop was open for business, and its illuminated shop sign was switched on. A large number of listing advertisements were displayed in the shop front. Pamphlets featuring listing advertisements were placed outside the shop for the public to pick up.

Licensing record showed that the shop had been operated as a sole proprietorship by a licensee holding a valid estate agent's licence. The Statement of Particulars of Business for the shop expired the year before without renewal.

Upon inspection, the licensee produced an expired Statement of Particulars of Business and a valid Business Registration Certificate. He admitted that he had not applied for renewal of the Statement of Particulars of Business and explained that he was in the course of negotiating the lease renewal of the shop and agreement had yet to be reached. That being the situation, he had not decided whether to carry on business at the shop.

The requirements under section 10 of the Estate Agents (Licensing) Regulation were then explained to the licensee and the matter was later referred to the Disciplinary Committee for consideration. The Disciplinary Committee, having considered the facts and the representation of the licensee, decided that the licensee had breached section 10 of the Estate Agents (Licensing) Regulation in that he carried on estate agency business at the shop without having applied for a Statement of Particulars of Business. With due regard to the fact that the licensee filed his application the day after the compliance visit, the Disciplinary Committee reprimanded him and imposed a fine of \$3,000 to be paid to the Treasury.

《地產代理(發牌)規例》第10條

持牌地產代理在於某地點以特定營業名稱經營地產代理業務前，須就該地點及名稱向監管局申請批給營業詳情說明書。

Section 10 of the Estate Agents (Licensing) Regulation

A licensed estate agent shall, before carrying on estate agency business at any place under a particular business name, apply to the Authority for the grant of a statement of particulars of business.

未有向客戶解釋合約條款

Failing to Explain to Client Terms of An Agreement

一名代理被發現沒有向買家解釋臨時買賣合約內的條款，紀律委員會決定予以譴責。

一名買家對一個單位有興趣，但持保留態度，尚未決定購買與否。由於該買家以為倘若物業交易無法完成，其責任只是損失按金，遂決定簽署臨時買賣合約。該名代理安排該買家簽署臨時買賣合約時，並沒有主動向她解釋合約內之條款。那份臨時買賣合約內之條款乃賣家所擬定，而該賣家是一名管有物業之承按人，他在合約內列明任何一方有權強制對方執行該合約。然而，該代理沒有留意到此條款，當買家問他若無法完成這宗物業交易，買家須負甚麼責任。該代理回答說她祇會被賣方沒收按金。

該名買家於簽署正式買賣合約前，已打算取消此交易。但其律師告知她，根據臨時買賣合約內的條款，賣方可興訟要求她完成交易。

紀律委員會經詳細研究所有證據後，認為該代理沒有向買家解釋臨時買賣合約的條款，違反了《執業規例》第13(1)條，應為此受到譴責。

A salesperson was found to have failed to explain the terms and conditions of the provisional agreement for sale and purchase. The Disciplinary Committee decided that a reprimand for the breach be issued to her.

A purchaser became interested in a flat but had certain reservations and could not make up her mind. Under the impression that, in all sale and purchase situations, a purchaser would only be liable to the forfeiture of the deposit, she decided to enter into a provisional agreement for sale and purchase. When the purchaser was presented with the provisional agreement for sale and purchase, the salesperson did not take the initiative to explain the terms and conditions of the agreement. The provisional agreement for sale and purchase was prepared by the vendor who happened to be a mortgagee in possession and had stipulated in the agreement that either party might sue for specific performance of the agreement. However, the salesperson failed to take note of this and when the purchaser enquired about her liability in case she defaulted, the salesperson replied that her loss would only be limited to the forfeiture of the deposit.

Before the signing of the formal agreement, the purchaser desired to withdraw from the transaction but was advised by her solicitors that under the provisional agreement for sale and purchase, the vendor could sue her for the specific performance of the purchase of the flat.

The Disciplinary Committee, after careful consideration of the evidence presented, decided that the salesperson had failed to comply with section 13(1) of the Practice Regulation in that she had not explained to the purchaser the terms and conditions of the provisional agreement for sale and purchase and that the salesperson should be reprimanded for the breach.

《地產代理常規(一般責任及香港住宅物業)規例》第13(1)條

持牌人在其任何並非由律師代表的客戶訂立任何住宅物業的買賣協議之前須向該客戶解釋該協議的每項條文的涵義，並促使該客戶注意該協議的重要條款及條文的涵義。

Section 13(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation

A licensee shall, before a client of the licensee who is not legally represented enters into an agreement for sale and purchase of a residential property, explain to the client the meaning of each clause of the agreement and draw to his attention the meaning of any essential terms and provisions thereof.

加入額外條款 損害客戶利益

Additional Terms Prejudice Client Interest

一名地產代理，在與客戶簽立「地產代理協議」時，額外加入若干條款，剝奪客戶作為賣家可在簽立一份有約束力的買賣合約前取消出售物業，或更改放盤價的權利，違背保障客戶利益的原則，被紀律委員會判處停牌及進修課程。

個案中投訴人為一居者有其屋單位業主。他去年透過該地產代理的公司，將其單位放於居屋第二市場出售。在簽訂「地產代理協議」時，代理促使業主另簽署了一份服務合約，當中一項條款訂明倘客戶在獲發「可供出售證明書」後放棄出售物業，須向代理支付服務費若干元；另一項條款又訂明倘客戶未能按服務合約中所列價格出售物業則作悔約論，除須繳付服務費外，另須額外向代理繳付若干數額。

代理原已為投訴人覓得一名準買家，該名準買家亦同意以業主的放盤價購買其單位。但由於準買家未向房委會取得「購買資格證明書」，故業主祇口頭答應出售，雙方沒有簽訂臨時買賣合約。

不久之後，業主向代理表示欲將樓價提高，而當其時準買家仍未取得「購買資格證明書」。代理即以業主悔約為由，向其追討服務費。其後代理入稟小額錢債審裁處，最後雙方作出和解。

代理在研訊中答辯，由於居屋第二市場代理一般會負責替客戶申請買賣許可證，推銷工作亦較繁複，成本因而較高，故有需要在「地產代理協議」內加入額外條款，以保障利益。而他們一直都有在居屋第二市場中使用該等服務合約，並非偷偷摸摸進行，存心蒙騙客戶。

An estate agent added to the estate agency agreement a number of additional clauses that would deprive the client, as vendor, the right to cancel the sale, or to alter the listing price, before the conclusion of a legally binding sale and purchase agreement. The Disciplinary Committee ruled that this was against the principle of protecting client interest and ordered that the licence of the estate agent concerned be suspended. The agent was also ordered to take a training course.

The complainant in this case is the owner of a Home Ownership Scheme (HOS) flat. Last year he listed his flat in the HOS Secondary Market with the company the estate agent in question worked for. When the agency agreement was being signed, the estate agent urged him to sign a service agreement which was to be attached to the agency agreement. One of the clauses of this service agreement stipulated that if the vendor would choose not to sell his property after the *Certificate of Availability for Sale* had been issued, then the vendor would have to pay a certain amount of money to the agency company as "service fee". Another clause in the service agreement indicates that if the vendor fails to sell his property at the price listed in the service agreement, then the vendor will be deemed to have reneged on the sale and liable to the payment of not only the "service fee" but also additional charges.

The estate agent in this case had found a potential purchaser for the flat who would be willing to buy the flat at the listed price. However, since this potential purchaser was yet unable to obtain the *Certificate of Eligibility to Purchase*, the complainant had only indicated verbally that he would be willing to sell. No provisional sale and purchase agreement was signed.

Soon afterwards the complainant indicated to the estate agent that he wished to raise the price of the property in question, at which time the potential purchaser still had not yet obtained the *Certificate of Eligibility to Purchase*. The estate agent then sought payment of service fee from the complainant on the ground that the latter had reneged on the agreement. The agent later took his claim to the Small Claims Tribunal and the matter was eventually settled between the parties.

The estate agent, in response to the complaint laid against him, indicated that agents would normally apply for the *Certificate of Availability for Sale* for vendors in the HOS Secondary Market and that cost in marketing such flats would generally be higher. He claimed that it was necessary for extra clauses to be added to the estate agency agreement in order to protect the interest of the agent. He further indicated that the service agreement had been in use for properties in the HOS Secondary Market all along and that nothing had been hidden from the complainant, nor was there any intention to deceive him.

委員會經仔細考慮後，認為代理將有關服務合約附在「地產代理協議」內，容易令人誤會為協議的一部份，實為不妥。而有關條款亦祇單方面保障代理的利益，並限制了客戶對自己物業如何處理的自由，違反《操守守則》第3.4.1條，未有保障和促進客戶利益。委員會是以判決暫停該代理的牌照及著令他進修課程。

The Disciplinary Committee, having carefully considered all evidence, held that attaching the service agreement to the estate agency agreement might lead the parties concerned to think that the service agreement was an integral part of the estate agency agreement, and that that was an improper act. Furthermore, the terms of the service agreement were set to protect the interests of the agent only, while trespassing on the client's right to freely dispose of his own properties. This was found to be in breach of paragraph 3.4.1 of the Code of Ethics, as there was no advancement or protection of client interest. For this reason, the Disciplinary Committee ordered that the licence of the estate agent be suspended for a fixed period of time. In addition, a condition that the agent should attend a relevant training course was attached to the licence.

《操守守則》第3.4.1條

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.



追佣手法欠妥

Demanding Commission in An Improper Way

一名地產代理因追討佣金，在他人的物業外張貼追佣傳單，被紀律委員會停牌及強制她修讀地產代理的專業課程。

事緣一位有意經營小生意人士向一名獨資經營的地產代理查詢店舖資料，但雙方並無正式委託，事後該名人士經另一代理商號洽談舖位，該代理認為她有意逃避支付佣金，所以要求她繳付佣金，但她沒有理會其收佣要求。隨後代理在收不到佣金的情況下，用傳單張貼於有關商舖的門口及櫥窗上，並在傳單上寫上該準租客的電話號碼及指控欠佣的字句。

紀律委員會召開研訊，討論該名代理上述的行為會否影響其「適當人選」的持牌資格。研訊中，代理承認自己不應在他人的商舖外張貼追佣傳單，又對傳單內容深感歉疚。惟希望委員會不要撤銷牌照，讓她繼續經營代理業務，以免影響生計。

委員會仔細考慮過後，認為該代理的追討行為存有威嚇成分，手法令人受驚和不安，大大損害業界的專業形象，足以構成撤銷牌照的理由。不過委員會姑念她在投訴調查期間態度合作，若撤銷其牌照將影響其生計，決定暫時停牌十四天，以及在牌照上附加條件，規定她必須完成一個不少於二十小時的地產代理課程，以加強她的專業知識和能力。

地產代理從業員應先訂立委託關係，以確定提供服務後收取佣金的權利。地產代理更不應使用恐嚇、暴力及其他非法手段追收欠款。

An estate agent who posted unauthorized bills on someone's premises in pursuit of commission allegedly owing had her licence suspended by the Disciplinary Committee and was ordered to attend a training course for estate agents.

In this case, a person who was looking for a shop unit to operate a small business enquired with the estate agent concerned who was the sole proprietor of her estate agency business. There was no formal appointment. The agent mentioned a shop unit close to her own shop. The intending tenant later negotiated for the lease of the same shop unit through another agency. Thinking that she might have been bypassed the agent pursued the tenant for commission. The tenant did not heed her demand and the agent later posted some bills on the door and window of the tenant's shop with the tenant's telephone number and words alleging unfairness.

The Disciplinary Committee held an inquiry hearing to determine whether the agent was still fit and proper to hold a licence as a result of her said conduct. At the hearing, the agent admitted to the Committee that she should not post those bills on other people's premises and expressed regret for the contents of the bills. She hoped the Committee would not revoke her licence but allow her to continue with her business on which her livelihood depended.

After careful deliberation, the Committee was of the view that the agent's conduct amounted to threatening and harassing tactics and had caused fear and anxiety in the tenant and others. In view of their adverse effect on the trade's image, such acts would warrant the revocation of her licence if not for the consideration that the agent had been cooperative with the investigation and the hearing, and the effect of revocation on her livelihood. The Committee decided to suspend the agent's licence for a period of 14 days and impose a condition on her licence to the effect that she should complete a training course of not less than 20 hours to improve her professional knowledge and competence.

Practitioners should enter into agency agreement with their clients to ensure that they are entitled to remuneration for services rendered. They should not resort to threatening, violent or other unlawful means when demanding money owed.

《操守守則》第 3.1.1 條

地產代理和營業員在執業時必須避免從事可能觸犯法律的活動。

Paragraph 3.1.1 of the Code of Ethics

Estate agents and salespersons shall refrain from activities during their practice which may infringe the law.

《操守守則》第 3.7.2 條

地產代理和營業員應避免做出可能令地產代理行業信譽及 / 或名聲受損的行為。

Paragraph 3.7.2 of the Code of Ethics

Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.

不當處理客戶佣金

Improper Handling of Commission

一名地產代理因受人教唆擅取佣金受到法律制裁，其後亦被紀律委員會裁定要在牌照上附加條件，以示懲戒。

事緣該名代理在離職前一天與另一名將同時離職的同事聯手促成一宗租賃交易，他的同事負責收取佣金。在收到租客以現金支付的佣金後，他的同事沒有將佣金交還公司。其後他的同事將一半佣金分給答辯人，並囑咐他不要把此事告知公司。

不久之後，事件為前僱主所知悉，該代理遭警方以盜取佣金為由提出檢控。他向法院承認控罪，被判社會服務令，並須向其前僱主賠償。

該代理向紀律委員會解釋，自己在是次事件中主要是受了同事的唆擺，事後雖然深感後悔，但因已離開公司，未能作出補救；他又表示自己亦要維持家計，希望委員會給予機會，讓他繼續從事代理工作。

紀律委員會認為擅取佣金與盜竊無異，是嚴重的罪行，但鑒於代理是受到別人的慫恿，事後又坦白承認過失，有悔過之意，而法庭也給了他應有的制裁，故決定暫不撤銷他的牌照，但須在牌照上附加條件，規限其工作範圍，包括在未來兩年內，每次獲發牌照的有效期不得超過六個月；申請續牌時須有僱主書面推薦；不得擔任分行經理之職及在業務中代僱主交收或保管客戶金錢；也不可以獨資或合夥形式經營地產代理業務；並須在轉職時通知監管局等。若該代理以後再犯，他的牌照會被撤銷。

地產代理從業員不應因一時貪念，私相授受，擅取佣金，除有可能留下案底，影響前途外，還可能會被撤銷牌照，不能繼續執業。

An estate agent was induced to keep commission money payable to his employer by a colleague and was convicted of theft. Action was taken against him by the Disciplinary Committee and specific conditions were imposed on his licence.

The agent and his colleague were about to leave the employ of the company in question. Together they closed a deal one day before he and his colleague left. His colleague was given the commission payable under that transaction in cash. The colleague pocketed the commission without letting his employer know and later gave half the amount to the agent and asked him not to inform their employer.

The employer subsequently discovered that the commission was outstanding and reported the matter to the Police. The agent was charged with theft, pleaded guilty, and was sentenced to social service and made to pay a compensation to his former employer.

At the inquiry hearing, the agent stated to the Disciplinary Committee that he committed the offence mainly because of his colleague's ill counsel. Although he was full of remorse, it was too late to undo what he had done as both of them had left the company. He also indicated that he had to maintain his family's livelihood and asked the Committee to give him the chance to continue working in the trade.

The Disciplinary Committee was of the view that the agent's taking of the commission was tantamount to theft. However, the Committee took into consideration the fact that the agent had only been induced to commit the offence, that he had admitted his wrongdoing and showed remorse, and that the court had already sentenced him to just punishment. The Committee thus decided to give him a chance by imposing certain conditions on his licence. These included the grant of licences valid for six months only during the next two years, a requirement for employer's recommendation for the renewal of each licence, the agent being debarred from appointment as a branch manager or serving as a sole proprietor or partner, restriction on handling clients' monies, and the requirement for the agent to report to the Authority any change in employment. If the agent should commit any offence again, his licence may be revoked.

Practitioners should not take away or withhold commission or money not due to them. In addition to criminal sanctions, they may also be deprived of their eligibility to practise.

《地產代理條例》第19(2)(d)條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及以下情況—該人因任何罪行(本條例所訂的罪行除外)在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

Section 19(2)(d) of the Estate Agents Ordinance

In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person for any offence other than an offence under this Ordinance, being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.

未有續牌而繼續從事地產代理工作 Unlicensed Practice during Lapse of Licence

一名地產代理在牌照屆滿後沒有申請續牌，但仍繼續從事地產代理工作，被紀律委員會吊銷牌照，並指定必須在申請牌照或續牌前通過資格考試。

證據顯示在無持有有效牌照期間，該名代理受租客委託租賃物業，並與客戶訂立了一份「地產代理協議」。其後向該客戶介紹物業，並陪同視察及與業主議價，最後促成雙方簽訂租約。

及後租客懷疑該代理沒有持有代理牌照，往監管局查閱登記冊又發現他無有效牌照紀錄，遂向監管局投訴。監管局查證後證實該代理在牌照屆滿後沒有申請續牌，於是把上述案件轉交警方處理，最後該代理被控無牌從事地產代理工作，違反《地產代理條例》第15(1)(b)條，被法院判處罰款5,000元。

紀律委員會其後展開研訊，研究應否讓該代理繼續持牌從事地產代理工作。委員會於研訊後綜合各項要點，認為該代理沒有續牌而繼續代理工作，以身試法。委員會亦相信該代理乃蓄意不續領牌照，但考慮到答辯人已被法庭判罰，且於事發後馬上向監管局補領牌照，獲發短期臨時牌照，所以委員會決定把其臨時牌照吊銷，委員會亦規定她日後申請再發牌時，必須已通過資格考試，否則將不獲發牌照。

根據《地產代理條例》，所有從業員執業時，必須持有有效牌照，否則便會觸犯刑事罪行。《地產代理(發牌)規例》又規定，所有續牌申請須在現有牌照有效期屆滿前規定的期限提出，從業員應留意，未依時續牌或續牌申請未獲處理，便很可能變成無牌執業。

An estate agent who failed to renew her licence upon its expiry but continued to carry out estate agency work had her licence suspended by the Disciplinary Committee and was ordered to pass the qualifying examination before a new licence was issued.

There was evidence that the agent in question had taken part in a leasing transaction while she did not hold a valid licence issued by the Authority. She had entered into an estate agency agreement with a prospective tenant, accompanied the prospective tenant to inspect and view the premises, and had procured the signing of a lease between the landlord and the tenant.

The prospective tenant later grew suspicious and went to the Authority to conduct a licensee check. He lodged a complaint, and the Authority started its own investigation of the suspected breach and confirmed that the agent in question had not renewed her licence upon its expiry. The case was referred to the Police and the agent was eventually convicted of contravening section 15(1)(b) of the Estate Agents Ordinance and fined \$5,000.

An inquiry hearing was subsequently convened to see if the agent should be allowed to continue practising. After careful consideration of the evidence available, the Disciplinary Committee came to the conclusion that the agent had no reasonable excuse for the breach and she had purposely failed to renew her licence. Considering that the agent had been punished by the court and she had, immediately after the exposure, applied to the Authority for a short-term provisional licence, the Committee ordered that her licence be suspended. The Committee also ordered that she should have passed the qualifying examination before she would be issued a licence to practise.

Under the Estate Agents Ordinance, practising without a licence is a criminal offence. The Estate Agents (Licensing) Regulation also provides that application for renewal shall be made not more than three months and not less than one month before the expiry date of the relevant licence. Practitioners should beware that continuing to practise after a licence expires without renewal or before renewal application is approved may bring about serious consequences.

《地產代理條例》第 15(1)(b)條

任何個人除非是持牌地產代理，否則不論是獨自或是以合夥成員的身分，均不得以地產代理身分行事。

Section 15(1)(b) of the Estate Agents Ordinance

An individual shall not, either by himself or as a member of a partnership, act as an estate agent unless he is a licensed estate agent.

《地產代理(發牌)規例》第 13 條

牌照續期申請須於該牌照有效期屆滿前 3 個月至屆滿前 1 個月的期間內提出，或於監管局以書面准許的在該牌照有效期屆滿前的較短期間內提出。

Section 13 of the Estate Agents (Licensing) Regulation

An application for the renewal of a licence shall be made not more than 3 months and not less than 1 month prior to the expiration of the licence or within such shorter period prior to the expiration thereof as the Authority may in writing permit.



公司無牌執業 董事須負責任

A Director is Held Liable for Offences Committed by the Company

一家地產代理公司，因未有領取牌照經營地產代理業務，被法庭裁定罪成，判處罰款，其持牌董事則被紀律委員會判處停牌一個月。

去年監管局職員在一次例行巡查中，發現一家公司未領有地產代理(公司)牌照而經營地產代理業務，在搜集到足夠證據後，遂將事件轉介警務處。其後警方提出檢控，該公司承認控罪，被法庭判處罰款二萬元。

有關地產代理公司有三名董事，而該名代理為公司唯一的持牌董事，在監管局職員兩次巡查中均在場，並有進行地產代理工作。

該代理在研訊時向紀律委員會解釋，他在去年年中與數名友人合作，開設地產代理公司，而其中一人承諾負責申領牌照事宜。他因此未在意該公司未領有牌照，並非蓄意無牌經營地產代理業務。

委員會在聽取所有證供後，認為該代理作為有關公司的持牌董事，主管該公司的地產代理業務，對無牌營業一事不可推卸責任，亦不應將申領牌照事宜完全託付他人，而該公司無牌營業是在他的同意或縱容下發生的，根據《地產代理條例》第42條，該代理實應負上責任。委員會認為《地產代理條例》乃整個監管機制的重要基石，違反後果嚴重，故判處暫停該代理牌照一個月。

A company was found to be operating property agency business without a valid licence. The company was prosecuted in court and fined, while one of its directors, who was the only director at the time who held an estate agent licence, had his licence suspended for one month by the Disciplinary Committee.

In a regular inspection last year, staff members of the EAA found that the company was operating estate agency business without an estate agent (company) licence. After gathering enough evidence, the EAA referred the case to the Police. Later, the company was prosecuted by the Police and the court, upon the company pleading guilty, imposed a fine of \$20,000.

There were three directors in this company, and one of them was a licensed estate agent. He was present at both inspections by EAA staff and was observed to be doing estate agency work.

The director concerned explained to the Disciplinary Committee at inquiry hearing that he started the business last year as a partnership with a few friends. One of his friends in the partnership promised to take care of the application for the licence, and he was unaware that the company had never been licensed. He pleaded that he did not deliberately run an agency practice without a licence.

The Disciplinary Committee, having examined all evidence, observed that the estate agent concerned, being the only licensee among the directors, was in control of the agency business and therefore could not be discharged from the responsibility of operating the company without a valid licence. Also, he should not have delegated the application for licence to another director. The Committee held that the unlicensed operation of the company occurred with his consent or connivance. Under section 42 of the Estate Agents Ordinance, the estate agent was found to be responsible for the offence. The Disciplinary Committee, recognising the licensing of practitioners as the cornerstone of the regulatory system, deemed unlicensed operation a serious offence, and ordered that the licence of the estate agent concerned be suspended for one month.

《地產代理條例》第42條

凡任何犯了本條例所訂的任何罪行的人是一間公司，並已證明該罪行是在該公司的一名董事或與公司管理有關的其他高級人員，或任何看來是以該等董事或高級人員身分行事的人的同意或縱容下犯的，則該董事或該其他高級人員或該人(視屬何情況而定)，即屬犯上同樣的罪行。

Section 42 of the Estate Agents Ordinance

Where a person by whom an offence under this Ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company or any person purporting to act as such director or officer, the director or other officer or the person, as the case may be, shall be guilty of the like offence.

監管局調停 和平解決糾紛

Dispute Resolved through Mediation of the EAA

一名母親及她打算置業的兒子，透過地產代理甲視察了數個物業，每次視察後均簽署了表格4及其附表1，但沒有購買任何物業。其後，地產代理甲仍多次向他們介紹其他物業，而在每次睇樓後，地產代理甲均會安排他們簽署附表1。然而，其中有一次，母親獨自透過地產代理甲睇樓並簽署了附表1，她沒有告訴兒子這件事情。與此同時，她的兒子亦透過另一名地產代理到該物業睇樓及購買該物業。

地產代理甲得知那兒子透過另一地產代理購入物業，於是向他母親追討相當於樓價1%之佣金共\$10,800。母親很是擔憂，沒有告訴她的兒子便自行向地產代理甲繳付全數佣金，她的兒子得知有關事情後，即鼓勵母親向地產代理監管局作出投訴。

地產代理監管局接獲母親的投訴後隨即展開調查，發現有關投訴有可能是由於他們與地產代理甲之間的誤會而引起的。兒子事前並不知道他的母親已往該物業睇樓，而母親亦不知道她的兒子已透過另外一名地產代理往同一物業睇樓，同時，地產代理甲亦不知道母親和她兒子之間的誤會，而直接向該母親追討佣金。

經過地產代理監管局的調停及解釋，雙方最後和平地解決有關糾紛，地產代理甲願意將其中\$6,000發還予母親。有關投訴最後通過地產代理監管局達成調解，而監管局亦已向地產代理甲指導，日後應安排由簽署表格4的客戶簽署附表1，以減少誤會。

A mother and son who intended to purchase a property visited an estate agency and were introduced to a number of properties. A Form 4 with details of the properties they viewed on that occasion set out in Schedule 1 was signed by the son who did not purchase any of them. Thereafter, the estate agent continued to introduce other properties to them on several occasions and after each inspection, the estate agent would produce Schedule 1 for their signature. On one occasion, only the mother viewed the subject property and she signed on Schedule 1 without informing the son. Meanwhile, the son also viewed the subject property and bought it through another estate agency.

Learning that the son had purchased the subject property through another estate agency, the original estate agency asked the mother to pay a commission of \$10,800 which was equivalent to one per cent of the purchase price. The mother got worried and paid the commission without telling the son about it. When this was discovered by the son, he urged his mother to lodge a complaint with the Authority.

Investigation was carried out by the Authority. It appeared that the complaint was caused by a misunderstanding between the estate agent and his client. The son did not seem to know that his mother had viewed the subject property earlier on while the mother did not seem to know that the son had appointed another estate agency for the purpose of viewing the same property. The estate agency, without realizing that there was such misunderstanding, believed that they were entitled to charge the mother the commission for their service.

Through EAA's efforts of conciliation and explanation, the parties settled their dispute amicably and the estate agent returned \$6,000 to the mother. The complaint was resolved by mediation and the estate agency was advised to ensure that the person signing Form 4 would be the same as the person signing Schedule 1.

私吞客戶佣金

Theft of Commission

一名地產代理因私下吞併客戶交來的佣金而被裁定盜竊罪名成立。紀律委員會在研究過這個個案後認為此等行為令這名代理不再是持牌的適當人選，決定撤銷他的牌照。

有關地產代理受僱於一家代理行，根據他在紀律研訊的供詞，他與僱主關係十分差。在事發當日，他其實已準備於翌日離開該公司，在同區自立門戶，經營地產代理業務。他當天最後一宗交易是租賃，租客以現金向他付出佣金，他卻沒有把佣金交給公司而私下吞掉該筆佣金。他的僱主發現後報警，警方落案控告他盜竊，稍後經法庭裁定罪名成立，判處罰款。

在紀律研訊中，該名代理也直認此事，但卻辯稱因為公司規定租賃雙方都須支付佣金，而他急於完成該宗交易，私下答允業主不須付佣金，但完成交易後又恐怕僱主會責怪他沒有按公司規定辦事，藉詞剋扣他的薪金，所以把心一橫，索性不把佣金交給僱主。

在考慮過所有相關證據後，紀律委員會認為該名代理不論對其僱主抑或客戶，均有責任好好處理收到的佣金。他沒有把佣金交給僱主，是嚴重的違反誠信行為，除了干犯刑事罪行外，也會令地產代理業的聲譽受損。根據《地產代理條例》，持牌人干犯不誠實的罪行，會直接影響其作為持牌人的適當人選資格。在這個個案中，委員會覺得這名代理並不是持牌的適當人選，因而決定撤銷他的牌照。

上述代理的行為，其實不單違反僱員對僱主的誠信，而且也有可能損害其客戶的利益。因為客戶簽立的「地產代理協議」，其實是與代理所代表的僱用機構訂立的，該公司按合約可向客戶要求支付佣金，客戶因此可能被捲入佣金爭議中。

An estate agent failed to surrender to his employer commission received from a client and was convicted of theft. The Disciplinary Committee, after considering his case, was of the opinion that what the agent had done rendered him not a fit and proper person to hold a licence and therefore revoked his licence.

The estate agent concerned worked for an estate agency company. According to his testimony at the hearing, his relationship with his employer was anything but cordial. At the material time, he was about to quit the job and set up his own estate agency business in the neighbourhood. The last deal he closed was a tenancy for which he received in cash the commission paid by the tenant. The agent did not hand over the money to his employer but pocketed it. This was discovered by the employer who reported it to the Police. The Police charged him with theft. Later, the agent was convicted and fined by the court.

Before the Disciplinary Committee, the agent admitted to the facts and said that despite the company rule that commission must be obtained from both sides of the transaction, he, in order to close the tenancy deal, promised the landlord that he would waive the commission payable by him. The agent claimed that, after he had completed the deal, he was afraid that his employer might blame him for not following the rule and use that as a pretext to deduct the outstanding commission from his salary. He therefore made up his mind to cheat his employer of the tenant's share of commission.

After careful consideration, the Disciplinary Committee held the view that the agent certainly owed a duty toward his employer as well as his client to hand over the commission where it belonged and that failure to do so would constitute gross breach of trust on his part. Besides having committed a criminal offence, the way the agent dealt with money received from his client would also bring disrepute to the estate agency trade. The Committee noted that theft was a crime founded on dishonesty which directly impinged on the fitness and properness of a licensee under the Estate Agents Ordinance. In the circumstances of the case, the Committee concluded that the estate agent concerned was not a fit and proper person to continue to hold a licence and that it would be appropriate to revoke his licence.

The agent's act was not only a breach of trust toward his employer but could possibly cause damage to his client's interest. As the relevant estate agency agreement was entered into between the tenant and the estate agency company the agent worked for, collection action could have been undertaken by the company against the tenant under the mistaken belief that the tenant had not paid commission, thereby involving the tenant in a commission dispute.

《地產代理條例》第19(2)(d) 條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及以下情況——該人因任何罪行（本條例所訂的罪行除外）在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

Section 19(2)(d) of the Estate Agents Ordinance

In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person of any offence being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.

《操守守則》第3.4.1 條

作為代理或受託為代理的地產代理和營業員，應保障和促進客戶的利益，按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.



買賣手續欠清晰 未保障客戶利益

Client Interest Jeopardised by An Agreement Not Properly Made

一名地產代理在客戶取得首置貸款合格證明書前，安排他簽訂臨時買賣合約，未有充份保障客戶利益，被紀律委員會在牌照上附加條件，限制她的執業。

投訴人在本年初向房屋協會申請「首次置業貸款計劃」，並隨即委託地產代理物色合適的單位。不久之後代理為他覓得一單位，在看過後他表示有興趣購買該物業。

由於當時投訴人尚未取得房協的「合格證明書」，根據首置條款的規定，申請人必須由提交申請日前120個月至取得「合格證明書」時，在香港並無以任何形式，直接或間接擁有住宅物業，而簽訂了買賣合約亦會被視為擁有物業，故他向代理求證簽署了臨時買賣合約是否會影響他的貸款申請。代理向他表示，若不在合約上填寫日期便不會影響貸款資格。投訴人遂與賣家簽訂了一份沒有填上日期的臨時買賣合約，並以支票支付訂金，交付地產代理保管，直至取得「合格證明書」才發放予賣家。

一個多月後房協以投訴人在香港擁有住宅物業為理由，拒絕了他的貸款申請，

該名代理向委員會表示，她其實在事前已向投訴人清楚解釋在未有「合格證明書」前簽立買賣合約的後果，但投訴人當時對有關物業很感興趣，表示希望有文件可令業主為他預留購買該物業的權利，所以她便取出公司的標準臨時買賣合約，但不填上簽立日期及漏空其他多處，以證明雙方有交易的誠意。對她來說，該份文件祇是一份交易意向書，算不上是有約束力的買賣合約。

紀律委員會在聽取所有供詞後，認為該文件的詮釋或訂立意圖容有爭議之處，惟代理安排客戶簽

An estate agent arranged for her client to sign a provisional agreement for sale and purchase for a property before the client had obtained the *Certificate of Eligibility*, which would facilitate his purchase of the flat. The Disciplinary Committee ruled that the agent had not sufficiently safeguarded client's interest and ordered that restrictions be attached to her licence.

Early this year, the complainant applied to the Housing Society for a loan under the Home Starter Loan Scheme and then engaged an estate agent to search for a property for him. The agent soon showed him a property in which he became interested after viewing.

At that point in time, the complainant had not yet obtained the *Certificate of Eligibility* from the Housing Society. According to the stipulations of the Home Starter Loan Scheme, an applicant must not be in direct or indirect possession of any form of property in Hong Kong within the 120 months prior to the submission of application, and during the time between the submission of application and the grant of the *Certificate of Eligibility*. For the purpose of this restriction, the signing of the provisional agreement for sale and purchase is interpreted as coming into possession of a property. On this the complainant queried the agent as to whether the signing of the agreement would affect his loan under the Home Starter Loan Scheme, and the agent said that his eligibility for the loan would not be affected if no date were to be entered in the provisional agreement. The complainant then signed the undated provisional agreement, made out a cheque for the deposit, and passed the cheque to the agent for stakeholding, with the instruction that the money be released to the vendor once the *Certificate of Eligibility* was successfully obtained.

A little more than a month later the complainant was informed by the Housing Society that his application was refused because he was found to be in possession of property in Hong Kong.

The estate agent explained to the Disciplinary Committee that she had arranged for the complainant to sign the provisional agreement in order that the vendor and the purchaser might prove to each other their commitment to the transaction. She claimed that since the agreement was not dated and with many details left out, it could only be interpreted as a letter of intent and not a provisional agreement for sale and purchase.

Having heard all relevant submissions, the Disciplinary Committee held that the estate agent in question, by arranging her client to sign a

訂一份有多處留空的合約，執業手法確有問題，更有違保障及促進客戶利益的原則；她亦不明瞭該份合約在房協眼中實際上已是一份有約束力的買賣合約，令人對她的專業能力有所懷疑，遂在代理牌照上附加一項條件，限制一個月內不得處理有關房委及房協轄下的住所貸款計劃及居屋買賣的事宜。另委員會亦著令該代理修習有關法例，以提高其專業知識及能力。

contract which was left blank in many places, had committed an act of undesirable practice and infringed upon the principle of protecting and advancing client interest. The Committee, observing that she did not understand that the contract was in effect a provisional agreement for sale and purchase, had doubt about her professional capabilities as an estate agent. The Committee therefore ordered that a condition be added to her licence, to the effect that she be debarred for one month from all transactions related to the various loan schemes of the Housing Authority and the Housing Society and any property subject to the Housing Ordinance. The agent was also encouraged to study the relevant legislations so as to enhance her professional knowledge and standard of service.

《操守守則》第3.2.2條

地產代理和營業員應掌握有關的一切法律、政府規例，及各地產市場的重要事實和發展，以便能盡責地向客戶提供意見。他們應盡量憑本身在地產方面的知識、訓練、資歷和經驗向客戶提供服務和意見。

Paragraph 3.2.2 of the Code of Ethics

Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market in order to be in a position to advise their clients in a responsible manner. They should strive to provide services and opinions based on knowledge, training, qualification and experience in the real estate business.

《操守守則》第3.4.1條

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益，按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of the clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.