紀律案例選錄
A SELECTION OF DISCIPLINARY CASES

個案 1

進行地產代理工作時為路人帶來嚴重危險

警方收到很多關於馬路安全及地產代理在新樓盤的拉客活動的投訴。有見及此，警方與監管局在一新樓盤採取聯手行動，以規管地盤一帶之地產代理活動。

當日，主管案件的高級督察目睹一地產代理向停在紅燈前車上的司機及乘客兜攬生意，遞上住宅樓盤之宣傳資料。地產代理首先走近一輛停在慢線的車輛，然後又走近另一輛停在快線的車輛。交通燈轉綠後，司機就將車輛駛離，但地產代理仍然在車道上徘徊。因此，為避免撞倒他，一輛正在慢線行駛的車輛要轉到快線。

該高級督察請該地產代理返回行人路上，並告知他，他的行為已違反《道路交通條例》。關於此事，監管局之職員亦收到通知，不久監管局一名職員亦到達現場。在現場，該地產代理拒絕合作。雖經屢次要求，該地產代理不但拒絕出示名片及工作證，而且還向該高級督察及該監管局職員聲稱他是另一間地產代理公司的僱員。

Case 1

Endangering road users during agency work

Having received numerous complaints about road safety and touting at the first-sales site of a residential development, the Police and the Authority launched a joint operation to regulate estate agents' activities in the vicinity.

On the material day, the senior police inspector in charge of the operation saw an estate agent approaching vehicles waiting at a red traffic light and canvassing drivers and passengers by showing them promotional materials for the residential development. The estate agent first approached a vehicle waiting on the slow lane. He then moved onto another vehicle on the fast lane. When the traffic light turned green, the drivers in those vehicles drove off but the estate agent remained wandering on the carriageway. As a result, a vehicle approaching on the slow lane had to move to the fast lane to avoid running him down.

The senior inspector invited the estate agent to return to the pavement and told him that his behaviour constituted an offence under the Road Traffic Ordinance. The Authority was informed of the incident and a member of staff arrived at the scene shortly afterwards. At the scene, the estate agent refused to cooperate. Not only did he refuse to produce his business card or staff card despite repeated requests, he also told the senior inspector and the Authority's staff member that he was an employee of another estate agency company.

經審慎考慮後，紀律委員會裁定地產代理之行為無疑會危害自身及其他路人的安全。

After careful consideration, the Disciplinary Committee found that the estate agent's behaviour would undoubtedly endanger himself and other road users.

在紀律研訊時，該名地產代理向紀律委員會承認他曾經誤導該高級督察及該監管局職員關於他僱主的身份。紀律委員會認為該名地產代理之行為會妨礙及延遲監管局完成調查工作。

At the inquiry hearing, the estate agent admitted that he had misled the senior inspector and the Authority's staff member on the identity of his employer. The Disciplinary Committee took the view that the estate agent's behaviour was likely to hamper or delay the Authority from completing its investigation.

紀律委員會裁定該名地產代理未有遵守《操守守則》第 3.1.1 段，因他沒有避免違反《道路交通條例》第 48 條。他亦有就僱主資料作出虛假陳述及拒絕與監管局合作。他的地產代理牌照因此而暫時被吊銷九個月。

The Disciplinary Committee decided that the estate agent had not observed paragraph 3.1.1 of the Code of Ethics in that he failed to refrain from activities that might breach Section 48 of the Road Traffic Ordinance, and that the estate agent had made false representation of the details of his employer and refused to cooperate with the Authority. His estate agent's licence was suspended for nine months as a result.

《道路交通條例》第 48 條

任何使用道路的行人，或於任何道路上駕駛人力車的人疏忽地危害其本人或他人的安全，即屬犯罪，可處罰款 $500 。

Section 48 of the Road Traffic Ordinance

A pedestrian who in using any road, or a person who by driving a rickshaw on any road, negligently endangers his own safety or that of any other person commits an offence and is liable to a fine of $500.

《操守守則》第 3.1.1 段

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.

個案 2

從事超越地產代理能力及知識範圍的工作

一名地產代理之牌照被紀律委員會暫時吊銷，因他明知舊租客的租約有分租限制，及在客人沒有尋求法律意見之情況下，安排客人頂讓舊租客的零售店未屆滿租期。

在租約租期屆滿前，舊租客欲結束營業，於是聘請地產代理尋找新租客以頂讓未屆滿的租期。該名地產代理在此宗交易中代表新舊租客雙方。

業主與舊租客訂立之租約規定舊租客不能將零售舖出讓、分租，或放棄其管有權。雖然有此限制，該地產代理在沒有獲得業主同意之下，依然安排新舊租客為頂讓未屆滿的租期而簽署「物業特許合約」及「承讓招頂合約」。

在簽署這兩份合約以前，地產代理安排新租客付與舊租客相等於三個月的特許費、差餉及管理費作為按金。

新租客接管零售店後不久，業主反對未經他同意的租約轉讓。業主以書面形式通知舊租客轉讓違反現租約，又拒絕新租客承接未屆滿租期的要求。在此情況下，新租客唯有將零售店舖交回舊租客，但舊租客聲稱此乃違反「物業特許合約」，並將按金沒收。

Case 2

Undertaking work beyond an agent's knowledge and competence

The Disciplinary Committee suspended an estate agent's licence for his arranging his client to take over the remaining term of a retail shop tenancy from an outgoing tenant even though he was aware that alienation was prohibited under the tenancy agreement made between the landlord and the outgoing tenant ("the current tenancy agreement"), and that his client had not obtained legal advice.

The situation arose when the outgoing tenant wished to close his business and engaged the estate agent to find someone to take over the tenancy. The estate agent acted for both the outgoing tenant and the replacement tenant in this transaction.

Under the current tenancy agreement, the outgoing tenant was prohibited to assign, sub-let or otherwise part with possession of the retail shop. Despite this restriction and without obtaining the consent of the landlord, the estate agent arranged for the outgoing tenant and the replacement tenant to sign a Licence Agreement and a Sale and Takeover Agreement covering both the transfer of business and of tenancy.

Before signing these two agreements, the estate agent arranged for the replacement tenant to pay to the outgoing tenant a deposit equivalent to three months' licence fees, plus rates and management fees.

Shortly after the replacement tenant had taken possession of the shop from the outgoing tenant pursuant to the Licence Agreement, the landlord objected to the tenancy transfer. The landlord notified the outgoing tenant in writing that the transfer was in breach of the current tenancy agreement and refused the replacement tenant's request to take over the remaining term. Under these circumstances, the replacement tenant had no alternative but to deliver up possession of the shop to the outgoing tenant. However, the outgoing tenant alleged that this was a breach of the Licence Agreement and hence forfeited the deposit.

在紀律研訊時，紀律委員會裁定該名地產代理明知租約有不准轉讓之限制，依然安排新租客在未有尋求法律意見之下訂立「物業特許合約」及「承讓招頂合約」。

紀律委員會認為此項交易包括生意轉讓及租約轉讓，可能超越地產代理之能力及知識範圍。審慎的地產代理，在此情況下應建議客人尋求法律意見，並應向新租客解釋清楚在沒有業主同意情況下訂立「物業特許合約」的風險。紀律委員會裁定該地產代理沒有履行《操守守則》的第3.4.1段，沒有保障和促進客戶的利益，所以將他的地產代理牌照暫時吊銷三個月。

At the inquiry hearing, the Disciplinary Committee found that the estate agent had arranged for the replacement tenant, who had not taken legal advice, to enter into both the Licence Agreement and the Sale and Takeover Agreement even though the estate agent was fully aware of the alienation restriction on transfer of tenancy.

The Disciplinary Committee took the view that the transaction, which included transfer of business and tenancy, might have been beyond the estate agent's knowledge and competence. A prudent agent would have advised his clients to seek legal advice in the circumstances and should have advised the replacement tenant on the risks of entering into the Licence Agreement without the prior consent of the landlord.

The Disciplinary Committee held that the estate agent had not complied with paragraph 3.4.1 of the Code of Ethics by failing to protect and promote his client's interests and suspended his licence for three months.

《操守守則》第3.4.1段

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 their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

個案 3

安排非法租約

一名營業員安排業主與租客，就一私人機構參建居屋計劃之單位訂立租約，但當時該單位之轉讓限制仍未被解除。

該名營業員曾經在三個不同場合提醒業主與租客物業受轉讓限制，落實建議之租約實屬違法。

業主因此份租約而被裁定違反《房屋條例》第27A條之罪行，及被判罰可觀的罰款。

在紀律研訊中，該名營業員承認該宗交易是由他辦理的，而且他知道依據《房屋條例》，出租此單位屬非法轉讓。但他認為他只要提醒他的客戶該轉讓屬非法便已足夠，他亦不知道他的行為會帶來這麼嚴重的後果。

紀律委員會經考慮監管局所提出之證據及該營業員之申述，裁定該營業員在執業時未有遵守《操守守則》第3.1.1段，理由是他在執業期間並無避免從事可能觸犯法律的活動。紀律委員會決定將該營業員之牌照暫時吊銷一個月。

Case 3

Procuring illegal letting

A salesperson arranged for a landlord and a prospective tenant to enter into a tenancy agreement for a Private Sector Participation Scheme property, despite the existence of alienation restrictions in respect of the property.

On three different occasions, the salesperson reminded the landlord and the tenant that the property was subject to alienation restrictions and it was illegal to proceed with the proposed letting.

As a result of the letting, the landlord was convicted under Section 27A of the Housing Ordinance and was ordered to pay a heavy fine.

At the inquiry hearing, the salesperson admitted that he had handled the transaction and that he had known that the letting would amount to illegal alienation under the Housing Ordinance. However, he thought that it would be sufficient to remind his clients of the illegality and he did not know that his action would lead to serious consequences.

Having considered the evidence presented by the Authority and the representations made by the salesperson, the Disciplinary Committee found that the salesperson had failed to observe paragraph 3.1.1 of the Code of Ethics as he had failed to refrain from activities during his practice which might infringe the law. The Disciplinary Committee decided that the salesperson's licence be suspended for one month.

《房屋條例》第 27A 條

凡—

(a) 任何人看來是就土地設定按揭或以其他方式將土地押記，或將土地轉讓或以其他方式讓與，或訂立一項關乎土地的協議，而不論該人是以貸款人或借款人身分或是以其他身分行事；及

(b) 該項看來是如此作出的按揭、其他押記，或該項看來是如此作出的轉讓、其他讓與，或該項看來是如此作出的協議，根據第**17B**條是無效的，

該人即屬犯罪，可處罰款 **$500000** 及監禁 **1** 年。

Section 27A of the Housing Ordinance

Where -

(a) a person whether as lender, borrower or otherwise purports to create a mortgage of or otherwise charge land or to assign or otherwise alienate land or to enter into an agreement which relates to land; and

(b) the purported mortgage or other charge or the purported assignment or other alienation or the purported agreement is void by virtue of section 17B,

the person commits an offence and is liable to a fine of $500000 and to imprisonment for 1 year.

《操守守則》第 3.1.1 段

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.

個案 4

訛騙當事人訂立未經雙方同意的租約

一名地產代理訛騙客戶訂立租約，及對客戶及租客提供不同版本之租約。紀律委員會裁定此乃背離《操守守則》第3.3.1段的要求（即地產代理和營業員在經營過程中，必須秉持誠實、忠誠和嚴正的態度向客戶提供服務），並暫時吊銷該地產代理的牌照6個月。

案中地產代理是業主在此宗租務的單邊代理。雖經多輪談判，業主仍拒絕接受租客要他供應洗碗機的要求。為達成交易，該地產代理在未得業主同意下自掏腰包為租客購買洗碗機。然後，他安排業主與租客各簽署兩份載有一方滿意而另一方反對條款之租約。該名地產代理又在將租約給予雙方保存之前，將租約之某些紙頁更換。

租客要求業主修理洗碗機時始揭發雙方簽署兩個不同版本租約一事。

在紀律研訊時，該地產代理解釋他當時因雙方均不肯就租約條款妥協而感受重大壓力。但紀律委員會認為此解釋不是該不誠實行為的充份理由。紀律委員會認為該地產代理應知道將客戶已簽租約之紙頁更換是不誠實的行為。此乃嚴重犯錯行為，可能為客戶帶來重大損失。

考慮到該地產代理的求情理由，紀律委員會決定將該地產代理的牌照暫時吊銷六個月。

Case 4

Deceiving the client to enter into tenancy agreement before it has been agreed

An estate agent deceived his client into entering into a tenancy agreement and provided different versions of the tenancy agreement. The Disciplinary Committee ruled that this went against Paragraph 3.3.1 of the Code of Ethics, which provides that estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity, and suspended the estate agent's licence for 6 months.

The estate agent acted for the landlord. Despite rounds of negotiation, the landlord refused to accede to the tenant's request that a dishwasher be provided. Being anxious to close the deal, the estate agent bought a dishwasher for the tenant out of his own pocket without seeking the landlord's approval. He then arranged for the landlord and the tenant to sign two different tenancy agreement forms which contained terms agreeable to the party who signed it but not to the other party. The estate agent replaced certain pages of the tenancy agreement before returning the tenancy agreement to the parties for their retention.

The fact that the parties had signed and retained two different versions of the tenancy agreement was uncovered when the tenant requested the landlord to repair the dishwasher.

At the inquiry hearing, the estate agent explained that he had been under great pressure as the parties could not compromise on the terms of the tenancy agreement. However, the Disciplinary Committee rejected this explanation as a justifiable reason for such misconduct. It took the view that the estate agent should have realized that his act of replacing pages of the signed tenancy agreement amounted to dishonesty. It was indeed a serious mistake which might cause heavy loss and damage to his client.

Having considered the estate agent's mitigation submissions, the Disciplinary Committee decided that the estate agent's licence be suspended for six months.

《操守守則》第 3.3.1 段

地產代理和營業員在經營過程中，必須秉持誠實、忠誠和嚴正的態度向客戶提供服務。他們應保障客戶在地產交易中不因欺詐、失實陳述或不合專業操守的行為而受損。

Paragraph 3.3.1 of the Code of Ethics

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

個案 5

沒有核實當事人法律行為能力

一名地產代理沒有核實買方之法律行為能力，而安排賣方與一名未滿18歲之人士訂立臨時買賣合約。該地產代理之牌照因此而被暫時吊銷兩星期。

該地產代理在交易中為賣方及買方之雙邊代理。在簽署臨時買賣合約之前，買方提名她的朋友和她的兒子為物業的買方。但簽署臨時合約時，買方的兒子還未滿18歲。

幾日後，地產代理安排雙方會面傾談買方提出刪除買方朋友的名字的要求。賣方同意將買方的朋友的名字刪除，結果只剩下買方兒子作為物業的唯一被提名買方。

其後，雖然賣方之律師多次要求，買方仍拒絕在正式買賣合約加入任何成年人買方。最後，買方撤銷購買。

紀律委員會經小心考慮在紀律研訊時各方所提出之證據及申述後，裁定該地產代理對當事人負有謹慎責任，但地產代理在安排客戶訂立臨時買賣合約之前，未有採取所有切實可行的步驟，以確定當事人是否有法律行為能力簽署臨時買賣合約。紀律委員會認為地產代理是物業交易初段的把關人，在此階段，買賣雙方通常會在未聘請律師之前就訂立有法律約束性的臨時買賣合約。

Case 5

Failure to verify the legal capacity of parties

An estate agent, who failed to verify the legal capacity of the purchaser and arranged for the vendors to enter into a provisional sale and purchase agreement with a purchaser under 18 years of age, had her licence suspended for two weeks.

The estate agent acted for both the vendors and the purchaser as dual agent in this transaction. Before signing the provisional sale and purchase agreement, the purchaser had nominated her son and her friend to be the nominee purchasers. The purchaser's son was then under 18.

A few days later, the estate agent arranged for the parties to meet together to discuss the purchaser's request to delete the name of the purchaser's friend from the provisional sale and purchase agreement. The vendors agreed to delete the name of the purchaser's friend. As a result, the purchaser's son became the sole nominee purchaser of the property.

Subsequently, despite repeated requests from the vendors' solicitors, the purchaser refused to add an adult nominee purchaser to the formal sale and purchase agreement. Eventually the purchaser rescinded the purchase.

Having carefully considered the evidence and the representations made by the parties at the inquiry hearing, the Disciplinary Committee came to the conclusion that the estate agent did owe a duty of care towards the parties, and that it was an estate agent's duty to take all practical steps to ascertain the legal capacity of parties before letting them enter into a provisional sale and purchase agreement.

The Disciplinary Committee also took the view that estate agents were gatekeepers in the initial stages of property transactions where buyers and sellers normally entered into a binding provisional sale and purchase agreement before solicitors were engaged.

為查明立約當事人是擁有可訂立合約的完全法律行為能力的成年人，地產代理應以其身份證明文件(例如身份證)來核對當事人之年齡。此乃物業轉讓及合約法之基本常識，是從業員資格考試之課程範圍。地產代理實踐這項只要求代理審慎行事而不涉特別技巧的程序，應不會遇到困難。

To ascertain that the contracting parties had full legal capacity for entering into a contract, an estate agent should check their identification documents, such as identity cards. Such basic knowledge of conveyancing and contract law was part of the syllabus of the practitioners' qualifying examinations. An ordinary estate agent should have no difficulty in following this practice, which demanded no special skills but prudence.

考慮到錯誤並非出於不良的意圖，紀律委員會給予該地產代理一個較輕的制裁，暫時吊銷其牌照兩個星期。

Taking into consideration of the fact that the estate agent had no ill intent in making the mistake, the Disciplinary Committee imposed a light penalty and suspended the estate agent's licence for two weeks.

《操守守則》第 3.2.2 段

地產代理和營業員應掌握有關的一切法律、政府規例，及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, qualifications and experience in the real estate business.

《操守守則》第 3.4.1 段

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 their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

個案 6

沒有獲得正式授權的證明

一名地產代理因沒有確保賣方之代表有代表賣方簽署臨時買賣合約之正式授權而被紀律委員會予以警告。

買方指在簽署臨時買賣合約之前，地產代理給予他們土地查冊。土地查冊顯示，物業是由兩名個人聯名擁有的。地產代理建議買方將訂金交與賣方之律師作為託管人，而買方亦遵從。

當收到臨時買賣合約時，買方留意到其中一賣方以自己身份簽署，同時亦以代表身份代另一賣方簽署，買方並未能看到或獲得任何文件證明該賣方獲另一賣方正式授權簽署臨時買賣合約。買方後來留意到賣方之律師並沒有兑現其支付訂金之支票。賣方既沒有簽署正式買賣合約，亦沒有給予買方任何賠償。他們的理由是該臨時買賣合約並沒有由所有業主正確地簽署，因此無效。

在回應投訴時，該地產代理解釋在此交易中他只為買方服務，所有與賣方之聯絡是經由賣方委任的獨家地產代理公司進行。在安排簽署臨時合約時，他得悉賣方將會出席，但他沒料到實際上只有其中一位賣方到場簽署合約。該地產代理承認他沒有要求賣方的地產代理出示缺席賣方的授權書。

Case 6

Failure to obtain proof of proper authorisation

The Disciplinary Committee issued a warning to an estate agent who failed to ensure that the vendor's representative had proper authorisation to sign the provisional sale and purchase agreement on the vendor's behalf.

According to the purchasers, the estate agent provided them with a land search before signing the provisional sale and purchase agreement. The land search showed that the property was jointly owned by two individuals. The estate agent advised the purchasers to pay the deposit to the vendors' solicitors as stakeholders, which the purchasers did.

When the purchasers received the provisional sale and purchase agreement, they noticed that one of the vendors had signed the agreement in her own capacity as well as on behalf of the other vendor. The purchasers were not shown or given any document showing proper authorisation for the signing of the provisional sale and purchase agreement. The purchasers later noted that the vendors' solicitors did not cash their cheque for the deposit. The vendors neither proceeded with the signing of the formal sale and purchase agreement nor paid any compensation to the purchasers. They argued that the provisional sale and purchase agreement was ineffective as it was not properly signed by all of them.

In response to the complaint, the estate agent explained that he had only served the purchasers in the transaction and all contacts with the vendors were made through another estate agency, which was the vendors' exclusive agent. Before arranging for the signing of the provisional agreement, he was told that the vendors would be present and he did not expect that only one of the vendors had actually shown up for the signing of the agreement. The estate agent admitted that he did not ask the vendors' estate agent to produce any authorisation from the absentee vendor.

紀律委員會小心考慮所有證供後，裁定該投訴成立，因地產代理沒有確保缺席賣方已正式授權另一賣方代表他簽署臨時買賣合約，未能符合《操守守則》第3.4.1段的要求。但考慮到該地產代理有正確地建議其客人將訂金交予賣方之律師作為託管人，紀律委員會只向他予以警告。

The Disciplinary Committee, after careful consideration of the evidence, decided the complaint substantiated in that the estate agent had failed to observe Paragraph 3.4.1 of the Code of Ethics to ensure that the absentee vendor had properly authorised the other vendor to sign the provisional sale and purchase agreement on his behalf. However, in view of the fact that the estate agent had already duly advised his clients to pay the deposit to the vendors' solicitors as stakeholders, the Disciplinary Committee only ordered that a warning be issued to the estate agent.

《操守守則》第 3.4.1 段

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 their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

個案 7

物業買家遭失實廣告誤導

投訴人為一住宅物業買家。投訴人透過一地產代理公司視察有關物業，並簽署睇樓紙。但其後投訴人透過另一地產代理公司購入上述物業，因此被首間地產代理公司追討佣金。

投訴人指稱首間地產代理公司的其中一間分行曾在櫥窗外展示「獨家經營」字樣廣告，令投訴人相信該地產代理公司獲得上述物業之獨家銷售權。惟其後投訴人得知該地產代理公司並無獲委託為該樓盤之獨家代理。

雖然最終投訴人撤銷投訴，但監管局職員發現該地產代理公司仍然繼續於櫥窗外展示「獨家經營」字樣之廣告，遂繼續作出調查，並多次到場視察。雖然該地產代理公司在回應時表示有關標語意思只是指該地產代理公司在該樓盤的商場內擁有獨家經營地產代理業務之權利，並非指其獲得有關物業之獨家代理權，惟經紀律委員會商議後，認為該廣告標語帶有誤導成分，最終裁定該地產代理公司違反《地產代理常規（一般責任及香港住宅物業）規例》第9(1)條有關發放失實及誤導性廣告之規定，罰款港幣10萬元及要求該地產代理公司於七天內移除該廣告。

Case 7

Purchaser misled by false advertisement

The complainant was a purchaser of a residential property. He engaged an estate agency company, Company A, to view the subject property and signed an estate agency agreement. However, the complainant subsequently purchased the property through another agency company, Company B. The complainant was nevertheless still asked by Company A to pay the company his commission.

The complainant alleged that Company A had displayed a signboard on its shop window containing the words 'exclusive agency'. Because of this, the complainant thought that Company A was the exclusive agent for the subject property. However, the complainant later discovered that Company A had never been appointed as the exclusive agent of the property concerned.

Notwithstanding that the complainant subsequently withdrew his complaint, EAA continued its own investigation into the matter. EAA staff paid several visits to Company A and found that Company A had continued to display the signboard at its shop window. In response to EAA's enquiries, Company A explained that the signboard was meant to say only that it had the exclusive right granted by the owner to run estate agency business in the shopping arcade, but not that it was the exclusive agent of the subject property. Despite the explanation, the Disciplinary Committee, after deliberation, found that the signboard contained misleading and false information and ruled that Company A was in breach of s.9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. The Disciplinary Committee imposed a fine of $100,000 against Company A and ordered the company to remove the signboard within 7 days.

《地產代理常規（一般責任及香港住宅物業）規例》第 9(1)條

持牌地產代理不得安排或准許發出任何全部或部分與其地產代理業務有關並載有在要項上屬虛假或具誤導性陳述或詳情的廣告。

Section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation

A licensed estate agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular.

個案 8

發放誤導性新聞稿

一間地產代理公司的分行經理主動向其公司市場資訊部提供未核實的資料，聲稱一名內地買家同一時間買下五個單位收租，導致其公司於新聞稿發放虛假或具誤導性的資料，被紀律委員會暫時吊銷牌照兩個月。

該間地產代理公司，由於向傳媒機構發出一則載有在要項上屬虛假或具誤導性陳述的新聞稿，被紀律委員會予以譴責及罰款港幣二十萬元。

該名分行經理聲稱曾收到一名不願留下個人資料的內地旅客向其表示欲購買數個居屋單位作投資之用，但因時間關係沒有視察物業，只透露他可能委託其親戚代為購買。其後，他發現其分行曾達成五宗居屋屋苑的買賣，在未核實買方身份下，向其公司的市場資訊部提供資料以草擬新聞稿。

該地產代理公司收到上述未核實的資料後，向傳媒機構發放了一則新聞稿，其內容稱該分行經理透露有一名內地買家買入五個居屋單位作收租之用，並列出五項物業的參考資料、面積及售價。翌日，多份報章都刊登該新聞稿所提供的資料。該等資料事後被指虛假及具誤導性，監管局遂展開調查。

Case 8

Issuing misleading information in the press release

A branch manager who provided unverified information on the sale of 5 Home Ownership flats to his estate agency company for the latter's issue of a press release, which turned out to contain false and misleading information, was suspended from estate agency practice by the Disciplinary Committee for 2 months.

The Disciplinary Committee also reprimanded and imposed a fine of $200,000 on his company for causing or permitting the issue of such press release.

The case started with the branch manager claiming to receive an enquiry from an anonymous mainlander who showed interests in the purchase of several Home Ownership flats for rental income purposes. According to the branch manager, the mainlander did not inspect the flats but indicated that he might instruct his relatives to complete the purchases. The branch manager later found that there were 5 completed transactions in Home Ownership flats. Before he verified the identities of the purchasers, he just presumed the purchases were made by the purchasers on behalf of that mainlander and provided the information to the marketing division of his company.

Upon receipt of the said unverified information, the estate agency company issued a press release on it to the media. A list showing the descriptions of the 5 Home Ownership flats, the sizes and the prices was also included in the press release. The information was widely reported in the press.

Subsequently, it was suspected that the contents of the press release might be false or misleading. The Estate Agents Authority therefore initiated investigation.

根據調查所得，事實上沒有任何內地旅客一次過購入上述五個居屋單位作收租之用，而該名分行經理也沒有促成有關交易。該分行經理向監管局承認在發放上述資料前未有核實買家身份，他對該新聞稿的內容及消息令讀者誤會及產生不便致歉。其公司則表示無意以新聞稿發放謬誤訊息，同時承諾覆核資料發放的程序。

In the course of investigation, the branch manager admitted that he did not verify the identities of the purchasers before providing the information to the marketing division of his company. He deeply regretted the misunderstanding and inconvenience that might have caused to the readers of the press release. The company pleaded that it did not intend to issue false or misleading information in the press release. It undertook to review its internal procedures on release of information.

紀律委員會在紀律研訊上聆聽有關各方提出的證據及考慮該地產代理公司及分行經理坦白承認責任及其求情理由後，裁定該地產代理公司違反《地產代理常規（一般責任及香港住宅物業）規例》第9(1)條—安排或准許發出任何全部或部份與其地產代理業務有關並載有要項上屬虛假或具誤導性陳述或詳情的廣告。紀律委員會決定向該公司予以譴責及罰款港幣二十萬元。

The Disciplinary Committee, having heard the evidence from all parties and the admissions of facts and liabilities of the branch manager and the estate agency company, ruled that the company had committed a breach of section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation by causing or permitting the issuance of an advertisement wholly or partly relating to its estate agency business which included statement or particular that was false or misleading in a material particular. The Disciplinary Committee imposed an order of reprimand and a fine of $200,000 on the company.

紀律委員會亦裁定該分行經理由於提供未核實的資料給公司，導致其公司發放虛假或具有誤導性的新聞稿，乃不負責任的行為，並且可能令地產代理行業信譽及名聲受損。紀律委員會決定暫時吊銷其牌照兩個月。

The Disciplinary Committee also decided that it was an irresponsible act for the branch manager to provide unverified information to the marketing division of his company. Such act would bring disrepute to the trade. The Disciplinary Committee ordered a temporary suspension of his licence for 2 months.

《地產代理常規（一般責任及香港住宅物業）規例》第 9(1)條—

持牌地產代理不得安排或准許發出任何全部或部分與其地產代理業務有關並載有在要項上屬虛假或具誤導性陳述或詳情的廣告。

Section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation

A Licensed Estate Agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular.

《操守守則》第 3.7.2 段—

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.

個案 9

發牌制度是規管事務的基本

一名地產代理在他的牌照及在他所經營的兩所地產代理業務商舖的營業詳情説明書屆滿後沒有續牌。在無牌期間，他在櫥窗展示樓盤廣告及派發單張，推廣自己仍然進行地產代理業務及在那兩所商舖經營地產代理業務。

就他是否繼續持有牌照的合適人選事宜，紀律委員會對他召開了紀律研訊。

經仔細考慮雙方所提交的証供及陳述後，紀律委員會裁定有關對該名經紀的指稱成立及向該名經紀行使《地產代理條例》第 30 條的紀律制裁權。

紀律委員會認為發牌基制是規管事務的基本，違反牌照規例會有嚴重的後果及財政困難並不是不續牌的合理解釋。

紀律委員會暫時吊銷此名經紀的牌照。

Case 9

Licensing is fundamental to regulatory regime

A holder of an Estate Agent Licence (Individual) failed to renew his licence and the two Statements of Particulars of Business of his estate agency business after their expiry. Whilst unlicensed, this estate agent listed advertisements on show windows and distributed pamphlets, advertised that he carried on or was willing to carry on estate agency business and estate agency work and held himself out at his places of business to the public as being ready to undertake estate agency work as an estate agent.

An inquiry hearing was conducted by the Disciplinary Committee against this estate agent to consider whether he was a fit and proper person to continue to hold a licence.

Having carefully considered the evidence presented and the representations made by the parties, the Disciplinary Committee was satisfied that the allegations against this estate agent was well-founded and exercised the disciplinary powers against this estate agent under section 30 of the Estate Agents Ordinance.

The Disciplinary Committee considered that the licensing requirement was fundamental to the regulatory regime and financial hardship was not a legitimate excuse for not applying for a licence.

The Disciplinary Committee suspended this estate agent's licence for a certain period.

《地產代理條例》第 15 條

(1) 除本條例另有規定外，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—

(a) 以地產代理身分從事或經營地產代理工作的業務，或宣傳、通知別人或聲言其以地產代理身分從事或經營，或願意以地產代理身分從事或經營地產代理工作的業務；或

(b) 以地產代理身分行事；或

(c) 以任何方式向公眾顯示自己隨時可以地產代理身分承擔進行地產代理工作，不論是否為酬金或其他金錢上的或非金錢上的報酬。

(2) 除本條例另有規定外，任何公司除非是持牌地產代理，否則不得—

(a) 以地產代理身分從事或經營地產代理工作的業務，或宣傳、通知別人或聲言其以地產代理身分從事或經營，或願意以地產代理身分從事或經營地產代理工作的業務；或

(b) 以地產代理身分行事；或

(c) 以任何方式向公眾顯示其隨時可以地產代理身分承擔進行地產代理工作，不論是否為酬金或其他金錢上的或非金錢上的報酬。

Section 15 of the Estate Agents Ordinance

(1) Subject to this Ordinance, an individual shall not, either by himself or as a member of a partnership-

(a) exercise or carry on or advertise, notify or state that he exercises or carries on, or is willing to exercise or carry on, the business of doing estate agency work as an estate agent; or

(b) act as an estate agent; or

(c) in any way hold himself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,

unless he is a licensed estate agent.

(2) Subject to this Ordinance, a company shall not-

(a) exercise or carry on or advertise, notify or state that it exercises or carries on, or is willing to exercise or carry on, the business of doing estate agency work as an estate agent; or

(b) act as an estate agent; or

(c) in any way hold itself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,

unless it is a licensed estate agent.

《地產代理(發牌)規例》第 10(1)條

(1) 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，並須向監管局繳付關乎該業務的牌照費有關部分。

Section 10(1) of the Estate Agents (Licensing) Regulation

(1) 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 for that place and name and shall pay to the Authority the relevant portion of the licence fee in respect of such business.