

個案 1

某地產代理公司在報章上刊登某屋邨的住宅樓盤廣告。監管局致函該地產代理公司，要求提供有關樓盤的地產代理協議（表格3）及其他資料。

該地產代理公司覆函表示沒有有關地產代理協議，只是有分行同事把內部參考紀錄誤作刊登報章廣告的稿件，傳真至總行市場部，市場部隨後將該傳真資料交給有關報章刊登廣告。

該地產代理公司亦涉及另外一宗廣告。該地產代理公司安排在某報刊登某屋邨的樓盤廣告，內容為：「A座678' 143萬元」。

在監管局查詢下，該地產代理公司確認該單位的地址，並提供該單位的地產代理協議（表格3）。

根據差餉物業估價署所提供的資料，該單位的實用面積為45.4平方米（約488.7平方呎）。根據其他物業代理公司的資料顯示，該單位的建築樓面面積為585平方呎。所有證據均顯示，該單位面積並非678平方呎。

監管局紀律委員會裁定，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》（下稱《常規規例》）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」。紀律委員會視任何違反有關廣告宣傳規例的行為為嚴重事件。倘若公眾所依賴的廣告資料錯誤，有關人士可能因此而招致重大損失。凡含有錯誤資料或對事實作出失實陳述的廣告，將嚴重影響公眾的利益。

該地產代理公司求情時稱，分行同事作為前線員工，擁有樓盤的最新資料，總行方

CASE 1

An estate agency issued a newspaper advertisement for a residential property. EAA then called the estate agency and requested the Estate Agency Agreement (Form 3) for that property, as well as other relevant documents.

The estate agency's written reply stated that there was no Estate Agency Agreement for the property concerned. Their staff had mistakenly faxed some internal reference materials to the marketing department for the advertisement, and the marketing department subsequently placed the advertisement at the newspaper concerned.

The estate agency had also arranged for the placement of another advertisement of a property on a housing estate, which read, "Block A, 678', \$1.43 million".

After enquiries from EAA, the estate agency confirmed the address of the listed property, and provided the Estate Agency Agreement (Form 3) concerned.

According to the Rating and Valuation Department, the saleable area of the subject flat was 45.4 square metres (about 488.7 square feet) and according to the information supplied by other estate agencies, the gross floor area of the subject flat was 585 square feet. All the evidence showed that the area of the subject flat was not 678 square feet.

The Disciplinary Committee of EAA ruled that the estate agency was in breach of section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("Practice Regulation"), i.e. "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". The Disciplinary Committee takes a serious view of all breaches of regulations on advertising. If the facts of the advertisements, on which the public relies, are incorrect, consumers can suffer serious loss and damage. All advertisements with incorrect information or misrepresentations of facts seriously damage the public interest.

The estate agency said in mitigation that its front-line staff at branch offices possessed the latest information on properties, and it

面難以核對分行所提供樓盤資料的正確性。就這方面，該地產代理公司仍繼續研究有何方法可以避免再次出錯。

紀律委員會考慮該地產代理公司的求情後，認為該地產代理公司未有採取足夠措施，以減低樓盤廣告出現資料錯誤的機會及可能性，決定判處罰款。

was difficult for the main office to ascertain the accuracy of property information provided by the branch offices. The estate agency was studying how to prevent similar mistakes in future.

The Disciplinary Committee, having considered the mitigation put forward by the estate agency, decided it had not taken sufficient measures to minimise the possibility and probability of incorrect information appearing in property advertisements. The estate agency was ordered to pay a fine.

個案 2

某地產代理公司在報章刊登以下住宅樓盤廣告：

- 「屋邨甲 複式全海1910' 880萬」(廣告1)
- 「屋邨乙 唯一銀主2266' 2060萬」(廣告2)
- 「屋邨丙 銀主886' 428萬」(廣告3)
- 「屋邨丁 銀主1368' 850萬」(廣告4)

應監管局查詢廣告的真確性，該地產代理公司提供了有關廣告的物業地址：

- (i) 屋邨甲22樓B室(物業1)
- (ii) 屋邨乙1樓B室(物業2)
- (iii) 屋邨丙13樓D室(物業3)
- (iv) 屋邨丁14樓A室(物業4)

該地產代理公司亦提供了有關物業1，物業3及物業4的地產代理協議(表格3)。有關地產代理協議顯示，物業1的賣方所指示的放盤價為\$18,000,000，而非\$8,800,000；物業3和物業4的賣方並非「銀主」。該地產代理公司未能提供物業2的有關地產代理協議，並解釋物業2的賣方代理曾發信予該地產代理公司，表示可合作處理物業2，但該地產代理公司未能提供有關書信文本以作證明。

CASE 2

An estate agency issued the following advertisements for residential properties in a newspaper:

- "Housing estate A duplex full sea view 1910' 8.8M" ("Advertisement 1")
- "Housing estate B the only mortgagee 2266' 20.6M" ("Advertisement 2")
- "Housing estate C mortgagee 886' 4.28M" ("Advertisement 3")
- "Housing estate D mortgagee 1368' 8.50M" ("Advertisement 4")

In reply to EAA's enquiry into the authenticity of the advertisements, the estate agency provided the following addresses corresponding to the advertisements:

- (i) Housing estate A Flat B, 22/F. ("Property 1")
- (ii) Housing estate B Flat B, 1/F. ("Property 2")
- (iii) Housing estate C Flat D, 13/F. ("Property 3")
- (iv) Housing estate D Flat A, 14/F. ("Property 4")

The estate agency also provided the Estate Agency Agreements (Form 3) for Properties 1, 3 and 4. According to these agreements, the selling price, as instructed by vendor of Property 1, was \$18,000,000, not \$8,800,000, while the vendors of Properties 3 and 4 were not mortgagees. The estate agency failed to provide the Estate Agency Agreement for Property 2, and explained that the agent for the vendor of Property 2 had sent it a letter, indicating the possibility of co-operation. The estate agency, however, was not able to produce the relevant correspondence.

紀律委員會認為，該地產代理公司就有關廣告1、3及4違反了《常規規例》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。」同時，在發出廣告2前，該地產代理公司並未與有關的物業賣方訂立地產代理協議，因而違反《常規規例》第6(1)條：「為賣方行事的持牌地產代理須在以下時間與該賣方訂立地產代理協議：

- (a) 在接受出售或出租有關住宅物業的指示後7個工作日內；
- (b) 就該物業的出售或出租而作廣告宣傳之前；或
- (c) 就該物業簽署買賣協議或租契之前，三者之中以最早者為準。」

該地產代理公司被紀律委員會譴責，及判處罰款。

The Disciplinary Committee was of the view that, in relation to Advertisements 1, 3 and 4, the estate agency violated section 9(1) of the Practice Regulation, i.e. "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". Meanwhile, before issuing Advertisement 2, the estate agency failed to enter into an Estate Agency Agreement with the vendor of the property concerned and, therefore, breached section 6(1) of the Practice Regulation, i.e. "a licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor-

- (a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;
- (b) prior to advertising the property for sale or lease; or
- (c) prior to signing an agreement for sale and purchase or a lease of the property, whichever is the earlier."

As a result, the estate agency was reprimanded and fined by the Disciplinary Committee.

個案 3

某代理安排一位準買家視察有關物業。準買家對有關物業感興趣，該名代理於是向該準買家表示，為方便與業主議價，準買家須簽署臨時買賣合約及發出訂金支票。該名代理預備了一份臨時買賣合約，在準買家簽署時，價錢及付款日期均留空。準買家並依據該代理的指示，發出一張支票交予該代理。離去前，準買家要求該代理在知悉業主還價後立即通知他，他需要在了解清楚所有交易細節後，才會決定是否買入該物業。

數日後，準買家聯絡該代理時，始知悉業主已簽署該臨約。但準買家事前並不知悉交易詳情，該名代理亦沒有事先聯絡他及得到他的確認，準買家即時要求取回該臨約及支票。

準買家經諮詢律師後，停止支付該支票。他亦發信向有關物業業主解釋事件經過。結果，該買賣沒有繼續進行。

在準買家單方面簽訂該物業的臨時買賣合約前，該代理未有在臨約上填上樓價及付款日期等重要條款。由於該代理未能保障客戶利益，因而違反監管局發出的《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。」

由於客戶沒有受到金錢損失，該代理只是被訓誡及在牌照上附加條件，須在指定日期內獲取十個持續專業進修學分。

CASE 3

An estate agent arranged for a prospective purchaser to view a property. The prospective purchaser was interested in the property, and the estate agent asked him to sign a provisional agreement for sale and purchase and to write a cheque for the deposit, so as to facilitate the negotiation with the vendor. The estate agent prepared a provisional agreement for sale and purchase, on which the space for the property price and the dates of payment were left blank when the prospective purchaser signed it. The prospective purchaser, upon instruction of the estate agent, handed a cheque to the estate agent. Before he left, the prospective purchaser requested the estate agent to let him know as soon as the vendor reverted with an offer, and explained that he needed to understand all details of the transaction before deciding whether to purchase the property.

A few days later, the prospective purchaser, upon calling the estate agent, found out that the vendor had already signed the provisional agreement for sale and purchase. The prospective purchaser did not know the transaction details beforehand, nor did the estate agent contact him to obtain his confirmation in advance. The prospective purchaser asked immediately for the agreement and the cheque to be returned to him.

Upon consulting his lawyer, the prospective purchaser decided to terminate the payment of the cheque, and sent a letter to the vendor to explain what happened. The transaction fell through.

Before the prospective purchaser signed the provisional agreement for sale and purchase for the subject property, the estate agent failed to fill in the property price and dates of payment, which were important terms. As the estate agent failed to protect his client's interests, he had breached paragraph 3.4.1 of the Code of Ethics, which says "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."

As the client did not suffer from financial losses, the estate agent was admonished and had conditions attached to her licence, requiring her to obtain 10 CPD points before a certain date.

個案 4

某地產代理公司與一名業主簽訂表格3，被委任為出售有關物業的代理。在簽訂表格3的數個月前，賣方的兒子從有關物業墮下身亡（下稱「該事件」），本港報章廣泛報道該事件，在該區工作的地產代理理應知悉該事件。

一名任職該地產代理公司的地產代理安排買方視察有關物業。買方在視察有關物業時，及在簽署臨時買賣合約及支付訂金前，曾向該地產代理提問單位有沒有「古靈精怪嘢」及是否「無嘢唔妥」。據該代理稱，他對買方提問的回應是「據我所知無」。但是，據買方說，該代理的答覆只是「無」。無論如何，該代理承認他在回答前，並未採取任何步驟去調查該單位有沒有「古靈精怪嘢」及是否「無嘢唔妥」。

買家在簽正式買賣合約前，從另一名地產代理口中得悉該事件，隨即向賣方要求取消買賣及取回訂金，但遭賣方拒絕。買家採取法律行動要求賣方退回訂金，並就該代理公司所作的失實陳述向其申索賠償。

法庭裁定該代理曾作出誤導，「古靈精怪嘢或任何嘢唔妥」應該包括慘劇例如該事件。賣方從未授權該代理作出該誤導。法庭裁定當該代理作出該誤導時，他的身分是買家的代理，而非代表賣方，故此賣方不須為該代理的誤導負責。賣方有權因買方不繼續進行買賣而沒收買方已付的訂金。

法庭並判決由於買方的重複提問，該代理應該知道買方是會依據他的回應作出買樓決定，及應該知道如他在搜集及提供有關資料上不小心及不專業，買方會蒙受損失。該代理承認在回答買方的詢問前並未進行任何查究。故此，在這情況下向買

CASE 4

An estate agency company signed a Form 3 with the vendor, and was appointed the agent for the sale of a property. A few months before signing Form 3, the son of the vendor fell from the balcony of the property and died ("the incident"). The local press widely reported the incident, and estate agents working in the area would have known about it.

An estate agent working in the estate agency concerned arranged for a purchaser to view the subject property. When inspecting the property and prior to signing the provisional agreement for sale and purchase and paying a deposit, the purchaser had asked the estate agent whether there was anything "weird" or "wrong" about the property. According to the estate agent, he replied that there was nothing to his knowledge, but the purchaser claimed that the answer was just a plain "no". In any case, the estate agent admitted that he had not taken any steps to verify whether the property had anything "weird" or "wrong" about it.

Before signing the sale and purchase agreement, the purchaser learnt of the incident from another estate agent. He immediately requested the vendor to cancel the transaction and refund the deposit, but the vendor refused. The purchaser went to court to demand a refund and compensation for the estate agency's misrepresentation.

The court ruled that the estate agent had indeed misled the purchaser, and that anything "weird" or "wrong" should be taken to include tragic events such as the incident. The vendor had in no way authorised the estate agent to make such a misrepresentation. The court decided that when the estate agent made the misrepresentation, he was acting as the purchaser's agent and not the vendor's, and so the vendor did not have to be responsible for the misrepresentation. The vendor had the right to forfeit the deposit due to the purchaser not carrying on with the transaction.

The court also ruled that, based upon the repeated enquiries of the purchaser, the estate agent should have known that the purchaser would decide on the purchase based on his response. He should also have known that the purchaser would suffer from losses if he was negligent and unprofessional in researching and providing the information concerned. The estate agent admitted that he had not

方提供一個錯誤的陳述，該代理是未履行其作為買方代理的責任。

法官裁定，由於該代理未履行他對買方的代理責任，作為其僱主的地產代理公司，亦要為他的過錯負責。因此，有關地產代理公司須向買方賠償買方因決定不完成有關交易而被賣方沒收的訂金。

監管局調查買方對該代理的投訴及舉行紀律研訊。監管局紀律委員會裁定該代理違反了《操守守則》第3.2.1, 3.3.1, 3.4.1及3.5.1段。

第3.2.1段列明：「地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、本操守守則，以及由監管局不時發布的所有其他指引。」

第3.3.1段列明：「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。」

第3.4.1段列明：「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。」

第3.5.1段列明：「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。」

該代理的直屬主管經理沒有因應其作為經理的職責，為下屬設立妥善的程序制度，以確保下屬不會向客戶作出錯誤的回覆，因而違反《常規規例》第15條。

done any research before answering the purchaser's questions. The estate agent's misrepresentation to the purchaser, under such circumstances, constituted a failure of fulfilling his duty as the purchaser's agent.

According to the judge's ruling, as the estate agent failed to fulfil his duty as the purchaser's agent, the estate agency company, being his employer, would also need to bear responsibility for his mistake. As a result, the estate agency company had to indemnify the purchaser for the deposit forfeited by the vendor due to the purchaser deciding not to complete the deal.

EAA investigated the complaint lodged by the purchaser against the estate agent, and held an inquiry hearing. The Disciplinary Committee of EAA decided that the estate agent breached paragraphs 3.2.1, 3.3.1, 3.4.1 and 3.5.1 of the Code of Ethics.

Paragraph 3.2.1 states, "estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice."

Paragraph 3.3.1 stipulates, "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."

Paragraph 3.4.1 says, "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."

Paragraph 3.5.1 states that "estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence."

The estate agent's immediate supervisor, his manager, had not established proper procedures or systems to ensure her subordinates would not respond to clients with incorrect information, and was in breach of section 15 of the Practice Regulation.

該地產代理公司沒有設立及維持妥善的程序或制度，以防止及察覺其代理所作出的錯誤的回覆，尤其是該公司沒有設立程序或制度，以確保員工參加訓練課程及學習良好的執業方式。該公司因而違反了《常規規例》第15條：「持牌地產代理須設立妥善的程序或制度以監督和管理其地產代理工作的業務，以確保其僱員或其轄下的人遵守本條例的條文。」

該代理及其直屬主管經理被紀律委員會暫時吊銷牌照。該地產代理公司則被譴責。

The estate agency company failed to establish and maintain proper procedures or systems to prevent estate agents making incorrect replies, or to be aware when estate agents have made such replies. In particular, the estate agency company failed to establish procedures or systems to ensure that its staff would participate in training courses to ensure good practice. The company, as a result, breached section 15 of the Practice Regulation, i.e. "a licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Ordinance."

The estate agent's and his immediate supervisor's licences were suspended by the Disciplinary Committee, and the estate agency company was reprimanded.

個案 5

一名商舖業主向某地產代理公司口頭放售一項物業，連租約放盤價為\$7,500,000。

任職該地產代理公司的一名代理聯絡賣方，表示有客人有興趣購買該物業。賣方向該代理表示，該物業內有個閣樓並未「入則」，而地台曾經改低。其後，該代理帶同一份買方已簽好的臨時買賣合約找賣方。該代理向賣方解釋臨約的條款後，賣方再向該代理提及該物業內的閣樓未曾「入則」，以及地台曾經改低，並問該代理有否向買方交代清楚。賣方亦提議該代理於臨約內列明有關改建。惟該代理表示沒有問題，並指出臨約中第11條已訂明該物業是以現狀售予買方，足夠保障賣方利益。

賣方因此簽署了該臨約，以\$7,500,000把該物業售予買方。臨約中完全沒有提及該物業內有加建的閣樓以及地台曾作改動。

CASE 5

The owner of a shop verbally appointed an estate agency company to sell the property and the related tenancy agreement, at a price of \$7,500,000.

An estate agent working at the agency company contacted the vendor and said a client was interested in purchasing the subject property. The vendor told the estate agent that there were unauthorised building works or alterations concerning a cockloft and a split floor design of the property. Subsequently, the estate agent brought a provisional agreement for sale and purchase, already signed by the purchaser, to the vendor. After the estate agent explained the terms of the agreement to the vendor, the vendor mentioned the unauthorised cockloft and split floor design again, and asked if the estate agent had explained this clearly to the purchaser. The vendor suggested to the estate agent that the alterations concerned be explicitly stated in the provisional agreement for sale and purchase. The estate agent reassured the vendor that there should be no problem, saying that clause 11 of the agreement specified that the property would be sold on an "as is" basis, which adequately protected the vendor's interests.

As a result, the vendor signed the provisional agreement for sale and purchase to sell the property to the purchaser for \$7,500,000. The provisional agreement for sale and purchase did not mention the unauthorised cockloft and alteration of the split floor in the property.

後來在簽署正式買賣合約前，賣方獲其代表律師通知買方律師對該物業的業權提出爭議，指該物業內有僭建閣樓及地台不相稱，而就此買方從未獲任何通知及資料。賣方於是問該代理有否切實向買方表明僭建閣樓和地台改低事宜。該代理沒有正面回應，只表示買方曾親自視察過該物業，所以必定知情。

其後，買方在法院提出訴訟，要求法院聲明該物業內增建的閣樓與及地台所作之改動屬僭建工程或違例改建，致令該物業的業權欠妥。買方要求法庭強制賣方履行臨約，並判令賣方向他們作出賠償。

法院就是項訴訟作出判決，聲明有關該物業的增建及改動屬違例建築致令其業權欠妥。法院亦頒布雙方須依從臨約行事的強制履行令，而因上述違例建築或改動的存在，賣方須向買方賠償\$570,000。另外，賣方亦要賠償買方因該物業的延期交易所引致的損失以及訟費。

根據土地註冊處的紀錄，買賣雙方終於在一年後完成該物業的交易，成交價為\$6,930,000。賣方向監管局投訴該代理。

紀律委員會認為該代理違反《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」。該代理清楚知悉該物業可能曾進行僭建工程或改建，卻沒有將此等事項告知買方及訂明於臨時買賣合約內，引致其後賣方與買方就該物業的買賣交易展開民事訴訟，被紀律委員會暫時吊銷牌照及在牌照上附加條件，須在指定日期內獲取10個持續專業進修學分。

Before signing the sale and purchase agreement, the vendor was informed by his lawyer that the purchaser's lawyer disputed the title of the property, saying there was an unauthorised cockloft and a split floor, and the purchaser was neither informed of this nor received any relevant information. The vendor then asked the estate agent if he had clearly told the purchaser about the unauthorised cockloft and the split floor. The estate agent only said the purchaser had inspected the property in person so he should have known.

The purchaser took the matter to court and asked the court to declare the additional cockloft and alteration done to the floor were unauthorised, making the title of the property defective. The purchaser requested the court to order for specific performance of the provisional agreement for sale and purchase on the part of the vendor, and for the vendor to pay damages to the purchaser.

The court ruled that the addition and alteration to the subject property were unauthorised, making its title defective. The court also declared an order for specific performance for both parties to act according to the provisional agreement for sale and purchase. As a result of the unauthorised addition and alteration, the vendor had to pay damages in the sum of \$570,000 to the purchaser, the damages incurred by the delay of the transaction, as well as the costs.

According to the records of the Land Registry, the two parties finally completed the transaction a year later, at a price of \$6,930,000. The vendor lodged a complaint with EAA against the estate agent.

The Disciplinary Committee was of the view that the estate agent was in breach of paragraph 3.4.1 of the Code of Ethics, i.e. "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." The estate agent clearly knew the subject property might have undergone unauthorised building works or alterations, but failed to inform the purchaser of the same, and failed to specify the relevant information in the provisional agreement for sale and purchase, leading to a civil dispute between the vendor and the purchaser. The Disciplinary Committee suspended the licence of the estate agent and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

個案 6

一名地產代理向賣方訛稱買方提出，願以\$1,330,000購買有關物業。該代理向賣方提議若買方以\$1,350,000成交，賣方額外支付\$10,000作為酬勞（除原有佣金\$13,500外）。最後，賣方以\$1,350,000出售物業給買方，並付給代理\$10,000額外酬勞。

事實上，買方一直提出以\$1,350,000購買該物業，亦從沒有開價\$1,330,000。賣方後來得悉，向廉政公署投訴該代理訛騙及偷竊。該代理於原審法庭被判有罪，後因技術問題上訴得直。監管局其後向該代理進行紀律研訊。

該代理沒有盡快及如實地把買方所提出的價錢通知賣方，因而違反《常規規例》第11(e)條及第11(f)條。第11(e)條列明：「持牌人在接獲任何要約後，須在切實可行的範圍內盡快將該要約向客戶提交，以供客戶接受。」第11(f)條列明：「持牌人須按其接獲各項要約的次序，將所有要約通知客戶，並以客觀和無偏頗的方式提交該等要約，但第13(2)(b)條另有規定者除外。」

該代理亦沒有秉持誠實、忠誠和嚴正的態度向客戶提供服務，違反《操守守則》第3.3.1段：「地產代理必須秉持誠實、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、失實陳述或不符合專業操守的行為而受損」。

該代理被紀律委員會判罰暫時吊銷牌照。

CASE 6

An estate agent falsely told the vendor that the purchaser offered to purchase a property for \$1.33 million. The estate agent suggested to the vendor that if the purchaser was willing to buy the property for \$1.35 million, the vendor would pay \$10,000 to the estate agent as remuneration, on top of the original commission of \$13,500.

In fact, the purchaser had offered to purchase the property at \$1.35 million all along, and had never made any offer of \$1.33 million. The vendor, upon realising this fact, reported the case to the Independent Commission Against Corruption and accused the estate agent of fraud and theft. The estate agency was convicted on first hearing, but the result was rescinded after appeal due to technical reasons. EAA then conducted an inquiry hearing into the estate agent.

The estate agent had not conveyed the offer of the purchaser immediately and accurately to the vendor and, therefore, had breached sections 11(e) and 11(f) of the Practice Regulation. Section 11(e) states that a licensee shall "present an offer to a client for acceptance as soon as is practicable after receiving it", while section 11(f) stipulates that a licensee shall, "subject to section 13(2)(b), inform a client of all offers received in the order he receives them and present them in an objective and unbiased manner."

The estate agent also failed to provide services to clients with honesty, fidelity and integrity, thereby violating paragraph 3.3.1 of the Code of Ethics, which states, "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."

The estate agent's licence was suspended by the Disciplinary Committee.

個案 7

某代理為一間地產代理公司的董事及股東。該地產代理公司的另外兩名股東是某項物業的業主，物業買入價為\$498,000。為說服一名買家有關物業是一個「筍盤」，該代理聲稱業主購入物業的購入價為\$580,000。買家最終同意以\$618,000購入有關物業。

該代理從沒有向買方客戶披露業主乃其地產代理公司的股東，因而違反了《操守守則》第3.6.2段：「在有可能/潛在利益衝突的情況下向各方詳盡披露因該物業獲得的金錢或其他實益利益」；違反《操守守則》第3.3.1段：「地產代理必須秉持誠實、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」。

該代理沒有就有關物業進行土地查冊，亦沒有提供土地查冊結果文件給買家，違反《常規規例》第13(4)條：「為住宅物業的賣方行事的持牌人，在緊接該物業的買賣協議或租契訂立之前，須就該物業安排在土地註冊處進行土地查冊，並向該物業的買方提供一份該土地查冊結果的文本。」

紀律委員會決定暫時吊銷該代理的牌照。

CASE 7

An estate agent was a director and a shareholder of an estate agency company. Another two of the shareholders of that estate agency company were the registered owners of a property, which was initially purchased for \$498,000. To convince the purchaser that the subject property was value for money, the estate agent claimed that the vendors purchased the property for \$580,000. The purchaser agreed to buy the property for \$618,000.

The estate agent had never disclosed to the purchaser that the vendors were shareholders of his estate agency company and had, therefore, breached paragraph 3.6.2 of the Code of Ethics, i.e. "estate agents and salespersons shall, in the event of possible or potential conflict of interest... disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned." He has also breached paragraph 3.3.1 of the Code of Ethics, i.e. "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."

The estate agent also failed to carry out a land search of the subject property, and failed to supply a copy of the land search to the purchaser, thereby breaching section 13(4) of the Practice Regulation, which says "a licensee acting for the vendor of a residential property shall, immediately before an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property."

The Disciplinary Committee decided to suspend the licence of the estate agent.

個案 8

一名代理受委託出租一項物業，該物業並非一間獨立住宅單位（即指有獨立煮食設備及浴室）。

該代理誤以為《常規規例》第13(4)條不適用於非獨立住宅單位，因此沒有就有關物業在土地註冊處進行土地查冊。由於沒有取得有關物業的土地查冊的結果，該代理未能發現已有多項根據《刑事罪行條例》（第200章）所發出的通知書及封閉令已登記於土地註冊處紀錄內。

有關租客最終被迫遷出有關物業。租客向監管局投訴該代理。紀律委員會認為該代理違反《常規規例》第13(4)條及《操守守則》第3.4.1段：「代理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」，暫時吊銷其牌照及在牌照上附加條件，須在指定日期內獲取10個持續專業進修學分。

CASE 8

An estate agent was appointed to lease a property. The subject property was not a self-contained unit (a self-contained unit is an independent dwelling with separate cooking facilities and bathroom).

The estate agent mistakenly thought that section 13(4) of the Practice Regulation was not applicable to non-self-contained units, and did not carry out a land search for the subject property at the Land Registry. Without the land search documents, the estate agent failed to spot the several notices and closure orders, issued under the Crimes Ordinance (Cap. 200), registered at the Land Registry.

The tenant was eventually forced to leave the subject property. The tenant then filed a complaint against the estate agent with EAA. The Disciplinary Committee was of the view that the estate agent had breached section 13(4) of the Practice Regulation and paragraph 3.4.1 of the Code of Ethics, i.e. "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." The Disciplinary Committee suspended the licence of the estate agent, and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

個案 9

本個案中的有關物業於事發時是未落成的丁屋。一名代理安排買方作為「認購人」與業主代理人簽訂有關該物業的「認購書」。在「認購書」訂立之前，該物業仍未完成補地價手續，而「滿意紙」亦未發出，觸犯有關地契規定。

該代理從沒有向買方出示業主給予業主代理人的授權書，亦沒有向買方解釋購買未落成的丁屋的複雜性及風險，且未有建議買方尋求獨立法律意見，因而違反《操守守則》第3.4.1段：「代理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」，被紀律委員會暫時吊銷牌照，及在牌照上附加條件，須在指定日期內獲取10個持續專業進修學分。

以上案例的內容僅為有關案件的部分內容及法例的撮要，並不代表案件中的所有內容，亦不可取代原本的法律條文。案例僅供參考之用。

CASE 9

The subject property of this case was, at the material time, an uncompleted village house. An estate agent arranged for a purchaser, in the capacity of a "subscriber", to sign a "subscription agreement" with the agent of the vendor. When the "subscription agreement" was entered into, the payment of the premium for the subject property had not yet been made, and the occupation permit had not yet been granted, thereby violating the relevant land lease.

The estate agent had not shown the purchaser the letter of authorisation given by the landlord to his agent, nor explained the complicity and risks of purchasing uncompleted village houses to the purchaser, nor suggested to the purchaser to seek independent legal advice, thereby breaching paragraph 3.4.1 of the Code of Ethics, i.e. "estate agents and salespersons ... 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." The Disciplinary Committee suspended the licence of the estate agent and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

The above summary of cases is for reference only. It only contains parts of the contents of the cases concerned, and extracts of laws. It does not represent all contents of the cases concerned, and should not be construed as a replacement of the original laws.