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紀律案例選錄 A selection of disciplinary cases

個案1 – 私吞客戶佣金

一名地產代理從業員因欺騙其僱主以私吞客戶佣金，在法庭被裁定詐騙罪名成立，並且被監管局吊銷其牌照和在其牌照上附加條件。

楊女士打算購買一項物業，並為此委託該從業員。根據從業員所屬的甲公司的政策，如該公司促成楊女士購買物業，楊女士須向該公司繳付樓價1%的佣金。結果，楊女士經甲公司以1.1百萬元購入一項物業。

涉案的從業員向甲公司訛稱楊女士是由乙公司轉介而來的客人。甲公司被該從業員誤導，於是與乙公司簽署合作協議，協議訂明楊女士所繳付的樓價1%的佣金由乙公司收取。

該從業員取得乙公司的蓋章，填妥合作協議，並代乙公司簽署，然後將協議傳真給甲公司。

其後，楊女士將一張11,000元(即樓價1%)的支票交予該從業員，而該從業員將支票存入自己的銀行戶口。

結果，該從業員被控違反《盜竊罪條例》第16A(1)條的詐騙罪，被判監禁三個月。

監管局紀律委員會就此事召開紀律研訊。該從業員承認指稱，最終被紀律委員會吊銷牌照兩個月，而其牌照上亦加上條件，要求該從業員在24個月內取得20個持續專業進修學分。

Case 1 – Pocketing client's commission

An estate agency practitioner had his licence suspended, with a condition attached, after being convicted of fraud for deceiving his employer by pocketing a commission from a client.

The client, Ms Yeung, intended to buy a property and approached the practitioner for assistance. According to the company policy of estate agency A, for whom the practitioner worked, Ms Yeung had to pay 1% of the purchase price as commission if the agency successfully introduced a property to her. Ms Yeung eventually bought a property through the agency for \$1.1 million.

The practitioner made a false representation to estate agency A, claiming Ms Yeung had been referred to him by estate agency B. Estate agency A was misled into entering into a co-operation agreement with estate agency B, so that estate agency B would be entitled to receive the 1% commission from Ms Yeung.

The practitioner obtained the company chop of estate agency B, filled in the particulars of the co-operation agreement, and signed on behalf of estate agency B. He then faxed the said agreement to estate agency A.

Ms Yeung subsequently issued a cheque for \$11,000 (i.e. 1% of the purchase price) and gave it to the practitioner, who then deposited the cheque into his bank account.

The practitioner was subsequently convicted of fraud, contrary to section 16A(1) of the Theft Ordinance, and was sentenced to three months' imprisonment.

In an inquiry hearing conducted by the EAA's Disciplinary Committee the practitioner admitted the allegation against him. The Disciplinary Committee suspended his licence for two months, and attached a condition to his licence, requiring him to obtain 20 CPD points within 24 months.

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個案2 – 遺失客戶身分證

兩名地產代理從業員在一手物業銷售處遺失客戶的香港身分證，被紀律委員會譴責和在他們的牌照上附加條件。

該兩名從業員（張先生和趙先生）屬同一地產代理公司的僱員。張先生邀請客戶黃女士到一個樓盤的銷售處參觀示範單位。黃女士於晚上抵達銷售處，應該兩名從業員要求，提交香港身分證和個人資料，以便從業員代其向發展商取價目表。

黃女士最後決定不購買任何單位，並要求趙先生歸還她的身分證和填上她個人資料的表格。趙先生回應指會替黃女士向發展商取回她的身分證和表格。黃女士等至次日凌晨一時，趙先生才向她表示未能找到她的身分證和表格，但保證會在早上歸還身分證。

其後，趙先生告知黃女士尋索不果，於是黃女士致電發展商查詢，惟發展商職員表示從來沒有收過她的身分證。

結果，黃女士向警方報失身分證。

兩名從業員承認要求黃女士提供身分證，並表示他們將之交給發展商，以取得價目表。然而，經過多次向發展商查詢和多番搜索，仍然找不到黃女士的身分證。他們又承認忘記向誰人交出黃女士的身分證和個人資料，也沒有備存紀錄。

紀律委員會認為，兩名從業員在履行職務時，未有盡量小心和盡力，未有遵從《操守守則》第3.5.1段¹。兩名從業員坦白承認這項指稱。

Case 2 – Losing client's identity card

Two estate agency practitioners were reprimanded and had a condition attached to their licences for losing their client's Hong Kong identity card at a first-sale office.

Both practitioners were employees of the same estate agency. One of the practitioners, Mr Cheung, asked the client, Ms Wong, to view the show flats of a development at the sales office. Ms Wong arrived at the sales office in the evening, and was told by the practitioners that she had to provide the developer with her identity card and personal particulars in order to obtain a price list, which she did accordingly.

Ms Wong eventually decided not to purchase a unit, and asked the other practitioner, Mr Chiu, to return her identity card and the form containing her personal particulars. Mr Chiu explained to Ms Wong that they had to collect her identity card and the form from the developer. Ms Wong waited until 1am the next day, and was then told by Mr Chiu that he had been unable to find either her identity card or the form. Mr Chiu promised to return the identity card to her the following morning.

Mr Chiu later told Ms Wong that her identity card could not be found. Ms Wong called the developer to enquire about the whereabouts of her identity card and was told by the developer's staff that they had never received it.

Ms Wong subsequently reported the loss of her identity card to the police.

Both practitioners admitted that they had asked Ms Wong to provide her identity card and said they had passed her identity card to the developer in order to obtain the price list. They were unable to locate her identity card after repeated enquiries with the developer and numerous searches. They also admitted that they did not recall to whom they had passed her identity card and personal particulars, nor had they kept a record.

An inquiry hearing was conducted to examine the allegation against the practitioners for their failure to exercise due care and due diligence in fulfilling their duties, failing to comply with paragraph 3.5.1¹ of the Code of Ethics. The practitioners frankly admitted the allegation.

¹ 第3.5.1段訂明：「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。」

¹ Paragraph 3.5.1 states, "Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence."

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最後，紀律委員會決定譴責兩名從業員，並在他們的牌照上附加條件，規定他們在12個月內取得五個持續專業進修學分。

The Disciplinary Committee reprimanded the practitioners and attached a condition to their licence, requiring them to obtain five CPD points within 12 months.

個案3 – 未取得業主同意帶準買家視察物業

一名地產代理從業員，在帶準買家視察一項物業前，未有取得賣方客戶的同意，因而被紀律委員會譴責和在其牌照上附加條件。

歐女士是該物業聯名業主之一，她委託某家地產代理公司放售該物業，並將物業大門的鑰匙交給該公司的職員梁女士，以便代理公司安排準買家參觀物業。

幾天後，歐女士致電梁女士，表示其女兒把個人財物留在放售物業內，因此要求梁女士暫停安排準買家參觀物業，而梁女士表示會遵從指示。

數天後，歐女士路經該地產代理公司分行，重複上述指示，梁女士再度保證會遵從。

歐女士的女兒後來發覺部分個人物品不翼而飛，於是報警。警方完成調查後沒有拘捕任何人。

監管局就此事進行調查，發現在歐女士指示地產代理公司暫停安排準買家參觀單位後，梁女士的同事馮先生兩次安排一名客戶參觀該單位。

馮先生解釋說，一名客戶表示對歐女士的單位有興趣，於是他致電歐女士，冀得到她同意，讓該客戶參觀單位。歐女士沒有接聽電話，於是馮先生留下口訊，請歐女士回電。歐女士一直沒有回覆，馮先生便推斷歐女士已同意讓他帶客戶參觀單位。同樣的事情在兩星期後再次發生。

Case 3 – Arranging for property viewing without vendor's consent

An estate agency practitioner was reprimanded and had a condition attached to his licence for failing to obtain the consent of the vendor before arranging for a prospective purchaser to view a property.

Ms Au, one of the joint owners of the property, listed the property with an estate agency for sale. Ms Au left the key of the property with Ms Leung of the estate agency so that the estate agency could arrange for prospective purchasers to view the property.

A few days later, Ms Au telephoned Ms Leung and instructed her not to arrange for prospective purchasers to view the property for the time being, as her daughter had placed some of her personal belongings in the property, and Ms Leung agreed.

Ms Au repeated her instruction to Ms Leung in person in the branch office of the estate agency a few days after she had telephoned Ms Leung. Ms Leung again assured Ms Au that necessary arrangements would be made.

Ms Au's daughter subsequently found that some of her personal belongings had gone missing. Ms Au's daughter reported the matter to the police. The police completed their investigation of the case but no one was arrested for the incident.

An investigation revealed that a colleague of Ms Leung, Mr Fung, had arranged for a client to view the property on two occasions after Ms Au had instructed the estate agency not to allow prospective purchasers to view the property.

Mr Fung explained that he had called Ms Au to obtain her consent to view the property when a client had shown interest in it. He said Ms Au had not answered the phone, so he had left a message, asking Ms Au to call him back. There was no response from Ms Au so Mr Fung assumed that she had agreed to let him arrange for the client to view the property. The same thing happened two weeks later.

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紀律委員會就馮先生的失當行為召開紀律研訊，認為馮先生未經業主同意下，安排準買家視察物業，違反《地產代理常規（一般責任及香港住宅物業）規例》（《常規規例》）第10(b)條，決定譴責馮先生，並在他的牌照上附加條件，規定他在12個月內取得十個持續專業進修學分。

An inquiry hearing into Mr Fung's misconduct was conducted. The Disciplinary Committee ruled that Mr Fung had breached section 10(b) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation) for arranging for an inspection of the property without the prior consent of the vendor, and decided to reprimand Mr Fung and attach a condition to his licence requiring him to obtain 10 CPD points within 12 months.

個案4 – 發出虛假誤導的廣告

一家地產代理公司因為發出虛假或誤導的廣告，遭紀律委員會譴責和罰款。

該地產代理公司在報章刊登的廣告內容概要如下：

- (i) 幾名持有數個ABC花園和DEF廣場單位的業主，委託該地產代理公司，擔任該批物業的獨家代理；
- (ii) 其中一個位於ABC花園的單位為銀主盤；
- (iii) 該地產代理公司可安排準買家參觀XYZ山莊第一座和第二座的放售單位。

應監管局的要求，該地產代理公司提供幾份就上述物業簽訂的地產代理協議。但是，這些協議都沒有顯示該公司是這些物業的獨家代理，也沒有顯示該任何一個ABC花園單位的賣方是銀主。

該公司出示了一份就XYZ第二座其中一個單位的「出租香港住宅物業用的地產代理協議」，但未能出示任何就該座的任何單位簽訂的「出售香港住宅物業用的地產代理協議」。

該公司在2007年2月初發出有關廣告，然而所有和ABC花園有關的地產代理協議的簽訂日期都是2007年3月9日，而且協議內容指定協議在當天起生效。

Case 4 – Issuing false and misleading advertisements

An estate agency was reprimanded and fined for issuing false and misleading advertisements.

The estate agency issued advertisements in a newspaper to the effect that:

- (i) The estate agency was the exclusive agent appointed by the owners in respect of several properties at ABC Garden and DEF Plaza;
- (ii) one of the properties at ABC Garden was being sold by the mortgagee of the property;
- (iii) The estate agency could arrange viewing of the flats for sale in Blocks 1 and 2 of XYZ Villa.

Upon request from the EAA, the estate agency provided several estate agency agreements in respect of the properties mentioned above. However, none of these agreements showed that the estate agency had been appointed as the exclusive agent of the properties, nor did they show that the vendor of any property at ABC Garden was a mortgagee.

The estate agency also provided an "Estate Agency Agreement for Leasing of Residential Properties in Hong Kong" in respect of a property in Block 2 of XYZ Villa, but no "Estate Agency Agreement for Sale of Residential Properties in Hong Kong" in respect of any property in the block.

The advertisement was issued in early February 2007. However, all estate agency agreements relating to the properties at ABC Garden were dated 9 March 2007 and specified to take effect on the same date.

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該公司回覆監管局說，廣告中所述的「獨家代理」並非指ABC花園和DEF廣場的物業而言，而是指那些業主就其他物業委託該公司擔任獨家代理。

該公司發出載有在要項上屬虛假或具誤導性陳述或詳情的廣告，又沒有在發出廣告前取得賣方的書面同意，違反《常規規例》第9(1)和9(2)條，面臨紀律制裁。

在紀律研訊中，該公司承認大部分指稱，但否認有關ABC花園其中一個單位為銀主盤的廣告內容失實。該公司堅稱該單位的銀主，曾委託該公司放售該物業。該公司又出示一份土地查冊，顯示該物業由銀主售出。然而，該公司未能提供有關該物業的地產代理協議。

紀律委員會不接受該公司的辯解，並決定譴責該公司及罰款17,000元。

In its reply to the EAA, the estate agency explained that the reference to exclusive agency did not relate to the properties at ABC Garden and DEF Plaza, but to other properties for which the estate agency had been appointed by the owners as the exclusive agent.

The estate agency faced disciplinary actions for issuing advertisements which included a statement or particular that was false or misleading in a material particular, and for failing to obtain the vendor's written consent prior to advertising the properties for sale, in breach of section 9(1) and 9(2) of the Practice Regulation.

At the inquiry hearing, the estate agency admitted all the allegations except the one relating to issuing the advertisement which stated that a property at ABC Garden was being sold by the mortgagee. The estate agency alleged that the mortgagee of the property at ABC Garden had listed the property for sale. The estate agency also provided a land search of that property which indicated that the same had been sold by the mortgagee. However, the estate agency was unable to produce any estate agency agreement in respect of that property.

The Disciplinary Committee did not accept the defence put forward by the estate agency, which was eventually reprimanded and fined \$17,000.

個案5 – 未進行土地查冊

一名地產代理從業員在準租客簽署臨時租賃合約前，未有進行土地查冊，又沒有向準租客解釋合約上的每項條款，被紀律委員會譴責和在牌照上附加條件。

客戶陳先生在參觀一樓盤的示範單位時認識了該從業員，並向他查詢該樓盤中可供租用的單位。從業員安排陳先生參觀一個單位後，陳先生即表示有興趣租用該單位。該從業員隨而草擬一份臨時租賃合約。

由於陳先生當天沒有攜帶支票簿，該從業員遂安排陳先生翌日簽署臨時租賃合約。

Case 5 – Failing to conduct land search

An estate agency practitioner was reprimanded and had a condition attached to his licence for failing to conduct a land search before a provisional tenancy agreement was entered into, and for failing to explain to the tenant the meaning of each clause of the agreement.

A client, Mr Chan, came to know the practitioner when he went to view the show flats at the sales office of the development. Mr Chan asked the practitioner whether there were any flats for rent at the development. The practitioner arranged for Mr Chan to view and inspect a property, in which Mr Chan had expressed interest. The practitioner then drafted a provisional tenancy agreement.

As Mr Chan did not have his cheque book with him, the practitioner arranged for him to sign the provisional tenancy agreement the next day.

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翌日陳先生現身及簽約，但該從業員並不在場，所以沒有親身向陳先生解釋臨時租賃合約的條款。在訂立臨時租賃合約以前，該從業員並沒有進行土地查冊。

應監管局查詢，該從業員出示了有關物業的一份土地查冊文件，惟該土地查冊是在訂立臨時租賃合約後13天才進行的。

紀律委員會裁定該從業員違反《常規規例》第13(1)(a)和13(4)條，最終決定譴責該從業員，並在他的牌照上附加條件，規定他必須在12個月內取得十個持續專業進修學分。

Mr Chan turned up and signed the provisional tenancy agreement the next day. The practitioner was not available and did not explain the terms of the agreement to Mr Chan personally. No land search of the property had been conducted before the provisional tenancy agreement was entered into.

Upon enquiry from the EAA, the practitioner only produced a land search of the property conducted 13 days after the signing of the provisional tenancy agreement.

The Disciplinary Committee ruled that the practitioner had breached section 13(1)(a) and 13(4) of the Practice Regulation. The committee eventually reprimanded the practitioner, and attached a condition to his licence, requiring him to obtain 10 CPD points within 12 months.

個案6 – 未經業主准許安排租用權轉讓

一名地產代理從業員安排客戶和一名商舖租戶簽訂「商舖轉讓合約」，由於轉讓未經業主批准，因此，該從業員被紀律委員會暫時吊銷牌照並在其牌照上附加條件。

客戶黃先生希望開設一所餐廳，於是指示該從業員為他尋找合適的商舖。該從業員安排黃先生參觀一間當時作餐廳用途的商舖。餐廳經營者是租戶而非業主，而餐廳的租約為期三年。

餐廳經營者提出將餐廳業務和租用權同時轉讓給黃先生。於是，該從業員安排雙方簽訂一份「商舖轉讓合約」，黃先生繳付了50,000元首期訂金給餐廳經營者。

其實，原來的租約有一項條款，訂明不准轉租或轉讓租用權。根據黃先生的說法，該從業員並沒有向他解釋此條款。同時，該從業員只聽信餐廳經營者的說法，以為業主已同意將租約轉讓，並沒有親自向業主查證。

Case 6 – Arranging for lease transfer prohibited by landlord

An estate agency practitioner had his licence suspended, and a condition attached to it for arranging for a “shop transfer agreement” between his client and a tenant of a shop, when in fact the landlord had not agreed to such a transfer.

The client, Mr Wong, wanting to start a restaurant business, instructed the practitioner to help him look for a suitable shop. The practitioner arranged for Mr Wong to view a shop which at the time was a restaurant. The restaurant operator was not the owner of the property, but was the tenant, holding a lease for a term of three years.

The restaurant operator offered to transfer his restaurant business, including the lease of the shop, to Mr Wong. The practitioner arranged for the parties to enter into a “shop transfer agreement”. Mr Wong paid an initial deposit of \$50,000 to the restaurant operator.

The original lease of the shop contained a provision which prohibited any sub-letting or lease transfer. According to Mr Wong, the practitioner did not explain this provision to him, nor did the practitioner ascertain from the landlord whether he had agreed to the lease transfer arrangement. He simply relied on the restaurant operator's words that the landlord had so agreed.

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其實，業主並不同意這項轉讓，因此「商舖轉讓合約」取消，惟餐廳經營者拒絕向黃先生退回訂金，黃先生因此蒙受損失。

紀律委員會認為該從業員沒有向黃先生解釋原來的租約有不准轉租或轉讓租用權的條款，並指出監管局在2005年5月發出的執業通告05-02(CR)提醒從業員，「商舖轉讓」的安排相當複雜，從業員安排簽訂「租用權轉讓合約」時，必須先取得業主的同意。

從業員若小心行事，應先確定業主是否同意租戶轉讓租用權，然後才安排他的客戶簽訂「商舖轉讓合約」。該從業員沒有這樣做，因此沒有保障客戶的利益，未有遵從《操守守則》第3.4.1段²。

紀律委員會決定暫時吊銷該從業員的牌照兩個月，並在他的牌照上附加條件，要求他在12個月內取得十個持續專業進修學分。

In fact, the landlord had not agreed to the transfer of the lease of the shop, and the “shop transfer” transaction had to be aborted as a result. Mr Wong lost his initial deposit because the restaurant operator refused to return it.

The Disciplinary Committee found that the practitioner had not explained to Mr Wong that the original lease of the shop contained a provision against sub-letting and lease-transfer. The Disciplinary Committee further pointed out that the EAA's Practice Circular No. 05-02 (CR), issued in May 2005, reminded practitioners of the complications involved in any “shop transfer” arrangement and that the landlord's prior consent to any “lease transfer” arrangement must be obtained.

An estate agency practitioner acting with reasonable care should have ascertained from the landlord whether the landlord had consented to the transfer of the lease by the tenant before arranging for his client to enter into the “shop transfer agreement”. The practitioner did not do so and had hence failed to protect the interests of his client, thereby failing to comply with paragraph 3.4.1² of the Code of Ethics.

The Disciplinary Committee ordered that the licence of the practitioner be suspended for two months and that a condition requiring him to obtain 10 CPD points in 12 months be attached to his licence.

個案7 – 就物業許可用途作出失實陳述

一名地產代理從業員因對客戶作出有關物業許可用途的失實陳述，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

該從業員在他的商舖櫥窗展出一個單位的廣告。該單位在一幢商業大廈內，但廣告說該單位「可商住」。

一名婆婆希望用積蓄，購買一個單位自住。該從業員安排她參觀該單位，聲稱該單位可作住宅用途，又安排婆婆簽訂一份臨時買賣合約，以58萬元購入物業。

Case 7 – Misrepresentation on property's permitted use

An estate agency practitioner had his licence suspended and a condition attached to it for his misrepresentation to a client with regard to the permitted use of a property.

The practitioner put up an advertisement of a property in his shop window. The property was in a commercial building but the advertisement stated that it was “suitable for commercial and residential uses”.

An elderly woman wanted to purchase a home for herself with her savings. The practitioner arranged for her to view the property and assured her that the property could be used as domestic accommodation. He arranged for the woman to sign a provisional agreement to purchase the property for \$580,000.

² 第3.4.1段訂明：「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。」

² Paragraph 3.4.1 states, “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.”

紀律案例選錄

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其實，該物業並不是住宅單位，而佔用許可證將該物業的許可用途限制為「非住宅用的辦公室」。

在紀律研訊中，該從業員承認，雖然明知物業是商業單位，但沒有提醒客戶物業不可作住宅用途。他向紀律委員會表示，該物業有座廁、洗澡和煮食設施，因此他認為物業適合作住宅用途。

紀律委員會裁定該從業員對客戶表示物業可作住宅用途，屬失實的陳述，該從業員因而未有遵從《操守守則》第3.3.1段³。

紀律委員會又認為，該物業的廣告中有關該物業「可商住」的聲稱，屬虛假和誤導的。該從業員展示這樣的廣告，未有遵從《操守守則》第3.7.2段⁴。

紀律委員會決定暫時吊銷該從業員的牌照六個月，並在該牌照上附加條件，規定該從業員在24個月內取得20個持續專業進修學分。

In fact, the property was not a domestic unit. The occupation permit restricted its permitted use to "office for non-domestic use".

At the inquiry hearing, the practitioner admitted that he had not advised his client that the property could not be used for domestic purposes, although he knew it was a commercial unit. He told the Disciplinary Committee that the property had a toilet, as well as bathing and cooking facilities. He therefore considered it suitable for domestic use.

The Disciplinary Committee held that the practitioner had misrepresented to his client that the property could be for domestic use, and therefore had failed to comply with paragraph 3.3.1³ of the Code of Ethics.

The Disciplinary Committee further held that the statement in the advertisement that the property was "suitable for commercial and residential uses" was false and misleading. In putting up such an advertisement, the practitioner had failed to comply with paragraph 3.7.2⁴ of the Code of Ethics.

The Disciplinary Committee ordered that the licence of the practitioner be suspended for six months and that a condition requiring the practitioner to obtain 20 CPD points in 24 months be attached to his licence.

個案8 – 沒有查核土地許可用途

一名地產代理從業員因為沒有替客戶查核將購入的物業所在的土地的許可用途，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

陳女士希望搬進一幢新界村屋，改善家庭居住環境。陳女士通過報章廣告，知悉有村屋出售，甚感興趣，於是致電有關的從業員查詢。該從業員安排她參觀大埔區一幢兩層高的村屋。

Case 8 – Failing to check permitted use of land

An estate agency practitioner had his licence suspended and a condition attached to it for failing to check the permitted use of a piece of land on which a house which his client was about to buy was built.

Ms Chan wanted to improve the living condition of her family by moving to a village house in the New Territories. Attracted by an advertisement in the newspaper that there were village houses for sale, she contacted the practitioner concerned, who arranged for her to view a two-storey house in a village in Tai Po.

³ 第3.3.1段訂明：「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。」

⁴ 第3.7.2段訂明：「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。」

³ Paragraph 3.3.1 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."

⁴ Paragraph 3.7.2 states, "Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade."

紀律案例選錄

A selection of disciplinary cases

陳女士認為該村屋合適，故決定以1百萬元購入。該從業員安排她簽訂臨時買賣合約。合約上對該物業的說明中，只有一個地段號碼和對該塊土地上的建築物的描述。陳女士付出首期訂金50,000元。根據該臨時買賣合約的附錄，樓價包括「兩個貨櫃和一幢在該塊地上建成的一間房屋」。

其實，該幢兩層高房屋是建築在農地上的違例建築物，而陳女士同意購入的只是一塊農地，而非村屋。陳女士其後向監管局投訴該從業員。

在紀律研訊中，該從業員承認自己不知道該物業建於農地之上。他表示，他曾向陳女士解釋，該兩層高房屋是臨時建築物，而如果政府要求清拆，買方不會得到任何賠償。他堅稱雖然他已經如此解釋，陳女士仍然決定購買該物業。

紀律委員會認為，陳女士用辛苦儲起的積蓄購買一幢臨時房屋的可能性甚低，並認為該從業員沒有對他的客戶披露物業的詳情，又沒有小心查明土地的許可用途，未有遵從《操守守則》第3.3.1段⁵。

紀律委員會決定將該從業員的牌照暫時吊銷三個月，並且在其牌照上附加條件，規定該從業員在12個月內取得十個持續專業進修學分。

Ms Chan found the house suitable and agreed to purchase it for \$1 million. The practitioner arranged for her to sign a provisional agreement for sale and purchase. In the provisional agreement, the property was described by a lot number as well as the structure erected on the land. Ms Chan paid an initial deposit of \$50,000. The provisional agreement included an annex, which stated that the purchase price included "two containers and a house erected on the land".

In fact, the two-storey house was an unauthorised structure built on agricultural land. The property which Ms Chan had agreed to purchase was only a piece of agricultural land, not a village house. Ms Chan made a complaint to the EAA about the practitioner.

At the inquiry hearing, the practitioner admitted that he had not known that the property was on agricultural land. He said he had explained to Ms Chan that the two-storey house on the land was only a temporary structure and that the purchaser would not get any compensation if the government ordered its demolition. He asserted that, despite his explanation, Ms Chan was keen to make the purchase.

The Disciplinary Committee deemed it inherently improbable that Ms Chan would have been willing to use her hard-earned money to buy a temporary house. The Disciplinary Committee held that the practitioner had not disclosed to his client the details of the property and had failed to diligently check the permitted use of the land, thereby failing to comply with paragraph 3.3.1⁵ of the Code of Ethics.

The Disciplinary Committee ordered that the licence of the practitioner be suspended for three months and that a condition requiring him to obtain 10 CPD points within 12 months be attached to his licence.

個案9 – 沒有披露交易中的個人利益

一名地產代理從業員由於在物業交易中沒有向客戶披露個人利益，被紀律委員會暫時吊銷牌照六個月和在其牌照上附加條件。

Case 9 – Failure to disclose interest in transaction

An estate agency practitioner had her licence suspended for six months and a condition attached to it for her failure to disclose to her client her interest in a transaction.

⁵ 參註3

⁵ See note 3

紀律案例選錄

A selection of disciplinary cases

該從業員安排客戶鄭先生出售一幢工業物業予一間買家公司(ABC公司)。該名從業員其實是ABC公司的主要股東、秘書及董事，但她並沒有如實告知賣方。

該從業員主動接觸鄭先生，表示有買家對鄭先生的物業有興趣。經商議後，鄭先生同意以98,000元出售物業。於是，該從業員安排鄭先生和ABC公司簽署一份臨時買賣協議，但沒有向鄭先生透露自己在ABC公司的身份和利益。

另一方面，該從業員在鄭先生不知情下，將物業介紹給另一名買家。這名買家同意以11萬元向ABC公司購買該物業，並簽署臨時買賣合約。換言之，ABC公司藉轉售該物業賺取了12,000元。

該從業員利用自己的公司買賣物業獲利，卻沒有告訴鄭先生，未有遵從《操守守則》第3.6.2段⁶。

紀律委員會認為該從業員沒有在交易中透露自己的利益，違反了對客戶的受信責任，決定暫時吊銷該從業員的牌照六個月，並在其牌照上附加條件，規定她必須在一年內取得十個持續專業進修學分。

The practitioner arranged for Mr Cheng, a vendor client, to sell an industrial property to a purchaser company (ABC Limited), of which she was the main shareholder, the secretary and a director, but she failed to inform Mr Cheng of this fact.

The incident began when the practitioner approached Mr Cheng and told him that she had an interested purchaser for his property. After negotiation, Mr Cheng agreed to sell the property for \$98,000. The practitioner then arranged for the vendor to enter into a provisional sale and purchase agreement with ABC Limited. The practitioner did not disclose to the vendor her interest in ABC Limited.

Meanwhile, unknown to the vendor, the practitioner introduced the property to a sub-purchaser. The sub-purchaser agreed to purchase the property from ABC Limited for \$110,000 and entered into a provisional sale and purchase agreement for the purchase. In other words, ABC Limited gained \$12,000 from the sub-sale.

The practitioner used her own company to purchase and sell the property for a profit, but she did not tell Mr Cheng about it. She had therefore failed to comply with paragraph 3.6.2⁶ of the Code of Ethics.

The Disciplinary Committee considered the practitioner's non-disclosure of her interest in the transaction to be a breach of an estate agent's trust and fiduciary duties owed to a client. The Committee decided to suspend the agent's licence for six months and attached a condition to the licence requiring the agent to obtain 10 CPD points within a year.

⁶ 第3.6.2段訂明：「在有可能／潛在利益衝突的情況下（例如同時代表賣家和買家），地產代理和營業員必須向客戶表明他們同時代表雙方，以及向各方詳盡披露因該物業而獲得的金錢或其他實益利益。」

⁶ Paragraph 3.6.2 states, "Estate agents and salespersons shall, in the event of possible or potential conflict of interest (such as representing both the vendor and the purchaser), 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."

紀律案例選錄**A selection of disciplinary cases****個案 10 – 沒有披露與買方的關係**

一名地產代理從業員由於沒有向賣方披露她和買方的關係，被紀律委員會暫時吊銷牌照，並在牌照上附加條件。

該名從業員獨資經營某地產代理商號。賣家劉先生通過該商號放售物業，並經該名從業員介紹一位買家。經過商議，劉先生同意以 5.48 百萬元出售物業。

簽署臨時買賣合約前，從業員向劉先生表示，買方將以公司(XYZ 公司)名義購買物業。

其實，XYZ 公司由該從業員及其丈夫擁有，他倆是 XYZ 公司的董事和股東。

其後，該名從業員向紀律委員會承認沒有向劉先生披露她和買方的關係，因此該從業員未有遵從《操守守則》第 3.6.2 段⁷。

該名從業員解釋，她沒有披露自己和買方的關係，是因為擔心劉先生一旦知道她是買方便會提高價錢。她表示購入該物業乃作自住用途，而他們的出價實較當時之市價稍高。

紀律委員會認為，沒有任何證據顯示該物業以低於市價的價格出售；而且，在紀律研訊之時，物業仍然由 XYZ 公司持有，顯示該名從業員很可能沒有轉售該物業的意圖。同時，該名從業員亦已深感後悔。紀律委員會考慮了上述情況，決定暫時吊銷該名從業員的牌照三個月，並要求她在兩年內取得 20 個持續專業進修學分。

Case 10 – Failure to disclose relationship with purchaser

An estate agency practitioner had her licence suspended, and a condition attached to it, for failing to disclose to the vendor her relationship with the purchaser.

The practitioner was the sole proprietor of an estate agency firm. Mr Lau put his property on sale through the practitioner's firm. The practitioner then introduced a potential purchaser to Mr Lau. After negotiation, Mr Lau agreed to sell the property for \$5.48 million.

Before signing the provisional agreement for the sale and purchase of the property, the practitioner told Mr Lau that the purchaser would use a company (XYZ Limited) to purchase the property.

XYZ Limited was in fact owned by the practitioner and her husband. The two were the directors and shareholders of XYZ Limited.

Subsequently, the practitioner admitted to the Disciplinary Committee that she had failed to disclose to Mr Lau her relationship with the purchaser. Hence, the practitioner had failed to comply with the requirements in paragraph 3.6.2⁷ of the Code of Ethics.

The practitioner said she did not disclose her relationship with the purchaser because she was worried that Mr Lau would increase the price if he knew she was the purchaser. She said the property had been bought for self-use, and the price they offered was in fact slightly higher than the market price at the time.

The Disciplinary Committee found no evidence showing that the property had been sold below the market price. Moreover, the property was still held by XYZ Limited at the time of the inquiry hearing, which suggested that the practitioner might not have purchased the property for resale. Meanwhile, the practitioner had shown genuine remorse. The Disciplinary Committee eventually ordered that the licence of the practitioner be suspended for three months and that the practitioner be required to obtain 20 CPD points within two years.

⁷ 參註 6

⁷ See note 6