



## 封面故事 Cover story

### 紀律處分新計劃

### New scheme for disciplinary cases

#### 專訪 Feature interview

與紀律委員會主席廖玉玲女士訪談  
An Interview with Ms Elaine Liu,  
Chairman of Disciplinary Committee

#### 焦點速遞 In the spotlight

有關填寫臨時協議的新執業通告  
New Practice Circular on Completion of  
Provisional Agreement

#### 誠信與你 Integrity in focus

- 向一手住宅物業買家提供誤導性資訊  
Providing misleading information to purchasers  
in the first-sale of residential properties
- 沒有告知客戶住宅物業存在違建工程  
Failing to inform the client of the existence of  
unauthorised building works in a residential property



# ✈ 紀律處分新計劃

地產代理監管局(「監管局」)一向致力確保持牌人守法循規。為了提高持牌人對違規情況的警覺性，長遠改善業內的違規情況，監管局推出一項紀律處分新計劃(「新計劃」)以處理違規個案。該新計劃已於2014年1月1日起生效。

## 計劃簡介

監管局紀律委員會經審視業內的違規問題後，發現部分常見的違規個案的性質屬比較簡單的類別。因此，委員會討論後通過推出一項新計劃以處理上述情況。新計劃涵蓋違反《地產代理條例》(「《條例》」)及其附屬法例內八項特定要求的違規事項。該八項「指明違規事項」的詳細內容請閱讀本文最後一部分。

在新計劃下，由生效日起計，倘若持牌人被發現首次違反一項或多於一項指明違規事項，而他／她承認案情概要及指稱，並選擇以新計劃處理其個案的話，則他在符合新計劃的條款的情況下，將不會被紀律處分。倘若該持牌人在其後兩年內，再度觸犯任何違規事項(無論是否屬於指明違規事項)，則紀律委員會在決定該再次違規的處分時，會同時考慮其參加了新計劃及在首次違規後沒有被處分的事實，相應地，有關處分難免較高。

倘若持牌人選擇以新計劃處理其個案，則其已承認的違規事項，將會紀錄在「違規備忘錄」(「備忘錄」)內。備忘錄內每項紀錄只會在本局的網站上刊登兩年。不過，有關紀錄連同持牌人的紀律處分紀錄會被一併保存，作為紀律委員會日後就其他違規考慮處分的因素。

自2014年1月1日起未因任何違規而被紀律處分的持牌人，均有資格選擇新計劃。至於不選擇新計劃的持牌人，其違規個案則會按照一貫的紀律程序處理。

## 八項指明違規事項

新計劃涵蓋違反《條例》、《地產代理常規(一般責任及香港住宅物業)規例》(「《常規規例》」)及《地產代理(發牌)規例》(「《發牌規例》」)內八項特定要求的違規事項。

八項指明違規事項詳列如下：

1. 沒有管有訂明資料(《條例》第36(1)(a)(i)條)
2. 沒有與客戶訂立地產代理協議(《常規規例》第6(1)及6(2)條)
3. 沒有按照表格內所指明的指引及指示填寫表格；沒有在表格附同表格內所指明的文件(《常規規例》第3(2)(a)及3(2)(b)條)
4. 沒有自以下事項發生起計的31天內將該事通知監管局：
  - (i) 終止從事地產代理工作；
  - (ii) 僱用或終止僱用任何營業員；
  - (iii) 委任《條例》下的經理或終止其委任；
  - (iv) 獲委任為持牌地產代理公司的董事或終止擔任公司的董事；及
  - (v) 成為或終止作為某持牌地產代理合夥的成員及該合夥進行或擬進行地產代理工作(《條例》第40(1)至(4)(5)條)
5. 沒有備存(i)一份其所收取的住宅物業放盤的紀錄及(ii)所訂立的地產代理協議的文本不少於三年的期間(《常規規例》第8(2)(a)條)
6. 沒有書面通知監管局其登記地址的變更(《條例》第14(3)(a)條)
7. 沒有保留向客戶所發出的收據的副本最少三年(《常規規例》第12(2)(b)條)
8. 沒有在其發出的文件上說明其牌照號碼或營業詳情說明書的號碼、營業名稱及營業地點(《發牌規例》第14(1)(b)條)；及沒有在其發出的廣告上說明其牌照號碼或營業詳情說明書的號碼及營業名稱(《發牌規例》第14(1)(c)條)

如欲了解計劃的詳情及相關的常見問答，請瀏覽監管局網站([www.eaa.org.hk](http://www.eaa.org.hk))。

# New Scheme for Disciplinary Cases

The Estate Agents Authority ("EAA") attaches great importance to ensuring compliance in the estate agency trade. To heighten the estate agency trade's vigilance against non-compliances and improve their compliance in the long run, the EAA has launched a New Scheme ("the Scheme") for handling disciplinary cases with effect from 1 January 2014.

## Introduction of the Scheme

Upon reviewing the non-compliance in the trade, the EAA Disciplinary Committee found that a number of cases commonly breached by the trade were relatively straight forward in nature. In this connection, the Committee has recently endorsed the Scheme to address the issue. The Scheme covers eight specified breaches of requirements under the Estate Agents Ordinance ("EAO") and its subsidiary legislation. The details of the specified breaches are listed in the last section of this article.

Under the Scheme, if a licensee commits any of these specified breaches for the first time (with effect from 1 January 2014), he/she will not be, subject to the terms of the Scheme, disciplined if he/she opts for the Scheme and agrees to the facts and allegations. If the licensee is found to have breached any requirements again (irrespective of whether it is one of the specified breaches or not) in the following two years, and the fact that he/she has opted for the Scheme and has not been punished in the first time will be taken into consideration in deciding the sanction for the subsequent breach. Accordingly, the sanction for the subsequent breach would inevitably be higher.

If the licensee has opted for the Scheme, every admitted breach will be entered into a "Memorandum of Admitted Breaches" ("the Memorandum"). Each record in the Memorandum will only be shown at the EAA's website for two years. However, such a record will be retained together with the licensee's disciplinary record for sentencing purposes in the future cases.

Any licensee who has not been disciplined for any breaches from 1 January 2014 is eligible to opt for the Scheme. For licensees who do not opt for the Scheme, their breaches will be handled in accordance with the usual disciplinary procedures.

## The Eight Specified Breaches

The Scheme covers breaches of eight specified requirements under the EAO, Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation ("PR") and Estate Agents (Licensing) Regulation ("LR").

The eight specified breaches are as follows:

1. Failure to possess prescribed information (EAO s.36(1)(a)(i))
2. Failure to enter into an estate agency agreement with client (PR ss.6(1) & 6(2))
3. Failure to complete form in accordance with the directions and instructions specified in the form; Failure to accompany form by documents specified in the form. (PR ss.3(2)(a) & 3(2)(b))
4. Failure to give notice to the EAA within 31 days of
  - (i) ceasing to be engaged in estate agency work;
  - (ii) employment of salespersons or termination thereof;
  - (iii) appointment of managers for the purposes of the Estate Agents Ordinance or termination thereof;
  - (iv) appointment of directors or termination thereof; and
  - (v) the becoming or ceasing to become a member of a partnership engaged in estate agency work (EAO ss.40(1) to 40(5))
5. Failure to keep (i) a record of all listings received and (ii) a copy of all estate agency agreements entered into for not less than three years (PR s.8(2)(a))
6. Failure to notify the EAA in writing of a change of registered address (EAO s.14(3)(a))
7. Failure to retain a copy of receipt issued to clients for not less than three years (PR s.12(2)(b))
8. Failure to state the number of licence or statement of particulars of business, the business name and place of business in any document (LR s.14(1)(b)); and  
Failure to state the number of licence or statement of particulars of business and the business name in advertisement (LR s.14(1)(c))

Details of the Scheme and the relevant frequently asked questions and answers are available at the EAA's website ([www.eaa.org.hk](http://www.eaa.org.hk)).



# 與紀律委員會主席廖玉玲女士訪談

本期《專業天地》專訪了監管局紀律委員會主席廖玉玲女士，以了解「紀律處分新計劃」的目的和背景；廖女士又會分享她參與監管局工作的經驗。

問：編者 答：廖玉玲女士

## 問：紀律處分新計劃的目的為何？

答：新計劃將簡化和加速處理較為簡單直接的違規個案，而不影響監管局作為規管者的有效性。一個公平而有效地處理違規個案的制度，對於監管局的工作十分重要。簡化和加速處理違規個案的程序，既可令監管局資源有效運用，也可以縮短處理個案和有關持牌人忐忑等候結果的時間。我們希望有關持牌人可以從速從錯誤中學習，注意良好的執業和工作制度，確保守法循規。

我們辨別了八項「指明違規事項」並將之列入新計劃的範疇中。該八項「指明違規事項」都屬簡單直接的，而不牽涉操守及誠信的問題。因此，我們認為該計劃給予有關持牌人改正的機會是合理的，同時不會影響監管局規管的有效性。該計劃只容許首次違規的持牌人參加，鼓勵他們從速糾正錯誤，這也是合理的安排。

於2012-13年度經紀律委員會處理的違規個案之中，有高達四成違規事項是屬於該八項「指明違規事項」的。該數目包括了首次違規者及重複違規者，因此實際上新計劃將處理的個案會較少。即使如此，新計劃也會減省監管局不少資源。

## 問：長遠來說，你期望該項計劃對於改善業界違規情況有何影響？

答：部分持牌人觸犯指明違規事項，可能屬無心之失。該計劃給予他們改正的機會，並促使他們更注重守法循規。監管局亦同時推行教育工作，協助業界維持專業水平。這各項工作長遠來說可以提升業界的專業水平。維持業界良好的執業水平對持牌人及消費者均有利。

## 問：你預期持牌人會選擇該計劃嗎？為甚麼？

答：理想而言，我希望沒有持牌人需要選擇該計劃，因這表示業界並沒有違反相關事項。然而，我完



紀律委員會主席廖玉玲女士  
Ms Elaine Liu, Chairman of Disciplinary Committee

全理解現實與理想有分別。在該計劃下，選擇計劃的持牌人可獲得一個改正的機會並且不會因該次違規而即時受處分。如該持牌人其後兩年沒有違規，該首次違規可以完全無須被紀律處分。對於相關持牌人而言，這不是參與計劃很好的理由嗎？

有人可能會誤會，已選擇新計劃的持牌人如再次違規，將會被嚴懲；有人甚至認為，假如相關持牌人再次違規，罰則自然會倍增。這些想法都是誤解。在該計劃下，假如持牌人在兩年內再度違規，紀律委員會在決定他們該再次違規的處分時，同時考慮其參加了新計劃及在首次違規後沒有被處分的事實，相應地，有關處分難免較高。至於處分有多高，則要經全盤考慮相關因素才能決定，包括違規的嚴重性及違規紀錄等。這其實是與紀律委員會的一貫原則和做法是一致的。

**問：你已擔任監管局成員數年，可否分享一下你對監管局工作的意見？**

答：我於2008年開始擔任監管局成員。監管局其他成員均能幹和友善。在過去數年間，我參與不同委員會的工作。我曾擔任牌照委員會的主席，該委員會其中一項重要工作，是為決定持牌人是否持牌「適當人選」而制訂公平和透明的政策，並且公平公正地實施此政策。作為第28條調查小組主席時，小組審視《地產代理條例》第28條賦予監管局的廣泛權力運用於適當的個案中，免被濫用。

我自2012年出任紀律委員會主席，現時主要處理該委員會的工作。主持紀律委員會研訊、審理及裁定違規個案已成為我日常工作的一部份。此外，紀律委員會也要考慮紀律研訊的程序規則，以及其他的政策事宜。雖然委員會的工作量比我預期為重，但我樂在其中。同時，我與委員會其他委員及監管局人員合作愉快，他們當中不少人和我同樣擁有相同的熱忱。

**問：根據你進行紀律研訊的經驗，你對於地產代理業界的操守有甚麼看法？**

答：過去多年業界的操守水平及對於守法循規的警覺性有所進步，整體來說，重複違規的持牌人比例並不多，但仍然有涉及違反誠信並導致消費者損失的嚴重違規個案。監管局對這些違規事項保持警覺，繼續對這些違規持牌人採取紀律行動，相信能收阻嚇之用。此外，監管局也通過舉辦持續進修活動及發出執業通告，協助持牌人維持及提升執業水平。

**問：你擔任監管局成員數年間，有甚麼難忘的經驗？可否從大律師的角度，分享一下監管局紀律研訊和法庭審案有何分別？**

答：我對監管局成員及委員會委員的投入和付出印象深刻。這亦使我在監管局工作的經驗愉快和充實。

紀律研訊和法庭審訊在多方面都有所不同，例如在規則和程序，及證據的要求等；但兩者在秉持公義、堅守公平公正公開的原則和保障答辯人有申述的權利等方面，並無異致。

**問：身為一位積極參與公務的大律師，你如何分配時間及平衡工作和生活？**

答：這對我來說有時是一項挑戰。良好的時間管理十分重要，而現時我的安排還可以，並沒有出現問題。我珍惜和重視大律師的工作、我摯愛的家庭及我所參與的公職。這三方面無論在知識和情感上，都給予我充實的體驗。某程度上來說，它們在我生命中互相平衡和補足。我享受和珍惜我生命中這三方面的體驗和當中相遇的每一個人。

## An Interview with Ms Elaine Liu, Chairman of Disciplinary Committee

In this Issue of *Horizons*, we interviewed Ms Elaine Liu, Chairman of EAA Disciplinary Committee, with a view to understanding more about the background and objective of the New Scheme for Disciplinary Cases. She also shared with us her experiences of participating in the EAA's work.

Q: Editor      A: Ms Elaine Liu

**Q: What is the purpose of the New Scheme for Disciplinary Cases?**

A: The Scheme is to streamline and expedite the process of handling straight forward breaches without compromising the effectiveness of the EAA's regulatory role. A fair and effective system to deal with non-compliance cases is important in the works of the EAA. A streamline and expedited process for straight forward

cases will more efficiently utilise the resources of the EAA. It will also shorten the period of time during which uncertainties of the result of the disciplinary proceedings may be lingered on the minds of the licensees who are involved in the disciplinary proceedings. We hope that these licensees will quickly learn from their breach and direct their mind and attention to a better practice and system of work to ensure compliance.

We identified 8 specified breaches and included them in the scope of the Scheme. These 8 specified breaches are straight forward matters and do not involve issues of ethics and integrity. We therefore consider that it is justified to give the licensees concerned a chance under the Scheme and at the same time, does not compromise the effectiveness of the EAA's regulatory role. The Scheme only covers the first time offender to whom we also consider it justifiable to be included in the Scheme with a view to encouraging them to rectify the breaches in a timely manner.

In the year of 2012–13, the total number of cases fell within these 8 specified breaches amounted to about 40% of the total breaches handled by the Disciplinary Committee of the EAA. This figure covers both the first time offenders and repeated offenders, therefore the cases that will fall within the purview of the Scheme will be lesser. Nonetheless, with the Scheme, considerable amount of resources could be saved.

**Q: What effects would you expect the Scheme will have on improving the trade's compliance in the long run?**

A: Some of the licensees probably have committed these specified breaches inadvertently. The Scheme, which gives them a chance, will draw their attention to the importance of compliance. The EAA is also undertaking educational efforts to assist licensees in maintaining their professional standard. All these efforts will promote and enhance the trade's professionalism in the long run. The upholding of good professional standards of the licensees benefits both the trade and the consumers.

**Q: Do you expect licensees would opt for the Scheme and why?**

A: Ideally, I hope that no licensee will need to opt for the Scheme as it would mean that there is no such breach at all. That asides, I am fully aware that the reality runs differently. Under the Scheme, the licensees concerned are given a chance and sanction will not be imposed on them on that occasion if they opt for the Scheme. If the licensee does not commit any breach in the next 2 years, he will not be subject to any sanction at all for this first time breach. This is a very good reason to opt for the Scheme, isn't it?

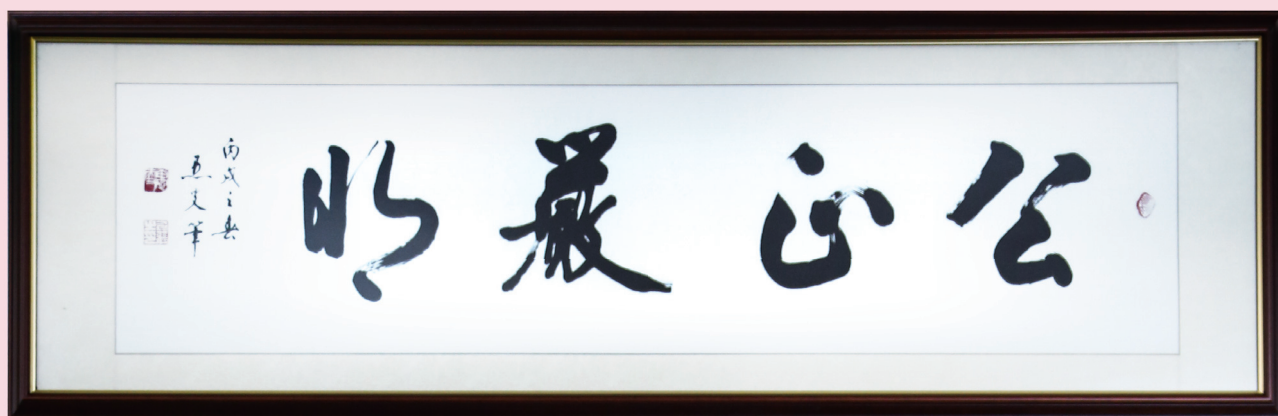
Some may be under a misleading notion that those who opted for the Scheme would be very severely punished if they re-offend. Some may even think that, as a rule, the subsequent sanction on re-offending will be multiplied by several times. This is a misconception. Under the Scheme, if the licensees concerned subsequently re-offend within 2 years, the fact that they have opted for the Scheme and have not been punished in the first time will be taken into consideration in deciding the sanction for the subsequent breach. Accordingly, the sanction for the subsequent breach would inevitably be higher. How much higher would be a matter to be decided by considering the entire circumstances, including the gravity of the breach, number of previous records etc. This is in line with the current principle and practice adopted by the Disciplinary Committee.

**Q: You have been an EAA board member for a few years. Could you share your views about the EAA's works?**

A: I have served on the EAA board since 2008. The other EAA board members are capable and friendly. During these years, I was also involved in the works of different committees of the EAA. I have served as the Chairman of the Licensing Committee. An important task when working in this Committee was to formulate a fair and transparent policy for determining the fitness and properness of a licence holder, and also to implement the policy in a fair and just manner. In my role as the Chairman of the section 28 Investigation Panel, considerations have been given to ensure that the wide power given to the EAA under section 28 of the Estate Agents Ordinance was used in appropriate cases and abuse of power was prevented.

I took up the Chairmanship of the Disciplinary Committee in 2012 and am now spending much of my time in the works of this Committee. Sitting as a member of the inquiry panel to hear and decide disciplinary cases is now a routine of my works. Besides, the Committee also considered the procedural rule for inquiry hearings and many other policy issues. The workloads in fact are heavier than I originally expect. Nonetheless, I enjoy the Committee works. It is also good to work with the committee members and the EAA administration staff, many of whom share similar enthusiasm as mine.





**Q: From your experiences of conducting inquiry hearings, what are your views about the conduct and ethical standard of the estate agency trade?**

**A:** The trade's ethical standard and awareness in compliance have improved over the years. Overall, the number of repeated offenders is not very high. However, there are still cases of serious breaches involving issue of honesty and causing considerable loss to consumers. The EAA would stay vigilant and continue to take disciplinary actions against those who have committed breaches, and trust this would have deterrent effect. In addition, by organising professional training activities and issuing practice circulars, the EAA assists licensees in maintaining and improving their professional standards.

**Q: What are your unforgettable experiences of working with the EAA? From the perspective of a barrister, could you share with our readers the differences between an EAA inquiry hearing and a court case?**

**A:** The commitment and dedication of the Board and committee members are impressive to me. This also made my works with the EAA a happy and fulfilling experience.

An inquiry hearing and a court hearing differ in various aspects. Take for instances, the rules and procedures, and the rules of evidence are different. However, the adherence to the principles of natural justice, fair representation and right to be heard are common to both.

**Q: As a barrister intensively involving in the public services, how do you allocate your time and achieve a work-life balance?**

**A:** This sometimes does become a challenge to me. Good time management is essential and it presently works well with me. I cherish and value my work as a barrister, my beloved family and the public services I participate in. Each of these gives me fulfilling experiences intellectually and emotionally. Somehow, they balance and complement with each other in my life. I enjoy and treasure each of these three aspects of my life and the people I meet in each of them.



## 有關填寫臨時協議的新執業通告

監管局發出一份有關填寫臨時買賣協議(「臨時協議」)的新執業通告(編號13-06(CR))，載列持牌人在預備臨時協議時須注意若干的重要事項。新通告已於2013年11月15日開始生效。

香港二手物業的買賣通常透過地產代理完成。在大部份的情況下，經辦的地產代理會預備臨時協議，並協助訂約方訂立協議。一般而言，由地產代理預備的臨時協議是一份具法律約束力的合約，假如臨時協議沒有被妥善填寫，便會容易引致糾紛。為此，監管局發出新執業通告，提醒持牌人在處理臨時協議時必須盡量小心和盡一切應盡的努力。

持牌人可於監管局網頁閱覽執業通告的全文：  
[規管 > 執業通告](#)

執業通告內容重點：

1. 不可安排客戶簽署在重要條款的位置仍漏空的臨時協議。
2. 就已簽署的臨時協議作出任何修訂之前，先取得客戶的同意。
3. 確保臨時協議內所載的所有資料均是真實及準確的。
4. 避免選擇週六、週日或公眾假期作為付款日期。
5. 不可安排賣方預先確認任何訂金的收訖。
6. 在臨時協議內列出買賣中包括的所有物品。
7. 如臨時協議內備有英文版本及中文版本，須清楚述明以哪個版本為準。
8. 簽署後，向客戶提供一份臨時協議的副本。

## New Practice Circular on Completion of Provisional Agreement

A new Practice Circular (No. 13-06 (CR)) on the completion of the provisional agreement for sale and purchase (PASP) came into effect on 15 November 2013. The Practice Circular sets out certain important matters to which licensees must pay attention when preparing a PASP.

The sale and purchase of second-hand properties in Hong Kong are often conducted through estate agents. In most cases, the handling estate agents would prepare the PASP and assist the parties to enter into the agreement. Generally speaking, the PASP prepared by an estate agent is a legally binding contract. It may easily give rise to disputes if it is not completed properly. The EAA therefore issued the new Practice Circular to remind licensees that they must exercise due care and due diligence when completing a PASP.

Licensees may view the full Practice Circular at the EAA website: [Compliance > Practice circulars](#)

Key points of the Practice Circular:

1. Do not arrange for clients to sign a PASP with the spaces providing for the essential terms of the transaction left blank.
2. Obtain consent before making any amendment to a signed PASP.
3. Ensure that all information in a PASP is true and accurate.
4. Avoid selecting a Saturday, Sunday or public holiday as a payment date.
5. Do not arrange for a vendor to confirm receipt of any deposit in advance.
6. List in a PASP any items included in the sale and purchase.
7. State clearly which version shall prevail if a PASP is written in both English and Chinese.
8. Supply a copy of the PASP to the client after signing.



## 紀律研訊個案一 向一手住宅物業買家提供誤導性資訊

從業員向一手住宅物業的買家提供資訊時，必須以賣方所提供最新版本的售樓說明書、價單及相關文件內所載列的資訊為基準，並避免作出失實陳述。否則，從業員可能會被監管局紀律處分。

一名從業員在推廣一個新住宅樓盤的單位時，向一位準買家保證她能獲得銀行批出相等於單位售價80%的按揭貸款。從業員並再三游說該準買家，聲稱發展商正提供樓價5%的折扣優惠，而且只有透過他所屬的地產代理公司購買該樓盤的人士，才能享有該項優惠，而當日更是該優惠的最後一天。

基於該從業員提供的上述資訊，該名買家決定購入單位，並在該從業員協助下簽署臨時買賣合約，支付相等於樓價10%的訂金。然而，買家後來發現她未能取得相等於樓價80%的按揭貸款，更得悉發展商並

無向任何一間地產代理公司提供獨家折扣優惠，而事發當天亦不是該優惠的最後一天。買家遂向監管局投訴。

監管局紀律委員會認為，該從業員向買家提供誤導性的資訊，包括關於按揭及發展商提供優惠的資料，該從業員因此未有遵守《操守守則》第3.7.2段所述「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」。紀律委員會決定譴責該名從業員，並暫時吊銷他的牌照三個月。

上述個案發生於《一手住宅物業銷售條例》（「該條例」）生效之前。監管局提醒持牌人，自該條例於2013年4月底生效後，持牌人在推銷一手住宅物業時如果作出可能誤導準買家的陳述，有可能同時觸犯該條例。因為根據該條例，任何人作出具欺詐性或罔顧實情的失實陳述，以誘使另一人購買物業，即屬犯罪。

## Disciplinary hearing case — Providing misleading information to purchasers in the first-sale of residential properties

When providing information to purchasers in the sale of first-hand residential properties, practitioners must do so only on the basis of the latest information contained in the sales brochure, price lists and documents provided by the vendor. They must also refrain from making any misrepresentation. Otherwise, practitioners may be subject to disciplinary actions by the EAA.

When promoting a flat of a new residential development, a practitioner assured a prospective purchaser that she could definitely obtain a mortgage loan amounting to 80% of the purchase price. To further persuade the prospective purchaser, the practitioner also told her that the developer provided a 5% discount on the purchase price, and claimed that the incentive was provided exclusively to those who bought the flat through the estate agency company that the practitioner worked for. He also claimed that it was the last day the developer offered the incentive.

Based on the above information provided by the practitioner, the purchaser decided to purchase the flat. With the help of the practitioner, the purchaser signed a provisional agreement for sale and purchase and paid a deposit equivalent to 10% of the purchase price. However, the purchaser later found out that she could not obtain an 80% mortgage. She also learnt that the discount was not offered exclusively to any estate agency company, and the day that the incident happened was not the last day of the offer. She then lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the practitioner provided misleading information to the purchaser, including misrepresentation on the mortgage information and incentives offered by the developer. He thus failed to comply with paragraph 3.7.2 of the Code of

*Ethics*, which states that estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade. The Disciplinary Committee decided to reprimand the practitioner and suspend his licence for three months.

The case had taken place before the Residential Properties (First-hand) Sales Ordinance ("the Ordinance") came into effect in late April 2013. After the Ordinance has taken

effect, licensees may at the same time breach the Ordinance if they make any misrepresentation that may mislead prospective purchasers when promoting first-hand residential properties. Under the Ordinance, any person who makes a fraudulent or reckless misrepresentation for the purpose of inducing another person to purchase any residential properties may commit an offence.



## 紀律研訊個案一 沒有告知客戶住宅物業存在違建工程

從業員在處理住宅物業租賃時，應該採取步驟以確認有關物業是否涉及違例建築工程，並要告知準租客相關的事實和風險，否則有可能被紀律處分。

一名從業員在一宗住宅物業租賃中擔任雙邊代理。在安排準租客視察物業兩次之後，該從業員安排準租客簽署臨時租約(臨約)。在簽訂租約前，該從業員沒有就物業進行土地查冊，亦沒有向準租客提供查冊結果的文本。

準租客在簽署臨約並支付訂金之後，其友人就該物業進行土地查冊，才發現該物業的查冊紀錄上註冊了由建築事務監督發出的要求拆卸／改動違建工程命令，而該命令未獲遵從。準租客擔心違建工程帶來

的風險，遂要求與業主取消交易及取回訂金，但遭拒絕，於是向監管局作出投訴。

監管局紀律委員會就該個案進行紀律研訊。委員會認為，該名從業員受業主委託放租物業，並沒有遵照相關的執業通告規定，查核該物業的土地查冊是否已獲遵從，也沒有告知客戶有關事實。此外，該名從業員並沒有在緊接該物業的租約訂立之前，就該物業進行土地查冊，並向租客提供一份土地查冊結果，因而違反了《常規規例》第13(4)條的規定。因此，紀律委員會決定譴責該名從業員及罰款港幣3,000元，並在牌照上附加條件，要求該從業員在兩年內取得持續專業進修計劃下24個核心科目的學分。

## Disciplinary hearing case — Failing to inform the client of the existence of unauthorised building works in a residential property

When handling the leasing of residential properties, practitioners should take steps to ascertain whether unauthorised building works are involved and inform prospective tenants of the relevant facts and risks. Otherwise, practitioners may be subject to disciplinary actions by the EAA.

A practitioner acted for both sides in a lease transaction of a residential property. After arranging for the prospective tenant to inspect the property twice, the practitioner arranged for the tenant to sign a provisional tenancy agreement (PTA). Before the signing of the PTA, the practitioner had not conducted a land search in respect of the property, and hence did not provide a copy of the land search to the prospective tenant.

After the prospective tenant signed the PTA and paid a deposit for renting the property, his friend conducted a land search in respect of the property. From the land search, the tenant discovered that a building order for the demolition/alteration of unauthorised building work had been registered against the property and it had not been complied with. Worried of the risks involved in the unauthorised building works, the tenant requested to

cancel the deal with the landlord and claim back the deposit through the agent but was rejected. He then lodged a complaint with the EAA.

The Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the practitioner failed to inform the tenant that a building order for the demolition/alteration of unauthorised building works had been registered against the property and whether the order had been complied with, thus failing to comply with the guidelines of a relevant practice circular. The practitioner also failed to carry out a land search in respect of the property immediately before the PTA was entered into and supply a copy of the land search to the tenant and that breached section 13(4) of the Practice Regulation. Hence, the practitioner was reprimanded and fined HK\$3,000. A condition was also attached to the licence, requiring the practitioner to acquire 24 points in core subjects of the CPD Scheme in two years.





## 執業問與答 Practice Q & A

由本期《專業天地》起，我們會解答與持牌人執業息息相關的一些常見提問。

Starting from this issue of *Horizons*, we will list out the answers to selected enquiries commonly raised by licensees concerning estate agency practice.

**問：**向準買家提供優惠是銷售一手住宅物業的常用手法，亦經常有準買家向我們查問有否提供現金回贈。在《一手住宅物業銷售條例》（「《銷售條例》」）生效後，我們還可以向準買家提供優惠嗎？

**答：**持牌人是否可就其代理的一手樓盤向準買家提供優惠，需視乎持牌人所屬的地產代理公司與賣方就有關銷售該樓盤而訂立的協議或委託書的內容，亦屬於該地產代理公司的商業決定。《銷售條例》只要求賣方必須在相關價單內列明所提供優惠的資料，當中並無就地產代理在提供優惠方面有任何訂明。然而，監管局曾發出執業通告（編號13-04(CR)），提醒持牌人在處理一手住宅物業銷售時要注意的事項，當中包括提供優惠的指引。

在提供優惠時，持牌人必須將優惠詳情告知準買家，並說明該優惠是由賣方提供，抑或是由其所屬的地產代理公司提供。如果優惠是由地產代理公司提供，持牌人必須將其提供予準買家的任何優惠以書面形式向準買家作出，並具體列明提供優惠的條款及形式。

**Q: Providing incentives to prospective purchasers is a common tactic in first sale. It is also often that prospective purchasers ask us for cash rebates. Are we allowed to provide incentives to prospective purchasers after the Residential Properties (First-hand Sales) Ordinance ("the Ordinance") has come into effect?**

**A:** Whether licensees can provide incentives to purchasers depends on the terms of agreement or letter of appointment signed between licensees and vendors. It is also a commercial decision made by licensees. The Ordinance only requires vendors to set out in the relevant price list the incentives they offer. There is no provision on what estate agents must do when offering incentives. However, the EAA issued a Practice Circular (no 13-04 (CR)) to remind licensees of the points to note when handling first sale of residential properties and there are guidelines on providing incentives.

When providing incentives, licensees must inform the prospective purchaser of the details and state clearly whether the incentives are offered by the vendors or their estate agency companies. If the incentives are offered by estate agencies, licensees must set out in writing any incentives that they have offered to the prospective purchaser, and stipulate clearly the terms and format of the incentives so offered.

**問：**有一位準買家說他沒有準備銀行本票來抽籤購買一手住宅物業。我的公司可否為他開票，以他的名義向賣方入票抽籤？

**答：**在任何情況下，不論是否準買家主動要求，持牌人均不得向準買家提供或提出提供貸款，不論貸款的目的為何。

**Q: A prospective purchaser said he did not have a cashier's order to join the lot drawing for purchasing a first-hand residential property. May I submit a cashier's order issued by my agency company to the vendor for the lot drawing on behalf of the prospective purchaser?**

**A:** Under any circumstances, licensees must not offer or make loans, for any purpose, to a prospective purchaser, even if the prospective purchaser requests licensees to do so.

## 專題講座系列—《香港土地行政》

香港的土地由政府擁有，透過不同的方式租出或批出作各種用途。地產代理從業員若對香港的土地制度及批地政策有相關的認識，將有助他們日常執業。

就此，監管局於2013年10月17日舉辦一個以《香港土地行政》為題的持續專業進修計劃講座，由香港測量師學會現任產業測量組主席、該會前任會長吳恆廣先生，BBS向從業員講解香港的土地制度和政策。當日共有三百多名從業員出席講座，反應熱烈。

在講座中，吳先生首先回顧香港的土地租用制度，再從批租年期、地契類別和土地用途等各方面介紹各類不同的租契及批地條款，並講解土地政策的執行，以及批地政策對土地及房屋供應的影響。

吳先生重申，物業或土地的用途是受着政府批出該土地的批地條款、其他法例或相關條文所約束，因此，從業員在處理物業或土地的租賃或買賣時，在有需要的情況下，應查閱相關地契、分區計劃大綱圖及大廈公契等對該物業或土地的用途是否有任何限制或規定，以保障客戶的利益。

## Special Topic Series — Hong Kong Land Administration

Virtually all land in Hong Kong is owned by the Government and is leased or sold by the Government for various purposes through different means. Understanding the land system and land disposal policy would be helpful to estate agency practitioners in their daily practice.

In this connection, the EAA organised a CPD seminar on "Hong Kong Land Administration" on 17 October 2013. At the seminar, Sr Francis Ng, BBS, Chairman of the General Practice Division of the Hong Kong Institute of Surveyors (HKIS) and former President of the HKIS, briefed practitioners on the Hong Kong land policy and administration arrangement. The seminar was well received as over 300 practitioners attended.

At the seminar, Sr Ng first reviewed the background of the land tenure system. He elaborated on the lease terms, types and various land uses permitted under different types of land grant/government leases. He also explained the implementation of Hong Kong land disposal policy and how such policy would affect the supply of land and housing.

Sr Ng emphasised that the user of a property or land is restricted by the government lease, related ordinances or government regulations. Hence, to protect the interest of clients, practitioners should check the Conditions of Grant, outline zoning plan and deed of mutual covenant etc., for any restrictions or requirements set for the property or land, when needed.



吳恆廣先生向從業員講解香港的土地行政。

Sr Francis Ng explained land administration in Hong Kong to practitioners.





## 活動紀要 Events And Activities

2013年10月7日

來自台灣的地產代理業界代表團聯同香港地產代理商總會成員到訪監管局。

7 October 2013

A delegation from the Taiwan estate agency sector and members of the Hong Kong Real Estate Agencies General Association visit the EAA.



2013年10月29-30日

監管局參與於奧海城舉行的招聘進修博覽，藉此提升公眾對監管局工作的了解，特別是地產代理的入行門檻。攤位設有展板介紹監管局的主要職能和工作、有關地產代理發牌條件及資格考試等資訊。此外，監管局代表亦在博覽會上向公眾講解發牌制度及持續專業進修計劃。

29-30 October 2013

The EAA participates in a recruitment fair held at the Olympian City to enhance the public understanding of the EAA's work, in particular the entry requirements of the estate agency trade. Apart from introducing the key functions and work of the EAA, the EAA's exhibition booth also display information on the licensing requirements and qualifying examinations. Besides, a brief talk on the licensing regime and the Continuing Professional Development Scheme is delivered by a representative of the EAA.





# 統計數字

## Statistics



### 考試 Examinations

考試及考試日期 Examination and date	參加人數 No. of candidates	合格率 Pass rate
地產代理資格考試 Estate Agents Qualifying Examination		
19/3/2013	1,524	25.0%
3/6/2013	1,169	41.7%
11/9/2013	1,263	28.7%
13/12/2013	1,146	49.9%
營業員資格考試 Salespersons Qualifying Examination		
26/2/2013	1,141	43.3%
25/4/2013	1,065	38.8%
27/6/2013	948	48.7%
26/8/2013	877	20.9%
23/10/2013	669	45.4%
27/12/2013	708	44.1%



### 牌照數目 (截至2013年12月31日) Number of licences (as at 31/12/2013)

營業員牌照 Salesperson's Licence:	19,197
地產代理 (個人) 牌照 Estate Agent's Licence (Individual):	16,769
個人牌照總和 <b>Total no. of individual licences:</b>	<b>35,966</b>
地產代理 (公司) 牌照 Estate Agent's Licence (Company):	3,017



### 營業詳情說明書 (截至2013年12月31日) Number of statements of particulars of business (as at 31/12/2013)

合夥經營 Partnerships:	254
獨資經營 Sole proprietorships:	1,639
有限公司 Limited companies:	4,428
總數 <b>Total:</b>	<b>6,321</b>



### 接獲的投訴 (2013年1月至12月): Number of complaint cases received (January to December 2013)

494

統計數字  
Statistics

## 已處理的投訴個案結果\* (2013年1月至12月)

## Results of completed complaint cases\* (January to December 2013)

總數 Total  
**634**● (287) 指稱成立  
Substantiated● (145) 指稱不成立  
Unsubstantiated● (66) 資料不足  
Insufficient information to pursue● (136) 其他 (例如投訴人撤回投訴或因其他原因而終止調查)  
Others (include cases withdrawn or curtailed because of some other reasons)

\* 部分是往年接獲的個案

\* some cases were carried over from previous years



## 巡查次數 (2013年1月至12月)

## Number of compliance inspections (January to December 2013)

一手樓盤銷售處 First-sale sites:	1,475
代理商舖 Estate agency shops:	1,511
網上物業廣告 Online property advertisements:	600



## 巡查發現主動調查的個案 (2013年1月至12月)

## Number of cases arising from self-initiated investigations during inspections (January to December 2013)

主動調查的個案 :	95
Cases arising from self-initiated investigations	
主動調查而指稱成立的個案* :	105
Cases completed from self-initiated investigations and were substantiated*	

\* 部分是往年展開調查的個案

\* some cases were carried over from previous years



## 向持牌人或前持牌人採取的行動 (2013年1月至12月)\*

## Actions taken against licensees or ex-licensees (January to December 2013)\*

有關的持牌人或前持牌人人數 No. of licensees or ex-licensees	577
訓誡／譴責 Admonishment/reprimand	450
罰款 Fine	251
於牌照附加／更改條件 Attachment/alteration of conditions to licence	303
暫時吊銷牌照 Suspension	28
撤銷牌照 Revocation	12 <sup>#</sup>

\* 向持牌人或前持牌人作出的行動是根據《地產代理條例》而作出的判決，當中有部份可能屬於紀律性質，包括在發牌時或在其他情況下於牌照上附加條件。

\* These actions were taken pursuant to powers under the EAO. Some actions may be disciplinary in nature and others not, and they include the attachment of conditions to licences whether upon issuance or otherwise.

<sup>#</sup> 這12宗撤銷牌照個案內，11宗由牌照委員會裁定，一宗由紀律委員會裁定。<sup>#</sup> Among the 12 cases of revocation of licences, 11 cases were decided by the Licensing Committee and one was decided by the Disciplinary Committee.