

# *Inquiry Hearing Cases*

A Selection V



## Foreword

The Estate Agents Authority (“EAA”) issues this new booklet with the aim to enhancing licensees’ understanding of the relevant legal and regulatory requirements in handling property transactions through sharing certain real inquiry hearing cases, in a bid to promote quality service of the estate agency trade and to better protect the interests of consumers.

The facts of some inquiry hearing cases contained in this booklet have been adapted or modified as needed for easy reading, and the views expressed and stance taken are based on the facts and evidence presented to the Disciplinary Committee of the EAA at the material time.

## Disclaimer

The content and information contained in this booklet is only intended for general reference and should not be construed as a source of legal or professional advice. Readers are advised to seek legal or professional advice on matters encountered in specific situations. The EAA shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or in reliance on, any error, omission, statement or misstatement contained in the whole or any part of this booklet.

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### Notes:

All references to

1. "EAA" shall mean the Estate Agents Authority.
2. "Code of Ethics" shall mean the *Code of Ethics* issued by the Estate Agents Authority.
3. "Practice Circular" shall mean the practice circulars issued by the Estate Agents Authority.
4. "Continuing Professional Development Scheme" shall mean the Continuing Professional Development Scheme launched by the Estate Agents Authority.
5. "Land search" refers to the land register of a property in the Land Registry.

# 1 Misrepresentation or misleading client on property information

## 1.1 Misleading vendor about relevant property transaction price

Licensees must provide services to clients in an honest manner and must not make any misrepresentation that may mislead their clients, including information on the transaction prices of other properties. Otherwise they may be subject to disciplinary action by the EAA.

A salesperson acted for both the vendor and purchaser in a shop transaction. The vendor told the salesperson that he learnt from his neighbor that a shop near his was sold for more than \$10 million. The salesperson denied this and claimed the selling price was just over \$8 million, as the transaction was handled by her.

After that, the salesperson called the vendor, telling him that someone would like to buy his property for \$9 million and arranged for both parties to sign the Provisional Agreement for Sale and Purchase (“PASP”) later on. However, a month later, the vendor discovered that the shop nearby was actually sold for \$10 million, but not for just over \$8 million as the

salesperson had previously claimed. Feeling aggrieved, the vendor lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the salesperson made a misrepresentation to the vendor about the transaction price of the other property before arranging for the vendor to sign the PASP, not complying with paragraph 3.4.1 of the *Code of Ethics*, which states that “*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 thus reprimanded the salesperson and suspended her licence for 14 days. A condition was also attached to her licence, requiring her to obtain 12 points under the Continuing Professional Development Scheme in 12 months.

## 1.2 Misrepresentation on the permitted use of property

Licensees should protect the interests of their clients and should not make any misrepresentation to them. Otherwise, they may be subject to disciplinary action by the EAA.

A client was interested in renting a property for retail business and an estate agent introduced to her an “upstairs shop” in a commercial building. Though she heard from other estate agents that the permitted use of the said premises was for office purposes, she was told by this estate agent that there was no stipulation on the Deed of Mutual Covenant that the property was not allowed for retail use, and the use of “office” and “retail business” were both commercial in nature.

After being ensured by this estate agent, the client confirmed the leasing of the unit. Later on, the property management company refused to allow the property to be used for retail purpose, and rejected the renovation plan of that unit as it failed to comply with the Deed of Mutual Covenant and the occupation permit, which states that the premises is for “offices

with ancillary accommodation for non-domestic use” only. The tenant therefore had to terminate the tenancy agreement and lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the estate agent failed to remind the tenant to seek legal advice before entering into the provisional tenancy agreement, or to inform the tenant in advance of the risk of using the unit for retail use. Hence, she was in breach of paragraph 3.4.1 of the *Code of Ethics* which stipulates that “*Estate agents should protect and promote the interests of their clients.*”

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to reprimand her, impose a fine of \$3,000 and suspend her licence for 21 days. She was also required to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

### 1.3 Misleading tenant regarding unauthorised building works

Licensees must not provide misleading information to their clients about any possible unauthorised building works and should advise their clients to seek legal and professional advice. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent acted for both the tenant and the landlord in a leasing transaction. During the inspection of the property, the tenant client asked the estate agent whether the cockloft inside the property was duly authorised. The agent replied that the property did not have any illegal structure. After entering into the formal tenancy agreement, the client found out that the floor plan of the property retrieved from the Buildings Department did not reveal the existence of the cockloft and the cockloft was an illegal structure. The client cancelled the transaction finally and lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the estate agent misrepresented to the client that the property did not have any illegal

structure and failed to inform the client to seek legal advice about the risk of unauthorised building works of the property before arranging the client to proceed with the transaction.

Also, during the investigation of the case, the Committee found out that the estate agent failed to ensure that the representative of the corporate tenant was duly authorised to sign the Tenancy Agreement on behalf of the corporate tenant. Hence she failed to comply with 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”.

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the estate agent, the Committee reprimanded the estate agent and fined her \$1,000, suspended her licence for seven days and attached a condition to her licence requiring her to obtain 24 points under the Continuing Professional Development Scheme in 24 months.

### 1.4 Misrepresentation on the provision of public utilities

Licensees must not make any misrepresentation to clients on any information related to a property. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent was appointed as the dual agent in the tenancy of a street shop. During the property inspection, the potential tenant asked the estate agent whether there was any water supply in the property. He replied that there was both water and electricity supply.

Later, the estate agent arranged for the tenant to enter into a provisional tenancy agreement. After signing, the tenant discovered that the property did not have a water meter and he needed to apply one from the Water Supplies Department.

In addition, the tenant discovered that the estate agent had amended the provisional tenancy agreement without seeking his written consent

or arranging for him to initial against the relevant amendment. Feeling aggrieved, the tenant lodged a complaint with the EAA.

The estate agent did not verify whether there was a water meter installed for the property before he replied to the tenant. The EAA Disciplinary Committee found that the estate agent made a misrepresentation to the client and failed to protect and promote his interests. Therefore, he was in breach of paragraph 3.4.1 of the *Code of Ethics* issued by the EAA.

He was also in breach of paragraph 3.2.1 of the *Code of Ethics* regarding the improper handling of an amendment of a term of the provisional tenancy agreement mentioned above.

With regard to the above two breaches and having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Committee decided to reprimand him, suspend his licence for seven days, and attach conditions to his licence requiring him to obtain a total of 24 points under the Continuing Professional Development Scheme in 24 months.

# 2 Breaches relating to mortgage or stamp duty information

## 2.1 Failing to bring Special Stamp Duty to vendor's attention

Licensees should be conversant with the Government's measures for the property market so as to advise clients in a responsible manner. For example, licensees should bring to their clients' attention before entering into any Provisional Agreement for Sale and Purchase ("PASP") if the disposal of the property is subject to Special Stamp Duty ("SSD"). Otherwise, they may be subject to disciplinary action by the EAA.

A salesperson represented both the purchaser and the vendor in a residential property transaction. Prior to the signing of the PASP, the salesperson failed to bring to the attention of the vendor that the sale of that property was within 36 months of the vendor's acquisition, and as such, the sale would be subject to SSD. Later on, the vendor was told by the Inland Revenue Department that she would be liable to pay the SSD. Feeling aggrieved, the vendor lodged a complaint with the EAA. During investigation, it was also revealed that the salesperson had told the vendor that the purchaser was her niece but in fact it was her daughter.

The salesperson said that she was not aware of the SSD. The EAA Disciplinary Committee was of the view that she had failed to be fully conversant with the Estate Agents Ordinance (“EAO”), its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA, thus she was in breach of paragraph 3.2.1 of the *Code of Ethics* which 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*”. In addition, as she had told the vendor that the purchaser was her niece but in fact it was her daughter, she was also in breach of paragraph 3.7.2 of the *Code of Ethics*, which provides: “*estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”.

Having considered the nature of the case and the amount of money involved, the Disciplinary Committee reprimanded the salesperson, suspended her licence for 14 days, and attached a condition to her licence, requiring her to obtain 24 points under the Continuing Professional Development Scheme in 24 months as the total sanctions for the two breaches.

## 2.2 Misleading a client on the mortgage amount she will be offered

Licensees should not make any misrepresentation or promises about mortgages to clients. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent introduced a first-hand serviced apartment to a prospective purchaser and told her that she could definitely obtain a mortgage loan of 85% of the purchase price from the lending institution appointed by the developer.

Before signing the provisional agreement of sale and purchase, the prospective purchaser reconfirmed the mortgage loan amount with the estate agent and the agent reassured her that the loan amount would cover up to 85% of the property price.

However, a mortgage loan to the purchaser of only 40% of the property price was finally approved due to her financial situation. As a result, the

purchaser was unable to complete the transaction and her deposit was forfeited to the developer. Feeling aggrieved, she lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the estate agent should not have assured the purchaser that she would be able to obtain a certain amount of mortgage loan. The estate agent was in breach of paragraph 3.7.2 of the *Code of Ethics*, which stipulates: “*estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.*”

The Committee decided to reprimand the estate agent and suspend his licence for one month. A condition requiring him to obtain 12 points under the Continuing Professional Development Scheme in 12 months was also attached to his licence.

## 2.3 Misrepresentation on bank's valuation and mortgage offer

Licensees should not make any misrepresentation to prospective purchasers on the valuation of properties or make any promise on the mortgage terms. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent arranged for a prospective purchaser couple to inspect a property and enter into a Provisional Agreement for Sale and Purchase ("PASP") with \$3,960,000 as the purchase price. Before entering into the PASP, the estate agent told the couple that the valuation of the bank was \$4,100,000 and they could obtain an 80% mortgage loan.

However, it turned out that several banks valued the property within the range of \$3,350,000 to \$3,420,000 only. Moreover, the mortgage loan amount they were offered was just up to 50% of the property price because the property was not intended for self-use purpose.

Hence, the couple cancelled the transaction and lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the estate agent had made a misrepresentation to his clients on the valuation of the property. Thus, he was in breach of paragraph 3.4.1 of the *Code of Ethics* issued by the EAA, which stipulates: *“Estate agents and salespersons should protect and promote the interests of their clients”*.

In addition, he also failed to keep himself informed of the maximum loan-to-value ratio before advising his clients on the amount of mortgage loan they would be offered. Hence he was also in breach of paragraph 3.2.2 of the *Code of Ethics* which stipulates: *“Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market”*.

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent, fine him \$4,000 and attach conditions to his licence requiring him to obtain 24 points under the Continuing Professional Development Scheme in 24 months.

## 2.4 Misrepresentation on the amount of Stamp Duty

When providing information on stamp duty to clients, licensees must be prudent and should not make any misleading representations. Otherwise, they may be subject to disciplinary action by the EAA.

A salesperson introduced an industrial unit to a prospective purchaser. When the prospective purchaser asked about the ad valorem stamp duty (“stamp duty”) payable for the transaction, the salesperson told her that she did not have to pay any stamp duty if she sub-sold the property as confirmor before completing the transaction. Based on the above information, she agreed to purchase the unit and the salesperson arranged for her to enter into the provisional agreement for sale and purchase.

Later, upon signing the formal agreement for sale and purchase, the purchaser was advised by her lawyer that regardless of whether she sub-sold the property as confirmor or not, she was still liable to pay the stamp duty for buying the property. The purchaser then asked the salesperson

about it again who then realised he had made a mistake. The purchaser did not complete the transaction and her deposit of more than \$200,000 was forfeited to the vendor.

The EAA Disciplinary Committee was of the view that the salesperson made a misrepresentation on the payment of ad valorem stamp duty. He was in breach of paragraph 3.7.2 of the *Code of Ethics* issued by the EAA, which stipulates: “*estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.*” The committee decided to reprimand the salesperson, fine him \$1,000, and attached a condition to his licence, requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

# 3 Malpractice in the sale of First-hand residential property

## 3.1 Misrepresentation on the submission of registrations of intent

Licensees should not make any misrepresentation to clients in the sale of first-hand residential properties. Otherwise, they may be subject to disciplinary action by the EAA.

A salesperson arranged for a prospective purchaser and her fiancé to inspect a show flat of a first-hand residential development. When discussing the submission of registrations of intent of that development, the salesperson told the purchaser that she and her fiancé had to submit separate registrations of intent since they had not yet married. Also, she said that they could not purchase the property in joint names.

Later, when the purchaser entered into an agreement of sale and purchase of a property of that development, she requested the solicitor to include the name of her fiancé into the formal agreement. Through the solicitor, she discovered that the representation made by the salesperson

was not true. According to the vendor of the development, there was no restriction on unmarried couples submitting registrations of intent in joint names. Feeling misled by the salesperson, the purchaser lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the salesperson had made a misrepresentation to the client on the submission of registration of intent. Thus, she was in breach of paragraph 3.7.2 of the *Code of Ethics* issued by the EAA, which stipulates: “*estate agents and salespersons should avoid any practice which may bring discredit and/or dispute to the estate agency trade*”.

Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Committee decided to reprimand the salesperson, fine her \$3,000 and attach conditions to her licence requiring her to obtain 12 points under the Continuing Professional Development Scheme in 12 months.

### 3.2 Intercepting cars on the road to solicit business

The EAA has issued a Practice Circular (No.10-02 (CR)) setting out detailed guidelines on maintaining good order at first-sale sites. Licensees must comply with them or they might be subject to disciplinary action by the EAA.

A salesperson solicited business on the road outside a first-sale site. He intercepted a taxi heading to the site and approached the passengers to market the property.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that the salesperson had not complied with the guidelines in the Practice Circular, as he stood on the carriageway to intercept vehicles, endangering his own safety and the safety of drivers and other road users. He failed to comply with paragraph 3.2.1 of the *Code of Ethics*: *“estate agents and salesperson should be fully conversant with the Estate Agents Ordinance, its subsidiary legislation, 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*". As a result, the salesperson was admonished and fined \$1,000. A condition was also attached to his licence, requiring him to obtain 18 points from the Continuing Professional Development Scheme in 24 months.

As to the controller, who was responsible for overseeing the salesperson concerned at the first-sale site, as well as the estate agency company employing both the salesperson and the controller, they did not supervise their frontline staff properly and thus were in breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. They were reprimanded and fined \$10,000 and \$35,000 respectively.

### 3.3 Providing loans to potential purchasers

Licensees must not offer or make loans to any potential purchasers of first-hand residential properties. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent and a salesperson arranged for a potential purchaser to enter into a Provisional Agreement of Sale and Purchase for a first-hand residential property. As the prospective purchaser did not have sufficient money for the initial deposit on the spot, the estate agent and the salesperson offered him six cheques amounting to \$1,172,500 for the deposit, which said cheques were issued by the estate agency company that the estate agent and the salesperson worked for. However, the next day the purchaser did not repay the deposit money to the estate agency company.

After receiving a report on the case, the EAA conducted an investigation. The EAA Disciplinary Committee was of the view that the two licensees had failed to comply with the guidelines set out in Practice Circular (No.

13-04(CR)), which stipulates that licensees must not offer or make loans to a prospective purchaser, even if the prospective purchaser states that he does not have sufficient money for the payment of the deposit on the spot, whether in order to persuade a prospective purchaser to sign a Provisional Agreement of Sale and Purchase, or for any other purpose, and even if a prospective purchaser requests licensees to do so.

In addition, the estate agency company that employed the two licensees failed to establish proper procedures or systems to supervise and manage its business in order to ensure its employees comply with the provisions of the Estate Agents Ordinance, and its subsidiary legislation, the *Code of Ethics*, practice circulars and guidelines issued from time to time by the EAA. Thus, it was in breach of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Having considered the nature and gravity of the case and the disciplinary record of the two licensees, the Disciplinary Committee decided to reprimand them and fine them \$13,000 respectively. Their licences were suspended for seven days and a condition was attached to their licences requiring them to obtain 12 points under the Continuing Professional Development Scheme in 12 months. The estate agency company was also reprimanded and fined \$50,000.

### 3.4 Failure to fulfill the incentives promised to client

Licensees should fulfill the incentives they promised to offer to prospective purchasers when handling first-hand residential property transactions. Otherwise, they may be subject to disciplinary action by the EAA.

Two salespersons arranged an inspection to a show flat of a first-hand residential property for a prospective purchaser. During the visit, the prospective purchaser asked how much cash rebate could be offered to her if she bought the property through the salespersons. They promised to offer her 2% of the property price as cash rebate and to offer same ratio of the rebate to her relatives if they purchase the property through them.

Owing to the aforementioned promise, the purchaser and her relatives submitted registrations of intent for that new development through the estate agency company for which these two salespersons worked and signed the Provisional Agreement for Sale and Purchase respectively for four units of the development.

Later on, the two salespersons informed the purchaser that they could only offer 1.5% of the property price as cash rebate. Thus, the purchaser and her relatives refused to sign the confirmation letter of rebate and lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the two salespersons had failed to comply with the guidelines set out in Practice Circular (No. 13-04(CR)), which stipulates that licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered. They also brought discredit and disrepute to the estate agency trade and thus they were in breach of paragraph 3.7.2 of the *Code of Ethics*.

Having considered the behaviour of the salespersons and the amount of money involved, the Disciplinary Committee decided to reprimand them and fine them \$15,000 respectively. Their licences were suspended for two months and they were required to obtain 12 points under the Continuing Professional Development Scheme.

# 4 Misconduct and other malpractice

## 4.1 Failing to carry out a land search before entering into a tenancy agreement

An estate agent was appointed as a dual agent in the tenancy of a residential property. The property was not a self-contained unit (i.e. not an independent dwelling with separate cooking facilities and bathroom).

The agent failed to carry out a land search for the property and hence did not spot that there was a closure order issued under the Crimes Ordinance by the court. Without being informed of the closure order, the tenant rented the property but was subsequently evicted from the property.

Under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, estate agents must carry out a land search in respect of the property immediately before entering into a tenancy agreement in order to ascertain whether there are any subsisting encumbrances, such as court orders or mortgages, and to provide a copy of the land search to their tenant client. In this case, the licensee failed to carry out a land search for the property in the Land Registry and

hence failed to reveal the closure order issued by the court before the landlord and the tenant entered into the tenancy agreement.

According to Section 153B of the Crimes Ordinance, any property subject to a closure order are to be closed for six months. It will be an offence for anyone to enter the property or to interfere with anything used to close the property without lawful authority or reasonable excuse.

In this case, as the licensee did not comply with the requirement of carrying out a land search in the Land Registry, he failed to protect and promote the interest of his client and was in breach of paragraph 3.4.1 of the *Code of Ethics*, which stipulates: “*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 a result, the EAA Disciplinary Committee decided to suspend his licence for seven days and attach a condition to his licence requiring him to obtain 10 points under the Continuing Professional Development Scheme in one year.

### 4.2 Failure to disclose personal interests of the property to client

Licensees should disclose their own personal interests to their clients in relation to the properties they handle. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent arranged for a tenant to enter into a tenancy agreement in a leasing transaction. Throughout the transaction, the tenant had never met the landlord. Later on, the tenant discovered that the landlord's name stated in the tenancy agreement was the mother of the agent, and yet the land search revealed that the estate agent herself was in fact the registered owner.

The estate agent explained that the property was bought by her mother and she was only the registered owner. However, the EAA Disciplinary Committee was of the view that the estate agent had the intention to conceal the fact that she was the owner by writing her mother's name as the landlord in the tenancy agreement.

The EAA Disciplinary Committee found that the estate agent had failed to comply with the guidelines set out in Practice Circular (No. 08 - 03(CR)), which stipulate that an estate agent may not purchase or rent property from his client, and he may not sell or let his own property to his client unless he has made a full disclosure of all the relevant facts to his client before entering into any agreement with his client and has obtained his client's informed consent to such a transaction.

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent and suspend her licence for a month. A condition was also attached to her licence, requiring her to obtain 12 points under the Continuing Professional Development Scheme in 24 months.

### 4.3 Sending messages containing abusive content to client

Licensees must not send any messages containing abusive content or foul language to their clients. Otherwise, they may be subject to disciplinary action by the EAA.

A prospective purchaser and his wife visited the showroom of a first-sale site of a development and two salespersons accompanied them. A week later, the prospective purchaser informed the two salespersons that he was not going to use the estate agency service provided by their company. The prospective purchaser then received different mobile messages containing foul language from the two salespersons and from other unknown numbers, which were later found to be from the salespersons' colleagues. One of the salespersons even had a face-to-face quarrel with the prospective purchaser after finding out that he was not going to use their service. The prospective purchaser finally reported to the police and also lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that by sending mobile messages with foul language and abusive content to the prospective purchaser, the two salespersons and their colleagues had failed to comply with 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”.

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the two salespersons and their colleagues, the Committee reprimanded them and suspended all their licences for 21 days.

### 4.4 Cheating client to obtain the access card of the residential estate

Licensees should avoid any practice which may bring discredit to the estate agency trade. Otherwise, they may be subject to disciplinary action by the EAA.

A salesperson represented both a landlord and a tenant in a tenancy of a property in a residential estate. After the tenancy had been entered into, the salesperson asked the tenant to apply for an access card to the residential estate for her, and asked the tenant not to tell the landlord. She further asked the tenant to reimburse the access card application fee from the landlord and suggested him to tell the landlord that the access card user was his grandmother. Soon after the landlord discovered that the access card was for the salesperson's use, he cancelled it and lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the salesperson's conduct had brought discredit to the estate agency trade, and failed to comply with paragraph 3.7.2 of the *Code of Ethics* issued by the EAA, which stipulates: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.*"

Having considered the nature and gravity of the case, and the disciplinary record of the salesperson, the Committee decided to reprimand her, impose a fine of \$1,000 on her and suspend her licence for seven days. A condition was also attached to her licence requiring her to obtain 12 points under the Continuing Professional Development in 12 months.

# 5 Issuing non-compliant advertisement

## 5.1 Using photos of another property to advertise

Licensees must act in an honest manner and must not issue any advertisements with misleading or wrong information. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agency company posted an advertisement of a residential property for sale or rent with information of its block number, saleable area and gross floor area. Several photos showing the view of the property and its interior were also included.

However, the photos did not belong to the advertised property but belonged to another property located in the same block on a lower floor which shared the same direction and view. The staff of the estate agency company found the photos in the company computer database and used them. Later on, when the owner of the other property discovered the advertisement, she lodged a complaint with the EAA.

An inquiry hearing was conducted after an investigation. The EAA Disciplinary Committee was of the view that the estate agency company adopted the photos of another flat without carefully verifying the information when issuing the advertisement and thus was in breach of section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, which stipulates that *“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”*.

Having considered the nature and gravity of the case, the disciplinary record of the licensee and the sanctions imposed in similar cases, the estate agency company was reprimanded and fined \$11,500.

### 5.2 Non-compliant advertisement on social media

The Practice Circular (No. 13-04 (CR)) on the conduct of licensees in the first-sale of residential properties sets out guidelines regarding the provision of property information to prospective purchasers. Licensees must observe and comply with such guidelines. Failure to do so will be subject to disciplinary action by the EAA.

A licensee posted an advertisement on a social networking website, listing out prices of properties of a first-hand residential development before the vendor released the price list.

The EAA Disciplinary Committee was of the view that the licensee was in breach of the relevant Circular. The Circular stipulates that licensees must provide information to prospective purchasers only on the basis of the latest information contained in the sales brochure and documents prepared and provided by the vendor, and only after they have taken all reasonable steps and exercised all due diligence to verify the information. Licensees must not make any representation that may mislead prospective

purchasers and no advertisement shall be issued by licensees other than estate agency companies.

Therefore, the licensee failed to comply with paragraph 3.2.1 of the *Code of Ethics*: “*estate agents and sales persons should be fully conversant with the Estate Agents Ordinance, its subsidiary legislation, 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.*” The licensee was reprimanded and fined \$5,000. A condition was also attached to his licence, requiring him to obtain 12 points under the Continuing Professional Development Scheme in 12 months.

### 5.3 Advertising a property at a different price from that instructed by client

Licensees should not advertise a residential property at any price, rental or terms different from that instructed by the client concerned. Otherwise, they may be subject to disciplinary action by the EAA.

The EAA received an anonymous complaint regarding an online advertisement of a first-hand residential property posted by an estate agency company on an online property platform. The listing price of that property was \$16,000,000.

According to the price list on the Sales of First-hand Residential Properties Electronic Platform, the price of that development ranged from \$16,567,000 to \$21,541,000.

The estate agency company claimed that it received a special notice from the developer that the price could be adjusted to \$16,000,000 or below. However, upon EAA's enquiry, the developer said they did not instruct

any appointed estate agency companies to adjust the listing price other than that stated in the price list.

The EAA Disciplinary Committee found that the estate agency company issued an advertisement in which the property price stated was different from that instructed by the vendor. Thus, it was in breach of section 9(3) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation: *“A licensed estate agent shall not cause or permit to be advertised a residential property in respect of which he is acting as agent at a price or rental or on terms different from those instructed by the client concerned.”*

Having considered the nature and gravity of the case and the disciplinary record of that estate agency company, the EAA Disciplinary Committee reprimanded the estate agency company and fined it \$3,000.

### 5.4 Issuing an advertisement with incorrect property information

Licensees should exercise due care and due diligence in providing correct and accurate property information in advertisements. Otherwise, they may be subject to disciplinary action by the EAA.

The EAA received an anonymous complaint that an estate agency company had issued a non-compliant property advertisement on its company website.

The advertisement was about a 994-square-foot unit with a listed price of \$13.5 million. However, upon investigation, the EAA found that the said property was composed of two individual units which were owned by two different owners. It was not a single property as stated in the advertisement and the listed price of both properties was \$7 million each and the saleable area of the two units was 498 and 496 square feet respectively.

The EAA Disciplinary Committee was of the view that the estate agency

company failed to exercise due care and due diligence in ensuring the accuracy of the property information when issuing the advertisement for the properties. Therefore, it was in breach of paragraph 3.5.1 of the *Code of Ethics*, which stipulates: *“Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence”*

Having considered the nature and gravity of the case and the disciplinary record of the estate agency company, the Committee decided to reprimand the estate agency company and impose a fine of \$22,000.







Estate Agents Authority

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