



地產代理監管局
ESTATE AGENTS AUTHORITY

INQUIRY HEARING CASES

A Selection VI

Foreword

The Estate Agents Authority (“EAA”) publishes this 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. "EAO" shall mean the Estate Agents Ordinance.
3. "Code of Ethics" shall mean the *Code of Ethics* issued by the Estate Agents Authority.
4. "Practice Regulation" shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
5. "Licensing Regulation" shall mean the Estate Agents (Licensing) Regulation.
6. "Practice Circular" shall mean the practice circulars issued by the Estate Agents Authority.
7. "CPD Scheme" shall mean the Continuing Professional Development Scheme launched by the Estate Agents Authority.
8. "Land search" refers to the land register of property in the Land Registry.

1 *Regarding the sale of properties situated outside Hong Kong*

1.1 Non-compliant advertisement of uncompleted properties situated outside Hong Kong

Licensees should comply with the EAA guidelines on the sale of uncompleted properties situated outside Hong Kong (“UPOH”) when participating in the sale or issuing advertisements or promotional materials to promote UPOH. Otherwise, they may be subject to disciplinary action by the EAA.

The EAA received an anonymous complaint about an online advertisement regarding an UPOH. During the investigation, the EAA staff discovered four estate agency companies had issued online advertisements related to the same UPOH, all of which failed to comply with the relevant guidelines of the EAA.

It was also found that the four estate agency companies failed to perform due diligence on the relevant vendor and/or the development before issuing the advertisements or promotional materials.

The EAA Disciplinary Committee was of the view that the four estate agency companies were in breach of paragraphs 9, 10 and 14(a), (b) and (c) of Practice Circular (No. 17-03(CR)) as they failed to perform due diligence on the vendor and/or the development before participating in the promotional activities for the UPOH and failed to state clearly the following in the advertisement: (a) the development permit or approval numbers, and name of the

relevant authority which issued the permit or approval; (b) whether or not purchasers are acquiring an interest in the land, the building to be erected thereon, and/or a right to use and occupy the properties in the building; and (c) a prominent statement reminding purchasers that purchasing UPOH is complicated and contains risk.

Besides, two of the companies failed to comply with Practice Circular (No.18-02(CR)) about property advertisements as they failed to state clearly and legibly the property number. Another one of the companies failed to state the number of its licence or the relevant statement of particulars of business and business name in the advertisement, which is in breach of section 14(1)(c) of the Licensing Regulation.

The Disciplinary Committee found that all four companies were in breach of paragraph 3.2.1 of the *Code of Ethics*, which stipulates: “*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.*”

Having considered the nature and gravity of the case and the disciplinary records of the estate agency companies, the Disciplinary Committee decided to reprimand all four companies and impose fines on each of them from \$54,500 to \$56,000 respectively.

1.2 Issuing non-compliant advertisement of an uncompleted property development in the United Kingdom

Licensees are required to comply with the relevant guidelines issued by the EAA when issuing advertisements for uncompleted properties situated outside Hong Kong. Otherwise, they may be subject to disciplinary action by the EAA.

During an inspection on printed advertisements, the EAA staff discovered that an advertisement of an uncompleted property development in the United Kingdom issued by a licensed estate agency company did not comply with the requirements under the Practice Circular (No.17-03(CR)). It did not state clearly the development permit or approval numbers, name of the relevant authority which issued such documents, and whether or not purchasers are acquiring an interest in the land, the building to be erected, and/or a right to use and occupy the properties in the building.

The licensed estate agency company admitted their negligence and that they did not read the related Practice Circular carefully. They said that they would comply with the relevant guidelines in the future.

The EAA Disciplinary Committee found that the estate agency company failed to comply with the guidelines of Practice Circular

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(No. 17-03(CR)). Hence, it was in breach of paragraph 3.2.1 of the *Code of Ethics* issued by the EAA, which stipulates: *“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.”*

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 imposed a fine of \$3,000 on it.

2 Failing to comply with the AML/CTF requirements

2.1 Failing to conduct Customer Due Diligence of the vendor

Licensees are required to carry out Customer Due Diligence (“CDD”), regardless of the type of property, according to the EAA guidelines under the Anti-Money Laundering (“AML”) and Counter-Terrorist Financing (“CTF”) Ordinance. Otherwise, they may be subject to disciplinary action by the EAA.

During an inspection, an estate agency company was requested to provide the relevant documents and records of property transactions they had completed.

After reviewing the documents, the EAA staff discovered that the estate agency company failed to complete the verification of the corporate vendor’s identity in two transactions of a first-hand residential development before establishing the business relationship with the corporate vendor.

The EAA Disciplinary Committee was of the view that the estate agency company failed to comply with the guidelines of Practice Circular (No.18-01(CR)) that: *“licensees must carry out CDD: (a) before establishing a business relationship with the customer; (b) before performing for the customer any occasional transaction that involves an amount equal to or exceeding an aggregate value of \$120,000, whether carried out in a single operation or several operations that appear to the licensee to be linked;...”*

Hence, the estate agency company was in breach of paragraph 3.2.1 of the *Code of Ethics*, which states that “*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.*”

Having considered the nature and gravity of the case and the disciplinary record of that estate agency company, the Disciplinary Committee decided to reprimand the company and impose a fine of \$10,000.

2.2 Failing to establish proper procedures or systems to ensure compliance of the AML/CTF guidelines

Estate agents should set up proper procedures to supervise their business to ensure their employees or persons under their control comply with the EAO, its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA. Otherwise, they may be subject to disciplinary action by the EAA.

An estate agent runs his estate agency business as a sole proprietor. During a compliance inspection on the Anti-Money Laundering (“AML”) / Counter-Terrorist Financing (“CTF”) regulations, the EAA staff requested the estate agent to provide relevant documents and records of property transactions his agency had completed.

After reviewing the documents, a salesperson employed by the estate agent was found to have failed to conduct Customer Due Diligence (“CDD”) when handling the transaction of a second-hand residential property. She failed to complete the verification of the identities of the purchaser and the vendor before arranging for both parties to enter into the provisional agreement for sale and purchase.

Failing to comply with the AML/CTF requirements

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with the guidelines of Practice Circular (No.18-01(CR)) regarding CDD. Therefore, she was in breach of paragraph 3.2.1 of the *Code of Ethics*.

Besides, the Disciplinary Committee also found that the estate agent failed to establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the EAO, its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA. Hence, the estate agent was in breach of section 15 of the Practice Regulation.

Having considered the nature and gravity of the case and the disciplinary record of the estate agent and the salesperson, the Disciplinary Committee decided to reprimand both of them and required them to obtain 12 points in the CPD Scheme within 12 months. Moreover, a fine of \$3,000 was imposed on the estate agent.

Malpractice in handling tenancy

3.1 Arranging for only one of the registered owners to enter into a tenancy agreement

Licensees must not arrange the signing of a provisional tenancy agreement without the consent of all the registered owners of a property under the ownership of a tenancy in common, or proceed with any transaction of that property without proper authorisation by the parties concerned. Otherwise, they may be subject to disciplinary action by the EAA.

A salesperson was appointed by the landlord for the leasing of a property which is owned by two persons in the form of a tenancy in common. When he and the tenant's agent arranged for the tenant to enter into the provisional tenancy agreement, he informed the tenant's estate agent that there was a lawsuit between the two landlords for the ownership of that property and so only the signature of one of the landlords was needed. The tenancy agreement was then entered into by the tenant and one of the landlords and the tenant paid the deposit.

Later, the other landlord of the concerned property whose name was not included in the tenancy agreement, discovered that the property was leased out without her consent and knowledge. Believing that the salesperson and the estate agent should not have arranged the leasing of the property without her authorisation, she lodged a complaint with the EAA.

As the land search showed that the property was owned by two persons, but the two licensees only arranged for one of the landlords to enter into the tenancy agreement, the EAA Disciplinary Committee concluded that they were in breach of 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.*”

Having considered the nature and gravity of the case and their disciplinary record, the Disciplinary Committee decided to reprimand them, attach a condition to their licences requiring them to obtain 12 points under the EAA’s CPD Scheme in 12 months, and their licences were also suspended for one month respectively.

3.2 Handling the tenancy of licensed squatter structures which cannot be leased

When handling property transactions on rural land, licensees should verify the ownership of the property carefully and check whether it is allowed to be resold or leased. Otherwise, their clients may suffer loss and they may be subject to disciplinary action by the EAA.

An estate agent acted for a tenant in renting a squatter structure located on rural land in the New Territories. She arranged for a man who claimed to be the landlord of the structure to enter into the provisional and formal tenancy agreements with the tenant. She informed the tenant that the structure was located on private land. In fact it was a Government licensed structure which cannot be leased and the man who claimed to be the landlord was only the licensee of the land. Later, the tenant was informed by officials of the Squatter Control and Clearance Office that the structure was located on Government land and could not be leased. The tenant then lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the estate agent had failed to verify the ownership of the structure and whether the structure could be leased as a residential property before arranging for her client to enter into a tenancy agreement. Therefore, she 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.”

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, impose a fine of \$5,000 and suspend her licence for 14 days. A condition was also attached to her licence requiring her to obtain 12 points of the “Compliance and Effective Management” courses/seminars under the CPD Scheme in 12 months.

4 *Providing inaccurate property information*

4.1 Providing an inaccurate floor plan

Licensees should exercise due care and due diligence when providing property information to clients. They should verify the information and advise their clients to seek professional advice if they are in doubt of the accuracy of the property information. Otherwise, they may be subject to disciplinary action by the EAA.

A prospective purchaser told an estate agent that he was interested in purchasing a property with a flat roof. The estate agent then introduced a property to him. During the inspection, the estate agent provided the prospective purchaser a floor plan purportedly showing the ambit of the property and claimed that the area of the bedroom, the living room and the flat roof were all included in the floor plan.

After entering into the provisional agreement for sale and purchase with the estate agent, the purchaser found out from the solicitor that the assignment plan registered at the Land Registry was different from the floor plan provided by the estate agent, i.e. a portion of the flat roof actually did not belong to the property. Feeling aggrieved, the purchaser lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the estate agent had the duty to ensure the accuracy of the floor plan that he provided to his client, but he failed to verify the floor plan before

giving it to the purchaser and also failed to remind the purchaser to seek professional advice on the accuracy of the ambit of the property shown on the floor plan. Hence, he was in breach of paragraphs 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 agent, the Disciplinary Committee decided to reprimand him, impose a fine of \$5,000 and require him to obtain 12 points in the CPD Scheme within 12 months.

4.2 Failing to inform a purchaser about undischarged building orders of the property and the relevant risk

Licensees should inform the purchaser about undischarged building orders of the property, the risk of purchasing such property and to remind the purchaser to seek legal advice prior to signing the provisional agreement for sale and purchase (“PASP”). Otherwise, they may be subject to disciplinary action by the EAA.

During the viewing of a property with a prospective purchaser, an estate agent did not inform her client that the property had four undischarged building orders registered in the Land Register even though she knew about it. Prior to signing the PASP, the prospective purchaser read the land search record and found the four undischarged building orders. He asked the estate agent about them and in response, she told him that they were about general building maintenance. However, one of the orders was actually about the property being classified as a “Dangerous Building”. Moreover, the estate agent also neither informed the prospective purchaser about the risk of purchasing this property with these building orders nor advised him to seek legal advice before signing the PASP. Later on, the purchaser found out the truth from his lawyer and then lodged a complaint with the EAA.

The EAA Disciplinary Committee found that the estate agent failed to comply with paragraph 3.4.1 of the *Code of Ethics* issued by

the EAA, 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.”

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 impose a fine of \$10,000 on her. A condition was also attached to her licence requiring her to obtain 12 points of the CPD Scheme in 12 months, and of which at least 3 points shall be acquired from seminars or lectures on the land search subject.

4.3 Failing to inform a client that the property involved an assignment at nil consideration

Before arranging for clients to enter into the provisional sale and purchase agreement (“PASP”), licensees must inform the purchaser(s) if the relevant property involves a Deed of Family Arrangement and/or an assignment at nil consideration and advise them to seek independent legal advice. Otherwise, licensees may be subject to disciplinary action by the EAA.

In a property transaction, a salesperson arranged for the purchaser to enter into a PASP. However, the purchaser was later informed by his solicitor that the property involved a Deed of Family Arrangement which might affect his mortgage application.

Subsequently, all the purchaser’s mortgage applications from different banks were rejected. As a result, he cancelled the transaction and his deposit was forfeited. Feeling dissatisfied that the salesperson did not inform him that the property had a Deed of Family Arrangement registered at the land registry, nor of the potential risks relating to the title of the property, he lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the salesperson failed to inform the prospective purchaser that the property involved a Deed of Family Arrangement and/or an

assignment at nil consideration and failed to advise the prospective purchaser to seek legal advice before arranging for him to enter into the PASP. Hence, the salesperson was in breach of paragraph 3.4.1 of the *Code of Ethics*, which states that “*Estate agents and salespersons should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.*”

Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Disciplinary Committee decided to reprimand him, and impose a fine of \$8,000 and require him to obtain 12 points in the CPD Scheme within 12 months.

5 Breaches relating to providing mortgage information

5.1 Giving an assurance on the mortgage amount that could be obtained

Licensees must not give any assurances to clients that a certain amount of mortgage loan or terms could be successfully obtained. They should advise prospective purchasers to make enquiries directly with the banks or finance institutions concerned. Otherwise, they may be disciplined by the EAA.

A salesperson arranged for a prospective purchaser to inspect a first-hand residential property. The prospective purchaser said the price was too high to afford. The salesperson then told her that she could obtain a mortgage loan of 80% of the property price through a designated mortgage services company. Relying on this statement by the salesperson, she decided to purchase the property.

After entering into the provisional agreement for sale and purchase (“PASP”), the purchaser contacted the designated mortgage services company to apply for a mortgage loan. However, the company informed her that she could only obtain a loan of 50% of the property price unless she could provide another property for refinancing. Being unable to get the mortgage loan, she cancelled the transaction and lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that before arranging for the purchaser to sign the PASP, the salesperson

should not have made any statement to assure the purchaser that she could successfully obtain a mortgage loan to finance her purchase.

Hence, he failed to comply with the guidelines set out in Practice Circular (No. 13-04(CR)) and thus was in breach of paragraph 3.2.1 of the *Code of Ethics* which stipulates: *“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.”*

Having considered the nature and gravity of the case, and the disciplinary record of the salesperson, the Committee decided to reprimand him, and imposed on him a fine of \$7,000.

5.2 Providing inaccurate mortgage information to a purchaser who is a non-Hong Kong resident

Licensees must not provide any inaccurate information on mortgage plans to clients or give any assurance that a certain amount of mortgage loan or terms could be successfully obtained. Otherwise, they may be disciplined by the EAA.

An estate agent arranged for a prospective purchaser to inspect an industrial property. The prospective purchaser, who is not a Hong Kong resident, asked the estate agent if she could obtain a mortgage from a bank in Hong Kong. The estate agent replied that she could obtain a mortgage loan of 80% of the property price. Before entering into the provisional agreement for sale and purchase, the estate agent reconfirmed the client on the interest rate, amount of 20% down payment and the amount of mortgage loan she could obtain.

Later, the purchaser visited several banks in Hong Kong to make enquiries for a mortgage loan. However, most of the banks refused to provide her a mortgage loan of the property. Only one bank indicated that as her main source of income was outside Hong Kong, the bank could only grant her a mortgage loan of 30% of the property price. She finally cancelled the transaction and lodged a complaint with the EAA.

Breaches relating to providing mortgage information

The EAA Disciplinary Committee was of the view that the estate agent made a misrepresentation on mortgage information to his client without being fully conversant with the measures of the Hong Kong Monetary Authority (“HKMA”). According to the guidelines issued by HKMA at the material time, the maximum debt-servicing ratio for commercial and industrial properties for which an applicants’ income is mainly derived from outside Hong Kong is 30% of the property price.

Hence, the estate agent was in breach of paragraph 3.2.2 of the *Code of Ethics* which states that *“Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market in order to be in a position to advise their clients in a responsible manner.”*

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee decided to reprimand him, impose a fine of \$2,000 and attached a condition to his licence, requiring him to obtain 12 points under the EAA’s CPD Scheme in 12 months.

5.3 Making a misrepresentation on mortgage information of a first-hand residential property

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

A salesperson introduced a first-hand residential property to a prospective purchaser and used one of the units of that development with a listing price of over \$6,000,000 as an example to explain to her the calculation of a mortgage plan. The salesperson told the prospective purchaser that she could obtain a mortgage loan of 80% of the purchase price from a bank under the Mortgage Insurance Programme (“MIP”) launched by The Hong Kong Mortgage Corporation Limited.

Based on the above information, the purchaser decided to purchase one of the units at a price of \$6,851,000 and entered into the provisional agreement of sale and purchase. However, she was then informed by different banks that she was unable to obtain an 80% mortgage loan as the property price was over \$6,000,000.

As a result, the purchaser could only obtain a mortgage of 60% of the property price and had to borrow money from her family in order to complete the transaction. Feeling aggrieved, she lodged a complaint with the EAA.

Breaches relating to providing mortgage information

The EAA Disciplinary Committee found that the salesperson had made a misrepresentation to his client on mortgage information. According to the MIP, a mortgage loan of up to 80% loan-to-value ratio is applicable to property values up to \$6,000,000 only.

Therefore, the salesperson was 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 salesperson, the Committee decided to reprimand him, impose a fine of \$8,000 and attach a condition to his licence requiring him to obtain 12 points under the CPD Scheme in 12 months, of which at least 2 CPD points shall be acquired from seminars or lectures on the first-sale residential property subject.

6 *Malpractice in the sale of first-hand residential properties*

6.1 **Promoting a first-hand residential property with a pull-up banner**

When participating in the promotion of first-hand residential properties, licensees should be aware that property advertisements may only be issued by estate agency companies, and placing promotional materials and conducting business-soliciting activities that would block public places are not allowed. Such non-compliances may be subject to disciplinary action by the EAA.

A salesperson placed a pull-up banner advertisement of a first-hand residential property on a pedestrian path outside a shopping mall and distributed promotional leaflets of the said property to passers-by. When an EAA staff walked close to the advertisement, the salesperson intercepted him to distribute a promotional leaflet bearing his contact information and explained the details of the property to the EAA staff. The EAA staff then warned the salesperson and asked him to remove the pull-up banner and stop distributing the promotional leaflets.

The EAA Disciplinary Committee was of the view that the salesperson was in breach of Practice Circular (No.13-04(CR)) as he issued the promotional leaflet in his own capacity and not in the company's and thus failed to comply with paragraph 3.2.1 of the *Code of Ethics*. He also failed to comply with paragraph 3.7.2 of the *Code of Ethics*, which states "*estate agents and salespersons*

should avoid any practice which may bring discredit and/or disrepute to the estate agency trade” as he placed advertising materials and solicit business in public places.

Having considered the nature and gravity of the case, as well as the disciplinary record of the salesperson, the Disciplinary Committee decided to reprimand him, impose a fine of \$2,500, and attached a condition to his licence, requiring him to obtain 12 points under the CPD Scheme in 12 months.

6.2 Offering a loan to a prospective purchaser of a first-hand residential property

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

An estate agent arranged for a prospective purchaser to view a show flat of a first-hand residential development. After the inspection, the prospective purchaser was persuaded by the estate agent to purchase an unit of the development and she finally signed a provisional agreement for sale and purchase. However, after paying \$100,000 with her credit card as part of the deposit, the prospective purchaser realised that the handling charges of her credit card company was too high and she decided to pay the remaining deposit of \$600,000 by cheque.

As the prospective purchaser could not obtain her own cheque book before the first-sale site closed, the estate agent offered her a cheque issued by the estate agency company to pay the remaining deposit to the developer, and in return the prospective purchaser was asked to repay them with her own cheque the next morning. However, later that night, the prospective purchaser changed her mind and decided to cancel the deal due to the heavy stamp duty, and her deposit of \$100,000 was forfeited. She blamed the estate agent for over-persuading her to make the wrong purchase decision and lodged a complaint to the EAA.

The EAA Disciplinary Committee found that the estate agent and the estate agency company he worked for failed to comply with the guidelines set out in the Practice Circular (No. 13-04 (CR)), which states that licensees must not offer or make loans to a prospective purchaser. Hence, they were in breach of paragraph 3.2.1 of the *Code of Ethics* which states that “*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, the estate agency also violated section 15 of the Practice Regulation as it failed to establish proper procedures and systems to ensure that employees or persons under its control comply with the EAO.

Having considered the nature and gravity of the case and the disciplinary record of the estate agency company, the Committee decided to reprimand the company and impose a fine of \$150,000. The estate agent concerned was reprimanded and fined \$30,000. His licence was also suspended for six weeks and a condition was attached to his licence requiring him to obtain 12 points under the CPD Scheme in 12 months.



Malpractice in issuing advertisements

7.1 Failing to state the Property Number, advertisement date and saleable area on the property advertisement

When issuing property advertisements, estate agency companies must state clearly and legibly the Property Number(s) of the properties advertised and the date on which the advertisements are issued; and if the floor area information of the residential property is mentioned, they should provide the saleable area information obtained from the Rating and Valuation Department (“RVD”) or as stipulated in the agreement for sale and purchase of the first assignment of the property (“First Agreement”). Otherwise, they may be subject to disciplinary action by the EAA.

The EAA received a complaint claiming that an estate agency company did not state clearly and legibly the Property Number and the advertisement date. During the investigation, the EAA staff required the company to provide two residential property advertisements for checking. In the advertisements, the saleable area of the two properties was 512 sq. ft. and 426 sq. ft. respectively. However, according to the RVD record, the actual saleable area of the two properties should be 509 sq. ft. and 413 sq. ft., and the saleable areas of the two properties were 531 sq. ft. and 438 sq. ft. as respectively stipulated in the First Agreement. Also, the estate agency company failed to state the Property Number and the advertisement date on both of the advertisements.

The EAA Disciplinary Committee found that the estate agency company failed to comply with paragraph 3.2.1 of the *Code of Ethics*, which states that *“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”* and also breached the Practice Circular (No. 18-02 (CR)) issued by the EAA by failing to state clearly and legibly or ensure that it was stated clearly and legibly the Property Number(s) of the properties advertised and the date on which the advertisements are issued or updated. It also breached the Practice Circular (No. 12-02 (CR)) by failing to provide in the advertisement the saleable area of the property which can be obtained from the RVD or as stipulated in the First Agreement of the property.

Having considered the nature and gravity of the case and their disciplinary record, the Disciplinary Committee decided to reprimand the estate agency company, and impose a total fine of \$10,000 as the sanction for the three breaches.

7.2 Advertising in relation to its estate agency business with misleading information

Estate agency companies must not put up an advertisement in relation to their estate agency business with misleading information. Otherwise, they may be disciplined by the EAA.

An estate agency company published an advertisement in a newspaper stating that it acted for a developer in its acquisition of a number of blocks on a specific street. However, the wording of the advertisement also mentioned some other blocks which caused a misleading impression to the public that the estate agency company had helped the developer to successfully acquire those blocks, which was not true. As some owners of these blocks did not engage the estate agency company concerned to sell their properties, annoyances were caused to these owners by the misleading advertisement, and thus they lodged a complaint to the EAA.

The EAA Disciplinary Committee was of the view that the estate agency company published an advertisement which contained misleading information and had caused confusion to members of the public. Hence, it 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.*”

Malpractice in issuing advertisements

Having considered the nature and gravity of the case, and the disciplinary record of the estate agency company, the Committee decided to reprimand it and impose a fine of \$15,000.

7.3 Issuing an advertisement containing misleading wording

When issuing property advertisements, estate agency companies must not include any statements or material particulars that are false or misleading. Otherwise, they may be subject to disciplinary action by the EAA.

During a compliance inspection, an estate agency company was requested by the EAA to provide the prescribed information of a residential property being advertised in its shop window. The signed Estate Agency Agreement (Form 5) revealed that the landlord of the property had appointed the company for leasing only. However, the advertisement included wording such as “\$8.99 million”, which might mislead consumers to think that the property was for sale.

The EAA Disciplinary Committee was of the view that the estate agency company issued an advertisement which included statements or material particulars that were false or misleading. Hence, the company was in breach of section 9(1) of the Practice Regulation.

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 \$38,000.

7.4 Posting photos of another flat in a property advertisement

Licensees must not use photos which are not taken from the property being advertised in advertisements. Otherwise, they may be disciplined by the EAA for issuing a false or misleading advertisement.

A vendor appointed an estate agency company to sell a property she owned. Later, she found photos of her property being shown to advertise another property, which was not hers, on the website of the estate agency company. Feeling discontent that her own property photos were being used to promote another property, she lodged a complaint against the estate agency company.

In replying to the EAA's enquiries during investigation, the estate agency company said that they had warned the relevant estate agent after the incident was brought to their attention. The company also said that it has monitoring measures to ensure the compliance of its staff to the requirements and guidelines issued by the EAA. The company assured that it would strengthen the supervision of the branch's operation so to avoid similar mistake from happening again.

The EAA Disciplinary Committee was of the view that the estate agency company issued an advertisement wholly or partly relating

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to its estate agency business which includes any statement or particular that is false or misleading in a material particular. Hence, the company was in breach of section 9(1) of the Practice Regulation.

Having considered the nature and gravity of the case, the sanctions for similar cases and the disciplinary record of the estate agency company, the Committee decided to reprimand it and impose a fine of \$40,000.



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