

# 上 産 代 理 監 管 局 ESTATE AGENTS AUTHORITY



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局方必須依循《競爭條例》的精神,不能 禁止代理提供優惠或回贈,以免損害消費 者的利益。

The EAA must follow the spirit of the Ordinance and cannot prohibit agents from providing incentives or rebates, which may jeopardise consumers' interest.

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# 佣金與《競爭條例》

# Commission and Competition Ordinance

前有地產代理被競爭事務委員會(「競委會」)入稟控告他們涉嫌合謀訂定佣金比率,違反《競爭條例》「第一行為守則」。筆者希望在此欄目談談這個持牌人關注的問題。

首先,筆者希望再提醒地產代理公司應自行獨立決定或與客戶個別協商其收取的佣金率及他們向客戶提供的折扣、回贈及優惠;而非採用或跟從行業中的所謂「行規」或「標準」佣金率、或以任何形式集體訂定的佣金率。否則,便有可能違反《競爭條例》下的「第一行為守則」。

持牌人對佣金問題當然關注。事實上,局方 曾就地產代理向客戶提供優惠的問題向競委 會徵詢意見,競委會回覆表示,地產代理向 客戶提供優惠(例如現金或佣金回贈),會 被視為一種地產代理之間的價格競爭。因 此,基於《競爭條例》及政府採納有助競爭 的原則,監管局不應就佣金金額或比率向地 產代理施以任何規定,而禁止代理向客戶提 供優惠或回贈亦不恰當。

筆者深深明白,一個專業的地產代理,需要 花很多功夫才能促成物業交易,理應有權獲 得合理回報。然而,尤其在樓市淡靜的情況 下,競爭激烈無疑是市場定律。我希望持牌 人明白,基於上述競委會的建議,局方必須 依循《競爭條例》的精神,不能禁止代理提 供優惠或回贈,以免損害消費者的利益。反 之,局方會繼續教育消費者,不應只着眼於 他們需要支付的佣金金額或可以獲得的優惠 現是否夠專業。 arlier, the Competition Commission accused some estate agents of colluding to fix commission rates which contravened the First Conduct Rule under the Competition Ordinance ("the Ordinance"), and took legal action against them. I would like to talk about this issue of concern to licensees in this column.

First of all, I would like to remind estate agency companies again that they should make their own independent decisions or negotiate individually with their clients on the rate of commission they charge; as well as the discounts, rebates and incentives they offer to their clients, rather than adopting or following any so-called "customary" or "standard" rate in the industry or a rate that is set collectively in any way. Failing which, they may contravene the First Conduct Rule under the Ordinance.

Licensees are certainly concerned about the issue of commission. In fact, the EAA has sought opinion from the Competition Commission on the issue of incentives provided by estate agents to clients. The Competition Commission responded that the offer of incentives (such as cash/ commission rebates) by estate agents to clients is considered a form of price competition among estate agents. Therefore, in view of the Ordinance and the pro-competition principles adopted by the Government, the EAA should not impose any requirements on estate agents regarding the amount or rates of commissions to charge; and it is also inappropriate for the EAA to prohibit estate agents from offering cash/ commission rebates to clients or potential purchasers.

I fully appreciate that a professional estate agent needs to do a lot of work to facilitate a property transaction and should be entitled to receive a reasonable return. However, keen competition is undoubtedly the law of the market, especially in a stagnant property market. I hope that licensees could understand that based on the above advice of the Competition Commission, the EAA must follow the spirit of the Ordinance and cannot prohibit agents from providing incentives or rebates, which may jeopardise consumers' interest. Instead, the EAA will continue to educate consumers that they should focus on the service quality of the agents and whether their performance is professional enough, rather than focusing only on the amount of commission they have to pay or incentives they could receive.



# 有關銷售香港境外未建成物業的新執業通告

# New Practice Circular on the Sale of Uncompleted Properties Situated Outside Hong Kong

已建成發展項目的物業可供視察的情況不同,購買香港境外的未建成物業存在更多風險和不確定因素。因此,監管局於2017年12月發出一份有關銷售香港境外未建成物業的執業通告(下稱「2017年通告」),為參與境外未建成物業銷售的持牌地產代理提供一系列指引,以提高業界的專業水平,為消費者提供更佳的保障。

由於對港人購買香港境外物業的關注持續, 而部分在香港出售的境外未建成物業由持牌 人處理,監管局為了在其規管範圍內加強對 消費者的保障,及增強他們在委託持牌人處 理境外未建成物業時的信心,監管局認為有 nlike completed properties where property inspection may be feasible, there are more risks and uncertainties with respect to the purchase of uncompleted properties situated outside Hong Kong ("UPOH"). Therefore, in December 2017, the EAA issued a practice circular on UPOH (No. 17-03 (CR)) ("2017 Circular") which set out a series of guidelines for licensed estate agents participating in the sale of UPOH, with a view to enhancing the professional standard of the trade so as to provide consumers with better protection.

As the concern about Hong Kong people buying properties outside Hong Kong continues and some UPOH offered for sale in Hong Kong are handled by licensees, in order to strengthen consumer protection within the EAA's purview and enhance consumers' confidence in engaging licensees for handling UPOH, the EAA considers it necessary to draw to the consumers' attention the differences between the sale of UPOH by licensees and

必要提醒消費者留意由持牌人與非持牌人處理境外未建成物業銷售的區別,以及優化2017年通告的要求,以進一步提高持牌人的專業水平。

基於上述種種,監管局剛於2023年12月28日發出一份新的執業通告(編號23-02(CR))(下稱「新通告」),就持牌人在處理境外未建成物業銷售時的適當執業方式及措施列出更優化的指引,以供他們採用。新通告將於2024年7月1日起生效並屆時取代2017年通告。

新通告現已上載於監管局網站,而一套相關的問與答,以提供更多資料及如何遵循新通告的例子則會於2024年首季載於監管局網站。持牌人應仔細閱讀新通告內容,並於新通告生效前盡快就其相關工作作出修訂,以符合新通告的要求。為協助業界理解新的指引,監管局稍後會為持牌人推出持續專業進修培訓。同樣地,監管局亦會在新通告生效之前,推出宣傳推廣計劃,向消費者強調聘用持牌人購買境外未建成物業的好處。

#### 新通告的重點如下:

#### 取得重要資料的法律意見

- 取得由境外未建成物業所在地的執業律師 發出的法律意見,內容涵蓋:
  - (a) 賣方及境外未建成物業的盡職審查, 確認:
    - 賣方(i)確實存在、(ii)在法律上有權 發展該境外未建成物業;及(iii)在法 律上有權出售該境外未建成物業;
    - 賣方為完成興建該境外未建成物業 的資金來源或財務安排:
    - 如賣方與發展商並非同一人/實體,他們之間的關係;及
    - 該境外未建成物業所屬的發展項目 的關鍵資料;
  - (b) 根據該境外未建成物業所在地的法律,境外買方(i)購買;(ii)轉售;(iii)出租;及(iv)按揭該境外未建成物業是否有任何形式的限制;以及如有的話,該等限制的性質;及

non-licensees; and to further promote the professionalism of licensees by making improvements to the requirements in the 2017 Circular.

Based on the above considerations, the EAA has issued a new practice circular (No. 23-02 (CR)) ("New Circular") on 28 December 2023 to set out the improved guidelines on the appropriate practices and measures for adoption by licensees in their handling of UPOH sales. The New Circular will supersede the 2017 Circular at the same time as it takes effect on 1 July 2024.

The New Circular has been uploaded to the EAA website and a set of related Questions and Answers for providing more information and examples on how to comply with the New Circular will be available on the EAA website in the first quarter of 2024. Licensees should read the contents of the New Circular in detail and adjust their relevant work to ensure compliance with the New Circular from the effective date. To assist the trade to understand the new guidelines, the EAA will launch CPD training for licensees in due course. Similarly, publicity and promotion initiatives will be launched before the New Circular comes into effect to emphasise to consumers the benefits of buying UPOH through licensees.

#### Highlights of the New Circular are as follows:

#### **Obtain Legal Opinion on Material Information**

- Obtain a legal opinion issued by a lawyer practising in the place where the UPOH is situated covering:
  - (a) due diligence on the vendor and the UPOH confirming:
    - that the vendor is: (i) in existence; (ii) legally entitled to develop the UPOH; and (iii) legally entitled to sell the UPOH;
    - the vendor's source of funds or financial arrangement with regard to the completion of the UPOH;
    - the relationship between the vendor and the developer, if they are not the same person/entity; and
    - the key information of the development of which the UPOH forms part;



(c) 根據(i)該境外未建成物業所在地的法律:及(ii)有關買賣協議的條款(該條款不得與該境外未建成物業所在地的法律相抵觸)(如有),是否有任何機制保障買方所支付的訂金或部分付款:以及如有的話,該機制的詳情,以及在完成購買前如何處理訂金或部分付款。

#### 有關廣告及宣傳物品的要求

- 不得發出任何全部或部分與其地產代理業務有關(亦涵蓋賣方及境外未建成物業的資料)並載有在要項上屬虛假或具誤導性的任何陳述或詳情的廣告或任何宣傳物品。
- 取得賣方就廣告及宣傳物品所載資料的準確性和完整性的明確書面批署。
- 境外未建成物業的廣告及宣傳物品中必須 包含一些資料,而該些資料必須以指定方 式呈示或展示。當中包括監管局向消費者 發出的雙語警告:「To buy or not to buy non-local off-plan properties? Assess the risks before you buy! 境外樓花買唔買?計 過風險先好買!」。

#### 向買方提供的銷售文件

- 在買方就購買境外未建成物業訂立任何協 議<u>或</u>支付任何款項(以較早者為準)<u>之</u> 前,向買方提供以下文件:
  - (a) 重要資料的法律意見副本;
  - (b) 獨立的書面警告聲明;及
  - (c)銷售資料單張。

#### 有關税項、付款及財務安排

- 建議買方就其本身的情況而須繳納的税項 或徵費的類別及數額尋求獨立專業意見。
- 僅根據賣方所提供之資料提供有關付款安 排的資料。
- 不得作出任何按揭條款的保證。
- 在買方支付任何款項之前,以書面方式告 知買方款項是向誰繳付、付款的目的及款 項是否可退還。

- (b) whether there is any form of restriction(s) for foreign purchasers to (i) purchase; (ii) resell; (iii) lease; and (iv) mortgage the UPOH according to the laws of the place where the UPOH is situated; and if so, the nature of such restriction(s); and
- (c) whether there is any mechanism in place to safeguard the deposits or part payments made by the purchaser according to (i) the laws of the place where the UPOH is situated; and (ii) the terms of the relevant sale and purchase agreement (if any) which shall not be in conflict with the laws of the place where the UPOH is situated; and if so, the particulars of such mechanism and how the deposits or part payments will be dealt with pending completion of the purchase.

#### Requirements on Advertisements and Promotional Materials

- Must not issue an advertisement or any promotional material wholly or partly relating to their estate agency business (covering also information on the vendor and the UPOH) which includes any statement or particular that is false or misleading in a material particular.
- Obtain the vendor's express endorsement in writing of the accuracy and completeness of the information contained in advertisements and promotional materials.
- Must include certain information in the UPOH advertisements and promotional materials, which must also be presented or displayed in a specified manner. Such information includes the EAA's bilingual caution to consumers: "To buy or not to buy non-local off-plan properties? Assess the risks before you buy! 境外樓花買唔買?計過風險先好買!".

#### Sales Documents to be Provided to Purchasers

- Provide the following documents to purchasers <u>before</u> they enter into any agreement <u>or</u> make any payment in relation to the purchase of the UPOH (whichever is the earlier):
  - (a) a copy of the legal opinion on material information;
  - (b) a separate written warning statement; and
  - (c) a sales information sheet.

#### About Taxation, Payment and Financing Arrangements

- Advise purchasers of the need to seek independent professional advice on the types and amounts of taxes or levies that they may be liable to pay in respect of their own case.
- Provide information on payment arrangements based solely on the information provided by the vendor.
- Do not make any assurance on mortgage terms.
- Inform purchasers in writing (before they make any payment of moneys) to whom the payment will go, its purpose, and whether it is refundable.

# 印花税安排的調整

## Adjustments to Stamp Duty Arrangements

考慮到目前市場情況,政府決定由2023年10 月25日起調整住宅物業需求管理措施。

有關住宅物業交易的調整事項包括:額外印花 税的適用年期由三年縮短至兩年,下調買家印 花税及從價印花税的適用的税率,以及推出合 資格外來人才在港購買住宅物業暫免繳付印花 税的機制。

持牌人應向其客戶解釋上述的最新印花税安排,切勿向客戶提供任何失實或具誤導性的 資料。否則,持牌人或會遭受監管局的紀律處 分。

持牌人亦應提醒客戶可在有需要的情況下,於 簽訂臨時買賣協議前就其須繳付印花税的責任 先徵詢法律意見。

持牌人應閱讀已載於監管局網頁的相關致持牌 人函件(持牌人專區>致持牌人函件>27-10-2023)。 The EAA issued a Letter to Licensees on 27 October 2023 regarding the adjustments to the stamp duty arrangements for residential properties from the announcement made by the Chief Executive in his 2023 Policy Address.

In view of the prevailing market conditions, the Government has decided to make adjustments to the demand-side management measures for residential properties with effect from 25 October 2023.

The adjustments included: shortening the applicable period of Special Stamp Duty ("SSD") from three years to two years; reducing the applicable rate of Buyer's Stamp Duty ("BSD") and Ad Valorem Stamp Duty ("AVD"); and announcing a suspension mechanism of stamp duty for eligible incoming talents' purchase of residential property.

Licensees should advise their clients accordingly with respect to the latest stamp duty arrangements and must not provide inaccurate or misleading information to their clients. Otherwise, they may be subject to disciplinary action by the EAA.

Licensees should also invite their clients to seek legal advice on their liability for payment of stamp duty, if necessary, before proceeding with the execution of the provisional agreement for sale and purchase.

Licensees should read the Letter to Licensees at the EAA's website (Licensees Corner > Letter to Licensees > 27-10-2023).



# 僭建物損害客戶利益

# Unauthorised Building Works ("UBW") Harm Client's Interest

宇署希望透過監管局提醒持牌人,在處理物業交易時,應提醒客戶有關物業的 個建物所涉及的風險。持牌人不應向客戶提供 具誤導性資料,否則可能引致交易取消,而持 牌人亦可能被監管局紀律處分。

在一宗物業買賣交易中,買家在視察物業期間,向地產代理查詢:「這個單位內的閣樓是 否合法?」地產代理毫不猶豫地回應:「這單 位並沒有任何僭建物。」其後,買家再詢問:

「這廚房可否改為開放式廚房?」該地產代理 說:「你可在裝修期間,找工人拆掉廚房圍牆 及門,因只涉及室內工程,一般無需申請及預 先審批。|

事實上,從屋宇署「百樓圖網」取得的批准圖則顯示該單位內並沒有閣樓,該閣樓其實是僭建物。另外,改建原有廚房為開放式廚房,一般會涉及拆除須具耐火效能的牆及門,並有可能涉及拆除結構牆,有關工程和委任認可人士及/或註冊結構工程師,並有可能涉及訴除結構工程師,並有可能涉及調訊,獲得批准及同意中,並是中醫生效建築圖則,獲得批准及同意使,也由註冊承建商進行。在上述的個案中,並是世歷客戶就該物業的僭建物所涉及包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能影響樓宇結構及消防安全,包括可能

Through the EAA, the Buildings Department ("BD") would like to remind licensees that they should remind their clients about the risk of UBW when handling property transactions. Licensees should not provide any misleading information to clients or else it may lead to the cancellation of the transaction and the licensee may be subject to disciplinary action by the EAA.

In a transaction for the sale of a property, the purchaser asked the estate agent during the inspection of the property, "Is the cockloft inside the flat illegal?". The estate agent responded without any hesitation, "The flat is free of any UBW". The purchaser made a further enquiry, "Can I alter the kitchen to become an open kitchen?". The estate agent replied, "You can arrange your workers to remove the wall and door of the kitchen during fitting out works. As only internal works are involved, no prior application and approval are required in general".

In fact, there was no such cockloft according to the approved building plans obtained from the BRAVO system of the BD. The cockloft was in fact an UBW. In addition, as creating an open kitchen would generally involve the removal of wall and door with fire resistance rating or even the removal of a structural wall, the owner is required to appoint an authorized person and a registered structural engineer to submit building plans to the BD. The works should be carried out by a registered contractor after obtaining approval and consent from the BD. In the above case, the estate agent should have informed the client that there was an UBW in the property and reminded the client about the risk of the UBW, including the possible structural and fire safety problems as well as the possible enforcement action by the BD. The estate agent should have also reminded the client to seek professional building advice as necessary when carrying out interior building works.



Licensees should remind their clients that UBW would prejudice the clients' interest. The owner is ultimately responsible for the UBW in the property. Under the Buildings Ordinance, if the owner carries out unauthorised building works or fails to carry out the removal and rectification works within the period specified in the removal order without reasonable excuse, he/she may be subject to prosecution and have to bear criminal liability. The owner is responsible for ensuring the safety of the property and ensuring the property is free of UBW. If the UBW in the property results in loss of life or damage to property, the owner

工程,應按需要尋求建築專業人士意見。

持牌人須提醒客戶僭建物會損害他們利益。業主就其物業內的僭建物負有最終責任。在《建築物條例》下,業主如進行違例建築工程,或無合理辯解未能在清拆令指定的期限內清拆僭建物及完成糾正工程,均有可能被檢控及需負上刑事責任。業主有責任確保其樓宇安全及無僭建物。若因其樓宇的僭建物導致他人財物損失或人命傷亡,業主亦有機會負上其他刑事及民事法律責任。

持牌人可瀏覽屋宇署網頁 (www.bd.gov.hk)或掃描以 下二維碼了解更多相關資 訊。





may also bear other criminal and civil liabilities under the law.

For further information, please visit the BD's website at www.bd.gov.hk or scan the following OR Code.



# 監管局職員獲頒發「2023年申訴專員嘉許獎」 EAA's staff received "The Ombudsman's Award" 2023

上一管局一名職員獲頒發「2023年申訴專 □□□員嘉許獎一公職人員獎」,表揚他們 處理查詢時的專業表現和積極態度。

申訴專員嘉許獎頒獎典禮於2023年11月15日舉行。監管局牌照部陳鍾明先生,憑着處理查詢時的出色表現,獲頒發「公職人員獎」。他以積極的態度為公眾服務,贏得了認可和讚揚。

n EAA's staff member received "The Ombudsman's Award" 2023 for "Officers of Public Organisations" in recognition of his professionalism and positive attitude in enquiries handling.

The Ombudsman's Awards Presentation Ceremony was held on 15 November 2023. Mr Samuel Chan from the Licensing Section received an individual award for his outstanding performance in handling enquiries. He earned the recognition and commendation by adopting a positive attitude to serve the public.



陳鍾明先生(右)從申訴專員趙慧賢女士, PDSM, PMSM手中接過獎座。

Mr Samuel Chan (right) receives the award from The Ombudsman, Ms Winnie Chiu, PDSM, PMSM.

# 放寬資助出售單位按揭安排

# Relaxation of mortgage arrangements for subsidised sale flats

管局於2023年12月13日發出一封致持 開入函件,提醒持牌人香港房屋委員會 (「房委會」)已於2023年11月17日通過放 寬資助出售單位的按揭安排。

放寬資助出售單位的按揭安排包括延長房委會 就資助出售單位買家所提供的按揭保證契據下 的最長按揭保證期及按揭還款期,以便買家向 參與提供該等單位按揭貸款的認可財務機構取 得按揭貸款。

持牌人應留意新安排及放寬措施將分別適用於 2024年1月1日或之後在一手市場出售的資助 出售單位及2024年3月1日或之後在第二市場 出售的資助出售單位。持牌人不可向資助出售 單位買家提供任何不準確或具誤導性的資訊。

持牌人應閱讀已載於監管局網頁的相關致持牌 人函件(持牌人專區>致持牌人函件>13-12-2023)。如就上述事宜有任何查詢,可致電 2712 2712與房委會聯絡。 The EAA issued a Letter to Licensees on 13 December 2023 regarding the relaxation of the mortgage arrangements for subsidised sale flats ("SSFs") as endorsed by the Hong Kong Housing Authority ("HA") on 17 November 2023.

The relaxation of the mortgage arrangements for SSFs includes extending the maximum mortgage default guarantee period and mortgage repayment period under the Deeds of Guarantee being provided to purchasers of SSFs and authorised financial institutions participating in the provision of mortgage loans for such flats.

Licensees should note the new arrangements and that the relaxation will be applicable to SSFs sold on the primary market and the secondary market on or after **1 January 2024** and **1 March 2024** respectively; and they must not provide any inaccurate or misleading information to purchasers of SSFs.

Licensees should read the Letter to Licensees at the EAA's website (Licensees Corner > Letter to Licensees > 13-12-2023) and may contact the HA at 2712 2712 for any enquiries on the above matter.

# 代理人因違反《水務設施規例》而被判處罰款的個案

# The case that an agent was fined for contravening the Waterworks Regulations

世上管局於2023年10月13日於局方網站發出一則「最新消息及提醒」,提醒持牌人有關一宗代理人因違反《水務設施規例》而被判處罰款的個案。持牌人須注意,在參與處理劏房租賃時,絕不可以協助業主濫收公用設施及服務的費用,否則持牌人本身有可能違法而被判有罪。

The EAA issued a reminder notice on the EAA's website on 13 October 2023 regarding the case in which an agent was fined for contravening the Waterworks Regulations. Licensees are reminded that when handling the tenancy of subdivided units, they should not assist the landlord to overcharge the tenants for public utilities and services or else the licensees might themselves be convicted for breaching the law.

持牌人同時應提醒客戶,所有要求租客繳付劏 房的公用設施及服務的款項不得超過業主向租 客提供的書面帳目中顯示經分攤的款項,否則 即屬違法。

有關該宗個案詳情,請參閱政府新聞公布 (www.info.gov.hk/gia/general/202310/11/ P2023101100174.htm)。 Licensees should also remind their clients that it is an offence to require tenants to pay for the utility and service charges for the subdivided unit at a sum exceeding the apportioned amount as shown in the account in writing provided by the landlord to the tenant.

For details of the case, please refer to the Government press release (www.info.gov.hk/gia/general/202310/11/P2023101100174.htm).

# 《地產代理良好處理劏房租賃約章》最新消息 Update of the Charter on Good Practices of Estate Agents in Handling Subdivided Unit Tenancy

《地產代理良好處理劏房租賃約章》 (「《約章》」)於2023年9月12日推 出以來,地產代理業界一直鼎力支持,並積極 向同業推廣《約章》。截至2023年12月底, 已有91間地產代理商舗簽署《約章》,率先以 兩個「不會」以及六個「必會」的良好作業模 式處理劏房租賃。

簽署《約章》後,有關地產代理商舖將會得到一套宣傳物品,而其商舖名稱亦會列載於監管局網站的參與名單中。《約章》全年接受報名,詳情請瀏覽監管局網頁(www.eaa.org. hk/zh-hk/SDU-Charter)。

Since the roll-out of the Charter on Good Practices of Estate Agents in Handling Subdivided Unit Tenancy ("the Charter") on 12 September 2023, the estate agency trade has rendered firm support to the Charter and actively promoted it to their peers. As of end of December 2023, 91 estate agency shops have already signed the Charter, taking a pioneering step in demonstrating good practices in handling subdivided unit tenancies by adhering to the two "won'ts" and six "wills".

Upon signing of the Charter, participating estate agency shops will receive a set of promotional collaterals and their shop names will be included in the online list on the EAA's website. Enrollment of the Charter is open year-round. For more details, please visit the EAA's website (www.eaa. org.hk/en-us/SDU-Charter).





參與《約章》的地產代理商舖在櫥窗上張貼《約章》標誌,並於店內展示宣傳物品。

Participating estate agency shops posted the Charter logo sticker on shop windows and displayed promotional collaterals inside the shops.

# 持續專業進修活動一租賃「劏房」的規管與指引 CPD seminar on Regulations and Guidelines for Handling Subdivided Unit Tenancy

《業主與租客(綜合)條例》第IVA部於2022年1月22日生效後,首批「劏房」規管租賃即將進入次期租賃,為確保持牌人在處理租賃「劏房」時能符合該條例的規定,監管局與差餉物業估價署(「估價署」)於2023年10月20日合辦一個題為「租賃『劏房』的規管與指引」的持續專業進修講座。

席間,估價署首席物業估價測量師馮雅慧女士以及 監管局法律顧問容慧敏女士分別向持牌人講解租賃 「劏房」的規管以及監管局發出的執業通告(編號 22-01(CR))的規定。持牌人反應熱烈,共有126名 持牌人出席,參加者均對講座給予正面的評價。

為進一步讓持牌人了解當中的規定與指引,監管局於2023年12月推出與此相關的網上學習活動。

Since the enactment of Part IVA of the Landlord and Tenant (Consolidation) Ordinance effective from 22 January 2022, the first batch of regulated tenancies is about to approach their second term, the EAA and the Rating and Valuation Department ("RVD") co-organised a seminar titled 'Regulations and Guidelines for Handling Subdivided Unit ("SDU") Tenancy' on 20 October 2023, to ensure that licensees can comply with the Ordinance.

During the seminar, the Principal Valuer of the RVD, Ms. Debby Fung and the Legal Counsel of the EAA, Ms. Jennifer Yung, explained to the licensees respectively the regulations pertaining to tenancies of SDUs and the requirements outlined in Practice Circular (No. 22-01 (CR)) issued by the EAA. The licensees responded enthusiastically and a total of 126 licensees attended with positive feedback on the seminar.

To further assist licensees in understanding and complying with the requirements, the EAA launches an e-Learning programme on this topic in December 2023.

# 「地產代理商舖專業進修優越嘉許獎章」

## Premium CPD Mark for Estate Agencies

進一步表揚地產代理商舖不斷鼓勵其僱用的持牌人參與持續專業進修活動,監管局推出「地產代理商舖專業進修優越嘉許獎章」。 地產代理商舖若連續在三個持續專業進修時段或連續五個持續專業進修時段取得「地產代理商舖專業進修時段取得「地產代理商舖專業進修嘉許獎章」,將會分別獲頒發「地產代理商舖專業進修金章」(統稱"商舖優越嘉許獎章")。

監管局於2023年底向首批合資格的地產代理商 舖頒發「商舖優越嘉許獎章」。有關「商舖優 越嘉許獎章」的詳情,可瀏覽監管局「地產代理 商舖專業進修嘉許獎章」及「地產代理商舖專業 進修優越嘉許獎章」計劃網頁:www.eaa.org. hk/zh-hk/CPD-Scheme/CPD-Mark-for-Estate-Agencies-Award-Scheme To further recognise the continuous effort of estate agency shops in encouraging their licensed employees to participate in the Continuing Professional Development (CPD) activities, the EAA introduced the Premium CPD Mark for Estate Agencies. A Silver CPD Mark or Gold CPD Mark (collectively "Premium CPD Mark") will be awarded to agency shops which have attained the CPD Mark for Estate Agencies for three consecutive CPD periods or five consecutive CPD periods respectively.

The EAA issues the "Premium CPD Mark" to first batch qualified agency shops at the end of 2023. For more details of the Premium CPD Mark, please visit the EAA webpage of CPD Mark and Premium CPD Mark for Estate Agencies Award Scheme: www.eaa.org.hk/en-us/CPD-Scheme/CPD-Mark-for-Estate-Agencies-Award-Scheme

在《專業天地》內,我們會分享近期常見的投訴個案或違規情況, 作為對持牌人的提醒。

In *Horizons*, we will share some recent common complaints or malpractice as a reminder to licensees.

管局發現,近來涉及租賃相關的投訴 有所增加,部分個案涉及租客投訴地 產代理在租約期間未有履行承諾,例如就物 業維修事宜提供協助。其中一個個案中,一 名租客在視察物業時向地產代理查詢物業內 部狀況及電器的維修責任,地產代理回覆指 業主身在外地,如物業內部狀況及電器出現 任何問題,租客可聯絡地產代理,代理會協 助解決有關問題。

該名租客入住後,發現業主提供的冷氣機 未能正常運作,遂聯絡地產代理要求安排維 修,然而經多番催促,該代理均表示業主未 能安排維修。租客不滿地產代理沒有履行承 諾協助處理維修,於是向監管局作出投訴。

一般而言,當地產代理就有關物業與客戶達成租賃協議後,其他向客戶提供的服務包括在租約完結時代表業主收樓,或其他租務管理事宜,並不屬於「地產代理工作」的範疇。然而,若代理為促成交易而作出售後服務的承諾,則有責任履行相關承諾。

為免產生不必要的誤會,地產代理應

向客戶清楚解釋其在租約期內 的角色,如地產代理所提 供的協助僅作為業主及

The EAA has noticed a recent rise in complaints related to leasing. In some cases, tenants complained that the estate agents had failed to fulfil their promises during the tenancy period, such as providing assistance in property repairs. In one case, a tenant inquired about the property's internal condition and the responsibility for repairing home appliances during the property inspection. The estate agent responded that the landlord was not in Hong Kong and the tenant could contact the agent if there was any issue regarding the property's internal condition and home appliances. He would assist in resolving the problem.

After moving in, the tenant discovered that the air conditioner provided by the landlord was not functioning properly. The tenant hence contacted the estate agent and requested a repair. However, despite repeated requests from the tenant, the estate agent responded that the landlord was unable to arrange a repair. The tenant was dissatisfied that the estate agent had failed to fulfill his promise to provide assistance on repairs and lodged a complaint with the EAA.

Generally, after arranging the tenancy agreement, other services provided by the estate agent for his client, such as taking possession of the property for the landlord after the tenancy expires, or other tenancy management issues, are not "estate agency work". However, if the agent, in an effort to facilitate a transaction, makes after-sales service promises, they are obligated to fulfill those promises.

To avoid unnecessary misunderstanding, estate agents should clearly explain to their clients their role during the tenancy period. If their

assistance is only limited to facilitating communication between the landlord and tenant, they should explicitly explain this to their clients. On the other hand, if they promise to assist with repairs or termination of the tenancy, they should specify their service scope in writing to their clients to avoid any disputes.





#### 刑事個案 Criminal case

# 收賄代洽減租

# Accepting bribes for assisting in negotiation for rental reduction

#### 引言

地產代理從業員須以誠實的態度執業,以保障客戶的最佳利益。在提供地產代理服務時要緊記時刻遵守法例,切勿作出貪污及其他 舞弊行為,否則可能會觸犯罪行。

#### Introduction

Estate agency practitioners should provide services to clients with integrity and protect clients' best interest. During their practice, practitioners should observe and comply with the law, and avoid corruption and other malpractices at all times, or else they may be committing an offence.

#### 個案經過

一名地產代理在促成物業租賃交易後,同意 為租戶提供後續服務,包括協助租戶洽商調 整租金及續租。由於疫情影響,一名租戶要 求涉案地產代理協助與業主洽商減租及續 組。業主多次同意減收租金,由每月減收10 天租金至寬免一半租金不等。然而該名代理 在沒有取得其地產代理公司僱主的同意下, 每次在業主同意減租及續租時,均向租戶索 取報酬,並接受賄款,更向租戶提供虛假收 據及煽惑對方使用虛假收據記賬,以掩飾賄 款支出。

#### Case

An estate agent of an estate agency procured a lease transaction and agreed to provide post-transaction services to the tenant, including assisting in negotiation of rental concession and lease renewal. In view of the pandemic situation, the tenant had requested the estate agent concerned to negotiate with the landlord on rental reduction and renewal of lease. On various occasions, the landlord had agreed to reduce the monthly rental, each ranging from a rental of 10 days to half of its monthly rental. When the landlord acceded to the rental reductions and the lease renewal, the estate agent solicited a bribe from the tenant on each occasion and accepted bribes without the consent of the employer estate agency. The estate agent even gave false receipts to the tenant and incited the tenant to use them for accounting purposes so as to cover up the bribe payments.

#### 裁決

個案中的地產代理作為代理人(即地產代理公司僱員),在未有其主事人(即地產代理公司)的許可下,向租戶索取及接受賄款作為替對方與業主洽商減租及續租的報酬,觸犯《防止賄賂條例》第9條。該名代理亦就煽惑他人提供虛假資料,違反普通法及《盜竊罪條例》第19條。法官判刑時批評被告自編自導自演整個勾當,以不同藉口向租戶收取賄款,罪行性質嚴重,須判以相稱刑罰。該名物業代理最終被判入獄七個月,並須向所屬物業代理公司歸還涉案賄款。

#### Result

In this case, the estate agent, as an agent (i.e. employee of the estate agency), without the approval of his principal (i.e. the estate agency), solicited and accepted advantages from the tenant as a reward for assisting in the negotiation of rental concession and lease renewal. The estate agent contravened section 9 of the Prevention of Bribery Ordinance, whilst he also contravened the Common Law and section 19 of the Theft Ordinance for incitement to furnish false information. In sentencing, the Judge reprimanded the defendant for orchestrating a scam to collect bribes from the tenant on different pretexts, adding that a sentence proportionate to the seriousness of the offences should be imposed on the defendant. The estate agent was sentenced to imprisonment for seven months and was ordered to repay the bribes to the former employer as restitution.

#### 廉政公署意見

#### 



如遇到任何懷疑貪污的 情況,應立即向廉署舉 報。

#### **ICAC's Advice**

The ICAC reminds estate agency practitioners not to solicit or accept any advantages when conducting their principal's affairs or business without the approval of their principal (which may include their employer, clients), otherwise both the offeror and solicitor/recipient of the advantage may breach the Prevention of Bribery Ordinance. Any conviction of bribery offences will render estate agents not considered by the EAA as fit and proper persons to hold their licences, which may in turn inhibit them from participating in estate agency work. An estate agency's reputation could be damaged in the case of corruption. Therefore, estate agencies should foster good governance and put in place sound measures to uphold staff's integrity. Please scan the QR code below for details of the measures as recommended in the "Best Practice Checklist - Governance and Internal Control of Estate Agencies" jointly compiled by the ICAC and the EAA.



Should anyone come across any suspected corruption, they should report it to the ICAC immediately.

#### 紀律研訊個案 Disciplinary hearing case

# 發出虛假或誤導性物業廣告 Issuance of misleading property advertisements

#### 引言

地產代理公司不得發出任何載有在要項上屬 虚假或具誤導陳述或詳情的物業廣告,否則 有可能被監管局紀律處分。

#### 事件經過

監管局接獲一宗有關一個發布於網上物業平台的廣告的投訴,指該住宅物業廣告涉及誤導資訊。該則廣告的內容包括「單位樓層 低層」的字眼、該住宅物業的地址、某地產代理公司名稱、商標及牌照號碼。經監管局調查後,發現該住宅物業並非位處低層,此外,廣告上的物業地址及地產代理公司的牌照號碼亦不正確。

#### 研訊結果

監管局紀律委員會認為,該地產代理公司發出一則載有在要項上屬虛假或具誤導陳述或詳情的廣告。因此,該地產代理公司違反了《地產代理常規(一般責任及香港住宅物業)規例》第9(1)條。

考慮到個案的性質及該地產代理公司的違規 紀錄,紀律委員會決定譴責該地產代理公司 及向其罰款95,000港元。

#### **Introduction**

Estate agency companies must not issue property advertisements which include any false or misleading statement or particulars. Otherwise, they may be subject to disciplinary action by the EAA.

#### **Incident**

The EAA received a complaint about an advertisement listed on an online property portal with misleading information about a residential property. The advertisement included the wording "located on the lower floor", the address of the property, the name and trademark of an estate agency company and its licence number. Upon investigation, the EAA found that the property was not situated on the lower floor. Additionally, the property's address and the licence number displayed on the advertisement were also incorrect.

#### Result

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 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 estate agency company, the Committee decided to reprimand the estate agency company and impose a fine of HK\$95,000.



蔡志忠先生 香港專業地產顧問商會會長 **Mr Raymond TSOI Chi-chung** President of Hong Kong Chamber of Professional Property Consultants

#### 業界意見 Comment from trade

這次的處罰嚴厲,具有阻嚇作用。社會對於地產代理的行為操守要求日益提高,地產代理行業應盡力做好,地產代理公司在處理物業廣告時要更加小心謹慎,並且對員工特別是新入職的代理提供培訓,避免有類似的情況再次發生。

The severe sanction imposed this time will have a deterrent effect. As the expectation of high ethical standards of estate agents from society is getting higher and higher, practitioners should do their very best to strive for professionalism. Estate agency companies must be more prudent when handling property advertisements. Additionally, they must provide training to employees, especially newcomers, to help prevent situations similar to this case from happening again.



確保持牌人獲得有關反洗錢的最新和 最準確資訊,監管局在網站上設立 了「反洗錢資訊專區」。專區提供全面的反 洗錢資訊,讓持牌人可以一次過取得最新資 訊。以下是專區的部分重點內容:

- 執業通告(編號23-01):就減低交易涉及 洗錢或恐怖分子資金籌集的風險的必要措 施為持牌人提供指引,包括風險評估、客 戶盡職審查、備存紀錄及舉報可疑交易。
- 「反洗錢」最新消息:為持牌人提供由本 地以及國際組織(如保安局及聯合國安理 會)發出有關反洗錢的最新資訊。
- 監管局刊物:提供一系列由監管局編制的 宣傳刊物,刊物簡單易明,能加深持牌人 對反洗錢的理解,並鼓勵他們遵守有關法 例要求。
- 有關「反洗錢」的持續專業進修活動: 提供由監管局舉辦有關反洗錢的持續專 業進修活動資訊。持牌人可參加進修活 動了解反洗錢的最新消息及加深對有關 措施的認識。

要知道更多詳情,請瀏覽監管局網站(持牌人專欄>「反洗錢」資訊專區)。

To facilitate access to up-to-date and accurate information on AML, the EAA has established an "AML Corner" on the EAA's website. This dedicated section serves as a comprehensive resource hub for licensees to retrieve the latest information all at once. Some highlights in the "AML Corner" include:

- Practice circular No.23-01: This guideline sets out all the necessary measures that licensees must adopt to mitigate money-laundering and terrorist financing, including risk assessment, customer due diligence, record-keeping and reporting suspicious transactions.
- Latest news on AML: This section shares with licensees the latest updates on AML from both local and international organisations, such as the Security Bureau and the United Nations Security Council.
- Publications by the EAA: This section contains a collection of easyto-understand promotional materials developed by the EAA. These materials aim to enhance licensees' understanding of AML concepts and encourage compliance with the regulatory requirements.
- AML-related CPD Activities: This section provides information on the coming AML-related continuing professional development activities organised by the EAA. These activities offer opportunities for licensees to keep abreast of the latest developments and deepen their knowledge of AML practices.

For more information, please visit the EAA's website (Licensees Corner > Anti-Money Laundering (AML) Corner).

在《專業天地》內,我們會解答持牌人的一些常見提問。 In *Horizons*, we will answer questions commonly asked by licensees.

- 注 持有營業員牌照的地產代理可否以自僱人士身份從事地產代理工作?自僱人士從事地產代理工作及與其他持牌地產代理公司合作時,受哪些條例規管?
- 根據《地產代理條例》(「《條例》」), 牌照分為地產代理牌照及營業員牌照。 持有地產代理牌照的人士可以經營地產 代理工作的業務或擔任持牌地產代理的 營業員,而營業員牌照持有人不可以經 營地產代理工作的業務,他們只能以持 牌地產代理的營業員身分從事地產代理 工作。

所有持有由監管局發出有效地產代理牌 照的人士/公司(「持牌人」)的執業 及操守均受監管局所規管。持牌人在香 港進行任何地產代理工作均須遵守《條 例》及其附屬法例的相關條文,以及監 管局發出的《操守守則》及所有適用的 指引。

- ? Can a licensed salesperson carry out estate agency work as a self-employed person? What regulations are applicable to self-employed persons when they carry out estate agency work and collaborate with other estate agency companies?
- According to the Estate Agents Ordinance ("EAO"), there are two types of licences: estate agent's licence and salesperson's licence. The holder of an estate agent's licence may carry out estate agency work as an estate agent or act as a salesperson for another estate agent, while a licensed salesperson cannot carry out estate agency work as an estate agent but may only perform estate agency work as a salesperson of a licensed estate agent.

The practice and conduct of all persons/companies holding a valid licence issued by the EAA are regulated by it. When carrying out estate agency work in Hong Kong, licensees must comply with the EAO and its subsidiary legislation, the *Code of Ethics* and all applicable guidelines issued by the EAA from time to time.



### 監管局即將推出的持續專業進修計劃活動 Upcoming CPD activities offered by EAA

詳情請瀏覽《持續專業進修 計劃》的網頁:

Please visit the webpage of the CPD Scheme for details:



日期 (月/年) Date (Month/Year)	課程名稱 Course title	學分 CPD Points	語言 Language	類別 Category
1/2024	其他與地產代理工作相關的 法律及實務	3	廣東話	合規及有效管理
	簡介物業管理業發牌制度及 相關規管措施	1.5		
	《競爭條例》簡介	2		
	物業轉易須知	3		
2/2024	物業租賃實務知識	3		
3/2024	掌握土地查冊	3		
	理解物業產權負擔	3		

#### 其他活動

# 個人資料私隱專員公署主辦活動 條例簡介講座 (以視像形式進行) 日期 時間 語言 課程費用 22/02/2024 15:00-16:30 廣東話 免費

查詢電郵:training@pcpd.org.hk 查詢電話:3423 6654 (汪小姐)

#### 13-11-2023

監管局主席蕭澤宇先生BBS, JP(左三)及行政總裁韓婉萍 女士(中)出席由地產代理人員協會、九龍獅子會及尖沙咀 街坊福利會合辦的慈善活動。

The EAA's Chairman Mr Simon SIU Chak-yu, BBS, JP (third from left) and Chief Executive Officer Ms Ruby HON (middle) attend a charity event jointly organised by the Property Agents Association, Lions Club of Kowloon City and the Tsim Sha Tsui District Kai Fong Welfare Association.



#### 3-11-2023



監管局於旺角區舉行與前線持牌人交流的聚焦小組會議。席間,監管局 代表與出席的持牌人談及關於發牌、規管及持續專業進修等不同範疇的 事項,而持牌人則分享其日常執業所遇到的問題。

The EAA holds a focus group meeting with frontline licensees in Mong Kok District. During the meeting, EAA representatives discuss with the participating licensees on matters about licensing, compliance and the CPD Scheme while licensees share the issues they encounter in their daily practice.

#### 19-10-2023

監管局行政總裁韓婉萍女士(左一)出席Now TV訪問節目,談及 有地產代理公司安排物業買賣雙方簽署買賣協議備忘錄的事件。

The EAA's Chief Executive Officer Ms Ruby HON (first from left) is interviewed by Now TV. She talks about an incident concerning certain estate agency companies arranging for property purchasers and vendors to sign a memorandum of agreement in respect of the sale and purchase of property.



#### 26-9-2023



監管局與業界主要代表舉行聯絡會議,會上討論多個議題,包括有關銷售境外物業的新執業通告、常見違規問題及地產代理良好處理劏房租賃約章。

The EAA holds a liaison meeting with the representatives of major trade associations. Various issues are discussed during the meeting, including the new practice circular concerning the sales of properties situated outside Hong Kong, common non-compliance and the Charter on Good Practices of Estate Agents in Handling Subdivided Unit Tenancy.

#### 9/2016

監管局舉辦公開講座,題為「住宅物業 開門七件事」。

The EAA holds a public seminar titled "Key Information of Residential Properties".





### 11/2012

監管局慶祝成立15周年。

The EAA celebrates its 15th Anniversary.

## 10/2011

監管局前行政總裁余呂杏茜女士(左一) 出席在北京舉行的2011年中國房地產估價 師與房地產經紀人學會年會開幕式。

The EAA's former Chief Executive Officer Mrs Rosanna Ure (first from left) attends the opening ceremony of the 2011 Annual Conference of the China Institute of Real Estate Appraisers and Agents in Beijing.



#### 考試 Examination

營業員資格考試(電腦應考模式) Salespersons Qualifying Examination (Computer-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 09/2023

177

37%

考試日期 Examination date 10/2023

167

34%

考試日期 Examination date 11/2023

167

25%

營業員資格考試(筆試應考模式) Salespersons Qualifying Examination (Paper-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 10/2023

357

35%

地產代理資格考試(筆試應考模式) Estate Agents Qualifying Examination (Paper-based)



參加人數 No. of candidates

合格率 Pass rate

考試日期 Examination date 11/2023

533

20%

#### 牌照數目 (截至2023年11月30日)

Number of licences (As at 30/11/2023)

營業員牌照 Salesperson's Licence



21,237

地產代理(個人)牌照 Estate Agent's Licence (Individual)



18,510

個人牌照總和 Total no. of Individual Licences



39,747

地產代理(公司)牌照 Estate Agent's Licence (Company)



3,985

營業詳情説明書(截至2023年11月30日)

Number of statements of particulars of business (As at 30/11/2023)

合夥經營 Partnerships



165

獨資經營

Sole proprietorships



1,477

有限公司 Limited companies



5,404

總數 Total



7,046

開立的投訴個案宗數 (2023年1月至11月)

Number of complaint cases opened

(January to November 2023)

179



已處理的投訴個案結果\*(2023年1月至11月) Results of completed complaint

Cases\* (January to November 2023)

指稱成立

Substantiated

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 closed because of other reasons)

資料不足 Insufficient information to pursue

指稱不成立 Unsubstantiated 34 24 24 8數Total 263

\* 部分是往年接獲的個案 Some cases were carried over from previous years

# 巡查次數 (2023年1月至11月) Number of compliance inspections

(January to November 2023)



巡查發現主動調查的個案 (2023年1月至11月)
Number of cases arising from self-initiated investigations during inspections (January to November 2023)

主動調查的個案 Cases arising from self-initiated investigations

98

主動調查而指稱成立的個案\* Cases completed from self-initiated investigations and were substantiated\*

115

\* 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\* (2023年1月至11月)

Actions taken against licensees or ex-licensees\* (January to November 2023)

有關的持牌人或前持牌人人數 No of licensees or ex-licensees



404

#### 行動 Actions Taken



訓誡/譴責

Admonishment/ reprimand

303

罰款 Fine

249

於牌照附加/更改條件 Attachment/ alteration of conditions to licence

166

暫時吊銷牌照 Suspension

17

撤銷牌照 Revocation

32#

- \* 以上行動是根據《地產代理條例》所賦予的權力而採取的。當中部分行動屬紀律性質,其他則是由牌照委員會裁定的,包括在批出牌照時在牌 照上附加條件。部分是往年接獲的個案。
  - These actions were taken pursuant to powers under the Estate Agents Ordinance. Some actions were disciplinary in nature whereas others were decided by the Licensing Committee which actions included the attachment of conditions to licences upon issuance. Some cases were carried over from previous years.
- # 這些個案由牌照委員會裁定。理由是持牌人不再符合相關發牌條件。
  These cases were decided by the Licensing Committee on the ground that the licensees concerned no longer met the relevant licensing requirements.













