



## 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租。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

廉政公署提醒地產代理業從業員，在沒有主事人（可包括其僱主或客戶）許可的情況下，絕不可利用職權索取或收受任何利益，否則提供及索取/收受利益雙方均可能觸犯《防止賄賂條例》。若地產代理因賄賂而被定罪，亦有可能被地產代理監管局視為非持牌人的適當人選，因而影響他們的持牌資格，不能再從事地產代理工作。一旦發生貪污案件，地產代理公司的聲譽亦會受損，因此，地產代理公司應推行良好管治及實施有效的措施，以確保員工恪守誠信操守。有關措施的詳情，歡迎掃描以下二維碼，參閱廉政公署與地產代理監管局合作編制的《優質執業手冊－地產代理公司的管治與內部監控》。



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虛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。

### 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.

### 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。

### 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.

### 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。

### 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.



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### ● 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.