

紀律研訊個案 Disciplinary hearing case

向物業買家提供錯誤的印花稅資訊

Providing incorrect stamp duty information to a purchaser

引言

持牌人在處理物業買賣交易時，不得向買家提供錯誤的印花稅資訊，並應提醒買家就須繳付的印花稅事宜先徵詢法律意見或向稅務局查詢，否則有機會被監管局紀律處分。

事件經過

一名地產代理在安排買家就一住宅物業簽訂臨時買賣合約前，向該名並未取得香港永久性居民資格的買家表示，他可以利用入境事務處發出的「核實香港永久性居民身份證資格申請結果通知」，作為以香港永久性居民身份購買該物業以繳交較少稅款。然而，稅務局其後通知該買家，以香港永久性居民身份購買住宅物業，須以持有香港永久性居民身份證的日子為準（而非申請結果通知）。最終該買家未能以香港永久性居民身份購買該物業，而須繳付額外的買家印花稅，因此向監管局作出投訴。

結果

監管局經調查後將個案交由紀律委員會進行研訊。委員會認為，涉事地產代理違反《操守守則》第3.4.1段「作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。」。

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定向其作出紀律處分，包括譴責、罰款港幣合共24,000元，及在其牌照附加進修條件，包括須在12個月內，透過參加並完成監管局的持續專業進修計劃下的「合規及有效管理」類別的講座或研討會，並取得地產代理監管局認可的12個學分，當中至少3個學分須透過參加地產代理條例、其附屬法例、操守守則及執業通告科目的講座或研討會而獲取。



Introduction

Licencees must not provide incorrect stamp duty information to purchasers when handling sale and purchase transactions. They should advise purchasers to seek legal advice or consult the Inland Revenue Department ("IRD") regarding stamp duty obligations, failure to do so may result in disciplinary action by the EAA.

Incident

Before arranging for a purchaser to sign a provisional agreement for sale and purchase in respect of a residential property, an estate agent told the purchaser, who had not yet acquired her Hong Kong permanent resident status, that she could use the Notice of Application Result for Verification of Eligibility for Permanent Identity Card issued by the Immigration Department to purchase property as a Hong Kong permanent resident and pay less stamp duty. However, the IRD subsequently informed the purchaser that for the purpose of purchasing a residential property as a Hong Kong permanent resident must be based on the date of holding a Hong Kong permanent identity card (rather than the Notice of Application Result). Hence, the purchaser was unable to purchase the property as a Hong Kong permanent resident and had to pay additional Buyer's Stamp Duty. Consequently, the purchaser lodged a complaint with the EAA.

Result

The case was referred to the Disciplinary Committee for inquiry hearing after investigation. The Disciplinary Committee was of the view that the estate agent had breached paragraph 3.4.1 of the *Code of Ethics* which states "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 of this case and the disciplinary record of the estate agent, the Disciplinary Committee decided to impose disciplinary sanctions on the estate agent, including a reprimand, a total fine of \$24,000, and attaching conditions to his licence, including the requirement to obtain 12 points through attending seminars or workshops in the "Compliance and Effective Management" category of the EAA Continuing Professional Development Scheme within 12 months, at least three points must be obtained by attending seminars or workshops on the Estate Agents Ordinance, its subsidiary legislation, the *Code of Ethics*, and practice circulars.



岑柱華先生

地產代理(從業員)總公會副主席

Mr SHUM Chu-wah

Vice Chairman of Estate Agent
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業界意見 Comment from the trade

物業交易涉及複雜的稅務計算，從業員在提供印花稅資訊時務必謹慎，應以最新法例及官方指引為準，切勿提供未經核實的資訊。建議持牌人主動提醒買家直接參考稅務局文件，或建議其諮詢專業稅務顧問，以保障客戶利益及維護專業形象。

Property transactions involve complex tax calculations. When providing stamp duty information, practitioners must exercise caution, strictly refer to the latest legislation and official guidelines and avoid providing unverified information. Licensees should proactively remind purchasers to directly refer to the documents of the Inland Revenue Department or advise them to consult professional tax advisors, in order to protect the client's interests and remain professional.

紀律研訊個案 Disciplinary hearing case

向物業買方提供錯誤的樓宇大維修年份

Misrepresenting the year of major repair works of the building to a purchaser

引言

對物業買家而言，物業所處大廈何時曾進行大維修屬重要資訊之一，亦可能影響其作出購買的決定，若買家向持牌人作出查詢，持牌人須告知相關正確資訊。

事件經過

在一宗住宅物業買賣交易中，準買家向地產代理查詢物業所在的樓宇是否已進行大型維修工程，而該地產代理向其表示，該樓宇已於2015年完成翻新升降機、大堂及外牆的大維修。然而，買家在物業成交後，卻發現該樓宇即將要進行大維修，而該樓宇對上一次進行大維修的年份是2007年，買家因此向監管局作出投訴。



Introduction

For a property purchaser, information about when the building in which the property is situated last underwent major repairs is an important piece of information, and it may significantly influence his purchasing decision. If the purchaser asks the licensee about any major repairs, the licensee must provide accurate information.

Incident

In a residential property sale and purchase transaction, a prospective purchaser inquired with an estate agent whether the building in which the property was situated had completed its major repairs. The estate agent replied that the major repair works including lifts, lobby and external façade had been completed in 2015. However, after the transaction was completed, the purchaser discovered that the building was scheduled for impending major repair works, with the most recent such works having actually been carried out in 2007. The discrepancy prompted the purchaser to lodge a complaint with the EAA.

結果

監管局經調查後將個案交由紀律委員會進行研訊。紀律委員會認為，該地產代理未有向買家提供正確的資訊，未能保障和促進客戶的利益，因而違反地產代理監管局發出的《操守守則》第3.4.1段。

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定向該地產代理作出紀律處分，包括譴責、罰款港幣5,000元及在其牌照附加進修條件，包括須在12個月內，透過參加並完成監管局持續專業進修計劃下的「合規及有效管理」類別的講座或研討會，並取得地產代理監管局認可的12個學分。

Result

The case was referred to the Disciplinary Committee for inquiry hearing after investigation. The Disciplinary Committee was of the view that the estate agent provided incorrect information to the purchaser which did not protect and promote the interests of the client, thus failing to comply with paragraph 3.4.1 of the *Code of Ethics*.

Having considered the nature of this case and the disciplinary record of the estate agent, the Disciplinary Committee decided to impose disciplinary sanctions on her, including a reprimand, a fine of \$5,000, and attaching conditions to her licence, requiring her to obtain 12 points through attending seminars or workshops in the "Compliance and Effective Management" category of the EAA Continuing Professional Development Scheme within 12 months.



潘達恒先生

香港地產代理總商會主席

Mr Jacob POON Tat-hang

Chairman of Hong Kong Real Estate Agencies General Association

業界意見 Comment from the trade

地產代理不應單憑記憶及過往相關的經驗，在未核實的情況下，隨便回覆客人物業最新情況。亦因為代理每天也處理不同的大廈資料，有機會隨記憶淡忘或者物業數目眾多而產生混亂。

所以，從業員應該在買賣交易之前直接查詢業主單位的相關資料，或陪同客戶到管理處了解大廈維修等情況，並需要給予準買家一份最新的土地查冊，以得知物業的最新業權狀況，如業主姓名、買入時間、有否按揭及維修令等，將資料一次過提供予客戶，讓客戶作出最終置業的決定。

奉勸從業員在日常工作中須依法行事，應以「君子愛財，取之有道」的理念行事，加入同理心，明白客戶買賣物業是人生重要的決定，地產一員須擁有一份專業，要做好一個物業交易的把關者，客戶才對你們產生信任！

Estate agents should not solely rely on their memory and past experiences to answer the client's query about the latest property conditions without verifying the facts beforehand. As agents handle information on different buildings every day, there is a risk of forgetting details over time, or becoming confused due to the large number of properties involved.

Before proceeding with any sale and purchase of a property, estate agents should check the information of the flat directly with the vendor or accompany the client to the management office to find out the building's maintenance status. They should also provide an up-to-date land search document to the prospective purchaser to show the property's current title status, such as the owner's name, date of purchase, whether there is a mortgage status and any building order. All the information should be provided to the client at once, enabling them to make a final purchase decision.

Estate agents are advised to act in accordance with the law in their daily work. A virtuous person makes money in a proper way. They should also think in their clients' shoes as the sale and purchase of a property is a significant life decision for their clients. Estate agents should demonstrate professionalism and act as gatekeepers in property transactions to earn their clients' trust.