

紀律研訊個案 Disciplinary hearing case

未有向買方披露物業為涉及未成年人士的信託物業

Failure to disclose to purchaser that the property is held in trust for a minor

引言

涉及未成年人士的信託物業交易，因存在風險，持牌人應於買賣進行前，告知買方該物業為信託物業並提醒買方在進行交易前徵詢法律意見，否則有機會被監管局紀律處分。

事件經過

監管局接獲一宗住宅物業買賣的投訴。經過調查後，發現一名地產代理未有在緊接該物業的臨時買賣合約訂立前，就該物業安排在土地註冊處進行土地查冊，並向該物業的買方提供一份該土地查冊結果的文本。根據該查冊文件顯示，該物業實為涉及未成年人士的信託物業。於買賣雙方簽訂臨約後，買家委託的律師發現該信託的存在，表示按揭可能不獲銀行批核及會有業權糾紛的風險。最終買家沒有完成物業交易，並損失訂金。

結果

監管局紀律委員會認為該地產代理分別違反《地產代理常規(一般責任及香港住宅物業)規例》第13(4)條，及《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他作出紀律處分，包括譴責、向其罰款港幣合共28,000元，及在其牌照附加進修條件，包括須在24個月內，透過參加並完成地產代理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24個學分，當中須就物業轉易及租賃、專業操守及誠信，以及土地查冊三個科目，須分別至少取得3個學分。

Introduction

Transactions involving trust properties for minors carry significant risks, licensees should inform the purchaser that the property is a trust property and advise him to seek legal advice before proceeding with the transaction. Otherwise, they may be subject to disciplinary action by the EAA.

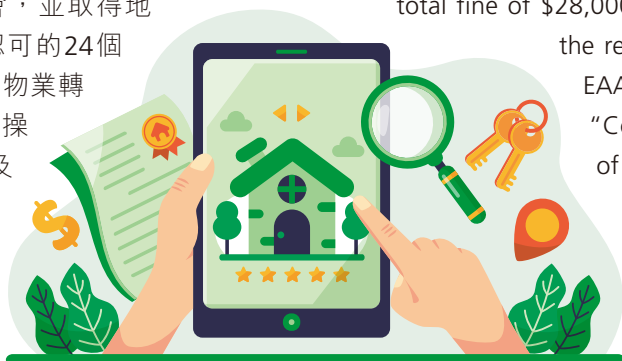
Incident

The EAA received a complaint related to the sale and purchase of a property. Upon investigation, it was found that an estate agent had failed to carry out a land search of the property and provide a copy of the land search to the purchaser immediately before the provisional agreement for sale and purchase was entered into. The land search revealed that the property was a trust property involving a minor. After the provisional agreement was entered into, the purchaser's retained lawyer discovered the existence of the trust and opined that the mortgage might not be approved by the bank and that there could be a risk of title dispute. Subsequently, the purchaser did not complete the transaction and the deposit was forfeited.

Result

The EAA Disciplinary Committee was of the view that the estate agent has breached section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation and paragraph 3.4.1 of the *Code of Ethics* issued by the EAA respectively.

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 \$28,000, and attach conditions to his licence, including the requirement to obtain 24 points recognised by the EAA through attending seminars or workshops in the "Compliance and Effective Management" category of the Continuing Professional Development Scheme under the EAA within 24 months, including at least three points each from the subjects of Conveyancing and Tenancy, Professional Ethics and Integrity, and Land Search.





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業界意見 Comment from the trade

地產代理一定要向客戶提供相關物業的準確資料，如沒有告知客戶有關物業為信託物業，就是不盡不實的行為，應要受到紀律處分。

Estate agents must provide clients with accurate information about the related property. Failure to inform the client that the property is a trust property is a fraudulent act and should be disciplined.

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不可安排客戶租賃商業單位作居住用途

Arranging for a client to lease a commercial unit for residential purpose is prohibited

引言

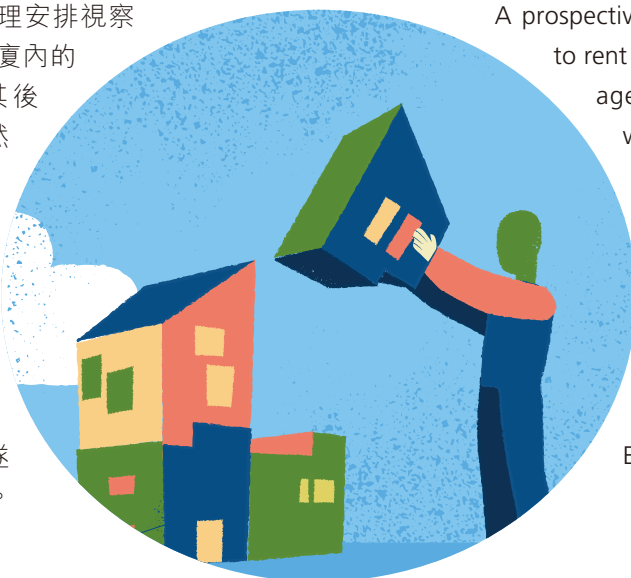
持牌人不應安排客戶租賃非住宅用途單位作居住用途，否則會被監管局紀律處分。

Introduction

Licencees should not arrange for their clients to lease a commercial unit for domestic purposes, otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名來自中國內地的人士尋求單位租住，由一名地產代理安排視察一個位於多用途大廈內的商業單位，並於其後簽訂租賃合約。然而，租客於入住後發現該單位只可用作商業用途。租客因此向該地產代理作出查詢，但該代理向其發送具羞辱性言論的訊息，租客遂向監管局作出投訴。



Incident

A prospective tenant from the Chinese Mainland sought to rent a flat to rent for use as a residence. An estate agent showed her a commercial unit located within a multi-purpose composite building and arranged for her to enter into a tenancy agreement. After moving in, the tenant discovered that the unit was restricted to commercial use only. She raised the matter with the estate agent but he replied with messages containing humiliating remarks. The tenant then lodged a complaint with the EAA against the estate agent.

結果

監管局紀律委員會認為，該持牌人不應在處理有關物業的租賃交易時，安排租客租賃商業單位居住及向租客傳送具羞辱性言論的訊息，因而違反了監管局發出的《操守守則》第3.7.2段，即「地產代理和營業員應避免做出可能令地產代理行業信譽及／或名聲受損的行為。」

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定向他作出紀律處分，包括譴責、罰款港幣5,000元、暫時吊銷牌照7天，及在其牌照附加進修條件，包括須在12個月內，透過參加並完成地產代理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，取得地產代理監管局認可的12個學分。



Result

The EAA Disciplinary Committee was of the view that the estate agent should not have arranged for the tenant to rent the commercial property for residential purpose and should not have sent humiliating messages to the tenant. He thus had breached paragraph 3.7.2 of the *Code of Ethics* issued by the EAA 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 of this case and the disciplinary record of the estate agent, the Disciplinary Committee decided to impose disciplinary sanctions on him, including a reprimand, a fine of \$5,000, suspension of his licence for seven days, and attach conditions to his licence, requiring him to obtain 12 points through attending seminars or workshops in the "Compliance and Effective Management" category of the Continuing Professional Development Scheme within 12 months.



蕭亮鴻先生

地產代理人員協會副主席

Mr Keith Siu

Vice-chairman of Property Agents Association

業界意見 Comment from trade

作為專業持牌地產代理或營業員，為客戶推介各類樓盤或物業前，不論是買賣或租賃，除了要詳細了解客戶要求及需要外，亦須如實地向客戶提供物業的正確資料，例如准許用途及實用面積等。

近年外國及中國大陸人士如留學生，在港購買或租賃各類物業情況越見普遍。由於他們對本港的物業市況及相關法規認識較淺，在進行交易時，往往全憑地產代理和營業員所提供的專業意見及資料作決定。若有從業員為促成交易，以不盡不實的手法誤導客戶，定必令香港地產代理行業多年來建立的信譽及名聲受損。

As a professional licensed estate agent or salesperson, it is essential to understand the client's requirements and needs on purchase, sales or leasing, and to provide accurate information about the property, such as permitted use and saleable area, before recommending properties to clients.

In recent years, it has become more common for foreigners and Chinese Mainlanders, such as students, to purchase or rent properties in Hong Kong. As they have limited knowledge of the Hong Kong property market and related regulations, they usually rely on the professional advice and information provided by estate agents and salespersons when making decisions. It is unethical for a practitioner to mislead his client in order to close a deal, and will undoubtedly damage the reputation and credibility of the Hong Kong estate agency industry.