業界意見 Comment from the trade

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地產代理在接受業主出租委託時，有責任採取合理步驟確認該物業是否能合法出租。當中包括於訂明來源取得該物業資料，以核實包括擁有權及產權負擔詳情等重要資訊。如業主並沒有該土地的合法業權，除非有業權人的妥善授權，否則無權以業主身份出租該物業。

同時，由於寮屋一般不可違規擴建、改變用途或轉讓，若地產代理協助放租寮屋，可能令客戶面臨極大的法律及實際風險。因此，在此個案中，地產代理的正確做法應是拒絕接受委託，並如實告知各方潛在的法律風險，絕不能為促成交易而抱着僥倖心態。

When being appointed by a landlord to lease a property, estate agents have the responsibility to take reasonable steps to confirm whether the property can be legally leased out. This includes obtaining property information from prescribed sources to verify important details such as ownership and the details of encumbrances. If the landlord does not hold the legal title of the land, he/she has no right to lease the property unless he/she has the proper authorisation from the title holder.

Furthermore, squatter properties generally cannot be lawfully extended, converted, or transferred. If an estate agent assists in leasing out a squatter property, it may lead to the client being exposed to significant legal and actual risks. Therefore, in this case, the correct approach for the estate agent is to decline the appointment and inform all parties of the potential risks honestly, rather than banking on luck just to seal the deal.

紀律研訊個案 Disciplinary hearing case

安排未取得「購買資格證明書」的準買家簽訂協議書

Arranging for a prospective purchaser to enter into an agreement before the purchaser obtained the Certificate of Eligibility to Purchase

引言

持牌人須確保擬購買房屋委員會居屋第二市場計劃單位的準買家在簽約前持有有效的購買資格證明書。否則，持牌人可能會被監管局採取紀律處分。

事件經過

一名地產代理安排一名準買家視察一個房委會居屋第二市場計劃下的單位。由於該名準買家當時尚未取得購買資格證明書，因而無法簽訂臨時買賣合約。儘管如此，該地產代理仍然誘使該準買家先簽訂另一份協議書以表明購買意向，並向賣方支付一筆誠意金。

Introduction

Licensees shall ensure that a prospective purchaser holds a valid Certificate of Eligibility to Purchase before entering into any agreement to purchase a flat under the Home Ownership Scheme Secondary Market Scheme of the Housing Authority. Otherwise, they may be subject to disciplinary action by the EAA.

Incident

An estate agent arranged for a prospective purchaser to inspect a property under the Home Ownership Scheme Secondary Market Scheme of the Housing Authority. However, as the prospective purchaser had not yet obtained the Certificate of Eligibility to Purchase, she lacked the capacity to enter into a provisional agreement for sale and purchase. Yet, the estate agent induced her to sign another agreement to express her intention to purchase ("Agreement") and pay earnest money to the vendor.

其後，該準買家在該協議書有效期內決定不繼續進行交易。該準買家認為，根據《房屋條例》，在取得「購買資格證明書」前簽署的任何形式的協議均屬無效，因此她要求撤回該協議並取回該筆誠意金。然而，該地產代理並未回應其要求，該準買家遂向監管局投訴。

結果

監管局經調查後將個案交由紀律委員會進行研訊。紀律委員會認為，該地產代理違反了監管局發出的《操守守則》第3.4.1段，即「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，紀律委員會決定向該地產代理作出紀律處分，包括暫時吊銷牌照1個月、譴責、罰款港幣2,000元、及在其牌照附加進修條件，須於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。

Later, the prospective purchaser decided not to proceed with her purchase within the validity period of the Agreement. The prospective purchaser was aware that pursuant to the Housing Ordinance, any kind of agreement signed before obtaining the Certificate of Eligibility to Purchase is invalid and hence she sought to cancel the Agreement and reclaim the earnest money. However, the estate agent did not respond to her request and therefore the prospective purchaser lodged a complaint with the EAA.

Result

The case was referred to the Disciplinary Committee for an 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* issued by the EAA which states that "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 the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to impose disciplinary sanctions on him, including a suspension of his licence for one month, a reprimand, a fine of $2,000, and attached conditions to his licence, requiring him to obtain 12 points by attending seminars or workshops in the "Compliance and Effective Management" category of the Continuing Professional Development Scheme within 12 months.

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作為專業的地產代理，理應知道居屋第二市場買賣受《房屋條例》嚴格監管。準買家必須持有有效的購買資格證明書，確認身分及資格後方可簽訂買賣協議。儘管現時地產代理行業競爭劇烈，要成功開單絕對不易；但亦不可以為求目的，不擇手段，試圖走法律罅，誘使客戶簽署無效的買賣協議。有關行為會損害客戶利益。希望業界同行能多加注意，免受紀律處分，甚至承擔法律責任。

A professional estate agent should know that the transactions of the flats of Home Ownership Scheme secondary market are strictly regulated by the Housing Ordinance. Prospective purchasers must hold a valid Certificate of Eligibility to Purchase and their identity and eligibility must be verified, before entering into a sale and purchase agreement.

Although competition in the estate agency industry is fierce nowadays and closing a deal is not easy, estate agents should never resort to unscrupulous means to achieve their goals — such as attempting to exploit legal loopholes and inducing clients to sign invalid sale and purchase agreements. Such action will harm the clients' interests. I hope that our fellow estate agents will pay closer attention to this, so as to avoid disciplinary action or even legal liability.