

打擊無牌地產代理

Stamp out unlicensed estate agents

監管局留意到有懷疑無牌人士向準買家、尤其是來自中國內地、不熟識香港物業交易流程及地產代理持牌要求的，於香港推廣及銷售一手住宅物業。今期《專業天地》中，監管局會講述監管局最近的相關執法行動，並提醒地產代理公司切勿聘用無牌人士從事地產代理工作。

The EAA has noticed that some suspected unlicensed individuals are promoting the sale of first-hand residential properties in Hong Kong to potential purchasers, particularly those from the Chinese Mainland, who are not familiar with the transaction process and licensing requirement of estate agents in Hong Kong. In this issue of *Horizons*, the EAA would like to talk about its latest related enforcement action and remind estate agency companies that they must not hire unlicensed individuals to carry out estate agency work.



監管局的行動與提醒

監管局重申，除了已訂明的豁免情況外，任何人在香港從事地產代理工作，均須持有由監管局發出的有效牌照。無牌從事地產代理工作，屬於刑事罪行，一經定罪，最高刑罰為罰款50萬元及監禁兩年。

在今年五月一次打擊無牌地產代理工作的行動中，監管局在一手樓盤銷售處發現一名涉嫌在無牌情況下從事地產代理工作的男子。該個案已即時轉交警方跟進，警方隨後已拘捕該名人士。

根據《條例》，「地產代理工作」的定義廣泛。本質上，「地產代理工作」是指在業務過程中為客戶：

- (一) 介紹意欲出售、購買或租賃物業的第三者而進行的活動或工作，及相關的商議；或
- (二) 於介紹工作和商議工作完成後，就物業達成買賣或租賃協議而進行的工作。

派發宣傳單張及／或向準買家提供物業資料，及或帶客視察物業或在街頭招攬途人參觀物業，均有可能構成無牌從事地產代理工作，屬《條例》下嚴格禁止的行為。地產代理公司的管理層或僱主必須確保只有持有有效地產代理牌照或營業員牌照的員工方可從事地產代理工作。他們不可聘用無牌人士推廣物業，更應積極監管中層管理人員，確保他們不會聘用或派駐無牌員工進行任何形式的宣傳活動。

The EAA's action and reminder

The EAA reiterates that, unless otherwise exempted, anyone engaging in estate agency work in Hong Kong must hold a valid licence issued by the EAA. Failure to do so is an offence and the maximum penalty is a fine of \$500,000 and imprisonment for two years.

During an operation combatting unlicensed estate agency work in May this year, the EAA identified a man suspected of conducting estate agency work without a licence at a first-hand sales site. The case was immediately referred to the Police, and the Police have arrested that person.

The definition of "estate agency work" in Estate Agents Ordinance ("EAO") has a wide meaning. In essence, the term "estate agency work" refers to any work done in the course of business for a client:

- (a) being work done in relation to the introduction to the client of a third person who wishes to buy, sell or lease a property or the subsequent negotiations for the purchase, sale or leasing of the property, or
- (b) being work done, after the introduction or the negotiations, to effect the purchase, sale or leasing of the property.

Distributing leaflets and/or providing property information to prospective purchasers and/or accompanying them to inspect show flats with a view to soliciting business may amount to unlicensed estate agency work, which is strictly prohibited under the EAO. The management or employer of estate agency companies must make sure that only employees with a valid estate agent's licence or salesperson's licence can carry out estate agency work. They must refrain from hiring unlicensed persons to promote properties, and must also actively supervise middle management to ensure they do not hire or deploy unlicensed staff for any form of promotional activities.

地產代理監管局
ESTATE AGENTS AUTHORITY



池牌人
CHI PAI YAN

地產代理（個人）牌照
ESTATE AGENT'S LICENCE (INDIVIDUAL)
E-123456

牌期屆滿日期 LICENCE EXPIRY DATE
11-10-2027

地產代理公司及其管理層的法律責任

持牌地產代理公司及其董事須設立妥善的程序及制度，以監督和管制其地產代理業務及確保無牌人士沒有進行地產代理工作。僱用或繼續僱用當其時並非地產代理牌照或營業員牌照持有人的人士作為營業員，亦屬於刑事罪行。一經定罪，最高刑罰為罰款10萬元及監禁六個月。

根據監管局發出的執業通告(編號15-01(CR))所述，《地產代理常規(一般責任及香港住宅物業)規例》第15條的要求不只適用於經營地產代理業務的僱主和董事，亦延伸至由地產代理聘用或委任的持牌地產代理(例如：為符合《條例》就有效和獨立地控制地產代理公司的辦事處的業務而委任的經理，以至其上司及高層管理人員)，而其職責或為設立及／或維持程序或制度，以監督及管理其僱員或其轄下工作的人。

因此，負責聘請地產代理的經理，須查核將獲聘從事地產代理工作的人士，是持有有效的地產代理或營業員牌照；並向員工清晰闡明未持有牌照的僱員(如代理見習生)可以及不可以從事的工作，並僅指派持牌人士進行地產代理工作。

Liability of licensed estate agency companies and their management

Licensed estate agency companies and their directors are responsible for establishing proper procedures or systems to supervise and manage their estate agency business and they must ensure that their unlicensed employees do not practice estate agency work. Employing or continuing to employ a person as a salesperson who for the time being is not the holder of an estate agent's licence or salesperson's licence is an offence; the maximum penalty upon conviction is a fine of \$100,000 and imprisonment for six months.

As stated in the Practice Circular (No. 15-01(CR)) issued by the EAA, the requirement of section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation is not restricted to owners and directors of an estate agency business, it extends to licensed estate agents (e.g., managers appointed for the effective and separate control of the business of an office of the estate agency company in compliance with the EAO, and their supervisors on the reporting line to the senior management) employed or appointed by an estate agent, who are responsible for establishing and/or maintaining the procedures or systems to supervise and manage the work of employees or persons under their control.

Therefore, hiring managers of estate agency companies must ensure that the person to be employed for conducting estate agency work possesses a valid estate agent's or salesperson's licence; and the work that non-licensed employees (e.g., agent trainees) can and cannot undertake is clearly set out for staff, and only licensees would be assigned to perform estate agency work.



捍衛行業專業水平

物業交易涉及複雜的程序與專業知識，例如進行土地查冊、確認產權負擔及協助各方簽訂協議等。持牌地產代理／營業員具備物業交易所需的專業知識處理物業交易，其執業及行為均受監管局規管。相反，無牌人士並非受監管局規管，消費者權益將無法獲得保障。

監管局將繼續採取巡查行動，對無牌從事地產代理工作的行為實施零容忍政策。凡有表面證據支持的個案，均會轉交警方作進一步行動。

Safeguard the trade's professionalism

Property transactions involve complicated procedures and specific knowledge such as conducting land searches, identifying encumbrances, and assisting the parties in entering into agreements. Licensed estate agents and salespersons possess the required professional knowledge to handle property transactions and their practice and conduct are regulated by the EAA. On the contrary, unlicensed persons are not regulated by the EAA and hence consumers' interests would not be protected.

The EAA will continue to conduct inspections and take a zero tolerance approach to unlicensed estate agency work. Any cases supported by prima facie evidence will be referred to the Police for further action.

