



紀律研訊個案 Disciplinary hearing case

向買家提供與政府租借地及其上的僭建物有關的錯誤資訊

Providing incorrect information to the purchaser regarding government-leased land and unauthorised building works on it

引言

持牌人在未經核實前，不應向買家提供錯誤的物業資訊，否則有可能被監管局紀律處分。

事件經過

在視察物業期間，兩名地產代理向一名準買家表示，該物業附帶位於政府土地上的僭建物及花園，早前已獲地政總署批出5年的使用許可，該使用權可一併轉讓給新業主。

在物業成交數月後，買家收到地政總署致前業主有關拖欠政府租金的信件。買家聯絡地政總署後得知，自2017年起收緊對非法佔用政府土地的規範化申請安排後，位於政府土地上的僭建物及花園的租用權已不得轉讓予新買家。由於前業主拒絕承擔責任，該買家需要拆除僭建物及還原該政府土地，隨後向監管局作出投訴。

結果

監管局經調查後將個案交由監管局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兩名地產代理的違規紀錄，紀律委員會決定向兩人作出紀律處分，包括譴責、分別罰款\$10,000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，取得地產代理監管局認可的18個學分，當中最少6個學分須透過參加物業轉易及租賃科目的講座或研討會而獲取。

Introduction

Licencees must not provide incorrect property information to purchaser clients prior to verification. Otherwise, they may be subject to disciplinary action by the EAA.

Incident

During a property viewing, two estate agents informed the prospective purchaser that the unauthorised building works ("UBW") and the garden adjacent to the property, which were situated on government land, were previously granted a five-year usage permit by the Lands Department, and that these usage rights could be transferred to the new owner.

Several months after the property transaction was completed, the purchaser received a letter from the Lands Department addressed to the former owner regarding the outstanding government rent. Upon contacting the Lands Department, the purchaser learned that the usage rights of the UBW and the garden situated on government land could not be transferred to a new purchaser due to the tightened arrangements for regularisation applications since 2017. As the former owner refused to take responsibility, the purchaser had to demolish the UBW, and reinstate the government land, and subsequently lodged a complaint with the EAA.

Result

The case was referred to the EAA's Disciplinary Committee for an inquiry hearing after investigation. The Disciplinary Committee was of the view that the estate agents 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 agents, the Disciplinary Committee decided to impose sanctions on both of the estate agents, including a reprimand, a fine of \$10,000 each, and attaching conditions to their licences, requiring each estate agent to obtain 18 CPD points through attending seminars or workshops in the "Compliance and Effective Management" category of the EAA Continuing Professional Development Scheme within 24 months, with at least six CPD points from seminars or workshops on the subject of Conveyancing and Tenancy.

業界意見 Comment from the trade



郭昶先生

香港地產代理專業協會會長

Mr Anthony KWOK

President of Society of Hong Kong
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在未經批准的情況下佔用政府土地是違法的。地產代理在處理可能涉及佔用政府土地的物業買賣時必須格外小心，應查閱與該土地租賃／佔用有關的文件及向政府相關部門或原業主尋求確認，確保所掌握的資訊是更新的。另外地產代理要盡力去查證有否業權上的問題，並核實是否沒有其他潛在的產權負擔。一旦處理不當，可能影響買方的權益，甚至可能構成業權爭議。

Occupying government land without permission is illegal. Estate agents must exercise great caution when handling a property transaction that involves government-leased land; they should examine documents related to the land lease and seek confirmation from relevant government departments or the original owner to ensure the information is up-to-date. Furthermore, estate agents must make every effort to investigate potential land title issues and verify whether there are other potential encumbrances. Improper handling could harm the purchaser's interests and even lead to title disputes.



紀律研訊個案 Disciplinary hearing case

未經業主的准許下擅自帶客戶視察物業

Arranging a property viewing without obtaining the owner's prior permission

引言

持牌人帶客戶視察住宅物業前，必須取得該物業的業主同意。否則，持牌人可能會被監管局採取紀律處分。

事件經過

一名業主委託一家地產代理公司放售及放租其物業，同時自行於網上物業平台刊登廣告放售該物業。及後一名地產代理在網上平台看到該廣告後，聯絡受委託的地產代理公司借用鎖匙，以便帶客戶視察物業。該受委託的地產代理公司遂知會業主，並獲得其同意。

在上述視察完成後，該名地產代理在未有通知該受委託的地產代理公司或業主的情況下，於隨後的另一天帶同客戶視察該物業。然而，當時該物業已經租出。新租客當時雖不在家中，但透過安全監控攝影機發現有陌生人進入其住所。租客震驚下報警並聯絡

Introduction

Licensees must obtain permission from the owner before arranging for clients to view listed residential property. Otherwise, they may be subject to disciplinary action by the EAA.

Incident

An owner engaged an estate agency company to list a property for both sale and lease, while simultaneously advertising the sale of the property himself on an online property platform. After seeing the online advertisement, an estate agent contacted the appointed estate agency company to borrow the keys of the property in order to arrange a property viewing with a client. The appointed estate agency company then notified the owner and obtained his permission.

After the abovementioned viewing, the estate agent brought clients to view the property on another day without notifying either the appointed estate agency company or the owner. However, by that time the property had already been rented out. The new tenant was not at the property at the time but discovered through a security surveillance

地產代理公司跟進。其後，業主亦獲悉此事，並向監管局作出投訴。

結果

監管局經調查後將個案交由監管局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3.7.2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，紀律委員會決定向該地產代理作出紀律處分，包括譴責及罰款港幣

4,100元（由於「罰款制裁寬減機制」適用於該指稱，罰款由\$4,500寬減至\$4,100）。



camera that some strangers had entered her premises. Feeling shocked, she called the Police and contacted the estate agency company to follow up. Later, the owner was also informed of the incident and lodged a complaint with the EAA.

Result

The case was referred to the EAA's Disciplinary Committee for an inquiry hearing after investigation. The Disciplinary Committee was of the view that the estate agent had breached paragraph 3.7.2 of the *Code of Ethics* promulgated 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 the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to impose sanctions on him, including a reprimand and a fine of \$4,100 (as the Monetary Sanction Reduction Mechanism was applicable to this allegation, the fine was reduced from \$4,500 to \$4,100).

業界意見 Comment from the trade



陳翠珊女士

地產代理管理協會副會長

Ms Anita Chan

Vice President of Estate Agents
Management Association

地產代理在安排客戶視察物業前，應事先取得業主或其授權代表的同意，並就每次視察作出妥善安排及知會相關各方。物業視察涉及業主的財產及租客的居所，未經准許擅自帶客進入，不但可能危及租客的私隱與人身安全，亦會損害業主對代理的信任。持牌人應時刻恪守專業操守，避免作出任何有損地產代理行業信譽及專業形象的行為。

Before arranging a viewing of a property, an estate agent should first obtain the consent of the owner or the owner's authorised representative and must make proper arrangements for and give notice of each viewing to the parties concerned. A property viewing involves both the owner's property and the tenant's home. Entering the property with a client without permission may not only compromise the tenant's privacy and personal safety but also undermines the owner's trust in the agent. Licensees should always uphold professional conduct and avoid any act that damages the credibility and professional image of the estate agency trade.