



Inquiry Hearing Cases of
Estate Agents –
A Selection
(First-Hand Residential Properties)

Foreword

In recent years, the thriving first-hand transactions have become the focus of the residential property market. Due to the buoyant situation in the second-hand market, more and more estate agents, including those who were primarily interested in second-hand market, have participated in the promotion of sales of the first-hand residential properties.

At the same time, the spotlight in the first-hand residential market also attracted much public attention and expectation on the conduct and services of the estate agency trade. The Estate Agents Authority (“EAA”) hence issues this new booklet with the aim to enhancing licensees’ understanding of the relevant legal and regulatory requirements pertaining to the sale and purchase of first-hand residential properties and to reminding them of the proper practices for handling first-hand property transactions in a bid to promote quality service of the estate agency trade and to better protect the interests of consumers.

This booklet will, through sharing certain real inquiry hearing cases, illustrate the relevant regulations, guidelines and ethics that licensees should comply with when handling first-hand residential properties transactions, as well as the disciplinary actions imposed on them in the case of non-compliance. The facts of some inquiry hearing cases contained in this booklet have been adapted or modified as needed for easy reading, and the views expressed and stance taken are based on the facts and evidence presented to the Disciplinary Committee of the

EAA at the material time. In some inquiry hearing cases, the incidents occurred prior to the coming into operation of the Residential Properties (First-hand Sales) Ordinance and readers will appreciate that certain applicable legal and regulatory requirements may have changed and the future regulatory approach may be thereby affected, and that these cases are included in this booklet for the purpose of alerting readers on the possible pitfalls only.

Disclaimer

The content and information contained in this booklet is only intended for general reference and should not be construed as a source of legal or professional advice. Readers are advised to seek legal or professional advice on matters encountered in specific situations. The EAA shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or in reliance on, any error, omission, statement or misstatement contained in the whole or any part of this booklet.

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Notes:

All references to

1. "EAA" shall mean the Estate Agents Authority.
2. "Practice Regulation" shall mean the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.
3. "Code of Ethics" shall mean the Code of Ethics issued by the Estate Agents Authority.
4. "Practice Circular" shall mean the practice circulars issued by the Estate Agents Authority.
5. "Continuing Professional Development Scheme" shall mean the Continuing Professional Development Scheme launched by the Estate Agents Authority.
6. "Land search" refers to the land register of a property in the Land Registry.

The background features a series of overlapping, flowing lines and circles in shades of gray and white, creating a sense of movement and depth. The lines are thick and curved, while the circles vary in size and are scattered across the upper half of the image. The overall aesthetic is clean and modern.

Provision of information or advice to client

1. Misrepresentation on Capital Investment Entrant Scheme

Mr. Z was a Mainland China resident. In late 2011, Mr. Z asked estate agent X whether he could obtain residency status in Hong Kong by investing in Hong Kong properties.

Estate agent X informed Mr. Z that purchasing properties in Hong Kong was one of the investment assets permissible under the then investment immigration policy of Hong Kong. He further advised that other means of investments such as equities, debt securities, certificates of deposits, etc. were less preferable for they were investment products of higher risk as compared to real properties. Upon estate agent X's recommendation, Mr. Z purchased two Hong Kong properties ("the Properties") of a first-hand residential development and paid a total of down payments of \$1.5 million.

Later on, Mr. Z was shocked to learn that the Government of the Hong Kong Special Administrative Region had suspended real estate as one of the Permissible Investment Asset Classes under the Capital Investment Entrant Scheme with effect from 14 October 2010. He therefore decided not to proceed with the transactions which resulted in the forfeiture of the deposits of \$1.5 million to the developer.

Mr. Z lodged a complaint with the EAA against estate agent X. The EAA Disciplinary Committee conducted an inquiry hearing into the case.

Estate agent X admitted that he was aware of Mr. Z's intention to migrate to Hong Kong by means of investment, but denied that he had ever advised Mr. Z that investment in real estate in Hong Kong was one of the

means to acquire residency status in Hong Kong nor had he ever played the role as an immigration consultant or provided Mr. Z with any opinions regarding investment immigration.

Estate agent X argued that he had introduced the Properties to Mr. Z only because Mr. Z told him that he would like to buy properties as his family residence after acquiring residency status in Hong Kong.

Nevertheless, there was evidence showing that estate agent X had provided Mr. Z with some documents on investment immigration before Mr. Z entered into the sale and purchase transaction of the Properties. Moreover, estate agent X's testimony was self-contradictory while Mr. Z's testimony (which was supported by other evidence) was more credible and logical. The Disciplinary Committee hence accepted Mr. Z's evidence that estate agent X had advised him that investing in real estate in Hong Kong was a means to obtain residency status in Hong Kong and relying on such advice, Mr. Z entered into the provisional agreement for sale and purchase of the Properties. Such advice turned out to be incorrect, and Mr. Z suffered loss as a result. Estate agent X therefore had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*".

In view of the fact that the breach was serious in nature and that Mr. Z had suffered a hefty monetary loss due to estate agent X's misrepresentation, the Disciplinary Committee decided to suspend estate agent X's licence for four months.

2. Supplying misleading floor plan and soliciting deposit before issuance of pre-sale consent

In around April 2010, salesperson Y received a call from a prospective purchaser asking for information relating to a first sale development (“the Development”). Salesperson Y told the prospective purchaser that if he was interested in purchasing any unit of the Development, he should submit through his estate agency company (“Estate Agency Company”) a cashier order of \$1 million payable to the law firm representing the developer. Salesperson Y then sent some information (including a floor plan and an “Authorisation Letter of Property Purchase” purporting to be an authorisation given by the purchaser to Estate Agency Company to deal with the purchase of a unit of the Development and to handle the cashier order payable by the prospective purchaser to the law firm representing the developer) to the prospective purchaser. However, the “Consent to Sell” in respect of the Development which was subject to the Consent Scheme had not yet been issued by the Lands Department at that time. It was issued in June 2010.

The Lands Department launched the Consent Scheme in 1961 to regulate the sale of uncompleted buildings. Under the Consent Scheme, no reservation fee, deposit or any other consideration shall be accepted or collected by the vendor or its agent in any form or manner prior to the Lands Department’s issuance of the “Consent to Sell”. Besides, before arranging for the sale and purchase of an uncompleted unit under the Consent Scheme, licensees should check if the Lands Department has issued the relevant “Consent to Sell” as no preliminary agreement, or any

other document, whether it is stated to be binding or not, shall be signed before the “Consent to Sell” is issued.

Hence, instead of telling the prospective purchaser to submit a cashier order of \$1 million payable to the law firm representing the developer and providing her with the “Authorisation Letter of Property Purchase”, salesperson Y should have advised the prospective purchaser that the “Consent to Sell” had not yet been issued and that the developer was not in a position to sell or accept any reservation offer. Salesperson Y’s failure to advise his clients properly was thus in breach of paragraph 3.2.2 of the Code of Ethics, which states: *“Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market in order to be in a position to advise their clients in a responsible manner”*.

Besides, the official layout of the property concerned was a 2-bedroom flat. However, the floor plan of the 2-bedroom flat which salesperson Y supplied to the prospective purchaser was furnished and had been decorated with furniture to show two additional partitions within the 2-bedroom flat, and any reasonable potential purchaser would be misled into believing that the property concerned had 4 bedrooms. His failure to exercise due care to provide illustration or advice to client that the property concerned was in fact a 2-bedroom flat or to supply an accurate floor plan showing the actual condition of the property concerned amounted

to a breach of paragraph 3.5.1 of the Code of Ethics, which states: *“Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence”*.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Salesperson Y frankly admitted his breaches. As regards his breach of paragraph 3.2.2 of the Code of Ethics for failing to advise his client in a responsible manner but instead soliciting a deposit from his client before the issuance of the “Consent to Sell”, the Disciplinary Committee decided to reprimand salesperson Y, suspend his licence for 14 days and attach a condition to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months. As for his breach of paragraph 3.5.1 of the Code of Ethics for providing the misleading floor plan, the Disciplinary Committee imposed a reprimand on salesperson Y and attached a condition to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

3. Misrepresentation on monthly rental of car parking space

Ms. M received a call from estate agent Y promoting the sale of a first-hand car parking space at Development A. She was told that the price would be around \$500,000, and the monthly rental thereof could yield some \$2,000.

The next day, estate agent X, who was estate agent Y's supervisor, met with Ms. M at the sale office of the Development A. Ms. M told estate agent X that she would like to buy a car parking space at Development A because of the potential monthly rental yield of some \$2,000. However, estate agent X told Ms. M that the sale of the car parking spaces of Development A had not yet been launched to the public. He tried to persuade Ms. M to consider buying the car parking spaces at Development B instead as it was in the vicinity of Development A and were sold by the same developer with a much lower price at around \$200,000 and with a more attractive rental income of around \$1,700 per month. Estate agent Y and estate agent Z were present when estate agent X made the aforesaid representation to Ms. M.

Learning that the price and rental yield of the car parking spaces at Development B were more attractive, Ms. M decided to buy two car parking spaces ("the Properties") at Development B.

After the completion of the sale and purchase of the Properties, Ms. M

listed the Properties with several large estate agencies for leasing. To her dismay, she found that the market monthly rentals of the car parking spaces at Development B could only fetch around \$1,000.

Dissatisfied with estate agent X's misrepresentation on the rental yield of the Properties, Ms. M lodged a complaint with the EAA against him.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Apart from Ms. M, the EAA also summoned estate agent Y to testify at the hearing. Estate agent Y said that he heard estate agent X telling Ms. M at the material time that each of the Properties could yield a monthly rental of around \$1,800.

However, estate agent X denied at the hearing that he had ever made any representation to Ms. M on the monthly rental of the Properties before she made the purchase since she did not ask any question about the rental yield of the Properties at all.

Estate agent X also called estate agent Z as his witness at the hearing. Estate agent Z testified that estate agent X did respond to Ms. M's relevant enquiry by telling her that she could get around \$1,700 to \$2,000 monthly rental for each of the Properties. When further questioned about the details of the conversations between estate agent X and Ms. M,

estate agent Z changed his stance and said he could not recall who (among the three estate agents present at the material time) exactly had advised Ms. M on the monthly rental of the Properties.

The Disciplinary Committee held that it was unlikely that Ms. M, who purchased the Properties for investment purpose, did not ask estate agent X at all about the potential monthly rental of the Properties.

In addition, the Disciplinary Committee noted that according to the information from the Rating and Valuation Department, the monthly rentals of the Properties during the relevant financial year did not exceed \$700.

After considering the relevant information and the witnesses' testimonies, including that of estate agent Z, the Disciplinary Committee was satisfied that the allegation against estate agent X was well-founded, i.e. estate agent X had represented to Ms. M that the car parking space at Development B could yield a monthly rental of \$1,700 when this was not the case. Estate agent X hence was in breach of paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*".

The Disciplinary Committee imposed on estate agent X a reprimand, a fine of \$3,000 and attached a condition to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

The Disciplinary Committee also reminded estate agent X that he should, in his future practice, verify all the relevant information before providing the same to clients.

4. Misrepresentation on property location

Mr. and Mrs. S wanted to buy a first-hand residential property. Through estate agents X and Y, they viewed the show flats of a development (“the Development”) which was then still under construction. The S couple had made it very clear to the estate agents that they would not buy any unit on the top floor of a building as it would be too hot to reside in a top floor unit during the summer time.

Estate agents X and Y then recommended a property (“the Property”) to the S couple. They assured the S couple several times that the Property was not on the top floor of the building, but one floor below it. They claimed that the Development was 51-storeyed high, and the Property was located on the 50th floor. Before arranging for the S couple to enter into a provisional agreement for sale and purchase (“PASP”) in respect of the Property with the developer, estate agents X and Y provided them with a pamphlet issued by the estate agents’ employer but not the sales brochure issued by the developer.

Shortly thereafter, the S couple found, when browsing another estate agency’s website, that the Development was actually 50-storeyed high, which meant that the Property was in fact situated on the top floor of the Development.

In a subsequent meeting with estate agent X, the S couple recorded their conversations with estate agent X who admitted to the S couple during the meeting that he was not aware of the fact that the Property was on the top floor of the Development. He did not refute the S couple's accusation that he had misled them into entering the PASP. During the conversation, estate agent X promised to compensate their loss if their request to withdraw from the deal was not accepted by the developer. He even signed a confirmation on his promise upon the S couple's request ("the Confirmation").

However, estate agent X reneged on his promise to compensate the S couple's loss when their request to cancel the PASP was subsequently refused by the developer. The S couple thus lodged a complaint with the EAA against both estate agents X and Y, and provided the conversation recording between them and estate agent X as evidence.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Estate agent X did not dispute the authenticity of the recording at the hearing. The Disciplinary Committee opined that the S couple were honest and reliable witnesses. In addition, the conversation recording and the Confirmation was cogent evidence supporting S couple's allegation against estate agents X and Y.

The Disciplinary Committee ruled that estate agents X and Y had misrepresented to the S couple that the Property was one floor below the top floor of the Development when in fact it was not true. Estate agents X and Y were therefore in breach of paragraph 3.7.2 of the Code of Ethics, which states: *“Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.”*

The Disciplinary Committee decided to reprimand each of the licensees, suspend their respective licences for a period of 14 days, and attach to their respective licences a condition requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

According to the Practice Circular (e.g. No.13-04(CR)) issued by the EAA, licensees handling the sale of first-hand residential properties should provide information to prospective purchasers on the basis of the latest information contained in the sales brochure and documents prepared and provided by the vendor; and they should take all reasonable steps and exercise all due diligence to verify the information. Moreover, licensees must not make any representation that may mislead prospective purchasers.

5. Providing inaccurate information on the view of a flat

While viewing a show flat at the sales office of a development under construction (“the Development”), Mr. K, a prospective purchaser, and his girlfriend Miss W were approached by salesperson X and estate agent Y. Salesperson X and estate agent Y tried to persuade Mr. K to buy a unit by highlighting the attractions of the Development. One of the major attractions was that there was a fabulous sea view in the distance.

As Mr. K and Miss W knew that another new residential development (“the neighbouring development”) was being constructed not too far away from the Development, they were concerned about whether they would be able to see the sea view from the unit they intended to purchase. They therefore asked salesperson X to find out on which floors of the Development the sea view would not be blocked by the neighbouring development. Salesperson X replied that the sea view outside the flats on the 25th floor and above of the Development would not be affected by the neighbouring development.

Mr. K then asked estate agent Y the same question and further inquired about the building height of the neighbouring development. Estate agent Y told him that the building height of the neighbouring development would range from 16 to 30 storeys and the neighbouring development would not block the view of the flats located above the 30th floor of the Development.

Being sceptical about the representations made by estate agents all along, Miss W, accompanying Mr. K at the time, recorded all the conversations between Mr. K and the two licensees with her mobile phone.

In fact, according to the information supplied by the Buildings Department, the building height of the neighbouring development would range from 16 to 33 storeys. Therefore, there was a possibility that the view of the flats on the 33rd floor and below of the Development would be blocked.

Disappointed with both licensees' failure to provide accurate property information, Mr. K lodged a complaint with the EAA against them. He also submitted the voice recordings of his conversations with the two licensees recorded by Miss W as evidence.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Disciplinary Committee was of the view that the two licensees had not exercised due care and due diligence to verify the information about the views from the flats of the Development before providing Mr. K with the information. The Committee found that the licensees did not comply with paragraph 3.5.1 of the Code of Ethics, which states: "*Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence*". For the disciplinary sanctions, the Committee decided to suspend the licensees' licences for seven days and to attach

to their licences a condition requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months respectively.

The EAA has issued Practice Circulars (e.g. No.13-04(CR)) on the sale of first-hand residential properties to remind estate agents not to make any representation that would mislead prospective purchasers. When providing property information to their clients, licensees should do so only on the basis of the information contained in the sales brochure and documents provided by the developer, and only after they have taken all reasonable steps and exercised all due diligence to verify the information.

6. Improperly assuring purchaser that the property could be resold before completion

Ms. N, while looking for a residential property for investment, was persuaded by salesperson X and estate agent Y to make a purchase of a first-hand shop unit at a mall. They assured her that she would definitely be able to get a mortgage amounting to 50% of the purchase price, repayable over 20 years at a rate of 2.15% per annum, and that she would definitely be able to re-sell the shop unit at a good profit as a confirmor before the completion date so that there would be no need for her to obtain a mortgage for financing the purchase. Attracted by such representations, Ms. N made the purchase. However, after signing the provisional agreement for sale and purchase and returning home, Ms. N became worried about her financial situation. She therefore instructed salesperson X to sell the shop unit at the original price, yet there was no sign of purchasers coming forth. As she was unable to re-sell the shop unit before the completion, she had to apply for a mortgage. However, she was disappointed to find that the mortgage terms were not as favourable as salesperson X and estate agent Y had assured her. As a result, she had to resort to selling some assets in order to have sufficient means to complete the sale. Dissatisfied with salesperson X and estate agent Y's service, she lodged a complaint with the EAA against salesperson X and estate agent Y, and also submitted a number of recordings as evidence.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. In the course, it was found that Ms. N had, before obtaining all the necessary details pertaining to the sale and purchase of the shop

unit, entered into a provisional agreement for sale and purchase in a rush. Ms. N regretted that she had been irrational and light-hearted in her purchase decision. Nonetheless, the Disciplinary Committee was of the view that the two licensees had made the representation that Ms. N would definitely be able to sell the property as a confirmor before the completion date. In making such an irresponsible statement to entice Ms. N to purchase the shop unit in a rush, salesperson X and estate agent Y failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: “*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”. The Disciplinary Committee imposed a reprimand, a \$2,000 fine, and decided that a condition be attached to the licensees’ licenses, requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

On the other hand, the Disciplinary Committee was of the view that there was insufficient evidence to support Ms. N’s complaint regarding the mortgage rate and terms. However, the Disciplinary Committee noted that Ms. N had previous experience in purchasing properties and applying for mortgages; and generally, a mortgage applicant should note that the mortgage terms and conditions might change due to market conditions and that the final decision rested with the bank. The Disciplinary Committee pointed out that Ms. N should have been more careful and serious in her purchase decision.

The Disciplinary Committee also commented that although the allegations relating to the mortgage terms and conditions were found to be unsubstantiated, it was necessary for salesperson X and estate agent Y to improve their professionalism and standard of service in order to prevent future misunderstandings. In particular, salesperson X and estate agent Y did not specialise in commercial property sales, and they knew Ms. N had no experience in investing in such properties. As such, they ought to have protected her interests by providing her with sufficient information, explaining to her the risks involved, and drawing her attention to terms and conditions that were not in her favour so that she would be in a position to make an informed decision prior to signing the provisional agreement for sale and purchase.

7. Giving misleading advice on stamp duty for purchasing two properties

Ms. T purchased a property at a first-hand development at about \$4 million through three agents. As she liked the location and facilities of the development, she wondered whether she should purchase another property at about \$5 million. However, she did not wish to pay extra stamp duty that would arise from purchasing two properties from the same developer on the same day, as this might be considered by the Stamp Duty Office to be forming a series of transactions in which case a higher rate of stamp duty would be charged on the aggregate amount of the two properties. She therefore asked the three agents for a way to avoid having to pay such extra stamp duty. The three agents were excited to learn that Ms. T would make another purchase, as they would receive more commission from the developer, and their boss would stop nagging them about meeting their customer quota. They advised that Ms. T could avoid having to pay extra stamp duty by purchasing a second property in the name of a relative, so that the Stamp Duty Office would believe that the two transactions were unrelated. Following their advice, Ms. T purchased a second property in her nephew's name.

Subsequently, Ms. T's lawyer warned her that there was the possibility that the Stamp Duty Office might consider the purchase of the two properties as a "series of transactions" despite the fact that the second property was purchased in her nephew's name, because Ms. T had in fact paid for both properties. Ms. T became worried and asked the developer if she could cancel the purchase of the second property, but her request was

refused. In the end, Ms. T decided not to purchase the second property, and her deposit was forfeited to the developer. Ms. T was angry at the three agents for putting her in such a situation, and lodged a complaint against them with the EAA.

Having conducted an inquiry hearing into the case, the EAA Disciplinary Committee was of the view that the three agents' suggestion to Ms. T that she could purchase a second property on the same day in her nephew's name so that she would not have to pay the extra stamp duty arising from the "series of transactions" was misleading, because there was a possibility that Ms. T would have to pay the extra stamp duty if the Stamp Duty Office found out that Ms. T was the beneficial owner of both properties. The Disciplinary Committee was of the further view that the three agents, in giving such misleading advice to Ms. T, had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*".

The Disciplinary Committee imposed on each of the three agents a reprimand, and decided that a condition be attached to their licenses requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months respectively.

8. Misrepresentation on payment of stamp duty in confirmor sale

Ms. C received a cold call from estate agency X regarding the sale of units in a first-hand residential development (“the Development”). Ms. C attended the sales office of the Development with her boyfriend, Mr. W, the following day.

Before making up their minds to purchase a unit, Mr. W asked estate agent X whether they had to pay any stamp duty if they bought a unit and then resold it as confirmors shortly afterwards. Estate agent X replied that they needed not to pay any stamp duty as the liability rested on the sub-purchaser. Relying on estate agent X’s advice, Ms. C and Mr. W signed the provisional agreement for sale and purchase (“the PASP”) to buy a unit in the Development (“the Property”).

A few days later, Ms. C and Mr. W attended their solicitors’ office to sign the formal agreement for sale and purchase. They were advised by their solicitors that they had to pay the stamp duty and they were told that there was in fact a clause in the PASP stipulating that the purchasers were responsible to pay the stamp duty. Mr. W called estate agent X immediately and questioned him on the matter. To Mr. W’s disappointment, estate agent X only provided him with two solicitors’ contact numbers and asked him to enquire with the solicitors directly.

Ms. C subsequently lodged a complaint with the EAA against estate agent X.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Upon estate agent X's admission to his misconduct, the Disciplinary Committee decided that estate agent X had wrongly advised the purchasers that they would not be responsible for the payment of the stamp duty in relation to the sale and purchase of the Property if they subsequently sold the Property as confirmors to a sub-purchaser. Estate agent X therefore was in breach of paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*". Estate agent X was reprimanded and a condition was attached to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

The Practice Circular (e.g. No.13-04(CR)) issued by the EAA has reminded estate agents handling the sale of first-hand residential properties not to make any representation that would mislead prospective purchasers.

In this subject case, estate agent X, upon Ms. C and Mr. W's enquiry, should have drawn their attention to the clause in the PASP and the relevant documents, or advised them to seek independent legal advice if he was not certain about the answer.

9. Misrepresentation on mortgage term

Mr. and Mrs. M bought a first-hand residential property through estate agent Y. Before entering into the provisional agreement for sale and purchase, the M couple told estate agent Y that they were retirees and thus were worried that it would be difficult for them to obtain a mortgage loan. They also expressed that they needed to obtain a mortgage of 70% of the purchase price to pay for the down payment and instalments. Estate agent Y told them that the property was of good quality and assured them that the bank would approve a mortgage loan of 70%, or even 90% of the purchase price (“the Representation”). The M couple subsequently applied for a mortgage with a number of banks, but they were only offered a loan of 50% of the purchase price. The M couple then lodged a complaint with the EAA.

Purchasing a property is a big investment requiring a large amount of money. Most buyers will therefore apply for a mortgage loan to finance their purchase from a bank. The Practice Circular issued by the EAA stipulates that practitioners must not make any assurances to prospective buyers on the mortgage terms when they are handling first-hand property transactions. In this case, estate agent Y failed to comply with paragraph 3.2.1 of the Code of Ethics issued by the EAA.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The M couple and estate agent Y all testified at the hearing. The Disciplinary Committee found that the M couple were honest and reliable witnesses while estate agent Y was evasive in answering the questions put to her by the Committee. Although estate agent Y was an experienced practitioner having practised in the estate agency trade for over 15 years, the Disciplinary Committee found that she was not

conversant with the requirements provided in the relevant EAA Practice Circular and the guidelines issued by the Hong Kong Monetary Authority on mortgage loans.

After careful consideration of the evidence presented and the submissions made by the parties at the inquiry hearing, the Disciplinary Committee rejected estate agent Y's evidence that she had not made the Representation to the M couple before arranging for them to sign the provisional agreement for sale and purchase of the property. The Disciplinary Committee accepted the M couple's evidence and held that estate agent Y had indeed made the Representation in contravention of the relevant Practice Circular and thus was in breach of paragraph 3.2.1 of the Code of Ethics, which states: "*Estate agents and salespersons should be fully conversant with the Estate Agents Ordinance, its subsidiary legislation, Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice*". The Disciplinary Committee decided to reprimand estate agent Y, suspend her licence for seven days and attach conditions to her licence requiring her to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

The Hong Kong Monetary Authority revises its guidelines on mortgage loans from time to time in light of market conditions. Lending institutions may also consider a number of factors such as the applicant's income sources and his/her financial condition, when vetting a mortgage loan application. Thus, practitioners should not make any assurances to prospective buyers on mortgage loans and should advise their clients to inquire with lending institutions directly.

10. Misrepresentation on incentive and mortgage term

On or about 26 December 2011, salesperson Y accompanied Ms. C and her family members to inspect a show flat of a first-hand residential property development (“the Development”). Salesperson Y then introduced them to estate agent X, who persuaded them to make a purchase of a residential property at the Development. Estate agent X assured Ms. C that she would definitely be able to get a mortgage amounting to 80% of the purchase price. Estate agent X further represented to Ms. C that the developer would offer a 5% discount on the purchase price if and only if the purchase was made through his estate agency company. Estate agent X and salesperson Y emphasised to Ms. C that it was the last day that the 5% discount would be available. Relying on such representations, Ms. C decided to purchase a unit for \$10,049,000 through the estate agency company of estate agent X and salesperson Y. Estate agent X and salesperson Y congratulated her for being able to meet the deadline for the discount. As Ms. C’s credit limit could not cover the initial deposit payment, she only paid part of the initial deposit by credit card. Salesperson Y and salesperson Z then accompanied Ms. C and her family members home to collect a cheque for the balance of the initial deposit for the purchase, during which salesperson Z further emphasised that it was the last day that the developer would offer a 5% discount on the purchase price. Without doubting salesperson Z’s confirmation, Ms. C proceeded with the purchase and gave the said cheque to salesperson Z.

It was later found that the representation made by estate agent X, salesperson Y and salesperson Z about obtaining the mortgage amount was false, as the guidelines issued by the Hong Kong Monetary Authority restricted mortgages to 50% of the purchase price for residential properties of \$10 million or above. It was also found that the 5% discount on the purchase price offered by the developer was not exclusive to the estate agency company of estate agent X, salesperson Y and salesperson Z, and that 26 December 2011 was not the last day of the offer. As such, Ms. C refused to proceed with the purchase. The initial deposit she paid for purchasing the property was forfeited to the developer. Feeling aggrieved, Ms. C lodged a complaint with the EAA against estate agent X, salesperson Y and salesperson Z.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. All allegations against estate agent X, salesperson Y and salesperson Z were substantiated. The Disciplinary Committee was of the view that Ms. C and her mother (who was also present at the scene at the material time) were reliable witnesses. Estate agent X had made the representations that Ms. C would definitely be able to obtain a mortgage loan of 80% of the purchase price of the property (“the 1st Representation”); and a 5% discount on the purchase price was only available if and only if the purchase was made through his estate agency company (“the 2nd Representation”). All three licensees had made the representation that 26 December 2011 was the last day that the said

5% discount would be offered (“the 3rd Representation”). As regards the 1st Representation, it was against the guidelines issued by the Hong Kong Monetary Authority on 10 June 2011 which required banks to lower the maximum loan-to-value (LTV) ratio to 50% for residential properties with a value between \$10 million and \$12 million. As regards the 2nd Representation, according to the written reply from the developer to the EAA’s enquiry, the developer did not offer any exclusive discounts to any estate agency company. Hence, the 2nd Representation was also false. Furthermore, according to the developer’s sales brochure and broadcast at the sales site, it was clearly stated that the developer could adjust or withdraw the discount offer at any time, but did not state that the offer would end at 9 p.m. on the date Ms. C signed the provisional agreement for sale and purchase. It could therefore be inferred that the 3rd Representation was also made up by estate agent X, salesperson Y and salesperson Z to induce Ms. C to purchase the property in a rush. In making such irresponsible representations, estate agent X, salesperson Y and salesperson Z failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: “*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”. The Disciplinary Committee imposed a reprimand on each of the three licensees. The licence of estate agent X was suspended for three months, and a condition was attached respectively to salesperson Y’s and salesperson Z’s licenses requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

11. Giving misleading information regarding open kitchen

ABC Estate Agency Limited (“ABC Agency”) was appointed the sole agent for the sale of flats in a luxury residential redevelopment project (“the Development”) in Mid-Levels, Hong Kong.

The Development was put on sale in mid-2009. The sales had proceeded well and quite a number of units were sold. When the purchasers took possession of their units upon completion of the sale and purchase in 2010 after the Occupation Permit was issued, they noted that there was no open kitchen as described in the leaflet provided by ABC Agency. What they got was an enclosed kitchen.

Promotional leaflets issued by ABC Agency in June (“the First Pamphlet”) and July 2009 (“the Second Pamphlet”) respectively (collectively referred to as “the Pamphlets”) carried floor plans showing Units A and D of the Development with open kitchens. ABC Agency stressed that the Pamphlets were prepared by them based on the information provided by the developer.

Documents received from the developer indicated that the developer had initially (before mid-2008) planned to provide open kitchens but had subsequently changed the design. The building plans submitted by the developer and eventually approved by the Building Authority depicted only the enclosed kitchens.

The EAA Disciplinary Committee conducted an inquiry hearing into the case.

During the disciplinary hearing, ABC Agency did not dispute that the Pamphlets were advertisements issued by them to the public for the promotion of the sale of the Development. However, they denied that the Pamphlets contained false or misleading information since the information therein (including the floor plans with open kitchen) was supplied by the developer, and it was therefore reasonable for them to assume that these plans were in order. In addition, words of warning were provided next to the floor plans stating: *“these proposed layout plans are artists’ renderings, which do not necessarily represent the way the completed apartment will look”* and there was also a small paragraph underneath the floor plans stating: *“The layouts of Units A and D of the Development have been altered as shown above to be the proposed layouts and subject to the approval from the Buildings Department. Please refer to the particular floor plans disclosed by the developer”*.

The Disciplinary Committee noted that when the sale of the units of the Development was launched onto the market in 2009, the units were uncompleted and all information related thereto was disseminated to the public through the sole agent. Hence, the public could only have access to property information through ABC Agency. Thus ABC Agency had an undeniable obligation to ensure the accuracy of its information

by seeking confirmation from the developer on the accuracy of the information provided in the promotional leaflets before distributing the same to the public. However, ABC Agency failed to do so. In addition, evidence showed that the developer was unaware of the content of the First Pamphlet as it was not approved by the developer before it was issued.

Furthermore, the Disciplinary Committee doubted the effectiveness of the messages of warning as mentioned above since they were set out in a very fine print, making them hardly noticeable and could easily be ignored by readers.

ABC Agency was reprimanded and fined \$242,000 for issuing misleading promotional materials, failing to take all reasonable steps and failing to exercise all due diligence to verify the accuracy of the information (i.e. the floor plan with an open kitchen) provided in the First Pamphlet and failing to include certain terms in the agency agreement with the developer in compliance with the Practice Regulation.

During the disciplinary hearing, a purchaser (“the Purchaser”) testified that salesperson X of ABC Agency had told her that the flat (“the Flat”) she intended to buy would have an open kitchen as featured in the First Pamphlet. Relying on the First Pamphlet and salesperson X’s

representations, the Purchaser signed the provisional agreement for sale and purchase (“the PASP”) and some other documents as requested by salesperson X. However, when she took possession of the flat, she found that the kitchen was enclosed.

Salesperson X told the Disciplinary Committee that one of the documents which the Purchaser had signed together with the PASP had explicitly stated that the Flat would be handed over to the Purchaser first, with internal fittings (including an open kitchen) to be completed afterwards. However, evidence indicated that salesperson X had not explained the aforesaid term to the Purchaser nor had he alerted the Purchaser to the legality of the subsequent conversion of the enclosed kitchen to an open one.

After considering all the relevant evidence, the Disciplinary Committee was of the view that salesperson X had misled the Purchaser into believing that she would get an open kitchen when she took possession of the Flat. Such information in fact had not been approved by the developer and salesperson X had failed to exercise due diligence in ensuring that the property information he disseminated was accurate and would not mislead his client. The Committee decided to impose on salesperson X a reprimand, a fine of \$10,000 and to attach a condition to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

The background features a series of overlapping, semi-transparent circles and wavy, ribbon-like lines in shades of gray. The elements are arranged in a dynamic, flowing pattern that suggests movement and interconnectedness. The lighting creates soft shadows and highlights, giving the shapes a three-dimensional appearance.

Offering of financial
advantage or benefit

12. Misrepresentation on incentives provided by the developer

Estate agent X arranged for a prospective purchaser, Mr. H, to view the show flats of Phase 1 of a residential development (“the Development”). When Mr. H was considering whether or not to make a purchase, estate agent X told him that the developer would offer the purchasers, who bought any unit of Phase 1 of the Development, an incentive of \$100,000 in a cash coupon for use in the purchase of a unit in Phase 2 (which had not yet been put on sale) in the future.

Seeing that Mr. H was still hesitant about whether to buy a unit, estate agent X added that if Mr. H did not intend to keep the coupon for his own use, he could encash the coupon by selling it to other purchasers at around \$80,000 to \$100,000.

Mr. H subsequently decided to buy a unit in Phase 1. However, neither estate agent X nor any staff member of the developer had shown Mr. H, or asked him to sign, any document regarding the promise of the incentive of the cash coupon of \$100,000.

About half a year later, Mr. H learnt that the sale of the units of Phase 2 of the Development was about to commence. He called estate agent X asking him for the \$100,000 coupon. Estate agent X, at the beginning, told Mr. H that he would help him to sell the \$100,000 coupon for cash. However, he turned rude in the following phone conversations when

Mr. H became more and more anxious to get the coupon upon the commencement of the sale of the units of Phase 2. Subsequently, estate agent X asked Mr. H to make the demand to the developer directly.

Mr. H later found out from the developer that there was in fact no such coupon of \$100,000 as mentioned by estate agent X. Instead, purchasers who bought flats of Phase 2 directly from the developer could enjoy a deduction of \$100,000 from the transaction price.

Mr. H lodged a complaint with the EAA against estate agent X. The EAA Disciplinary Committee conducted an inquiry hearing into the case.

Since estate agent X admitted that the information provided by him to Mr. H regarding the incentives offered by the developer was not true, he failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: “*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”. The Disciplinary Committee decided to impose a reprimand on estate agent X and to attach a condition to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

According to the Practice Circular No. 13-04 (CR) issued by the EAA, licensees must inform prospective purchasers of the details of any incentives which may be offered to purchasers and state clearly whether the incentives are offered by the developer or their estate agency companies. They must also advise prospective purchasers to consult the price list for information on any gift, or financial advantage or benefit offered by the developer. Moreover, licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered.

13. Failure to honour promise of cash rebate

Mr. P and his wife went to view the show flats in a new residential development (“the Development”). As they reached the development site, they were approached by salesperson Y of an estate agency company promoting the sale of units in the Development. In an attempt to solicit business from Mr. and Mrs. P, salesperson Y told them that if they would purchase flats of the Development through him, they would be given a cash rebate of 2% of the purchase price. Since other estate agents could only offer a cash rebate of 1% of the purchase price, Mr. and Mrs. P decided to engage salesperson Y’s service.

Salesperson Y then accompanied Mr. and Mrs. P to view the show flats, and provided them with the price list and other information of the Development for their consideration.

Eventually, the P couple decided to purchase two units. Salesperson Y arranged for them to go to the developer’s sales office to sign the provisional agreements for sale and purchase, along with other documents. After signing all the documents, the P couple reminded salesperson Y of his cash rebate promise and stressed that the payment of the 2% cash rebate had to be paid to them without delay. Salesperson Y assured the P couple that he would certainly follow up the matter with his superior.

However, despite repeated demands and negotiations with the estate

agency company, Mr. P was not paid the 2% cash rebate that salesperson Y had promised.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Both Mr. P and salesperson Y testified at the hearing. Mr. P produced a tape recording of the conversation that he and his wife had with salesperson Y. The conversation took place after the P couple had signed the provisional agreements for sale and purchase. During the conversation, Mrs. P pointed out to salesperson Y that he had, earlier on, promised to give a 2% cash rebate and it was only because of this promise that they had agreed to engage his service to make the purchase. Salesperson Y did not deny that was the case. In fact, salesperson Y's response showed that he acknowledged having made such a promise. In the conversation, the P couple repeatedly asked salesperson Y to follow up with his superior for the payment of the cash rebate. Salesperson Y assured them that he would.

At the inquiry hearing, salesperson Y denied that he had ever offered a cash rebate to Mr. P. He said when he approached the P couple that day, he had provided them only with some pamphlets about the Development. He claimed that the P couple had made the request for a 2% cash rebate only after they had signed the provisional agreements for sale and purchase. As regards the taped conversation, salesperson Y was unable to give any satisfactory explanation as to why he did not

refute then the P couple's assertion that he had made a cash rebate promise, but instead agreed to follow up on the matter.

The Disciplinary Committee rejected salesperson Y's evidence that he had not offered any cash rebate to the P couple. The Committee accepted Mr. P's evidence and held that salesperson Y had indeed promised the P couple a 2% cash rebate, that this was the condition upon which the P couple agreed to engage salesperson Y's service, and that salesperson Y had failed to fulfil his promise.

The Disciplinary Committee pointed out that luring potential clients into engaging an estate agent's service by the promise of a cash rebate and then subsequently reneging on the promise would undermine confidence in and bring disrepute to the estate agency profession. Salesperson Y failed to observe paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*". The Disciplinary Committee suspended salesperson Y's licence for one month.

14. Failure to give the full amount of cash rebate as promised

Ms. C had just finished seeing her doctor when she bumped into salesperson X, who persuaded her to view the show flats of a first-hand development (“the Development”). Although she was not interested in buying any properties, she accepted salesperson X’s invitation to view the show flats out of kindness, as he told her he would get scolded if he was not able to persuade anyone to view the show flats with him. The show flats were indeed very impressive. Realising that Ms. C had taken an interest in the show flats, salesperson X successfully persuaded Ms. C to submit a Registration of Intent.

A few days later, salesperson X called Ms. C to congratulate her as her Registration of Intent was successful, meaning she could select a flat to purchase. However, although Ms. C liked the Development very much, she was still on the fence about making a purchase as she was only an employee with limited financial resources. She remembered she had read on some online discussion forums that rebates were common in first-hand property sales, and so she asked salesperson X whether a commission rebate would be provided if she made a purchase through his estate agency company, and if so, she would be able to use the rebate amount to pay for part of the purchase price. He said he would ask his boss, and his boss (salesperson Y) would call her. Later that evening, when salesperson Y called Ms. C, she asked the same question. Salesperson Y replied that a rebate amounting to half of the commission that his estate agency company would receive from the developer would

be given to her if she made a purchase through them. She asked how much the rebate would be, and whether or not a written confirmation of this promise would be given to her. Salesperson Y said he would give her a written confirmation after he had found out how much commission his estate agency company would receive from the developer.

The next day, Ms. C signed the provisional agreement for sale and purchase of a property of the Development (“the Property”). Before signing it, she asked salesperson Y again whether or not a commission rebate would be provided to her as promised. Salesperson Y assured her that she would definitely get it.

Later on, salesperson Y called Ms. C to inform her that the amount of commission that his estate agency company had received from the developer amounted to 2.5% of the purchase price of the Property. They made arrangements to meet up at an MTR station so that the written confirmation could be given to Ms. C.

However, when they met up, Ms. C discovered that the amount of rebate as stated in the written confirmation (\$6,000) was substantially less than what she had expected (\$38,000). She confronted salesperson Y, who told her that the amount was half of his commission from the sale, and he denied having made the promise to give her half of the commission that

his estate agency company would receive from the developer. Ms. C was extremely unhappy with salesperson Y going back on his word, and so she refused to sign the written confirmation. She then lodged a complaint with the EAA against him. She tendered a telephone recording between her and salesperson Y as evidence to support her complaint.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Salesperson Y explained that he had only promised to give Ms. C half of the commission he would personally receive, that Ms. C had simply misunderstood what he meant, and that it was her fault not to clarify the matter with him. Nonetheless, the Disciplinary Committee noted that Ms. C was an honest and reliable witness. She had clearly recounted her version of events and her evidence was cogent and logical. Hence, the Disciplinary Committee was of the view that salesperson Y had indeed promised to give Ms. C half of the commission that the estate agency company would receive from the developer arising from the sale of the Property. In failing to keep his promise, salesperson Y failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: *“Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade”*. The Disciplinary Committee imposed on salesperson Y a reprimand, a \$3,000 fine, a suspension of the licensee’s licence for a period of 14 days, and decided that a condition be attached to the licensee’s license, requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

As regards salesperson Y's failure to set out in writing, before Ms. C signed the provisional agreement for sale and purchase of the Property, the amount of the rebate that he had offered to Ms. C, the Disciplinary Committee also found that salesperson Y had failed to comply with paragraph 33 of the Practice Circular No.13-04(CR), which provides as follows: *“(33) Licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered.”* For this non-compliance, the Disciplinary Committee imposed on salesperson Y a reprimand and decided that a condition be attached to the licensee's licence, requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

15. Denying promise of commission rebate

Ms. P had done well in the stock market, and wanted to purchase a property at a first-hand development (“Development ABC”) for investment purposes. She went online to do some research on Development ABC, and read on some discussion forums that some estate agents were willing to give a commission rebate as much as \$350,000 to purchasers. However, she did not want to go through the hassle of finding an estate agent at random, as she did not want to risk encountering an untrustworthy estate agent and she wanted to get as much commission rebate as possible.

Just as she was wondering what she should do, she remembered that she had purchased a previous property through estate agent Y, who had given her a commission rebate of \$590,000 for that transaction. She felt that he was trustworthy, and that it might be easier to negotiate a higher commission rebate with him as she was his client before. She contacted him through her driver, Mr. C, asking him if he would be willing to give her a \$320,000 commission rebate if she were to purchase a property at Development ABC through him. After much negotiation, estate agent Y agreed to do so even though he was not too happy about it.

On the same afternoon, Ms. P signed the provisional agreement for sale and purchase (“the PASP”) of the property, and a “Purchaser’s Declaration” with the handling agent’s details left blank. Prior to signing the PASP, she asked estate agent Y for a written confirmation of his commission

rebate promise, but he replied that he would only be able to provide it to her after the signing of the formal sale and purchase agreement. As she trusted estate agent Y, she did not further insist on her request.

Subsequently, estate agent Y denied ever having made any commission rebate promise to Ms. P and started to avoid her calls. Ms. P discovered that in the “Purchaser’s Declaration”, the handling agent’s details belonged to those of another estate agent (estate agent L) she had never seen before. She contacted estate agent L, who was estate agent Y’s colleague, to discuss the commission rebate matter, but he denied all responsibility. Being very angry and disappointed in estate agent Y for having lied to her, she lodged a complaint against him with the EAA.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Estate agent Y denied having made any promise of commission rebate to Ms. P, and alleged that it was only after she had signed the formal sale and purchase agreement that she first requested a \$320,000 commission rebate, but he had turned her down. However, the Disciplinary Committee was of the view that Ms. P was a credible and trustworthy witness and so was Mr. C. Both of them had recounted the incident in a clear and cogent manner. On the other hand, estate agent Y’s evidence was evasive and contradictory, especially on crucial matters. Hence, the Disciplinary Committee was of the view that estate agent Y had promised Ms. P that he would give her a \$320,000 commission

rebate if she purchased the property through him. For his failure to keep his promise, he had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: “*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”. The Disciplinary Committee imposed an admonishment on estate agent Y, and suspended his licence for a period of two months.

As regards estate agent Y’s failure to set out in writing, before Ms. P signed the PASP of the property, the amount of the rebate that he had offered to Ms. P, the Disciplinary Committee also found that estate agent Y had failed to comply with paragraph 31 of the Practice Circular No. 11-02(CR), which provides as follows: “(31) *Practitioners must set out in writing any promise of incentives, including any gifts, discounts or rebates they have made to prospective purchasers, and stipulate clearly the terms and format of the incentives offered by the developer or their estate agency company*”. For this non-compliance, the Disciplinary Committee imposed on estate agent Y an admonishment, and suspended his licence for a period of two months. This sanction was to run concurrently with the one imposed on estate agent Y regarding his breach of paragraph 3.7.2 of the Code of Ethics.



Handling of identification documents and credit cards

16. Losing client's identity card

Two licensees (salesperson X and estate agent Y) were employees of the same estate agency. Salesperson X asked her client, Ms. W, to view the show flats of a first-hand residential development at the developer's sales office. Ms. W arrived at the sales office at around 7:00 p.m. and was told by salesperson X and estate agent Y that she had to provide the developer with her identity card and personal particulars in order to obtain a price list, which she did by giving her identity card and completing a form ("the Form") containing her personal particulars to salesperson X and estate agent Y.

As Ms. W decided not to purchase any unit, she asked estate agent Y to return her identity card and the Form. Estate agent Y told Ms. W that they had to collect her identity card and the Form from the developer. After waiting several hours until 1:00 a.m. the following morning, Ms. W was then told by estate agent Y that he was unable to find either her identity card or the Form. Estate agent Y promised to return the identity card to Ms. W in the following hours.

On the morning of the following day, estate agent Y told Ms. W that her identity card could not be found. Ms. W called the developer to enquire about the whereabouts of her identity card and was told by a staff member of the developer that they had never received it. Ms. W then reported the loss of her identity card to the police.

Both licensees admitted that they had asked Ms. Wong to provide her identity card and said they had passed it to the developer in order to obtain the price list. They were unable to locate her identity card despite repeated enquiries with the developer and numerous searches. They also admitted that they did not recall to whom they had passed Ms. W's identity card and the Form, nor had they kept a record. They said they deeply regretted the incident and the inconvenience caused to Ms. W.

The EAA Disciplinary Committee conducted an inquiry hearing to examine the allegation against salesperson X and estate agent Y for their failure to exercise due care and due diligence in fulfilling their duties, in contravention of paragraph 3.5.1 of the Code of Ethics, which states: "*Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence*". Having taken into consideration that both licensees had frankly admitted the allegation and were remorseful, that efforts were made to find the missing identity card and that they had no previous disciplinary record, the Disciplinary Committee imposed a reprimand against each of the licensees and decided that a condition be attached respectively to their licences requiring them to obtain five points under the Continuing Professional Development Scheme within 12 months.

17. Failure to safeguard a client's credit card

Estate agent X arranged for a prospective purchaser, Mr. P, to view the show flats of a residential development ("the Development"). He told Mr. P that in order to enable him (X) to obtain for Mr. P the list prices of those units in which Mr. P was interested, Mr. P had to show his good faith by providing the developer with his Hong Kong identity card and credit card. Estate agent X also assured Mr. P that no amount would be debited against his credit card since he had not signed any document or authorisation to that effect. Mr. P therefore gave both his identity card and credit card to estate agent X in order to obtain the price list.

Estate agent X subsequently provided Mr. P with the prices of some of the units. As Mr. P took no interest in those units, he decided to leave and so he asked for the return of his identity card and credit card. Estate agent X went to look for Mr. P's identity card and credit card, and subsequently came back with a clerical colleague. Mr. P saw the clerk holding his Hong Kong identity card, credit card and three credit card payment slips. Mr. P was shocked when he was told that a total sum of \$500,000 was charged against his credit card for three payments. The payee in those transactions was an associated company of estate agent X's employer. Mr. P protested angrily saying he had never given authorisation to estate agent X or any of his colleagues to swipe his credit card for payment.

Estate agent X explained that his colleague had misunderstood the situation. His colleague thought that Mr. P would purchase a unit, and had therefore swiped the credit card for payment of the deposit. Mr. P demanded that the credit card payment transactions be immediately voided, but his demand was rejected. It was not until Mr. P had called the police for assistance that estate agent X made arrangement for the refund of the money debited.

Mr. P lodged a complaint with the EAA against estate agent X. The EAA Disciplinary Committee conducted an inquiry hearing into the case.

The Disciplinary Committee was of the view that estate agent X had not properly safeguarded Mr. P's credit card and had failed to discharge his duties with due care and due diligence. He had failed to comply with paragraph 3.5.1 of the Code of Ethics, which states: "*Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence.*" As estate agent X had frankly admitted his fault, he was leniently sanctioned. He was reprimanded and a condition was attached to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

Furthermore, the Disciplinary Committee also found that the estate agency company concerned and its District Sales Director, the person in charge of the sale activities of the frontline salespersons at the Development, had failed to establish proper procedures or systems to supervise or manage their staff, and were thus in breach of Section 15 of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation. The Disciplinary Committee decided that the company should be reprimanded and fined \$20,000, and the District Sales Director was also reprimanded and a condition was attached to his licence requiring him to obtain six points under the Continuing Professional Development Scheme within 12 months.

Under the Practice Circular No. 13-04 (CR) issued by the EAA, unless specifically required by the vendor, licensees must not ask a prospective purchaser to provide identification documents (e.g. identity cards, passports) and/or credit cards, whether for the purpose of arranging viewings, the payment of moneys in relation to a purchase, or for any other purpose. They are required, when asking a prospective purchaser to provide an identification document and/or a credit card at the request of the vendor, to state clearly to the prospective purchaser in writing: (a) the purposes for which the identification document/credit card will be used; and (b) that it is the vendor's requirement. In addition, licensees are

also required to specifically obtain the written approval of the prospective purchaser before any arrangement is made to use the credit card for the payment of deposits or any other moneys.

18. Giving wrong information to purchaser that no amount would be debited against his credit cards

Estate agent X arranged for a prospective purchaser, Mr. T, to view the show flats of a residential development (“the Development”). Estate agent X advised Mr. T that in order to secure a higher priority in the selection of units of the Development, Mr. T should submit a cashier’s order of \$150,000 to the developer first.

Since Mr. T had not brought with him any cashier’s order, estate agent X suggested to Mr. T that the estate agency company for which estate agent X was working (“Estate Agency Company”) could draw a cashier’s order in the sum of \$150,000 to the developer for Mr. T if Mr. T would pay the same sum of \$150,000 to Estate Agency Company by charging his credit cards.

Mr. T showed hesitation about doing so as he had not made up his mind whether or not to make any purchase. Estate agent X assured Mr. T that upon charging his credit cards for the said sum of \$150,000, only the credit limit would be thereby reduced but no amount would actually be debited against his credit cards before he confirmed that he would purchase a unit of the Development.

Relying on estate agent X’s assurance that no amount would actually be debited from his credit card accounts before any purchase, Mr. T agreed to swipe his credit cards for the said amount in favour of Estate Agency Company.

Mr. T subsequently decided not to purchase any unit of the Development. However, to his dismay, he discovered that a total sum of \$150,000 had been debited against his credit card accounts on the day he swiped his credit cards at the first-sale site.

Although the Estate Agency Company had at last refunded Mr. T the money debited, Mr. T lodged a complaint with the EAA against estate agent X. The EAA Disciplinary Committee conducted an inquiry hearing into the case.

Estate agent X admitted his misconduct at the hearing. The Disciplinary Committee ruled that estate agent X wrongly informed Mr. T that no amount would be debited against his credit cards before he confirmed that he would purchase a unit of the Development. Estate agent X therefore had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: *“Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade”*.

Estate agent X asked the Disciplinary Committee for leniency in meting out the sanctions by claiming that he was a novice in the estate agency trade. The Disciplinary Committee reminded estate agent X that being a professional licensee, he was well expected to serve his customers with prudence, especially when a large amount of money was involved.

Having considered that there was no evidence of dishonesty on the part of estate agent X, that he had a clean disciplinary record, and that he had frankly admitted his misconduct at the hearing, the Disciplinary Committee decided to hand down lighter sanctions on him. Estate agent X was hence reprimanded and a condition was attached to his licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

According to Practice Circular No. 13-04 (CR) issued by the EAA, licensees are required to specifically obtain the written approval of the prospective purchaser before any arrangement is made to use the credit card for the payment of deposits or any other moneys. Besides, unless specifically required by the vendor, licensees must not ask a prospective purchaser to provide identification documents (e.g. identity cards, passports) and/or credit cards, whether for the purpose of arranging viewing, the payment of moneys in relation to a purchase, or for any other purpose.



Offering Loans

19. Offering loans to enable client to join balloting

While soliciting business at a shopping mall in connection with the promotion of a first-hand residential development, salesperson Y invited two prospective purchasers to inspect the show flats. She also tried to persuade the prospective purchasers to submit a cashier's order to join the balloting for purchasing a unit of the development. Although the prospective purchasers told her that they did not have sufficient money for the payment on the spot, she responded that her employer estate agency company could offer a loan to them and issued a cashier's order for them to join the balloting.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Committee was of the view that salesperson Y was in breach of the relevant Practice Circular issued by the EAA regarding licensees' practices and conduct in promoting first sale of residential properties. Firstly, the Practice Circular stipulates that licensees must not solicit business at shopping malls or housing estates without the requisite permission. Moreover, licensees must not offer or make loans to a prospective purchaser, even if the prospective purchaser states that he does not have sufficient money for the payment of the deposit on the spot, whether in order to persuade a prospective purchaser to sign a preliminary agreement for sale and purchase or for any other purpose, and even if a prospective purchaser requests licensees to do so. Therefore, salesperson Y failed to comply with paragraph 3.2.1 of the Code of Ethics, which states: *"Estate agents and salespersons should be fully*

conversant with the Estate Agents Ordinance, its subsidiary legislation, Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice”.

Salesperson Y was reprimanded and fined a total amount of \$7,000. A condition was also attached to her licence requiring her to obtain 12 points under the Continuing Professional Development Scheme in 12 months.

As to the estate agency company employing salesperson Y, the Disciplinary Committee was of the view that it had not supervised its frontline employees properly to ensure that they comply with the relevant EAA guidelines which prohibit licensees from offering or making loans to prospective purchasers and was thus in breach of section 15 of the Practice Regulation, which states that a licensed estate agent shall establish proper procedures or systems to supervise and manage its business of doing estate agency work to ensure that its employees or persons under its control comply with the provisions of the Estate Agents Ordinance. The estate agency company concerned was reprimanded and fined \$60,000.

20. Offering loans for payment of initial deposit

Mr. and Mrs. P wanted to buy a residential flat and were introduced to salesperson X through their neighbour (who was salesperson X's mother-in-law). On or about 21 September 2013, salesperson X and her colleague, estate agent Y, accompanied P's family to inspect a show flat of a first-hand residential property development ("the Development").

Mr. and Mrs. P were interested in buying a unit of the Development but were concerned about the amount of stamp duties that they had to pay, as both of them were not Hong Kong permanent residents ("HKPR").

The buyer's stamp duty ("BSD")¹ and the higher rate of ad valorem stamp duty ("the new AVD")² were measures introduced by the Government of the Hong Kong Special Administrative Region to cool down the overheated property market on 27 October 2012 and 23 February 2013. At the time when Mr. and Mrs. P were considering and subsequently entered into the purchase transaction, these measures had taken effect pending legislative amendments to the Stamp Duty Ordinance.

1 The Stamp Duty (Amendment) Ordinance 2014 amended the Stamp Duty Ordinance to impose (inter alia) a buyer's stamp duty on certain residential property transactions with effect from 27 October 2012. This Amendment Ordinance was gazetted on 28 February 2014 and deemed to have come into operation on 27 October 2012.

2 The Stamp Duty (Amendment) (No.2) Ordinance 2014 amended the Stamp Duty Ordinance to provide for (inter alia) payment of ad valorem stamp duty at higher rates on both residential and non-residential properties acquired on or after 23 February 2013 and was gazetted on 25 July 2014 and deemed to have come into operation on 23 February 2013.

On 23 September 2013, Mr. and Mrs. P were advised by salesperson X and estate agent Y that if they signed the agreement for sale and purchase in the capacity as the trustees on behalf of their daughter who was at that time a minor and a HKPR, their transaction would be exempted from the payment of BSD and the new AVD, and thus a total sum of approximately \$1.3 million on stamp duty would be saved. In that case, they would only need to take out a mortgage of 50% of the purchase price from a bank to finance their purchase and might choose “the immediate mortgage payment method” offered by the developer to enjoy a 10% discount on the purchase price. Mr. and Mrs. P therefore entered into a provisional agreement for sale and purchase (“the 1st PASP”) to purchase a unit of the Development (“the Property”) at the price of \$7.2 million in the capacity as the trustees on behalf of their daughter and paid the initial deposit of 5% (i.e. \$360,000) of the purchase price by credit cards.

As Mr. and Mrs. P’s credit limits were insufficient to cover the whole sum of the initial deposit, salesperson X therefore paid the outstanding sum of around \$4,000 for them by using her own credit card. Mr. and Mrs. P promised to repay her shortly afterwards.

About two days later, Mr. and Mrs. P learnt from salesperson X and estate agent Y, who claimed that they had just consulted a solicitor, that Mr. and Mrs. P might still be liable to pay the BSD and the new AVD and that they might not be able to obtain a mortgage loan from a bank if they purchased

the Property in the capacity as trustees. They persuaded Mr. and Mrs. P to consider entering into the transaction in their own capacity (i.e. using their own names) instead. Mr. and Mrs. P were very upset. As they had no other choice, they decided to enter into a new provisional agreement for sale and purchase (“the 2nd PASP”) to purchase the Property on their own behalves in replacement of the 1st PASP.

Eventually, Mr. and Mrs. P had to raise more money (approximately \$1.3 million) for the payment of the BSD and the new AVD and they needed to obtain a mortgage of 60% of the purchase price from a bank and a second mortgage from the developer. As a result, they had to choose “the immediate second mortgage payment method” for payment of the purchase price and would only be given a 9% discount on the purchase price. As the purchase price had increased from \$7.2 million under the 1st PASP to \$7.28 million under the 2nd PASP, Mr. and Mrs. P were required to pay an additional \$4,000 for the initial deposit upon their signing of the 2nd PASP.

Since Mr. and Mrs. P had already used up their credit limits on 23 September 2013, estate agent Y offered to issue his personal cheque for \$4,000 to settle the outstanding deposit payment for them, on the understanding that Mr. and Mrs. P would repay the money to him thereafter.

Dissatisfied with the service of salesperson X and estate agent Y, Mr. and Mrs. P lodged a complaint with the EAA against them.

During the investigation, it was found that salesperson X and estate agent Y had breached the guidelines issued by the EAA by offering loans to prospective purchasers of a first-hand residential development.

According to the Practice Circular (No.13-04 (CR)) which sets out detailed guidelines on licensees' practices and conduct in promoting first sale of residential properties, licensees must not offer or make loans to a prospective purchaser, even if the prospective purchaser states that he does not have sufficient money for the payment of the deposit on the spot, whether in order to persuade a prospective purchaser to sign a preliminary agreement for sale and purchase or for any other purpose, and even if a prospective purchaser requests licensees to do so. Licensees must observe and comply with such guidelines. Failure to do so may be subject to disciplinary action by the EAA.

Subsequently, the EAA Disciplinary Committee conducted an inquiry hearing into the case.

Both salesperson X and estate agent Y admitted that they had respectively offered a loan to Mr. and Mrs. P. As they thought that the amount involved was very small and that Mr. and Mrs. P were the neighbours and friends of salesperson X's mother-in-law, they decided to lend the money to help them out without a second thought.

The Disciplinary Committee was of the view that salesperson X and estate agent Y were in breach of the relevant Practice Circular. They therefore failed to comply with paragraph 3.2.1 of the Code of Ethics, which states: "*Estate agents and salespersons should be fully conversant with the Estate Agents Ordinance, its subsidiary legislation, Code of Ethics, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice*". Both salesperson X and estate agent Y were reprimanded and fined \$10,000 respectively. A condition was also attached to their respective licences requiring them to obtain 12 points under the Continuing Professional Development Scheme within 12 months.



Others

21. Failure to advise on fees payable to the developer

Estate agent H arranged for Ms. C to inspect a property (“the Property”) which was one of the remaining unsold units of a completed first-hand residential property development (“the Development”).

When Ms. C decided to proceed with the purchase of the Property, estate agent H enquired with the developer which forms should be used for the provisional agreement for sale and purchase in the transaction. The developer told her that she could use the provisional agreement for sale and purchase forms for second-hand property transactions as it was a completed development. Estate agent H therefore proceeded to arrange for Ms. C and Mr. S (“the Purchasers”) to enter into a provisional agreement for sale and purchase in the form normally used in a second-hand property transaction (“the PASP”). The PASP provided that the Purchasers had to pay estate agent H’s company a commission in the sum of 1% of the purchase price of the Property, but did not state that the Purchasers had to pay certain fees applicable to first-hand property transactions to the developer. Moreover, Ms. C and Mr. S did not receive any land search from estate agent H.

Upon signing the formal agreement in respect of the Property, Ms. C was informed by her solicitors that since it was a first-hand property transaction, she would have to pay the developer disposal of debris fee, plan fee and deed of mutual covenant fee in the sum of \$4,836 (“the Developer’s Fees”). Moreover, she had to pay a commission of \$25,000 to estate agent H’s company.

After moving into the Property for a year, Ms. C learnt from her neighbours that all other purchasers of the Development at the material time signed provisional agreements for sale and purchase in the form used in first-hand property transaction without stating that purchasers were required to pay commission to their estate agents. Feeling aggrieved, Ms. C lodged a complaint with the EAA against estate agent H.

According to the developer, estate agent H and her supervisor had repeatedly phoned the developer on the use of the correct form of the provisional agreement for sale and purchase. As it was the first transaction of the remaining unsold units of a completed development, the developer had not yet prepared the relevant forms for the provisional sale and purchase agreements, and had therefore asked estate agent H to use a provisional agreement for sale and purchase form for second-hand property transactions. The developer agreed to pay estate agent H's company 1% of the property price as commission, and was also aware that estate agent H's company would receive from the Purchasers a commission of about 1% of the purchase price. For the subsequent sales of the remaining unsold units of the Development, the developer took the advice of its solicitors and used the provisional agreement for sale and purchase specially designed for first-hand property in a completed development. The developer would pay the handling estate agent a commission, and the purchaser was not required to pay any commission. The developer also mentioned that if the Purchasers had objected to paying the Developer's Fees, the developer would have considered waiving the same. However, the Purchasers did not raise any objection at the material time.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. The Disciplinary Committee was of the view that estate agent H had failed to take note of the fact that the sale and purchase transaction of the Property was a first-hand property transaction. Furthermore, she had also failed to enquire with the developer on the fees payable by the purchaser to the developer in respect of such a transaction and failed to advise Ms. C accordingly. Hence, estate agent H had failed to comply with paragraph 3.2.2 of the Code of Ethics, which states: *“Estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market in order to be in a position to advise their clients in a responsible manner. They should strive to provide services and opinions based on knowledge, training, qualifications and experience in the real estate business”* (“Allegation 1”). In addition, estate agent H had failed to perform a land search of the Property and provide a copy of the same to the Purchasers prior to their entering into the PASP (“Allegation 2”).

Both allegations against estate agent H were found substantiated. For Allegation 1, the Disciplinary Committee imposed a reprimand on estate agent H and attached a condition to her licence requiring her to obtain 12 points under the Continuing Professional Development Scheme. For Allegation 2, the Disciplinary Committee imposed on estate agent H a reprimand; a fine of \$2,000 and attached a condition to her licence requiring her to obtain 12 points under the Continuing Professional Development Scheme, one of the subjects must be on land searches organised by the EAA.

22. Losing chance to buy flat due to agent's misrepresentation

Ms. V wished to purchase a unit in a first-hand residential property development (“the Development”). Through the arrangement of estate agent C, an employee of ABC Estate Agency Company Limited, Ms. V was about to enter into a provisional agreement for sale and purchase in respect of a unit on a lower floor of the Development (“the Property”).

Meanwhile, estate agent Z, an employee of XYZ Estate Agency Company Limited, was serving Mr. W, who was interested in the Development. When estate agent Z learnt that Mr. W's daughter, Ms. V, was about to purchase the Property through estate agent C, he persuaded Ms. V not to purchase the Property, and assured her that he could arrange for Ms. V to purchase a unit on a floor which was higher than the Property and within Ms. V's budget.

Relying on estate agent Z's representation, Ms. V gave up the signing of the provisional agreement for sale and purchase in respect of the Property. However, estate agent Z was not able to arrange for Ms. V to purchase a unit on a higher floor, or any unit of the Development at all. Ms. V returned to estate agent C in an attempt to purchase the Property, but the Property had already been sold to another purchaser. As such, Ms. V lost the chance of purchasing the Property due to the misrepresentation of estate agent Z. Feeling aggrieved, Ms. V lodged a complaint with the EAA against estate agent Z.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. It was alleged that estate agent Z had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: “*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*”. The Disciplinary Committee unanimously agreed that the allegation was well-founded and that Ms. V and Mr. W (who was also present at the scene at the material time) were reliable witnesses. On the other hand, estate agent Z was evasive in answering questions put to him, and often contradicted himself in his evidence. His making of irresponsible representations resulted in Ms. V’s loss of the chance to purchase the Property.

The Disciplinary Committee decided that the licence of estate agent Z be suspended for one month, and a condition was attached to estate agent Z’s licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.

23. Misleading purchaser to enter into a transaction

Ms. D was shopping when she bumped into salesperson P, who persuaded her to view the show flats of a first-hand development. Although she was not interested in buying any properties, she still agreed to view the show flats out of curiosity, due to the mass publicity surrounding the development at the time. Salesperson P persuaded Ms. D to pay the deposit for a property at the development even though she told him that she did not intend to purchase any property. He told her that the purpose of paying the deposit was to reserve the property that she was interested in at that time. If she later decided to change her mind about making the purchase, there was no need for her to go ahead with the purchase.

That evening, Ms. D called salesperson P to tell him that she had decided not to purchase the property, as she did not have sufficient money. Salesperson P replied that she had already paid the deposit for her purchase and that she could not back out of the deal. A few days later, salesperson P and his boss arranged for Ms. D to mortgage her existing property to a financial company so that she would have sufficient money to continue with the purchase of the property. Two days later, Ms. D signed the provisional agreement for sale and purchase (“the PASP”) of the property.

Subsequently, Ms. D found out that she was only legally obligated to make a purchase upon signing the PASP of the property. Therefore, what salesperson P had represented to her before was false. Unhappy with

salesperson P's conduct, she lodged a complaint against him with the EAA.

The EAA Disciplinary Committee conducted an inquiry hearing into the case. Salesperson P denied having made the representation to Ms. D that she had already purchased the property and was bound to purchase the property before she had signed the PASP. He alleged that Ms. D had all along wanted to purchase the property; that was why she had paid the deposit days before signing the PASP. However, the Disciplinary Committee was of the view that salesperson P's evidence was evasive and contradictory, especially on crucial matters. On the other hand, Ms. D was an honest and reliable witness. Hence, the Disciplinary Committee was of the view that salesperson P had indeed told Ms. D that she was bound to purchase the property when Ms. D had not yet signed the PASP. As such, salesperson P had failed to comply with paragraph 3.7.2 of the Code of Ethics, which states: "*Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade*".

The Disciplinary Committee imposed on salesperson P a reprimand, a suspension of the licensee's licence for a period of 14 days, and decided that a condition be attached to the licensee's licence requiring him to obtain 12 points under the Continuing Professional Development Scheme within 12 months.



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