



紀
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Inquiry
Hearing
Cases

案
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第四輯
A Selection IV

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前言

房地產中介行業是香港經濟體系的重要環節。絕大部分物業交易，都是由地產代理從業員促成。所以，地產代理監管局（監管局）致力提升行業的專業操守和服務水平，以保障消費者利益。

監管局過去數度出版的紀律研訊案例選輯，深受業界重視。選輯的目的是加強從業員對《地產代理條例》及相關法規要求的認識，令到大家提高警覺。期望《紀律研訊案例選輯 — 第四輯》能夠繼續發揮以上功能。

監管局紀律委員會主席馬豪輝先生及眾現任和前任成員，都付出了寶貴時間和心血，積極參與紀律研訊工作，在2007及2008年期間，合共處理了406宗違規個案。紀律委員會對促進行業的進步貢獻良多，我謹衷心致謝。

地產代理監管局
行政總裁
陳佩珊
2009年5月

Foreword

The estate agency sector is one of the most crucial in Hong Kong's economy, with estate agency practitioners playing a key role in most property transactions. In a bid to protect consumer interests, the Estate Agents Authority (EAA) has striven to enhance the work ethic and standard of service of estate agency practitioners.

The EAA previously published several collections of representative inquiry hearing cases, the purpose of which is to deepen practitioners' understanding of the relevant laws and alert them to possible breaches of the Estate Agents Ordinance (EAO). These collections are valued by the trade and the latest collection - *Inquiry Hearing Cases - A Selection IV* - is intended to serve the same purpose.

I would like to extend my heartfelt gratitude to the Disciplinary Committee Chairman Mr Ma Ho-fai and Members, past and current, for their remarkable efforts and giving their time generously in hearing a total of 406 cases in 2007 and 2008. Their contribution to the development of trade is greatly appreciated.

Sandy Chan
Chief Executive Officer
Estate Agents Authority
May 2009

紀律委員會

成員名單

(2006年11月至2008年10月)

主席：

馬豪輝先生，SBS，JP

成員：

陳友正博士

簡家聰先生

李峻銘先生

梁永祥先生，JP

倫志炎先生

孫寶源先生

曾煥平先生

尹志強先生，BBS，JP

黃為山先生

委任成員：

陳永佳先生

梁繼昌先生

廖志明先生

馬少雄先生

吳健源先生

王羅桂華女士

黃燦光先生，OBE，QPM，CPM

(2008年11月至2010年10月)

主席：

馬豪輝先生，SBS，JP

成員：

陳友正博士

黃嘉純先生，JP

劉詩韻女士

李峻銘先生

李景亮先生

呂耀華先生

伍景華先生

孫寶源先生

委任成員：

朱樂生先生

郭榮鏗先生

梁家駒先生

梁繼昌先生

廖志明先生

謝順禮先生

王羅桂華女士

黃燦光先生，OBE，QPM，CPM

Disciplinary Committee

Membership

(November 2006 to October 2008)

Chairman:

Mr Ma Ho-fai, SBS, JP

Members:

Dr Bob Chan Yau-ching

Mr Frederick Kan Ka-chong

Mr Eric Lee Chun-ming

Mr William Leung Wing-cheung, JP

Mr Lun Chi-yim

Mr Richard Sun Po-yuen

Mr Joseph Tsang Hon-ping

Mr Aaron Wan Chi-keung, BBS, JP

Mr Wilson Wong

Board-appointed members:

Mr Chan Wing-kai

Mr Kenneth Leung Kai-cheong

Mr Liu Chi-ming

Mr Paul Ma Siu-hung

Mr Ng Kin-yuen

Mrs Karen Wong Law Kwai-wah

Mr Wong Tsan-kwong, OBE, QPM, CPM

(November 2008 to October 2010)

Chairman:

Mr Ma Ho-fai, SBS, JP

Members:

Dr Bob Chan Yau-ching

Mr Lester Garson Huang, JP

Ms Serena Lau Sze-wan

Mr Eric Lee Chun-ming

Mr Paul Lee

Mr Alexander Lui Yiu-wah

Mr Ng King-wah

Mr Richard Sun Po-yuen

Board-appointed members:

Mr Antonio Chu

Mr Dennis Kwok

Mr Johnny Leung

Mr Kenneth Leung Kai-cheong

Mr Liu Chi-ming

Mr Calvin Tse Shun-lai

Mrs Karen Wong Law Kwai-wah

Mr Wong Tsan Kwong, OBE, QPM, CPM

隱瞞賣家的確認入身分

兩名地產代理從業員隱瞞賣家的確認入身分，被紀律委員會譴責及在牌照上附加條件。

郭先生和家人打算購買村屋。某地產代理從業員（「甲從業員」）陪同他和太太視察一幢村屋。該幢村屋共有三層：地下、一樓及二樓。郭先生向甲從業員表示有興趣購買該幢村屋，甲從業員遂告訴他村屋的叫價為2.8百萬元，但沒有提及業主是誰。

其後，甲從業員安排郭先生和太太第二次視察該幢村屋，並告訴他們村屋的叫價仍然是2.8百萬元。他沒有提到村屋的業主是誰，亦沒有透露賣家的身分。

同一天晚上，甲從業員及他的同事（「乙從業員」）再次安排郭氏夫婦和郭先生的父母視察該幢村屋，但他們沒有透露業主是誰，亦沒有說明村屋三層樓的業權屬同一抑或是不同的業主所有，也沒有安排郭氏一家與村屋的賣家會面。郭氏一家只是通過該兩名從業員和賣家商議村屋的售價。

經過一番商議，郭氏一家同意以2.65百萬元購入該幢村屋。甲從業員為他們購入村屋的地下、一樓和二樓，分別準備了三份臨時買賣合約。這時，乙從業員才告訴郭先生和家人，村屋的三個樓層由不同賣家放售，並建議將樓價分為三部分：地下、一樓和二樓的樓價分別為95萬元、75萬元和95萬元。郭先生同意有關建議。

為購買村屋的地下、一樓和二樓而制訂的臨時買賣協議內，業主一欄填上三名分別姓朱、姓胡和姓伍人士的姓名。

郭先生以買家的身分，就購買村屋的地下簽署臨時買賣合約，而郭太太和郭先生的母親則分別就購入村屋的一樓及二樓，簽署臨時買賣合約。郭氏一家共付了9萬元首期訂金。

事實上，朱先生、胡先生及伍先生並非村屋三個樓層的業主。他們只是在不足兩個月前，分別與原來的業主簽署買賣合約購入各樓層，而所有交易尚未完成。換句話說，他們三人是以「確認人」，而非業主的身分，向郭氏一家出售三個樓層。

郭氏一家一直相信，於臨時合約上填寫的賣家姓名，是村屋的三個樓層的業

主。他們並不知道，而甲從業員及乙從業員亦從來沒有告訴他們，賣家以確認人的身分出售該幢村屋。

由於確認人在短時間內將該幢村屋轉讓予郭先生及家人，銀行只按確認人原來同意支付的樓價，而非郭氏一家於轉讓過程中同意支付的樓價，提供七成按揭。郭氏一家未能從銀行獲得足夠的按揭貸款，因此交易無法完成，確認人最後沒收郭氏一家支付的9萬元訂金。

紀律委員會就該個案進行紀律研訊。於研訊上，乙從業員承認，當他向郭氏一家介紹該幢村屋後，他一直以「業主」稱呼賣家。他聲稱已經向郭先生說明，賣家以物業投機者的身分出售物業，並告訴郭先生和家人，倘若他們和賣家訂於同一日完成物業交易程序，賣家願意減價。乙從業員辯稱，這顯示郭氏一家應該知道賣家並非原來的業主，而只是向業主購入村屋的買家。乙從業員承認，為郭氏一家處理交易的過程中，並沒有使用「確認人」這個字眼，亦沒有說明向確認人購入物業所涉及的風險。甲從業員則沒有作供。

紀律委員會裁定，甲從業員和乙從業員沒有向客戶披露賣家以確認人而非原來業主的身分出售物業。紀律委員會指出，從業員只是告訴客戶賣家是以物業投機者的身分出售物業，並不足夠。這樣做並不足以令客戶知道賣家的「確認人」的身分。一個專業的從業員應該向客戶解釋清楚賣家是誰、賣家以甚麼身分出售物業，以及如賣家是「確認人」時，客戶可能須要承擔的風險。從業員未有這樣做，不能視為已經採取適當措施，保障客戶的利益。因此，甲從業員和乙從業員沒有遵守《操守守則》第3.4.1段。

紀律委員會判令向該兩名從業員作出譴責，並在其牌照上分別附加條件，規定他們在24個月內取得20個持續專業進修計劃核心科目的學分。

《操守守則》第3.4.1段

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Concealing vendors' identities as confirmors

Two estate agency practitioners were reprimanded and had a condition attached to their respective licences for concealing the vendors' identities as confirmors.

Mr Kwok and his family wanted to purchase a village house. An estate agency practitioner ("Practitioner A") accompanied Mr Kwok and his wife to view a block of village house consisting of a ground floor ("G/F") and two upper floors ("1/F" and "2/F"). Practitioner A told him that the vendor's asking price was \$2.8 million. He did not mention who the vendor was.

Some time later, Practitioner A arranged a second viewing of the village house for Mr and Mrs Kwok. He told them that the asking price was still \$2.8 million. He did not say anything about the ownership of the village house or reveal the identity of the vendor.

On the evening of the same day, Practitioner A and his colleague ("Practitioner B") arranged for the Kwok couple and Mr Kwok's parents to view the village house again. Still they did not mention who the vendor was, or whether the different floors were owned by the same or different owners. They did not arrange for Mr Kwok and his family to meet the vendor. All price negotiations with the vendor were conducted through Practitioner A and Practitioner B.

After negotiation, Mr Kwok and his family agreed to purchase the village house at the price of \$2.65 million. Practitioner A then prepared three provisional agreements for sale and purchase, one each for the G/F, 1/F and 2/F. Only then did Practitioner B inform Mr Kwok and his family that each floor had a different vendor. He suggested allocating the purchase price to the different floors as follows: \$0.95 million for the G/F, \$0.75 million for the 1/F and \$0.95 million for the 2/F. Mr Kwok agreed.

In the provisional agreement for sale and purchase for the G/F, 1/F and 2/F of the village house, persons with the surname "Chu", "Wu" and "Ng" were named as the vendors respectively.

Mr Kwok signed the provisional agreement for sale and purchase for the G/F as the purchaser. His mother and Mrs Kwok did the same for the 1/F and 2/F respectively. The Kwok family paid a total initial deposit of \$90,000.

In fact, Mr Chu, Mr Wu and Mr Ng were not the owners of the respective floors. Each of them was only the confirmor of the respective floor from the original owner. They had entered into the respective sale and purchase agreements with

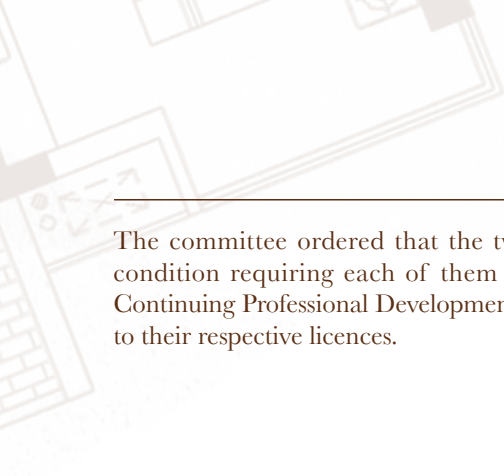
the original owner less than two months earlier. Their purchases had yet to be completed. In other words, they were selling the respective floors of the village house to Mr Kwok and his family as "confirmors", not owners.

Mr Kwok and his family all along believed that the vendors named in the provisional agreements were the owners of the respective floors. They did not know, and Practitioner A and Practitioner B had never told them, that the vendors were selling as confirmors.

Because the sale of the village house to the Kwok family was in fact a sub-sale by the confirmors within a short period of time, the bank would grant a mortgage loan only equivalent to 70% of the original purchase price agreed to be paid by the confirmors, and not the purchase price agreed by the Kwok family in the sub-sale. Unable to obtain sufficient mortgage finance, the Kwok family could not complete the purchase and had to forfeit their \$90,000 deposit.

The Disciplinary Committee conducted an inquiry hearing into the case. At the hearing, Practitioner B admitted that when he had introduced the village house to the Kwok family and subsequently, he had all along referred to the vendors as "the owner". He claimed that he had told Mr Kwok that the vendor was selling the house as a property speculator and that he had mentioned to the Kwok family that if they agreed to fix the completion date to match that of the vendor, the vendor would be prepared to lower the price. Practitioner B contended that this showed the Kwok family should have known the vendor was not the original owner but a purchaser from the original owner. Practitioner B admitted that he had never used the term "confirmor" throughout the course of his dealings with the Kwok family, nor did he explain to them the risks involved in a purchase from a confirmor. Practitioner A did not testify at the inquiry hearing.

The Disciplinary Committee found that both Practitioner A and Practitioner B had failed to disclose to their clients that the vendors were selling as confirmors and not as original owners. The committee pointed out that simply informing clients the vendor was selling as a property speculator was neither here nor there. It did not serve to enlighten clients that the vendor was selling as a "confirmor". A professional practitioner must explain fully to clients who the vendor was, in what capacity he was selling the property, and in the case of a purchase from a confirmor, the risks involved. A practitioner who failed to do so could not be said to have taken appropriate steps to protect his client's interests. Practitioner A and Practitioner B failed to comply with paragraph 3.4.1 of the Code of Ethics.



The committee ordered that the two practitioners be reprimanded and that a condition requiring each of them to acquire 20 points in core subjects of the Continuing Professional Development (CPD) Scheme within 24 months be attached to their respective licences.

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

沒有告訴客戶購買涉及饋贈契據的物業的風險和影響

一名地產代理從業員因沒有保障和促進客戶的利益而被譴責及在牌照上附加條件。

該從業員受買家杜女士委託購買物業。物業賣方潘先生則委託另一名從業員。潘先生的物業的業權紀錄涉及一份於2006年7月簽立的饋贈契據。該饋贈契據的受益人於2007年12月將物業售予潘先生。

2008年1月，該從業員安排杜女士簽署臨時買賣合約。該從業員告訴杜女士，有關物業涉及饋贈契據事宜。然而，他沒有提醒杜女士購買涉及饋贈契據的物業的風險和影響，亦沒有建議杜女士於簽署臨時買賣合約前，諮詢法律意見，因而沒有遵守《操守守則》第3.4.1段的規定。

此外，在緊接臨時買賣協議的簽訂前，該從業員亦沒有確保賣方代理進行土地查冊，並向杜女士提供查冊的結果。事實上，倘若杜女士取得土地查冊結果的文本，她便能更深入了解該物業的業權紀錄。

該從業員回答監管局的提問時承認沒有提醒杜女士購買業權紀錄涉及饋贈契據的物業的風險和影響，但表示並非蓄意隱瞞有關事宜。

紀律委員會就有關指稱召開紀律研訊，最後決定譴責該從業員，並在他的牌照上附加條件，規定他在12個月內取得12個持續專業進修計劃核心科目的學分。

《操守守則》第3.4.1段

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益，按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Failure to advise client on risks and implications of buying property with Deed of Gift

An estate agency practitioner was reprimanded and had a condition attached to his licence for failing to protect and promote his client's interests.

The practitioner acted for Ms To who was the purchaser in the sale and purchase of a property. Another practitioner acted for the vendor of the property Mr Poon. The title history of the property involved the execution of a Deed of Gift in July 2006 and the beneficiary of the Deed of Gift later sold the property to Mr Poon in December 2007.

In January 2008, the practitioner arranged for Ms To to enter into a provisional agreement for sale and purchase of the property. The practitioner told Ms To that the property involved a Deed of Gift. However, he did not advise Ms To on the risks and implications of purchasing a property involving a Deed of Gift. Nor did the practitioner advise Ms To to seek legal advice prior to signing the provisional agreement for sale and purchase, thus failing to comply with paragraph 3.4.1 of the Code of Ethics.

The practitioner had also failed to ensure that a land search of the property was conducted and supplied to Ms To immediately before the provisional agreement was entered into. Had Ms To received a copy of the land search, she would have been in a better position to view the title history of the property.

Upon enquiries from the EAA, the practitioner explained that the failure to advise Ms To on the risks and implications of purchasing a property with the title history involving a Deed of Gift was not intentional.

An inquiry hearing was conducted against the practitioner. The Disciplinary Committee reprimanded the practitioner and attached a condition to the practitioner's licence requiring him to obtain 12 points in core subjects of the CPD Scheme within 12 months.

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

安排客戶簽署漏空的臨時買賣合約

一名地產代理從業員安排客戶於漏空的臨時買賣合約上簽署，被紀律委員會暫時吊銷牌照及在牌照上附加條件。

一天，蘇氏夫婦到新界區某大型樓盤，希望購買合適且負擔得起的單位。他們在一間地產代理公司門外停駐，一名從業員上前向他們打招呼。該從業員提議帶他們視察該樓盤出售的單位。

該從業員陪同蘇氏夫婦視察了兩個單位，分別位於屋苑的一期（「一期單位」）及二期（「二期單位」）。蘇先生和太太對二期單位感興趣。

他們返回該地產代理公司後，該從業員要求蘇氏夫婦預先支付誠意金，並就購入二期單位簽署臨時買賣合約。該從業員表示，這樣有助他代表他們和賣家商議。他又游說蘇氏夫婦簽訂另一份購入一期單位的臨時買賣合約。

蘇氏夫婦以為該從業員會先和二期單位的賣家商議，倘若不成功，他們才考慮購買一期單位。於是，他們簽署了兩份臨時買賣合約。該從業員於兩份臨時買賣合約的條款上，漏空了不少地方，包括簽署正式買賣合約的日期和完成交易日期。蘇先生向該從業員支付了2萬元，並要求他發出收據。但是，該從業員建議蘇先生與他所屬的地產代理公司簽署一份「價格商議協議」，並稱該協議可視為收據。蘇氏夫婦告訴該從業員，由於安排按揭事宜需時，買賣的成交期不可少於60天。

該從業員分別就購入一期單位和二期單位，準備了兩份「價格商議協議」。該兩份協議均註明樓價不可多於1百萬元，且成交期不可少於60天。

第二天，蘇先生的手提電話收到該從業員發出的短訊。短訊稱賣家已經簽妥臨時買賣合約，但沒有指明是一期單位還是二期單位。

同一天稍後，蘇氏夫婦前往該地產代理公司。這時，他們才得知原來已簽妥的是購入一期單位的臨時買賣合約，而合約上訂明的成交期為40天。該從業員並沒有就縮短成交期一事，徵求蘇氏夫婦的同意。

紀律委員會就個案進行紀律研訊。蘇氏夫婦以及該從業員均有出席研訊作供。該從業員於供詞中聲稱，蘇氏夫婦初時表示要取得高於樓價七成的按揭貸款，因此他建議把成交期訂為不少於60天，讓他們有足夠時間取得按揭貸款。然

而，蘇氏夫婦隨後改變主意，表示他們只須要樓價六成的按揭貸款，並告訴該從業員成交期可以縮短。該從業員和賣家商議後，把臨時買賣合約上的成交期縮短至40天。他承認縮短成交期前，沒有徵詢蘇氏夫婦的意見。

紀律委員會不接納該從業員就成交期所提供的證供，並且指出，倘若蘇氏夫婦真的就成交期改變指示，一名專業的從業員應在「價格商議協議」上作出相應修改；而且，在該從業員給予監管局的書面回應上，他並沒有表示蘇氏夫婦曾經就成交期改變指示。

紀律委員會裁定，該從業員安排客戶在漏空的臨時買賣合約上簽署，沒有遵守《執業通告》編號03-02 (CR) 的規定：「從業員宜避免在重要交易條款（樓價、訂金、成交日、其他附帶條件）尚未談妥時令客戶在漏空的臨約上單方面簽署。」因此，該從業員沒有遵守《操守守則》第3.2.1段的規定。

紀律委員會亦裁定，該從業員未有取得客戶同意前，擅自縮短成交期，未能保障和促進客戶利益，沒有遵守《操守守則》第3.4.1段的規定。

紀律委員會判令暫時吊銷該從業員的牌照六個星期，並在牌照上附加條件，規定他在12個月內取得12個持續專業進修計劃核心科目的學分。

《操守守則》第3.2.1段

地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、本操守守則，以及由監管局不時發布的所有其他指引。

《操守守則》第3.4.1段

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Arranging for clients to sign a blank provisional agreement for sale and purchase

An estate agency practitioner had his licence suspended and a condition attached to it for arranging for his clients to sign on a blank provisional agreement for sale and purchase.

One day, Mr and Mrs So went to a large residential development in the New Territories to see if there were any suitable flats for purchase at an affordable price. Stopping by the shop of an estate agency, they were greeted by one of its practitioners. The practitioner offered to take Mr and Mrs So to the development to view some flats which were on sale.

The practitioner brought Mr and Mrs So to view two flats, one in Phase I (“the Phase I flat”) and one in Phase II (“the Phase II flat”), of the development. Mr and Mrs So were interested in the Phase II flat.

When they went back to the estate agency, the practitioner asked the So couple to pay in advance some earnest money and to sign a provisional agreement for sale and purchase for the Phase II flat. He said this would facilitate his negotiation with the vendor on their behalf. The practitioner also persuaded the So couple to sign a provisional agreement for sale and purchase of the Phase I flat.

On the understanding that the practitioner would first seek to negotiate with the vendor of the Phase II flat and that only if that was unsuccessful would the Phase I flat be considered, the So couple signed the two provisional agreements for sale and purchase. In each provisional agreement for sale and purchase, the practitioner had left blank many spaces in the printed terms, including the date for the signing of the formal agreement and the date of completion of the sale and purchase. Mr So gave \$20,000 to the practitioner. He asked the practitioner to issue a receipt, but the practitioner suggested that Mr So sign a “price negotiation agreement” with his estate agency instead. He said this would serve as a receipt. The So couple instructed the practitioner that the completion period of the purchase should not be less than 60 days, in order to allow time for them to make mortgage arrangements.

The practitioner prepared two “price negotiation agreements”, one in respect of the Phase I flat, and the other for the Phase II flat. In each document, it was stated that the purchase price should not exceed \$1 million and that the completion period should not be shorter than 60 days.

The next day, Mr So received a message sent from the practitioner to his mobile phone. The message stated that the vendor had signed the provisional agreement for sale and purchase. It did not specify whether it was for the Phase I or Phase II flat.

Later that day, Mr and Mrs So went to the practitioner's estate agency. Only then did it come to light that the provisional agreement for sale and purchase that had been signed was in respect of the Phase I flat. The completion period stated in the provisional agreement for sale and purchase was 40 days. The practitioner had not sought the So couple's prior consent to the shorter completion period.

The Disciplinary Committee conducted an inquiry hearing into the case. Both Mr and Mrs So testified, as did the practitioner. In the practitioner's testimony, he claimed that initially the So couple said they needed to obtain a mortgage loan of over 70% of the purchase price, so the practitioner suggested a completion period of no fewer than 60 days in order to allow them adequate time to obtain mortgage financing. However, the So couple later changed their mind and said that they only needed a 60% mortgage loan. They told the practitioner that a shorter completion period would do. The practitioner put 40 days as the completion period in the provisional agreement for sale and purchase, after negotiation with the vendor. The practitioner admitted that he had not consulted the So couple on this shorter completion period.

The committee rejected the practitioner's evidence on the completion period, pointing out that if, indeed, as claimed by the practitioner, the So couple had changed their instruction on the completion period, a professional practitioner would have amended the "price negotiation agreement" accordingly. Furthermore, in the practitioner's written reply to the EAA's enquiry, he never mentioned that the So couple had changed their instructions on the completion period.

The committee held that, in arranging for his client to sign two provisional agreements for sale and purchase with many spaces left blank, the practitioner had failed to observe the following guideline in the EAA's Practice Circular No. 03-02 (CR): "Practitioners should refrain from asking their clients to unilaterally sign any provisional agreement with many spaces left blank where the essential terms of the transaction (e.g. price, deposits, completion date, other conditions) have not been agreed on". Hence the practitioner had failed to comply with paragraph 3.2.1 of the Code of Ethics.

The committee further held that, in failing to obtain his clients' consent to the shorter completion period, the practitioner had failed to protect and promote his clients' interest, and hence, to comply with paragraph 3.4.1 of the Code of Ethics.

The committee ordered that the practitioner's licence be suspended for six weeks and that a condition be attached to his licence requiring the practitioner to acquire 12 points in core subjects of the CPD Scheme within 12 months.

Paragraph 3.2.1 of the Code of Ethics

Estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this 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.

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

未經業主准許安排租用權轉讓

一名地產代理從業員安排客戶和一名商舖租戶簽訂「商舖轉讓合約」，由於轉讓未經業主批准，因此，該從業員被紀律委員會暫時吊銷牌照並在其牌照上附加條件。

客戶黃先生希望開設一所餐廳，於是指示該從業員為他尋找合適的商舖。該從業員安排黃先生參觀一間當時作餐廳用途的商舖。餐廳經營者是租戶而非業主，而餐廳的租約為期三年。

餐廳經營者提出將餐廳業務和租用權同時轉讓給黃先生。於是，該從業員安排雙方簽訂一份「商舖轉讓合約」，黃先生繳付了5萬元首期訂金給餐廳經營者。

其實，原來的租約有一項條款，訂明不准轉租或轉讓租用權。根據黃先生的說法，該從業員並沒有向他解釋此條款。同時，該從業員只聽信餐廳經營者的說法，以為業主已同意將租約轉讓，並沒有親自向業主查證。

其實，業主並不同意這項轉讓，因此「商舖轉讓合約」取消，惟餐廳經營者拒絕向黃先生退回訂金，黃先生因此蒙受損失。

紀律委員會認為該從業員沒有向黃先生解釋原來的租約有不准轉租或轉讓租用權的條款，並指出監管局在2005年5月發出的《執業通告》編號05-02 (CR) 提醒從業員，「商舖轉讓」的安排相當複雜，從業員安排簽訂「租用權轉讓合約」時，必須先取得業主的同意。

從業員若小心行事，應先確定業主是否同意租戶轉讓租用權，然後才安排他的客戶簽訂「商舖轉讓合約」。該從業員沒有這樣做，因此沒有保障客戶的利益，未有遵從《操守守則》第3.4.1段。

紀律委員會決定暫時吊銷該從業員的牌照兩個月，並在他的牌照上附加條件，要求他在12個月內取得十個持續專業進修計劃核心科目的學分。

《操守守則》第3.4.1段

作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益，按照地產代理協議執行客戶的指示，並對交易各方公平公正。

Arranging for lease transfer prohibited by landlord

An estate agency practitioner had his licence suspended, and a condition attached to it for arranging for a “shop transfer agreement” between his client and a tenant of a shop, when in fact the landlord had not agreed to such a transfer.

The client, Mr Wong, wanting to start a restaurant business, instructed the practitioner to help him look for a suitable shop. The practitioner arranged for Mr Wong to view a shop which at the time was a restaurant. The restaurant operator was not the owner of the property, but was the tenant, holding a lease for a term of three years.

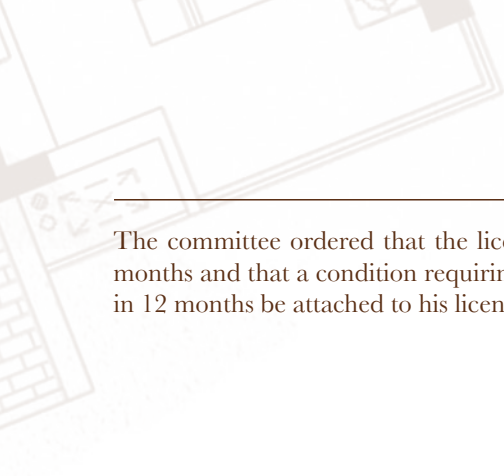
The restaurant operator offered to transfer his restaurant business, including the lease of the shop, to Mr Wong. The practitioner arranged for the parties to enter into a “shop transfer agreement”. Mr Wong paid an initial deposit of \$50,000 to the restaurant operator.

The original lease of the shop contained a provision which prohibited any sub-letting or lease transfer. According to Mr Wong, the practitioner did not explain this provision to him, nor did the practitioner ascertain from the landlord whether he had agreed to the lease transfer arrangement. He simply relied on the restaurant operator’s words that the landlord had so agreed.

In fact, the landlord had not agreed to the transfer of the lease of the shop, and the “shop transfer” transaction had to be aborted as a result. Mr Wong lost his initial deposit because the restaurant operator refused to return it.

The Disciplinary Committee found that the practitioner had not explained to Mr Wong that the original lease of the shop contained a provision against sub-letting and lease-transfer. The committee further pointed out that the EAA’s Practice Circular No. 05-02 (CR), issued in May 2005, reminded practitioners of the complications involved in any “shop transfer” arrangement and that the landlord’s prior consent to any “lease transfer” arrangement must be obtained.

A practitioner acting with reasonable care should have ascertained from the landlord whether the landlord had consented to the transfer of the lease by the tenant before arranging for his client to enter into the “shop transfer agreement”. The practitioner did not do so and had hence failed to protect the interests of his client, thereby failing to comply with paragraph 3.4.1 of the Code of Ethics.



The committee ordered that the licence of the practitioner be suspended for two months and that a condition requiring him to attain 10 CPD points in core subjects in 12 months be attached to his licence.

Paragraph 3.4.1 of the Code of Ethics

Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction.

現金回贈承諾不兌現

一名地產代理從業員沒有兌現現金回贈的承諾，被紀律委員會暫時吊銷牌照。

李先生和太太到某個新住宅樓盤的示範單位參觀時，任職於某地產代理公司的從業員主動接觸他們。當時，該名從業員正為該樓盤尋找買家，他極力向李氏夫婦推薦自己的服務。據李先生引述，該從業員提出向他們提供樓價百分之二的現金回贈。於是，李先生同意使用該從業員的服務。

隨後，該從業員陪同李氏夫婦視察示範單位，並替他們索取價單和其他資料，供他們考慮。李氏夫婦決定認購兩個單位。該從業員安排他們到發展商的銷售處，簽署臨時買賣合約和其他文件。李氏夫婦簽署所有文件後，提醒該從業員他曾作出現金回贈的承諾，並強調他必須安排支付百分之二的現金回贈。該從業員向他們保證，一定會與上司跟進有關事宜。

然而，縱使李先生多番向有關的地產代理公司提出要求和交涉，他始終沒有得到該從業員所承諾的百分之二現金回贈。

紀律委員會就該個案召開紀律研訊。李先生和有關從業員均在研訊中作供。李先生提供了一盒錄音帶，內裡紀錄了李氏夫婦簽署臨時買賣合約後與從業員的對話。在對話當中，李太太向該從業員指出，他曾經承諾給予百分之二的現金回贈，而他們正是基於這承諾，才同意使用該從業員的服務，透過他認購物業。在對話中，該從業員沒有否認他曾作出此承諾。事實上，該從業員的反應顯示他默認曾經作出上述承諾。李先生和太太在對話中重複提醒該從業員，向上司跟進支付現金回贈的事宜。該從業員保證他會跟進。

於紀律研訊中，該從業員否認他曾提出給予李先生現金回贈。他表示，於事發當天主動接觸李氏夫婦時，只是向他們提供了一些新樓盤的小冊子，他聲稱李氏夫婦只是簽署臨時買賣合約後，才提出百分之二現金回贈的要求。然而，該從業員沒有作出合理解釋，為何他在錄音對話中，始終沒有反駁李氏夫婦謂他曾承諾給予現金回贈的指稱，更同意作出跟進。

紀律委員會拒絕接納該從業員沒有提供現金回贈的證供，但接納李先生的證供，相信該從業員實際上曾經承諾送出百分之二的現金回贈，而李先生和太太是基於此，才答應使用該從業員的服務。事實上，該從業員沒有履行

其承諾。

紀律委員會指出，從業員以現金回贈優惠吸引客戶使用其服務，其後卻沒有兌現承諾，這種行為會削弱市民對地產代理行業的信心，損害行業的名聲。因此，該從業員未有遵守《操守守則》第3.7.2段。

結果，紀律委員會判令暫時吊銷該從業員的牌照一個月。

《操守守則》第3.7.2段

地產代理和營業員應避免做出可能令地產代理行業信譽及/或名聲受損的行為。

Failure to honour promise of cash rebate

An estate agency practitioner had his licence suspended for failing to honour his promise of cash rebate.

Mr Lee and his wife went to view the show-flats in a new residential development. As they reached the development site, they were approached by a practitioner of an estate agency company involved in soliciting people interested in purchasing units in the new development. He urged Mr and Mrs Lee to use his service. According to Mr Lee, the practitioner offered them a cash rebate of 2% of the purchase price. On this basis, Mr Lee agreed to use the practitioner's service.

The practitioner then accompanied Mr Lee and his wife to view the show-flats, and helped to obtain the price list and other information for their consideration. Eventually, the Lee couple decided to purchase two units. The practitioner 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 Lee couple reminded the practitioner of his cash rebate promise and stressed that he must arrange the payment of the 2% cash rebate. The practitioner assured the Lee couple that he would certainly follow up the matter with his superior.

However, despite repeated demands and negotiations with the estate agency company, Mr Lee was not paid the 2% cash rebate that the practitioner had promised.

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

At the inquiry hearing, the practitioner denied that he had ever offered a cash rebate to Mr Lee. He said when he approached the Lee couple that day, he had provided them only with some pamphlets about the new development. He claimed

that the Lee 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, the practitioner was unable to give any satisfactory explanation as to why he did not refute then the Lee couple's assertion that he had made a cash rebate promise, but instead agreed to follow up the matter.

The committee rejected the practitioner's evidence that he had not offered any cash rebate to the Lee couple. The committee accepted Mr Lee's evidence and held that the practitioner had indeed promised the Lee couple a 2% cash rebate, that this was the condition upon which the Lee couple agreed to use the practitioner's service, and that the practitioner had failed to fulfil his promise.

The committee pointed out that luring potential clients into using a practitioner's service by the promise of a cash rebate and then subsequently renegeing on the promise would undermine confidence in and bring disrepute to the estate agency profession. The practitioner failed to observe paragraph 3.7.2 of the Code of Ethics.

The committee suspended the practitioner's licence for one month.

Paragraph 3.7.2 of the Code of Ethics

Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.

就物業許可用途作出失實陳述

一名地產代理從業員因對客戶作出有關物業許可用途的失實陳述，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

該從業員在他的商舖櫥窗展出一個單位的廣告。該單位在一幢商業大廈內，但廣告說該單位「可商住」。

一名婆婆希望用積蓄，購買一個單位自住。該從業員安排她參觀該單位，聲稱該單位可作住宅用途，又安排婆婆簽訂一份臨時買賣合約，以58萬元購入物業。

其實，該物業並不是住宅單位，而佔用許可證（俗稱「入伙紙」）將該物業的許可用途限制訂為「非住宅用的辦公室」。

在紀律研訊中，該從業員承認，雖然明知物業是商業單位，但沒有提醒客戶物業不可作住宅用途。他向紀律委員會表示，該物業有座廁、洗澡和煮食設施，因此他認為物業適合作住宅用途。

紀律委員會裁定該從業員對客戶表示物業可作住宅用途，屬失實的陳述，該從業員因而未有遵從《操守守則》第3.3.1段。

紀律委員會又認為，該物業的廣告中有關該物業「可商住」的聲稱，屬虛假和誤導的。該從業員展示這樣的廣告，未有遵從《操守守則》第3.7.2段。

紀律委員會決定暫時吊銷該從業員的牌照六個月，並在該牌照上附加條件，規定該從業員在24個月內取得20個持續專業進修計劃核心科目的學分。

《操守守則》第3.3.1段

地產代理和營業員在經營過程中，必須秉持誠實、忠誠和嚴正的態度向客戶提供服務。他們應保障客戶在地產交易中不因欺詐、失實陳述或不合專業操守的行為而受損。

《操守守則》第3.7.2段

地產代理和營業員應避免做出可能令地產代理行業信譽及/或名聲受損的行為。

Misrepresentation of property's permitted use

An estate agency practitioner had his licence suspended and a condition attached to it for his misrepresentation to a client with regard to the permitted use of a property.

The practitioner put up an advertisement of a property in his shop window. The property was in a commercial building but the advertisement stated that it was “suitable for commercial and residential uses”.

An elderly woman wanted to purchase a home for herself with her savings. The practitioner arranged for her to view the property and assured her that the property could be used as domestic accommodation. He arranged for the woman to sign a provisional agreement to purchase the property for \$580,000.

In fact, the property was not a domestic unit. The occupation permit restricted its permitted use to “office for non-domestic use”.

At the inquiry hearing, the practitioner admitted that he had not advised his client that the property could not be used for domestic purposes, although he knew it was a commercial unit. He told the Disciplinary Committee that the property had a toilet, as well as bathing and cooking facilities. He therefore considered it suitable for domestic use.

The committee held that the practitioner had misrepresented to his client that the property could be for domestic use, and therefore had failed to comply with paragraph 3.3.1 of the Code of Ethics.

The committee further held that the statement in the advertisement that the property was “suitable for commercial and residential uses” was false and misleading. In putting up such an advertisement, the practitioner had failed to comply with paragraph 3.7.2 of the Code of Ethics.

The committee ordered that the licence of the practitioner be suspended for six months and that a condition requiring the practitioner to attain 20 CPD points in core subjects in 24 months be attached to his licence.

Paragraph 3.3.1 of the Code of Ethics

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

Paragraph 3.7.2 of the Code of Ethics

Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.

發出虛假和誤導廣告

——間地產代理公司因發出虛假的廣告而遭譴責及罰款。

2008年1月，該地產代理公司在置逸花園附近派發廣告單張，單張上載有置逸花園的放盤資料。置逸花園一號房子的業主高先生索取了一份單張，發現該單張上其中一項放盤資料，附有一張他自己房子的內部照片。高先生曾經委託其他地產代理公司放盤出售其物業，但從沒有委託該公司放盤。於是，他向監管局作出投訴。

該地產代理公司解釋，有關廣告其實是置逸花園七號房子的廣告，並出示該公司與七號房子的業主簽訂的地產代理協議（表格3）。該公司承認該廣告載有高先生的房子的照片，並表示這是由於公司員工錯誤地將高先生的房子的照片印於單張上。

該公司發出在要項上具誤導性的廣告，令讀者誤以為廣告中的放盤物業是高先生的物業，違反了《地產代理常規（一般責任及香港住宅物業）規例》（《常規規例》）第9（1）條的規定。

紀律委員會就該地產代理公司發出上述廣告，進行紀律研訊。該公司被紀律委員會譴責和罰款5,000元。

《常規規例》第9（1）條

持牌地產代理不得安排或准許發出任何全部或部分與其地產代理業務有關並載有在要項上屬虛假或具誤導性陳述或詳情的廣告。

Issuing false and misleading advertisement

An estate agency firm was reprimanded and fined for issuing a misleading advertisement.

In January 2008, the firm distributed leaflets in the vicinity of Comfy Garden. The leaflets contained property listings of Comfy Garden. Mr Ko, the owner of House 1 of Comfy Garden, upon collecting a leaflet, discovered that one of its property listings contained a photograph showing the interior of his house. Mr Ko had listed his property for sale with other estate agency companies, but never with this firm. Mr Ko then lodged a complaint with the EAA.

The firm explained that the advertisement was in fact related to House 7 of Comfy Garden and provided an estate agency agreement (Form 3) signed by the owner of House 7. The firm admitted that the advertisement contained a photograph of Mr Ko's property and said the mistake was due to an error by a staff member, who had wrongly selected the photograph of Mr Ko's property when preparing the leaflet.

The advertisement issued by the practitioner was misleading in a material particular, in that it gave readers the impression that the property being advertised was Mr Ko's property, thereby breaching section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation).

An inquiry hearing was conducted against the firm for issuing such an advertisement. The firm was reprimanded and fined \$5,000 by the Disciplinary Committee.

Section 9(1) of the Practice Regulation

A licensed estate agent shall not cause or permit to be issued an advertisement wholly or partly relating to his estate agency business which includes any statement or particular that is false or misleading in a material particular.

沒有披露樓宇租賃中的個人利益

一名地產代理從業員沒有披露她在一項租賃交易所涉及的個人利益，被紀律委員會暫時吊銷牌照、譴責及在牌照上附加條件。

莊先生有意物色合適單位租住，得悉一位友人的現居單位的租期即將屆滿，而他將搬離該單位。莊先生到該單位參觀後，認為合適，有意租住。該友人告訴莊先生他可聯絡一位從業員，從而可以安排莊先生租住該單位。莊先生並不知道該從業員的中文全名。

該從業員在電話中告訴莊先生，單位的業主在海外定居，她已獲得業主授權處理該單位的租賃事宜。雙方就租賃條款進行簡短的商議後，莊先生決定租住單位兩年。該從業員相約莊先生會面，安排簽署租約事宜。

會面期間，該從業員出示一份已由業主簽署的租約給莊先生簽署。該份租約只填上業主的中文姓名。莊先生簽署了租約，並支付3,000元佣金予該從業員。該從業員以一間地產代理公司的名義發出收據。

在整個會面的過程中，該從業員並沒有向莊先生透露自己的中文姓名和派發自己的名片，亦沒有與莊先生簽訂任何地產代理協議。

兩年租約即將屆滿之際，莊先生聯絡該從業員，安排續租事宜。該從業員安排莊先生簽署新租約。新租約仍然只是填上業主的中文姓名。莊先生就續租事宜，向該從業員支付了1,700元佣金。該從業員再次向莊先生發出以同一間地產代理公司的名義發出的收據。

後來，莊先生發現兩份租約上業主的中文姓名，與該從業員的中文姓名相同。單位的土地查冊顯示，該從業員為單位的登記業主，亦為佣金收據上的地產代理公司的獨資經營者。

紀律委員會就個案進行紀律研訊。該從業員承認有關指稱，紀律委員會認為她沒有向客戶披露她在單位的權益，未有遵守《操守守則》第3.6.1段。

結果，紀律委員會判令暫時吊銷該從業員的牌照一個月，向該從業員作出譴責及在她的牌照上附加條件，規定她在12個月內取得十個持續專業進修計劃核心科目的學分。

《操守守則》第3.6.1段

地產代理和營業員應避免就本身有實益利益的物業提供服務。

Failure to disclose personal interest in a leasing transaction

An estate agency practitioner had her licence suspended, was reprimanded and had a condition attached to her licence for failing to disclose her personal interest in a leasing transaction.

Mr Chong was looking for a flat to rent. He learnt that the lease for his friend's flat would soon expire and that his friend would move out. Mr Chong went to his friend's flat to have a look. He found it suitable and wanted to rent it. His friend told him to contact a practitioner who would help arrange the leasing of the flat to him. Mr Chong did not know the practitioner's full Chinese name.

Over the phone, the practitioner told Mr Chong that the landlord resided overseas and that she had full authority to handle the leasing of the flat. After a brief negotiation of the lease terms, Mr Chong decided to rent the flat for a term of two years. The practitioner made an appointment to meet Mr Chong for the signing of the tenancy agreement.

When Mr Chong met the practitioner, the latter took out a tenancy agreement for his signature. The tenancy agreement had already been signed by the landlord. The name of the landlord stated in the tenancy agreement was in Chinese only. Mr Chong signed the tenancy agreement and paid a \$3,000 commission to the practitioner, who issued a receipt in the name of an estate agency.

Throughout the meeting, the practitioner did not reveal her Chinese name. Nor did she give Mr Chong her business card or arrange for Mr Chong to enter into an estate agency agreement with the estate agency.

When the two-year lease was due to expire, Mr Chong contacted the practitioner to arrange a renewal. The practitioner arranged for him to sign a new tenancy agreement. In the new tenancy agreement, the name of the landlord was still stated in Chinese only. Mr Chong paid \$1,700 to the practitioner as the commission for arranging the new tenancy agreement. The practitioner issued a receipt in the name of the same estate agency.

Mr Chong subsequently found out that the name of the landlord in both tenancy agreements was in fact the practitioner's Chinese name. A land search of the flat revealed that the practitioner was the registered owner. The licence search revealed that the practitioner was the sole proprietor of the estate agency named in the commission receipts.

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

practitioner's admission, the committee held that the practitioner had failed to disclose to her client her interest in the flat, failing to comply with paragraph 3.6.1 of the Code of Ethics.

The committee ordered that the practitioner's licence be suspended for one month, that the practitioner be reprimanded and a condition be attached to her licence requiring her to acquire 10 points in core subjects of the CPD Scheme within 12 months.

Paragraph 3.6.1 of the Code of Ethics

Estate agents and salespersons should avoid accepting an appointment involving a property in which they have a beneficial interest.

向代理人提供利益

一位地產代理從業員被控「向代理人提供利益」，違反《防止賄賂條例》第9(2)(a)條的規定，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

該從業員為和平地產代理公司的董事，毛先生則是九龍好好購物商場的租務經理。

2004年6月，陳氏公司透過該從業員介紹，決定租用好好購物商場的一個單位。根據市場慣例，好好購物商場應該就陳氏公司租用該單位，向和平地產代理公司支付一個月租金的佣金。然而，毛先生向該從業員表示，好好購物商場會支付兩個月租金的佣金予和平地產代理公司，惟該從業員須將當中多出的部分，私下退回給他。

同年8月，該從業員就介紹陳氏公司租用該單位，向好好購物商場發出繳費單，繳費單上註明的佣金數額相等於兩個月的租金。隨後，好好購物商場向和平地產代理公司支付14萬元佣金，該從業員繼而向毛先生支付7萬元現金。

好好購物商場的管理層證實，沒有允許毛先生就處理好好購物商場的租務事宜，收受利益。

其後，該從業員被廉政公署拘捕，控以三項「向代理人提供利益」罪名。他承認其中一項控罪，而控方就另外兩項控罪沒有提證供檢控。其後，他被判處160小時社會服務令。

紀律委員會就該從業員違反上述條例，進行紀律研訊。該從業員承認有關指稱，因此未能符合《地產代理條例》第19(2)(d)條訂明的發牌條件中，有關適當人選的要求。紀律委員會考慮到他提出的求情理由，包括他已深感後悔，決定暫時吊銷他的牌照兩個月，以及在他的牌照上附加條件，規定他在12個月內取得十個持續專業進修計劃核心科目的學分。

《地產代理條例》第19(2)(d)條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及該人因任何罪行（本條例所訂的罪行除外）在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

Offering advantage to agent

The licence of an estate agency practitioner convicted of one count of “offering an advantage to an agent”, contrary to section 9(2)(a) of the Prevention of Bribery Ordinance, was suspended and attached with conditions by the Disciplinary Committee.

The practitioner was the director of Peaceful Property Agency Limited. Mr Mo was the leasing manager of Good Plaza, a shopping mall in Kowloon.

In June 2004, Chan Company decided to rent a unit at Good Plaza upon the introduction of the practitioner. According to market practice, Good Plaza should have paid Peaceful Property Agency Limited a sum equivalent to one month’s rental as commission for introducing Chan Company. Mr Mo, however, told the practitioner that Good Plaza would pay a sum equivalent to two months’ rental as commission to Peaceful Property Agency Limited, but that the practitioner had to rebate the extra commission to him personally.

In August 2004, the practitioner submitted a demand note to Good Plaza for a sum equivalent to two months’ rental as commission for introducing Chan Company to rent the unit. Good Plaza paid Peaceful Property Agency Limited \$140,000 as commission accordingly. The practitioner then paid Mr Mo \$70,000 in cash.

The management of Good Plaza confirmed that it had not allowed Mr Mo to accept any advantage in relation to the Plaza’s affairs or business.

The practitioner was subsequently arrested by ICAC officers and charged with three counts of “offering an advantage to an agent”. He pleaded guilty to one of the charges and the prosecution offered no evidence in respect of the other two charges. He was later sentenced to 160 hours of community service.

An inquiry hearing was conducted against the practitioner for committing the above offence. The practitioner admitted the allegation made against him, thereby failing to fulfil one of the fit and proper requirements for holding a licence as stipulated in section 19(2)(d) of the EAO. The committee, having considered the mitigating factors put forward by the practitioner, including the fact that he had shown genuine remorse, suspended his licence for two months. The committee also attached conditions to the practitioner’s licence, including requiring him to obtain 10 points in core subjects of the CPD Scheme within 12 months.

Section 19(2)(d) of the EAO

In determining whether or not a person is fit and proper for the purpose of holding an estate agent’s licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.

隱瞞業主叫價

一名地產代理從業員因隱瞞業主叫價，被裁定詐騙罪名成立，被紀律委員會暫時吊銷牌照。

2006年4月，嚴先生打算出售物業，透過ABC地產代理公司放盤，將放盤價訂為3.3百萬元。嚴先生與該地產代理公司簽訂地產代理協議（表格3），當中訂明嚴先生須支付樓價百分之一的佣金。其後，他將放盤價降低至3.15百萬元。

同年6月中，該從業員帶一名準買家賴女士視察物業。該從業員告訴賴女士，物業的放盤價是3.25百萬元。賴女士表示有意以3.2百萬元購買該物業。

隨後，該從業員安排他本人、嚴先生和賴女士會面，進一步商議價格。會面之後，兩人主要通過該從業員進行詳細的價格商議。

該從業員告訴賴女士，嚴先生不願意以3.2百萬元出售物業，並詢問她會否提價。賴女士表示願意以3.22百萬元購買該物業。

另一邊廂，該從業員要求嚴先生就賴女士提高物業的售價，支付額外佣金，金額為物業實際售價和叫價3.15百萬元之差價的一半。

雙方隨後簽署臨時買賣合約，嚴先生的物業以3.22百萬元售出。臨時買賣合約訂明，嚴先生須向ABC地產代理公司支付的佣金為32,200元。另一方面，該從業員安排嚴先生簽署另一份協議，訂明除了標準佣金百分之一外，嚴先生須支付額外佣金予ABC地產代理公司，金額為實際樓價和叫價3.15百萬元之差價的一半。

其後，該從業員被控兩項詐騙罪，包括要求嚴先生與ABC地產代理公司簽署另一份協議（「第一項控罪」），以及向賴女士隱瞞嚴先生同意把物業的叫價調低至3.15百萬元（「第二項控罪」），違反《盜竊罪條例》第16A條。他否認該兩項控罪。法院裁定首項控罪不成立，但第二項控罪成立，該從業員被法庭罰款75,000元。

紀律委員會也就該從業員觸犯上述法例進行紀律研訊。該從業員承認有關指稱，因此未能符合《地產代理條例》第19(2)(d)條訂明的發牌條件中，有關適當人選的要求。紀律委員會遂決定暫時吊銷他的牌照三個月。

《地產代理條例》第19(2)(d)條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及該人因任何罪行（本條例所訂的罪行除外）在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

Concealing real asking price from client

An estate agency practitioner had his licence suspended by the Disciplinary Committee after being convicted of fraud for deceiving his client.

In April 2006, Mr Yim listed his property for sale through ABC Property Agency Limited. The initial listing price was \$3.3 million. He signed an estate agency agreement (Form 3), which stated that the commission payable by Mr Yim would be 1% of the selling price. Mr Yim subsequently reduced the listing price to \$3.15 million.

In mid-June 2006, the practitioner took a potential purchaser, Ms Lai, to view the property. The practitioner told Ms Lai that the listing price of the property was \$3.25 million. Ms Lai then made an offer at \$3.2 million to purchase the property.

The practitioner then arranged a meeting with Mr Yim and Ms Lai to further negotiate the price, with the price negotiation conducted through the practitioner.

The practitioner told Ms Lai that Mr Yim would not accept \$3.2 million and asked if she could raise her offer. Ms Lai thus raised the offer to \$3.22 million.

The practitioner asked Mr Yim to pay extra commission for the increase in the offer by Ms Lai, with the extra commission to be 50% of the difference between the actual selling price and the \$3.15 million asking price.

A provisional agreement for sale and purchase in respect of Mr Yim's property for \$3.22 million was entered into, in which the commission payable to ABC Property Agency Limited by Mr Yim was stated as \$32,200. Meanwhile, the practitioner arranged for Mr Yim to sign a separate agreement where it was stated that in addition to the standard 1% commission, Mr Yim would give 50% of the difference between the actual selling price and \$3.15 million asking price to ABC Property Agency Limited as an extra commission.

The practitioner was subsequently charged with two counts of "fraud" for inducing Mr Yim to enter into a separate agreement with ABC Property Agency Limited ("the first charge") and concealing from Ms Lai the fact that Mr Yim had agreed to reduce the asking price of the property to \$3.15 million ("the second charge"), contrary to section 16A of the Theft Ordinance. The practitioner pleaded not guilty to both charges. He was acquitted of the first charge but convicted of the second and was fined \$75,000 by the court.

An inquiry hearing was conducted against the practitioner for committing the above offence. The practitioner admitted the allegation made against him, hence failing to fulfil one of the fit and proper requirements for holding a licence as provided in section 19(2)(d) of the EAO. The Disciplinary Committee suspended his licence for three months.

Section 19(2)(d) of the EAO

In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.

未取得業主同意帶準買家視察物業

一名地產代理從業員，在帶準買家視察一項物業前，未有取得賣方客戶的同意，因而被紀律委員會譴責和在其牌照上附加條件。

歐女士是該物業聯名業主之一，她委託某家地產代理公司放售該物業，並將物業大門的鑰匙交給該公司的職員（「甲從業員」），以便代理公司安排準買家參觀物業。

幾天後，歐女士致電甲從業員，表示其女兒把個人財物留在放售物業內，因此要求甲從業員暫停安排準買家參觀物業，而甲從業員表示會遵從指示。

數天後，歐女士路經該地產代理公司分行，重複上述指示，甲從業員再度保證會遵從。

歐女士的女兒後來發覺部分個人物品不翼而飛，於是報警。警方完成調查後沒有拘捕任何人。

監管局就此事進行調查，發現在歐女士指示地產代理公司暫停安排準買家參觀單位後，甲從業員的同事（「乙從業員」）兩次安排一名客戶參觀該單位。

乙從業員解釋說，一名客戶表示對歐女士的單位有興趣，於是他致電歐女士，冀得到她同意，讓該客戶參觀單位。歐女士沒有接聽電話，於是乙從業員留下口訊，請歐女士回電。歐女士一直沒有回覆，乙從業員便推斷歐女士已同意讓他帶客戶參觀單位。同樣的事情在兩星期後再次發生。

紀律委員會就乙從業員的失當行為召開紀律研訊，認為乙從業員未經業主同意下，安排準買家視察物業，違反《常規規例》第10 (b) 條，決定譴責乙從業員，並在他的牌照上附加條件，規定他在12個月內取得十個持續專業進修計劃核心科目的學分。

《常規規例》第10 (b) 條

持牌人在未經住宅物業的賣方事先同意的情況下，不得安排任何人視察和查看該物業。

Arranging for property viewing without vendor's consent

An estate agency practitioner was reprimanded and had a condition attached to his licence for failing to obtain the consent of the vendor before arranging for a prospective purchaser to view a property.

Ms Au, one of the joint owners of the property, listed the property with an estate agency for sale. Ms Au left the key of the property with Practitioner A of the estate agency so that the estate agency could arrange for prospective purchasers to view the property.

A few days later, Ms Au telephoned Practitioner A and instructed her not to arrange for prospective purchasers to view the property for the time being, as her daughter had placed some of her personal belongings in the property, and Practitioner A agreed.

Ms Au repeated her instruction to Practitioner A in person in the branch office of the estate agency a few days after she had telephoned Practitioner A. Practitioner A again assured Ms Au that necessary arrangements would be made.

Ms Au's daughter subsequently found that some of her personal belongings had gone missing. Ms Au's daughter reported the matter to the police. The police completed their investigation of the case but no one was arrested for the incident.

An investigation revealed that a colleague of Practitioner A, Practitioner B, had arranged for a client to view the property on two occasions after Ms Au had instructed the estate agency not to allow prospective purchasers to view the property.

Practitioner B explained that he had called Ms Au to obtain her consent to view the property when a client had shown interest in it. He said Ms Au had not answered the phone, so he had left a message, asking Ms Au to call him back. There was no response from Ms Au so Practitioner B assumed that she had agreed to let him arrange for the client to view the property. The same thing happened two weeks later.

An inquiry hearing into Practitioner B's misconduct was conducted. The Disciplinary Committee ruled that Practitioner B has breached section 10(b) of the Practice Regulation for arranging for an inspection of the property without the prior consent of the vendor, and decided to reprimand Practitioner B and attach a condition to his licence requiring him to obtain 10 CPD points in core subjects within 12 months.

Section 10(b) of the Practice Regulation

A licensee shall not arrange an inspection and viewing by any person of a residential property without the prior consent of the vendor of the property.

私吞客戶佣金

一名地產代理從業員因欺騙其僱主以私吞客戶佣金，在法庭被裁定詐騙罪名成立，並且被紀律委員會暫時吊銷其牌照和在其牌照上附加條件。

楊女士打算購買一項物業，並為此委託該從業員。根據從業員所屬的甲公司的政策，如該公司促成楊女士購買物業，楊女士須向該公司繳付樓價百分之一的佣金。結果，楊女士經甲公司以1.1百萬元購入一項物業。

涉案的從業員向甲公司訛稱楊女士是由乙公司轉介而來的客人。甲公司被該從業員誤導，於是與乙公司簽署合作協議，協議訂明楊女士所繳付的樓價百分之一的佣金由乙公司收取。

該從業員取得乙公司的蓋章，填妥合作協議，並代乙公司簽署，然後將協議傳真給甲公司。

其後，楊女士將一張11,000元（即樓價百分之一）的支票交予該從業員，而該從業員將支票存入自己的銀行戶口。

結果，該從業員被控違反《盜竊罪條例》第16A（1）條的詐騙罪，被判監禁三個月。

紀律委員會就此事召開紀律研訊。該從業員承認指稱，因此未能符合《地產代理條例》第19（2）（d）條訂明的發牌條件中，有關適當人選的要求，最終被紀律委員會暫時吊銷牌照兩個月，而其牌照上亦加上條件，要求該從業員在24個月內取得20個持續專業進修計劃核心科目的學分。

《地產代理條例》第19（2）（d）條

在決定任何人是否持有地產代理牌照的適當人選時，監管局須顧及該人因任何罪行（本條例所訂的罪行除外）在香港或其他地方被定罪，而該項定罪屬有需要裁斷該人曾有欺詐性、舞弊或不誠實的作為者。

Pocketing client's commission

An estate agency practitioner had his licence suspended, with a condition attached, after being convicted of fraud for deceiving his employer by pocketing a commission from a client.

The prospective purchaser, Ms Yeung, intended to buy a property and approached the practitioner for assistance. According to the company policy of Estate Agency A, for whom the practitioner worked, Ms Yeung had to pay 1% of the purchase price as commission if the agency successfully introduced a property to her. Ms Yeung eventually bought a property through the agency for \$1.1 million

The practitioner made a false representation to Estate Agency A, claiming Ms Yeung had been referred to him by Estate Agency B. Estate Agency A was misled into entering into a co-operation agreement with Estate Agency B, so that Estate Agency B would be entitled to receive the 1% commission from Ms Yeung.

The practitioner obtained the company chop of Estate Agency B, filled in the particulars of the co-operation agreement, and signed on behalf of Estate Agency B. He then faxed the said agreement to Estate Agency A.

Ms Yeung subsequently issued a cheque for \$11,000 (i.e. 1% of the purchase price) and gave it to the practitioner, who then deposited the cheque into his bank account.

The practitioner was subsequently convicted of fraud, contrary to section 16A(1) of the Theft Ordinance, and was sentenced to three months' imprisonment.

In an inquiry hearing conducted by the EAA's Disciplinary Committee, the practitioner admitted the allegation against him. The practitioner had failed to fulfil one of the fit and proper requirements for holding a licence as stipulated in section 19(2)(d) of the EAO. The committee suspended his licence for two months, and attached a condition to his licence, requiring him to obtain 20 CPD points in core subjects within 24 months.

Section 19(2)(d) of the EAO

In determining whether or not a person is fit and proper for the purpose of holding an estate agent's licence, the Authority shall have regard to any conviction, whether in Hong Kong or elsewhere, of the person for any offence (other than an offence under this Ordinance), being a conviction as regards which it was necessary to find that the person acted fraudulently, corruptly or dishonestly.

遺失客戶身分證

兩名地產代理從業員在一手物業銷售處遺失客戶的香港身分證，被紀律委員會譴責和在他們的牌照上附加條件。

該兩名從業員（「甲從業員」和「乙從業員」）屬同一地產代理公司的僱員。甲從業員邀請客戶黃女士到一個樓盤的銷售處參觀示範單位。黃女士於晚上抵達銷售處，應兩名從業員要求，提交香港身分證和個人資料，以便從業員代其向發展商索取價目表。

黃女士最後決定不購買任何單位，並要求乙從業員歸還她的身分證和填上她個人資料的表格。乙從業員回應指會替黃女士向發展商取回她的身分證和表格。黃女士等至次日凌晨一時，乙從業員才向她表示未能找到她的身分證和表格，但保證會在早上歸還身分證。

其後，乙從業員告知黃女士尋索不果，於是黃女士致電發展商查詢，惟發展商職員表示從來沒有收過她的身分證。

結果，黃女士向警方報失身分證。

兩名從業員承認要求黃女士提供身分證，並表示他們將之交給發展商，以取得價目表。然而，經過多次向發展商查詢和多番搜索，仍然找不到黃女士的身分證。他們又承認忘記向誰人交出黃女士的身分證和個人資料，也沒有備存紀錄。

紀律委員會認為，兩名從業員在履行職務時，未有盡量小心和盡力，未有遵從《操守守則》第3.5.1段。兩名從業員坦白承認這項指稱。

最後，紀律委員會決定譴責兩名從業員，並在他們的牌照上附加條件，規定他們在12個月內取得五個持續專業進修計劃核心科目的學分。

《操守守則》第3.5.1段

地產代理和營業員在履行職務時必須盡量小心和盡一切應盡的努力。

Losing client's identity card

Two estate agency practitioners were reprimanded and had a condition attached to their licences for losing their client's Hong Kong identity card at a first-sale office.

Both practitioners were employees of the same estate agency. One of the practitioners ("Practitioner A") asked the client, Ms Wong, to view the show flats of a development at the sales office. Ms Wong arrived at the sales office in the evening, and was told by the practitioners that she had to provide the developer with her identity card and personal particulars in order to obtain a price list, which she did accordingly.

Ms Wong eventually decided not to purchase a unit, and asked the other practitioner ("Practitioner B") to return her identity card and the form containing her personal particulars. Practitioner B explained to Ms Wong that they had to collect her identity card and the form from the developer. Ms Wong waited until 1am the next day, and was then told by Practitioner B that he had been unable to find either her identity card or the form. Practitioner B promised to return the identity card to her the following morning.

Practitioner B later told Ms Wong that her identity card could not be found. Ms Wong called the developer to enquire about the whereabouts of her identity card and was told by the developer's staff that they had never received it.

Ms Wong subsequently reported the loss of her identity card to the police.

Both practitioners admitted that they had asked Ms Wong to provide her identity card and said they had passed her identity card to the developer in order to obtain the price list. They were unable to locate her identity card after repeated enquiries with the developer and numerous searches. They also admitted that they did not recall to whom they had passed her identity card and personal particulars, nor had they kept a record.

An inquiry hearing was conducted to examine the allegation against the practitioners for their failure to exercise due care and due diligence in fulfilling their duties, failing to comply with paragraph 3.5.1 of the Code of Ethics. The practitioners frankly admitted the allegation.

The Disciplinary Committee reprimanded the practitioners and attached a condition to their licences, requiring them to obtain five CPD points in core subjects within 12 months.

Paragraph 3.5.1 of the Code of Ethics

Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence.

沒有查核土地許可用途

一名地產代理從業員因為沒有替客戶查核將購入的物業所在的土地的許可用途，被紀律委員會暫時吊銷牌照和在牌照上附加條件。

陳女士希望搬進一幢新界村屋，改善家庭居住環境。陳女士通過報章廣告，知悉有村屋出售，甚感興趣，於是致電有關的從業員查詢。該從業員安排她參觀大埔區一幢兩層高的村屋。

陳女士認為該村屋合適，故決定以1百萬元購入。該從業員安排她簽訂臨時買賣合約。合約上對該物業的說明中，只有一個地段號碼和對該塊土地上的建築物的描述。陳女士付出首期訂金5萬元。根據該臨時買賣合約的附錄，樓價包括「兩個貨櫃和一幢在該塊地上建成的一間房屋」。

其實，該幢兩層高房屋是建築在農地上的違例建築物，而陳女士同意購入的只是一塊農地，而非村屋。陳女士其後向監管局投訴該從業員。

在紀律研訊中，該從業員承認自己不知道該物業建於農地之上。他表示，他曾向陳女士解釋，該兩層高房屋是臨時建築物，而如果政府要求清拆，買方不會得到任何賠償。他堅稱雖然他已經如此解釋，陳女士仍然決定購買該物業。

紀律委員會認為，陳女士用辛苦儲起的積蓄購買一幢臨時房屋的可能性甚低，並認為該從業員沒有對他的客戶披露物業的詳情，又沒有小心查明土地的許可用途，未有遵從《操守守則》第3.3.1段。

紀律委員會決定將該從業員的牌照暫時吊銷三個月，並且在其牌照上附加條件，規定該從業員在12個月內取得十個持續專業進修計劃核心科目的學分。

《操守守則》第3.3.1段

地產代理和營業員在經營過程中，必須秉持誠實、忠誠和嚴正的態度向客戶提供服務。他們應保障客戶在地產交易中不因欺詐、失實陳述或不合專業操守的行為而受損。

Failing to check permitted use of land

An estate agency practitioner had his licence suspended and a condition attached to it for failing to check the permitted use of a piece of land on which a house which his client was about to buy was built.

Ms Chan wanted to improve the living condition of her family by moving to a village house in the New Territories. Attracted by an advertisement in the newspaper that there were village houses for sale, she contacted the practitioner concerned, who arranged for her to view a two-storey house in a village in Tai Po.

Ms Chan found the house suitable and agreed to purchase it for \$1 million. The practitioner arranged for her to sign a provisional agreement for sale and purchase. In the provisional agreement, the property was described by a lot number as well as the structure erected on the land. Ms Chan paid an initial deposit of \$50,000. The provisional agreement included an annex, which stated that the purchase price included “two containers and a house erected on the land”.

In fact, the two-storey house was an unauthorised structure built on agricultural land. The property which Ms Chan had agreed to purchase was only a piece of agricultural land, not a village house. Ms Chan made a complaint to the EAA about the practitioner.

At the inquiry hearing, the practitioner admitted that he had not known that the property was erected on agricultural land. He said he had explained to Ms Chan that the two-storey house on the land was only a temporary structure and that the purchaser would not get any compensation if the government ordered its demolition. He asserted that, despite his explanation, Ms Chan was keen to make the purchase.

The Disciplinary Committee deemed it inherently improbable that Ms Chan would have been willing to use her hard-earned money to buy a temporary house. The committee held that the practitioner had not disclosed to his client the details of the property and had failed to diligently check the permitted use of the land, thereby failing to comply with paragraph 3.3.1 of the Code of Ethics.

The committee ordered that the licence of the practitioner be suspended for three months and that a condition requiring him to obtain 10 CPD points in core subjects within 12 months be attached to his licence.

Paragraph 3.3.1 of the Code of Ethics

Estate agents and salespersons shall, in the course of business, provide services to clients with honesty, fidelity and integrity. They should protect their clients against fraud, misrepresentation or any unethical practices in connection with real estate transactions.

紀律研訊案例選輯 – 第四輯

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