地產代理監管局
ESTATE AGENTS AUTHORITY

紀律研訊案例選輯

第三輯

INQUIRY HEARING CASES

A SELECTION III

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前言

香港的經濟發展與房地產市道息息相關，而在許多物業交易過程之中，地產代理又往往扮演最前線和關鍵性的角色。地產代理監管局（監管局）一直致力提升地產代理行業的執業水平和服務素質，給予消費者保障。因此，從業員培訓是監管局的重點工作。

監管局認為，將一些具代表性的紀律研訊案例輯錄成書，既可加深從業員對法例要求的認識，又可倡導依法執業的風氣。所以，監管局曾經於2002和2006年推出了《紀律研訊案例選輯》和《紀律研訊案例選輯第二輯》。兩本選輯深受業界歡迎。

《紀律研訊案例選輯第三輯》輯錄了部分過去三年的研訊個案。監管局期望，這本新的選輯能夠繼續倡導業界依法執業的意識。為了方便從業員查閱在同一範疇的不同案例，我們特別將性質相似的個案歸類。

紀律委員會現任主席馬豪輝先生、前任主席廖譚婉瓊女士、現任和前任委員，積極參與紀律研訊工作，公平公正地處理所有研訊個案，為提升地產代理行業的發展盡心盡力。在此，由衷致敬！

地產代理監管局　行政總裁

陳佩珊

2008年4月

Foreword

The economic development of Hong Kong is closely linked with the property market, and estate agents often play a critical role in property transactions.

The mission of the Estate Agents Authority (EAA) has always been to raise the standards of the estate agency trade and enhance the quality of their service for the protection of consumers. Providing training for estate agency practitioners is, therefore, a key task for EAA.

EAA published two collections of representative inquiry hearing cases, *Inquiry Hearing Cases – A Selection* and *Inquiry Hearing Cases – A Selection II*, in 2002 and 2006 respectively in order to enhance practitioners' understanding of relevant laws and promote compliance. Both publications have been well-received by the trade.

Inquiry Hearing Cases – A Selection III features a number of cases heard over the past three years. EAA hopes this new collection will foster a greater sense of compliance among practitioners. This time, we have grouped similar cases together for practitioners' easy reference.

I would like to express sincere gratitude to Mr Ma Ho-fai and Mrs Amy Liu, current and former Chairman of the Disciplinary Committee respectively, as well as all current and former members of the committee, for their sterling work in handling inquiry hearings fairly and justly and their great effort in enhancing the service standards of the estate agency trade.

Sandy Chan
Chief Executive Officer
Estate Agents Authority
April 2008

成員名單

（2004年11月 — 2006年10月）	（2006年11月 — 2008年10月）
主席： 廖譚婉瓊女士	**主席：** 馬豪輝先生
成員： 陳鉅源先生 陳念慈小姐 陳友正博士 張惠彬博士 周永健先生 李峻銘先生 梁永祥先生 陸順甜先生 倫志炎先生 馬少雄先生 鄧意民先生 曾煥平先生 尹志強先生 黃為山先生	**成員：** 陳友正博士 簡家驄先生 李峻銘先生 梁永祥先生 倫志炎先生 孫寶源先生 曾煥平先生 尹志強先生 黃為山先生
增選成員： 陳永佳先生 簡家驄先生 馬豪輝先生 蔡克剛先生	**增選成員：** 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

Disciplinary Committee

Membership

(November 2004 – October 2006)	(November 2006 – October 2008)
Chairman:	**Chairman:**
Mrs Amy Liu Tam Yuen-king	Mr Ma Ho-fai
Members:	**Members:**
Mr Thomas Chan Kui-yuen	Dr Bob Chan Yau-ching
Miss Amy Chan Lim-chee	Mr Frederick Kan Ka-chong
Dr Bob Chan Yau-ching	Mr Eric Lee Chun-ming
Dr Charles Cheung Wai-bun	Mr William Leung Wing-cheung
Mr Anthony Chow Wing-kin	Mr Lun Chi-yim
Mr Eric Lee Chun-ming	Mr Sun Po-yuen
Mr William Leung Wing-cheung	Mr Joseph Tsang Hon-ping
Mr Luk Shun-tim	Mr Aaron Wan Chi-keung
Mr Lun Chi-yim	Mr Wilson Wong
Mr Paul Ma Siu-hung	
Mr Alex Tang Yee-man	**Board-appointed Members:**
Mr Joseph Tsang Hon-ping	Mr Chan Wing-kai
Mr Aaron Wan Chi-keung	Mr Kenneth Leung Kai-cheong
Mr Wilson Wong	Mr Liu Chi-ming
	Mr Paul Ma Siu-hung
Board-appointed Members:	Mr Ng Kin-yuen
Mr Chan Wing-kai	Mrs Karen Wong Law Kwai-wah
Mr Frederick Kan Ka-chong	Mr Wong Tsan-kwong
Mr Ma Ho-fai	
Mr Herbert Tsoi Hak-kong	

代理隱瞞其業主身分

兩名地產代理安排客戶租下一間店鋪，並從中收取了代理服務佣金，卻從沒透露自己乃店鋪之業主。

這兩人中，一人（「地產代理甲」）是一間地產代理公司的獨資經營者，另一人（「地產代理乙」）則是該公司員工。兩人同為一間店舖的業主。

地產代理甲以地產代理的身分，安排客戶參觀該物業。當客戶決定租用該物業時，地產代理甲及地產代理乙安排客戶簽署一份正式租賃協議，但並未向客戶提供土地查冊結果的副本。在整個過程中，他們沒有向客戶披露自己是業主的身分，並且安排第三者以業主身分簽署正式的租賃協議。客戶向該地產公司支付了二千元佣金。

數日後，客戶發現店舖的排水設施不符合其需求，要求兩名地產代理安排她與業主見面，商討解決方法。此時，兩名代理才透露自己就是業主。

監管局的紀律委員會認為，兩名地產代理不向客戶披露他們在物業中的權益，是違反了對客戶的受信責任，屬嚴重的違規行為，必須嚴正對待。但考慮到其他求情因素（二人事後表示懊悔和坦誠認錯），紀律委員會決定判處兩名地產代理停牌兩個月。

Agents concealing their identity as landlord

Two estate agents arranged for a client to rent a shop and were paid a commission for services rendered as agent without disclosing to their client that they were also the owners of the shop.

One estate agent ("Estate Agent A") was the sole proprietor of an estate agency firm and the other ("Estate Agent B") worked for the estate agency firm. They were the owners of a shop.

Estate Agent A arranged, in her capacity as the estate agent, for the client to view the property. When the client decided to rent the property, Estate Agent A and Estate Agent B arranged for the client to sign a formal tenancy agreement without providing her with a copy of the land search. They did not disclose that they were the landlords and arranged for a third party to sign the formal tenancy agreement in the name of the third party as the landlord. The client paid the estate agency firm a $2,000 commission.

After a few days, the client found the drainage facility of the property failed to meet her needs and requested the two estate agents to arrange for her to meet with the landlord to discuss the problem. The two estate agents then disclosed that they were the landlords.

The EAA Disciplinary Committee was of the view that the non-disclosure of the estate agents' interests in the property to their client was a breach of the estate agents' fiduciary duties owed to a client, and such a breach had to be taken seriously. After taking

into consideration other mitigating factors (both estate agents showed remorse and admitted their wrongful act candidly), the Disciplinary Committee ordered that the two estate agents' licences be suspended for two months.

代理隱瞞公司股東擁有物業業權

某代理為一地產代理公司的董事及股東。該地產代理公司的另外兩名股東是某物業的業主，物業買入價為四十九萬八千元。為了說服一位買家有關物業是個「筍盤」，該名代理聲稱業主購入物業的購入價為五十八萬元。買家最終同意以六十一萬八千元購入有關物業。

該名代理從沒有向買方客戶披露業主乃其地產代理公司之股東，因而違反了監管局發出之《操守守則》的第3.6.2段：「在有可能／潛在利益衝突的情況下.....向各方詳盡披露因該物業獲得的金錢或其他實益利益」；亦違反了《操守守則》第3.3.1段：「地產代理.....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」。

該名代理也沒有就有關物業進行土地查冊及提供土地查冊結果之文件副本給買家，違反《地產代理常規（一般責任及香港住宅物業）規例》（《常規規例》）第13(4)條之規定：「為住宅物業的賣方行事的持牌人，在緊接該物業的買賣協議或租契訂立之前，須就該物業安排在土地註冊處進行土地查冊，並向該物業的買方提供一份該土地查冊結果的文本。」

紀律委員會決定暫時吊銷該名代理的牌照。

Failure to disclose that an agency's owners are also the vendor

An estate agent was a director and a shareholder of an estate agency company. Another two of the shareholders of that estate agency company were the owners of a property, which was initially purchased for $498,000. To convince the purchaser that the property was value for money, the estate agent claimed that the vendors purchased the property for $580,000. The purchaser agreed to buy the property for $618,000.

The estate agent had never disclosed to the purchaser that the vendors were shareholders of his estate agency company and had, therefore, breached paragraph 3.6.2 of the Code of Ethics issued by EAA, which says, "Estate agents and salespersons shall, in the event of possible or potential conflict of interest … disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned." He has also breached paragraph 3.3.1 of the Code of Ethics, which says, "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."

The estate agent also failed to carry out a land search of the property, and failed to supply a copy of the land search to the purchaser, thereby breaching section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation), which says, "A licensee acting for the vendor of a residential property shall, immediately before

an agreement for sale and purchase or a lease of the property is entered into, cause to be carried out a land search in the Land Registry in respect of the property and supply a copy of the land search to the purchaser of the property."

The Disciplinary Committee decided to suspend the licence of the estate agent.

代理隱瞞自己為買家

某地產代理安排賣方客戶把一處工業物業售予一間買家公司（公司甲）。該名地產代理是公司甲的主要股東、秘書及董事，但她並沒有將這些事實告知賣方。

事緣該名地產代理主動接觸賣方，表示有買家對賣方的物業有興趣。經商議後，賣方同意以九萬八千元出售物業。於是，該名地產代理安排賣方和公司甲簽署一份臨時買賣協議，但沒有向賣方透露自己在公司甲的身分和利益。

另一方面，該名地產代理在賣方不知情下，將物業介紹給另一名買家（「次買家」）。最後，次買家同意以十一萬元從公司甲手上購買該物業，並簽署臨時買賣合約。換言之，公司甲藉轉售該物業賺取了一萬二千元。

該名地產代理利用自己的公司買賣物業獲利，卻沒有告訴客戶，違反了《操守守則》第3.6.2段，即「在有可能／潛在利益衝突的情況下（例如同時代表賣家和買家），地產代理和營業員必須向客戶表明他們同時代表雙方，以及向各方詳盡披露因該物業而獲得的金錢或其他實益利益。」

紀律委員會認為地產代理沒有在交易中透露自己的利益，違反了對客戶的受信責任，決定暫時吊銷該名代理的牌照六個月，並在其牌照上附加條件，規定她必須在一年內修讀十個持續專業進修學分。

Agent concealing her identity as purchaser

An estate agent arranged for a vendor client to sell an industrial property to a purchaser company ("ABC Limited"), of which she was the main shareholder, the secretary and a director, but she failed to inform the vendor of this fact.

The incident began when the estate agent approached and told the vendor that she had an interested purchaser for his property. After negotiation, the vendor agreed to sell the property for $98,000. The estate agent then arranged to have the vendor enter into a provisional sale and purchaser agreement with ABC Limited. The estate agent did not disclose to the vendor her interest in ABC Limited.

Meanwhile, unknown to the vendor, the estate agent introduced the property to a sub-purchaser. The sub-purchaser agreed to purchase the property from ABC Limited for the price of $110,000 and entered into a provisional sale and purchase agreement for the purchase. In other words, ABC Limited gained $12,000 from the sub-sale.

The estate agent used her own company to purchase and sell property for profit, but she did not tell her client about it. She was therefore in breach of paragraph 3.6.2 of the Code of Ethics, which stipulates that, "Estate agents and salespersons shall, in the event of possible or potential conflict of interest (such as representing both the vendor and the purchaser), disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned".

The Disciplinary Committee considered the estate agent's non-disclosure of her interest in the transaction to be a breach of estate agent's trust and fiduciary duties owed to a client. The committee decided to suspend the agent's licence for six months and attached conditions to the licence, requiring the agent to obtain 10 points under the Continuing Professional Development (CPD) Scheme within one year.

沒有披露自己與買家的關係

一名地產代理被指為賣方客戶促成一宗物業交易，但沒有向賣方披露她和買方公司的關係。

該名地產代理獨資經營某地產代理商號。賣方在該商舖放售有關物業，而該名地產代理則介紹了一位買家給賣方。經過商議，賣方同意以五百四十八萬元出售物業。

買賣雙方簽署臨時買賣合約前，地產代理向賣家表示，買方將以公司（下稱「公司甲」）名義購買物業。其實，買家是該名地產代理的丈夫，而他倆都是公司甲的董事和股東。

其後，該名地產代理向紀律委員會承認她沒有向賣方披露她和買方的關係。該地產代理顯然已違反了《操守守則》第3.6.2段，即「在有可能／潛在利益衝突的情況下（例如同時代表賣家和買家），地產代理和營業員必須向客戶表明他們同時代表雙方，以及向各方詳盡披露因該物業而獲得的金錢或其他實益利益。」

該名地產代理解釋，她沒有披露自己和買方的關係，是因為擔心賣方一旦知道她是買方便會提高價錢。她表示購入該物業乃用來自住，而他們的出價實較當時之市價稍高。

紀律委員會看不到有任何證據顯示該物業以低於市價的價格出售；而且，在紀律研訊之時，物業仍然由公司甲持有，顯示該名

地產代理很可能沒有轉售該物業的意圖。同時，該名地產代理亦已深感後悔。紀律委員會考慮了上述情況，決定吊銷該名代理的牌照三個月，並要求她在兩年內修讀二十個持續專業進修學分。

Failure to disclose relationship with purchaser

An estate agent was alleged to have concluded a deal with a vendor client without disclosing her relationship with the purchaser company to the vendor.

The estate agent was the sole proprietor of an estate agency firm. The vendors of a property put their property on sale through her firm, and she then introduced a purchaser to the vendors. After negotiation, the vendors agreed to sell the property for $5.48 million.

Before signing the provisional agreement for sale and purchase of the property, the estate agent told the vendors that the purchaser would use a company ("XYZ Limited") to purchase the property.

The purchaser was in fact the estate agent's husband, and the two were the directors and shareholders of XYZ Limited.

Subsequently, the estate agent admitted to the Disciplinary Committee that she had failed to disclose her relationship with the purchaser to the vendors. This means she had failed to comply with the requirements in paragraph 3.6.2 of the Code of Ethics, that is, "Estate agents and salespersons shall, in the event of possible or potential conflict of interest (such as representing both the vendor and the purchaser), disclose to their clients that they are so acting. Any pecuniary or other beneficial interests in relation to the property shall be disclosed fully to all parties concerned."

The estate agent said she did not disclose her relationship with the

purchaser because she was worried that the vendor would increase the price if he knew she was the purchaser. She said the property was bought for self-use, and the price they offered was in fact slightly higher than the market price at the time.

The Disciplinary Committee found no evidence showing that the property was sold below the market price. Moreover, the property was still held by XYZ Limited at the time of the inquiry hearing, which suggested that the estate agent might not have purchased the property for resale. Meanwhile, the estate agent had shown genuine remorse. The Disciplinary Committee, having considered all of the above, ordered that the licence of the estate agent be suspended for three months. The estate agent was also required to obtain 20 CPD points within two years.

買家不知有建築命令

一名地產代理向買方介紹賣方的物業，並成功安排雙方在首次看樓後簽訂臨時買賣合約。但是在臨時買賣合約簽訂前，該地產代理並未提供土地查冊資料，只是請買方翌日自行領取有關資料。該名地產代理解釋，在簽署臨時買賣合約時，已來不及進行土地查冊。

在研訊中，該名地產代理向紀律委員會承認，他沒有進行土地查冊便安排買賣雙方簽署臨時買賣合約，且不知道有關物業有兩項已登記建築命令。因為在簽署臨時買賣合約前，未有先進行土地查冊，該地產代理違反了《常規規例》第13(4)條。

紀律委員會認為，由於兩項建築命令的完工證在臨時買賣協議簽訂當日尚未發出，因此有關建築命令可能會帶來財務責任，甚或導致物業的業權欠妥。如果該名地產代理先為買方從土地註冊處取得土地查冊結果，然後才安排買賣雙方簽訂臨時買賣合約，便可以把所有潛在風險告訴客戶，讓客戶決定採取甚麼適當措施，包括尋求法律意見，以保障其個人權益。該名地產代理未能保障買家客戶的利益。

考慮到個案中的客戶沒有蒙受任何實質損失，亦已完成交易，還有該名地產代理提出的其他求情因素，紀律委員會裁定該名地產代理停牌十四天，並須於一年內取得十個持續專業進修學分。

Purchaser unaware of building orders

An estate agent introduced to the purchaser the vendor's property and successfully arranged for both parties to enter into a provisional agreement for sale and purchase after only one viewing. The estate agent did not provide a land search to the purchaser before signing the provisional agreement for sale and purchase but only asked the purchaser to collect the same on the day after. The estate agent explained that at the time of the signing of the provisional agreement for sale and purchase, it was too late to conduct a land search.

At the inquiry hearing before the Disciplinary Committee, the estate agent admitted that he did not conduct any land search before arranging for the parties to sign the provisional agreement for sale and purchase and he did not know that there were two building orders registered against the property. The failure to conduct a land search before the signing of the provisional agreement for sale and purchase was a breach of section 13(4) of the Practice Regulation.

The Disciplinary Committee was of the view that since the letter of compliance in respect of the two building orders had yet to be issued on the date of the signing of the provisional agreement for sale and purchase, there was a chance that the building orders might incur financial liability or even render the title to the property defective. If the estate agent had obtained a copy of the land search from the Land Registry for the purchaser before entering into the provisional agreement for sale and purchase with the vendor, the estate agent would have been able to advise

the purchaser on all the risks involved so that the purchaser could take appropriate steps, including seeking legal advice, to safeguard her interests. The estate agent had failed to protect his purchaser client's interest.

The Disciplinary Committee, having considered that the purchaser did not suffer any actual loss in the transaction and had completed the purchase as well as other mitigating factors submitted by the estate agent, decided that the estate agent's licence be suspended for 14 days and the estate agent shall obtain 10 points under the CPD Scheme within one year.

買家不知有法定押記

一名地產代理在一宗物業交易裡身為買賣雙方的代理，卻沒有就有關住宅物業進行土地查冊，便促成了買賣。根據監管局取得的土地查冊資料，該物業有三項「所有金額」法定押記，但賣方拖欠承按人的總金額則不得而知。然而，有證據顯示，該名地產代理知悉該物業是賣方按其承按人要求而出售的。

該名地產代理安排買方將首期訂金和其餘的訂金直接支付給賣方，但賣方卻沒有在成交當日出現。最後交易告吹，而買方亦無法向賣方討回訂金。

根據《常規規例》第13(4)條，代表賣方行事的地產代理，必須在緊接買賣協議訂立之前就物業進行土地查冊，並向買方提供土地查冊結果。

監管局發出之執業通告編號01-10規定，從業員應建議準買家與賣家協定將訂金暫交律師行保管，並解釋假如物業變為負資產，或賣方贖回現有按揭的能力存疑，不將訂金暫交律師行保管所涉及的風險。

經考慮有關證據及該名代理在研訊中所作陳述後，紀律委員會裁定該名地產代理違反了《常規規例》第13(4)條。紀律委員會並裁定他未能保障客戶的權益（違反《操守守則》第3.4.1段的指引及未遵守監管局執業通告編號01-10訂明的指引）。鑒於該名地產代

理的不當行為可引致嚴重後果及令其客戶蒙受損失，紀律委員會下令該名地產代理停牌一個月。

Purchaser unaware of legal charges

An estate agent, acting as a dual agent for both the vendor and the purchaser, put a sale and purchase of a residential property through without conducting a land search. According to the land search of the property obtained by EAA, the property was subject to three "all monies" legal charges. The total amount of money owed by the vendor to the mortgagee was not known. However, there was evidence showing that the estate agent knew that the property was sold by the vendor at the request of the vendor's mortgagee.

The estate agent arranged for the purchaser to pay both the initial deposit and the further deposit to the vendor directly. On the date of completion of the sale and purchase, the vendor did not show up. Eventually, the transaction fell through and the purchaser could not recover the deposits from the vendor.

Under Practice Regulation section 13(4), as the agent acting for the vendor, the estate agent should have carried out a land search in respect of the property and supplied the same to the purchaser immediately before the signing of the agreement of sale and purchase.

Practice Circular No. 01-10 issued by EAA states that practitioners should suggest to a prospective purchaser to negotiate with the vendor for stakeholding the deposits at a solicitors' firm and advise him of the risks of not stakeholding the deposits where the property concerned may become property with negative equity or where the vendor's ability to discharge the existing mortgage is in doubt.

Having considered the evidence and the representations made by the estate agent at the inquiry hearing, the Disciplinary Committee found that the estate agent had breached Practice Regulation section 13(4) and had failed to protect the interests of her client (contrary to paragraph 3.4.1 of the Code of Ethics and not following the guidelines set out in Practice Circular No. 01-10). In view of the fact that the breach committed by the estate agent would bring serious consequence and had brought loss to her purchaser client, the Disciplinary Committee ordered that the licence of the estate agent be suspended for one month.

未有就非獨立住宅單位進行查冊

一名代理受委託出租一項物業，該物業並非一個獨立住宅單位（即有獨立煮食設備及浴室的單位）。

該名代理誤以為《常規規例》第13(4)條不適用於非獨立住宅單位，因此沒有就有關物業在土地註冊處進行土地查冊。由於沒有取得有關物業的土地查冊結果，該代理並未發現多項根據《刑事罪行條例》發出的通知書及封閉令已登記於土地註冊處之紀錄內。

有關租客最終被迫遷出有關物業。租客向監管局投訴該名代理。紀律委員會認為該名代理違反了《常規規例》第13(4)條及《操守守則》第3.4.1段（代理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），決定暫時吊銷其牌照及在其牌照上附加條件，限他在指定日期前獲取十個持續專業進修學分。

No land search conducted on a non-self-contained unit

An estate agent was appointed to lease a property. The property was not a self-contained unit (a self-contained unit is an independent dwelling with separate cooking facilities and bathroom).

The estate agent mistakenly thought that section 13(4) of the Practice Regulation was not applicable to non-self-contained units, and did not carry out a land search for the property at the Land Registry. Without the land search documents, the estate agent failed to spot the several notices and closure orders, issued under the Crimes Ordinance, registered at the Land Registry.

The tenant was eventually forced to leave the property. The tenant then filed a complaint against the estate agent with EAA. The Disciplinary Committee was of the view that the estate agent had breached section 13(4) of the Practice Regulation and paragraph 3.4.1 of the Code of Ethics, which states, "Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction."

The Disciplinary Committee suspended the licence of the estate agent, and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

刊登失實廣告

某地產代理公司於報章刊登一則住宅樓盤廣告。

監管局要求該地產代理公司提供有關樓盤的地產代理協議（表格3）及其他相關文件。該地產代理公司函覆，表示並沒有有關地產代理協議，只是有分行同事誤把內部參考紀錄當作廣告稿件，傳真至總行市場部，市場部隨後將該份資料交給有關報章刊登廣告。

該地產代理公司亦安排在某報刊登另一則涉及某屋邨樓盤之廣告，內容寫著：「A座 678’ 143萬元」。

經監管局查詢下，該地產代理公司確認所登單位之地址，並提供有關地產代理協議(表格3)。

根據差餉物業估價署提供的資料，該單位的實用面積為45.4平方米（約488.7平方呎）。而根據其他物業代理公司的資料顯示，該單位的建築樓面面積為585平方呎。所有證據均顯示，該單位的面積並非678平方呎。

紀律委員會裁定，該地產代理公司違反《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」。紀律委員會認為，任何違反有關廣告宣傳規例的行為都應

該嚴肅處理。倘若公眾所依賴的廣告資料錯誤，消費者可能因此蒙受重大損失。但凡載有錯誤資料或失實陳述之廣告，均嚴重損害公眾利益。

該地產代理公司求情時稱，各分行之前線員工擁有樓盤的最新資料，要總行確定分行所提供樓盤資料是否準確無誤，並非易事。該地產代理公司正研究日後如何防止類似失誤再發生。紀律委員會考慮該地產代理公司提出的求情理由後，認為該公司並沒有採取足夠防範措施，減低樓盤廣告出現資料錯誤的機會及可能性，決定判處罰款。

Issuing false advertisements

An estate agency issued a newspaper advertisement for a residential property. EAA then requested the estate agency to provide the Estate Agency Agreement (Form 3) for that property, as well as other relevant documents.

The estate agency's written reply stated that there was no Estate Agency Agreement for that property. Their staff had mistakenly faxed some internal reference materials to the marketing department for the advertisement, and the marketing department subsequently placed the newspaper advertisement.

The estate agency had also arranged for the placement of another advertisement of a property on a housing estate, which read, "Block A, 678', $1.43 million".

After enquiries from EAA, the estate agency confirmed the address of the listed property, and provided the Estate Agency Agreement (Form 3).

According to the Rating and Valuation Department, the saleable area of the flat was 45.4 square metres (about 488.7 square feet) and according to the information supplied by other estate agencies, the gross floor area of the flat was 585 square feet. All the evidence showed that the area of the flat was not 678 square feet.

The Disciplinary Committee ruled that the estate agency was in breach of section 9(1) of the Practice Regulation, which states, "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". The Disciplinary Committee takes a serious view of all breaches of regulations on advertising. If the facts of the advertisements, on which the public relies, are incorrect, consumers can suffer serious loss and damage. All advertisements with incorrect information or misrepresentations of facts seriously damage the public interest.

The estate agency said in mitigation that its front-line staff at branch offices possessed the latest information on properties, and it was difficult for the main office to ascertain the accuracy of property information provided by the branch offices. The estate agency was studying how to prevent similar mistakes in future.

The Disciplinary Committee, having considered the mitigation put forward by the estate agency, decided it had not taken sufficient measures to minimise the possibility and probability of incorrect information appearing in property advertisements. The estate agency was ordered to pay a fine.

廣告資料與事實不符

某地產代理公司於報章刊登以下住宅樓盤廣告：

「屋邨甲	複式全海	1910’	880萬」	（廣告1）
「屋邨乙	唯一銀主	2266’	2060萬」	（廣告2）
「屋邨丙	銀主	886’	428萬」	（廣告3）
「屋邨丁	銀主	1368’	850萬」	（廣告4）

該地產代理公司應監管局查詢，就有關廣告之真確性提供了各有關物業之地址：

(i)	屋邨甲	22樓B室	（物業1）
(ii)	屋邨乙	1樓B室	（物業2）
(iii)	屋邨丙	13樓D室	（物業3）
(iv)	屋邨丁	14樓A室	（物業4）

該地產代理公司亦提供了有關物業1、物業3及物業4的地產代理協議（表格3）。當中資料顯示，物業1的賣方所定放盤價是一千八百萬元，而非八百八十萬元；而物業3及物業4的賣方則並非「銀主」。

該地產代理公司未能提供物業2的地產代理協議，並解釋這是由於物業2的賣方代理曾致函其公司，表示可能會合作處理物業2，但該地產代理公司無法提供有關函件證明。

紀律委員會認為，就廣告1、3及4而言，該地產代理公司違反了《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。」同時，在發出廣告2之前，該地產代理公司並未與有關物業之賣方訂立地產代理協議，因而違反《常規規例》第6(1)條：「為賣方行事的持牌地產代理須在以下時間與該賣方訂立地產代理協議：

(a) 在接受出售或出租有關住宅物業的指示後 7 個工作日內；

(b) 就該物業的出售或出租而作廣告宣傳之前；或

(c) 就該物業簽署買賣協議或租契之前，

三者之中以最早者為準。」

該地產代理公司被紀律委員會譴責，及判處罰款。

Advertisements containing incorrect information

An estate agency issued the following advertisements for residential properties in a newspaper:

"Housing estate A	duplex full sea view	1910'	8.8M"	("Advertisement 1")
"Housing estate B	the only mortgagee	2266'	20.6M"	("Advertisement 2")
"Housing estate C	Mortgagee	886'	4.28M"	("Advertisement 3")
"Housing estate D	Mortgagee	1368'	8.50M"	("Advertisement 4")

In reply to EAA's enquiry into the authenticity of the advertisements, the estate agency provided the following addresses corresponding to the advertisements:

(i)	Housing estate A	Flat B, 22/F.	("Property 1")
(ii)	Housing estate B	Flat B, 1/F.	("Property 2")
(iii)	Housing estate C	Flat D, 13/F.	("Property 3")
(iv)	Housing estate D	Flat A, 14/F.	("Property 4")

The estate agency also provided the Estate Agency Agreements (Form 3) for Properties 1, 3 and 4. According to these agreements, the selling price, as instructed by the vendor of Property 1, was $18 million, not $8.8 million, while the vendors of Properties 3 and 4 were not mortgagees. The estate agency failed to provide the Estate Agency Agreement for Property 2, and explained that the agent for the vendor of Property 2 had sent it a letter, indicating the possibility of co-operation. The estate agency, however, was not able to produce the relevant correspondence.

The Disciplinary Committee was of the view that, in relation to Advertisements 1, 3 and 4, the estate agency violated section 9(1) of the Practice Regulation, which says, "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." Meanwhile, before issuing Advertisement 2, the estate agency failed to enter into an Estate Agency Agreement with the vendor of the property and, therefore, breached section 6(1) of the Practice Regulation, which says, "A licensed estate agent who acts for a vendor shall enter into an estate agency agreement with the vendor-

(a) within 7 working days after accepting an instruction to sell or lease the residential property concerned;

(b) prior to advertising the property for sale or lease; or

(c) prior to signing an agreement for sale and purchase or a lease of the property,

whichever is the earlier."

As a result, the estate agency was reprimanded and fined by the Disciplinary Committee.

在公眾地方辱罵他人

三名營業員在一個首次開售的樓盤各為其所屬僱主推銷單位。當營業員甲正朝著一輛駛進停車場的私家車走去，欲趨近車上的乘客時，有人踢了他一下，他隨即跌倒。他看見營業員乙站在其身後，認為是營業員乙所為，因而引發了一場激烈爭吵，有人使用惡言及粗話指罵對方。此時，營業員丙加入聲援營業員乙，據稱曾襲擊營業員甲。

警方接報到場後，把營業員甲送院檢查。營業員乙及丙同時被控以「襲擊致造成身體傷害」罪名，但經審訊後均獲判無罪釋放。

在審訊中，營業員甲向裁判法院承認，他曾在衝突期間使用帶辱罵性言詞。營業員丙的供詞表示發生過激烈口角；而營業員乙則一直保持緘默，並否認曾襲擊營業員甲。但營業員甲和丙及其他證人均指營業員乙有使用粗言穢語加入對罵。

考慮過所有證據後，紀律委員會得出的結論是，雖然證據存在矛盾，未能確定誰人引發這場激烈口角，但仍有充分證據顯示三名營業員確曾交互辱罵對方。尤其是事件經媒體廣泛報道，紀律委員會非常重視此個案，認為三名營業員在公眾地方行為不檢，敗壞了地產代理行業的聲譽，造成無法彌補的損害。因此，紀律委員會決定吊銷三名營業員的牌照兩至三個月。

營業員甲仍堅稱自己在事件中是受害人，因為他受到挑釁並遇襲受傷。因此，他向上訴審裁小組提出上訴。上訴審裁小組在聽取營業員甲及監管局的陳詞後，決定維持紀律委員會的原判，暫時吊銷營業員甲的牌照兩個月，駁回上訴。

Shouting abuse in public

Three salespersons had been deployed by their respective employers to perform promotion work at a first-sale site.

When salesperson A approached the passengers inside a private car entering the car park, someone kicked the salesperson who then fell. He saw salesperson B behind him and believed that it was salesperson B who kicked him. A heated verbal exchange with abusive and foul language ensued during which salesperson B, joined by salesperson C, allegedly assaulted salesperson A.

The police were called, and salesperson A was taken to the hospital for a medical examination. Salespersons B and C were charged with the offence of "assault occasioning actual bodily harm" but they were both acquitted after trial.

At the trial, salesperson A admitted that he had used abusive language during the confrontation. The statement of salesperson C recorded a heated verbal argument. Salesperson B kept silent throughout, and denied that he had assaulted salesperson A. Both salespersons A and C and other witnesses pointed out that salesperson B had taken part in the heated verbal confrontation using foul language.

Having considered all the evidence, the Disciplinary Committee arrived at the decision that, although there was conflicting evidence as to who provoked the heated verbal exchange, there was ample evidence that an exchange of verbal abuse did take place among the three salespersons. Particularly as there was widespread coverage of the incident in the media, the Disciplinary

Committee took a serious view of the case, saying that the misconduct of the three salespersons had brought discredit and irreparable damage to the estate agency trade. The Disciplinary Committee suspended the licences of all three salespersons for two to three months.

Salesperson A maintained that he was the victim in the incident as he was provoked and sustained injuries during the attack on him. He, therefore, appealed to the Appeal Tribunal. After hearing submissions from salesperson A and from EAA, the Appeal Tribunal upheld the decision of the Disciplinary Committee to suspend the licence of salesperson A for two months and dismissed the appeal.

襲擊另一從業員

某地產代理在裁判法院被判「襲擊致造成身體傷害」罪名成立，並根據《侵害人身罪條例》第39條，被判罰款八千元。

受害人是另一間地產代理公司的一名代理。事發時，上述地產代理和受害人均在某商場的一條通道上派發二手物業促銷傳單。上述地產代理據稱揮動雙拳猛擊受害人的面部。在審訊中，該名地產代理辯稱由於事發地點人多擠迫，才會與受害人及其同事有身體接觸；而且他本人亦在事件中受傷，當時的行為只是出於自然反應。

紀律委員會仔細考慮過所有證據後裁定，執行地產代理工作時在公眾地方打架並導致另一名從業員受傷，屬於嚴重行為不檢，並對地產代理行業之聲譽造成無法彌補的損害。因此，紀律委員下令該名地產代理停牌六個月。

Assaulting another practitioner

An estate agent was convicted at a Magistrate's Court for the offence of "assault occasioning actual bodily harm" and was fined $8,000 under section 39 of the Offences Against the Person Ordinance.

The victim in the incident was an agent of another estate agent company. The incident took place when the above estate agent and the victim were distributing second-hand property promotional leaflets in a passageway of a commercial complex. The above estate agent allegedly punched the victim in the face with both fists. At the trial, the estate agent in his defence stated that he had body contact with the victim and his colleagues due to busy pedestrian traffic flow at the location. He was also hurt in the incident and that he merely acted out of natural response.

The Disciplinary Committee, having carefully reviewed all the evidence, found that fighting in public and causing injury to another practitioner in the course of performing estate agency work was a serious misconduct and would bring irreparable damage to the reputation of the estate agency trade. The Disciplinary Committee ordered that the licence of the above estate agent be suspended for six months.

單位有沒有「古靈精怪嘢」？

某地產代理公司與一名業主簽訂表格3，獲委託作為其代理，出售一處物業。在簽訂表格的數個月前，賣方的兒子從有關物業墮下身亡（下稱「該事件」）。由於本港報章廣泛報道該事件，在該區工作的地產代理理應知悉事件。

於該地產代理公司任職的一名地產代理安排一買家參觀有關物業。買方在簽署臨時買賣合約及支付訂金前，曾向該地產代理查問該單位有沒有「古靈精怪嘢」及是否「無嘢唔妥」。

據該名代理稱，他當時回答「據我所知，冇」。但是買方指稱該名代理的答覆只是「冇」。不管怎樣，該名代理承認，他事前並沒有做任何功夫，查證該單位有沒有甚麼「古靈精怪」或「唔妥」的東西。

買家在簽署正式買賣合約前，從另一名地產代理口中得悉該事件，隨即向賣方要求取消買賣及退還訂金，但遭賣方拒絕。買家於是採取法律行動，要求賣方退回訂金，並就該代理公司所作的失實陳述索償。

法庭裁定該名地產代理確實誤導買家，「古靈精怪嘢或任何嘢唔妥」應該理解為包括慘劇在內 — 例如該事件。賣方從沒有授權該代理作出如此的失實陳述。法庭裁定，該名代理作出有關失實陳述時，是以買家代理的身分行事，並非代表賣方，故此賣方無

須為誤導買方的失實陳述負責，並且有權因買方不繼續進行買賣而沒收買方已付之訂金。

法庭同時裁定，從買方的重複提問，該名代理應該知道買方會以他的回應作為買樓決定的考慮依據；也應該知道他在搜集及提供有關資料上的疏忽及不專業，會令買方蒙受損失。該名代理承認自己在回答買方的詢問前並未有進行任何調查。故此，該名代理在這種情況下向買方提供一個錯誤的陳述，是未有履行身為買方代理的責任。

根據法官的判決，由於該名代理失責，作為其僱主的地產代理公司，亦需要為他的過失負責。因此，有關地產代理公司須向買方賠償，買方因決定不完成該宗交易而給賣方沒收了的訂金。

監管局調查買方對該名代理的投訴及進行紀律研訊。監管局紀律委員會裁定該名代理違反了《操守守則》第3.2.1、3.3.1、3.4.1及3.5.1段。

第3.2.1段列明：「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。」

第3.3.1段列明：「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。」

第3.4.1段列明：「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。」

第3.5.1段列明：「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。」

該名代理的直屬主管經理沒有設立妥善的程序或制度，以確保下屬不會以錯誤的資訊回覆客戶，因而違反《常規規例》第15條。

該地產代理公司沒有制定及維持妥善的程序或制度，以防止代理給予客戶錯誤的回覆，也未能即時察覺到此等事件的發生；特別是該公司沒有任何程序或制度確保員工參加針對良好執業手法之培訓課程。該公司因而違反了《常規規例》第15條：「持牌地產代理須設立妥善的程序或制度以監督和管理其地產代理工作的業務，以確保其僱員或其轄下的人遵守本條例的條文。」

該名代理及其直屬主管經理被紀律委員會暫時吊銷牌照。該地產代理公司則被譴責。

Is there anything "unusual" about the property?

An estate agency company signed an Estate Agency Agreement (Form 3) with the vendor, and was appointed the agent for the sale of a property. A few months before signing the form, the son of the vendor fell from the balcony of the property and died ("the incident"). The press widely reported the incident, and estate agents working in the area would have known about it.

An estate agent working in the estate agency arranged for a purchaser to view the property. When inspecting the property and prior to signing the provisional agreement for sale and purchase and paying a deposit, the purchaser had asked the estate agent whether there was anything "unusual" or "wrong" about the property. According to the estate agent, he replied that there was nothing to his knowledge, but the purchaser claimed that the answer was just a plain "no". In any case, the estate agent admitted that he had not taken any steps to verify whether the property had anything "unusual" or "wrong" about it.

Before signing the sale and purchase agreement, the purchaser learnt of the incident from another estate agent. He immediately requested the vendor to cancel the transaction and refund the deposit, but the vendor refused. The purchaser went to court to demand a refund and compensation for the estate agency's misrepresentation.

The court ruled that the estate agent had indeed misled the purchaser, and that anything "unusual" or "wrong" should be taken to include tragic events such as the incident. The vendor had in no way authorised the estate agent to make such a

misrepresentation. The court decided that when the estate agent made the misrepresentation, he was acting as the purchaser's agent and not the vendor's, and so the vendor did not have to be responsible for the misrepresentation. The vendor had the right to forfeit the deposit due to the purchaser not carrying on with the transaction.

The court also ruled that, based upon the repeated enquiries of the purchaser, the estate agent should have known that the purchaser would decide on the purchase based on his response. He should also have known that the purchaser would suffer from losses if he was negligent and unprofessional in researching and providing the information. The estate agent admitted that he had not done any research before answering the purchaser's questions. The estate agent's misrepresentation to the purchaser, under such circumstances, constituted a failure of fulfilling his duty as the purchaser's agent.

According to the judge's ruling, as the estate agent failed to fulfil his duty as the purchaser's agent, the estate agency company, being his employer, would also need to bear responsibility for his mistake. As a result, the estate agency company had to indemnify the purchaser for the deposit forfeited by the vendor due to the purchaser deciding not to complete the deal.

EAA investigated the complaint lodged by the purchaser against the estate agent, and held an inquiry hearing. The Disciplinary Committee decided that the estate agent breached paragraphs 3.2.1, 3.3.1, 3.4.1 and 3.5.1 of the Code of Ethics.

Paragraph 3.2.1 states, "Estate agents and salespersons should be fully conversant with the EAO (Estate Agents Ordinance), 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 3.3.1 stipulates, "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 3.4.1 says, "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."

Paragraph 3.5.1 states, "Estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence."

The estate agent's immediate supervisor, his manager, had not established proper procedures or systems to ensure her subordinates would not respond to clients with incorrect information, and was in breach of section 15 of the Practice Regulation.

The estate agency company failed to establish and maintain proper procedures or systems to prevent estate agents making incorrect replies, or to be aware when estate agents have made such replies. In particular, the estate agency company failed to establish procedures or systems to ensure that its staff would participate in training courses to ensure good practice. The company, as a result, breached section 15 of the Practice Regulation, which states, "A licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Ordinance."

The estate agent and his immediate supervisor's licences were suspended by the Disciplinary Committee, and the estate agency company was reprimanded.

按揭計劃

某地產代理代表買方購買「一手」住宅物業，當時有兩個按揭計劃可供買家選擇。

《操守守則》第3.5.1段規定，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。

《執業通告》編號02-11訂明指引，規定從業員應讓買方知道其可能享有的優惠計劃詳情，並清楚說明有關優惠是由發展商或是地產代理公司提供。此外，由於市場上可供選擇的物業貸款計劃種類繁多，由有關銀行或發展商的代表向買方詳細解釋內容細節更為合適。

該名地產代理在安排買家就購買有關「一手」住宅單位簽署認購樓宇確定書時，買家曾詢問該地產代理可有任何付款優惠。但該名地產代理並未有清楚解答查詢，買家因而選擇了一個結合了七成銀行按揭及發展商兩成半二按之付款方案。但在簽署認購確定書後，買家才得悉其實還有另一個優惠計劃 — 如選擇九成銀行按揭的話，發展商可提供九六折樓價優惠作為獎勵。

在紀律研訊中，該名地產代理承認未有查核所有可供選擇的按揭優惠計劃。由於該名地產代理沒有認真進行資料查核及將上述九六折優惠計劃告知買家，買家因而錯過了選擇該計劃的良機，紀律委員會決定暫時吊銷其牌照兩個月。

Mortgage plans

An estate agent, acting for the purchasers in the purchase of a first-sale residential property, failed to inform his clients the two mortgage plans available.

Paragraph 3.5.1 of the Code of Ethics stipulates that estate agents and salespersons shall, in fulfilling their duties, exercise due care and due diligence.

Practice Circular No. 02-11 sets out guidelines that practitioners should inform buyers of the details of any incentive scheme they may have and state clearly whether the incentives are offered by the developer or the agency company. A great variety of property financing schemes exist and should preferably be explained to buyers in detail by representatives of the bank or developer concerned.

When the estate agent arranged for the purchasers to enter into the Confirmation of Instructions for the purchase of the first-sale residential property, the purchasers had asked the estate agent whether there was any discount in purchase price. The estate agent failed to clarify the enquiry and the purchasers subsequently elected a payment method involving a 70% bank mortgage together with a 25% second mortgage provided by the developer. After signing the Confirmation of Instructions, the purchasers then learnt about another payment incentive method involving a 90% bank mortgage for which the developer would provide a 4% discount of the purchaser price as incentive.

At the inquiry hearing, the estate agent admitted that he had failed to check all the incentive schemes available. In view of the fact that the estate agent had failed to conduct a proper enquiry and to inform the purchasers of the above 4% discount payment method, the purchasers had been deprived of the opportunity to elect such payment method. The Disciplinary Committee suspended his licence for two months.

向客戶提交虛假的出價

一名地產代理向賣方訛稱買方提出，願以一百三十三萬元購買有關物業。該名代理向賣方提議，若買方以一百三十五萬元買入物業，賣方將會在原有之一萬三千五百元佣金之上，額外支付一萬元給該代理，作為酬勞。

事實上，買方一直都提出以一百三十五萬元購買該物業，亦從沒有開價一百三十三萬元。賣方後來得悉事實，遂向廉政公署投訴該名代理訛騙及偷竊。該名代理於原審法庭被判有罪，但其後因技術性問題，上訴得直，獲撤銷控罪。監管局其後向該代理進行紀律研訊。

該代理沒有盡快及如實地把買方所提出的價錢通知賣方，因而違反《常規規例》第11(e)條及第11(f)條。

第11(e)條列明：「持牌人在接獲任何要約後，須在切實可行的範圍內盡快將該要約向客戶提交，以供客戶接受。」而第11(f)條則列明，持牌人須按其接獲各項要約的次序，將所有要約通知客戶，並以客觀和無偏頗的方式提交該等要約。

他亦沒有秉持誠實、忠誠和嚴正的態度向客戶提供服務，違反《操守守則》第3.3.1段：「地產代理及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」。

該名代理被紀律委員會判處暫時吊銷牌照。

Passing a false offer to client

An estate agent falsely told the vendor that the purchaser offered to purchase a property for $1.33 million. The estate agent suggested to the vendor that if the purchaser were willing to buy the property for $1.35 million, the vendor would pay $10,000 to the estate agent as remuneration, on top of the original commission of $13,500.

In fact, the purchaser had offered to purchase the property at $1.35 million all along, and had never made any offer of $1.33 million. The vendor, upon realising this fact, reported the case to the Independent Commission Against Corruption and accused the estate agent of fraud and theft. The estate agency was convicted on first hearing, but the result was rescinded after appeal due to technical reasons. EAA then conducted an inquiry hearing into the estate agent.

The estate agent had not conveyed the offer of the purchaser immediately and accurately to the vendor and, therefore, had breached section 11(e) and 11(f) of the Practice Regulation. Section 11(e) states that a licensee shall "present an offer to a client for acceptance as soon as is practicable after receiving it", while section 11(f) stipulates that a licensee shall "inform a client of all offers received in the order he receives them and present them in an objective and unbiased manner."

The estate agent also failed to provide services to clients with honesty, fidelity and integrity, thereby violating paragraph 3.3.1 of the Code of Ethics, which states, "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."

The estate agent's licence was suspended by the Disciplinary Committee.

安排客戶認購未落成丁屋

本個案中的有關物業於事發時是未落成的丁屋。一名代理安排買方以「認購人」身分與業主之代理人簽訂有關該物業的「認購書」。在「認購書」訂立之前，該物業尚未完成補地價手續，亦未獲發「滿意紙」，觸犯有關地契規定。

該名代理從沒有向買方出示業主給予其代理人之授權書，亦沒有向買方解釋購買未落成丁屋所涉及的複雜性及風險，兼且沒有建議買方尋求獨立法律意見，因而違反了《操守守則》第3.4.1段（代理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）。紀律委員會暫時吊銷其牌照及在其牌照上附加條件，限他在指定日期前獲取十個持續專業進修學分。

Failure to exercise due care in village house transactions

The property of this case was, at the material time, an uncompleted village house. An estate agent arranged for a purchaser, in the capacity of a "subscriber", to sign a "subscription agreement" with the agent of the vendor. When the "subscription agreement" was entered into, the payment of the premium for the property had not yet been made, and the occupation permit had not yet been granted, thereby violating the relevant land lease.

The estate agent had not shown the purchaser the letter of authorisation given by the landlord to his agent, nor explained the complexity and risks of purchasing uncompleted village houses to the purchaser, nor suggested to the purchaser that he should seek independent legal advice, thereby breaching paragraph 3.4.1 of the Code of Ethics, which says, "Estate agents and salespersons … 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."

The Disciplinary Committee suspended the licence of the estate agent and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

不適當處理轉讓業務和租賃交易

一名地產代理在一宗商舖租約轉讓的交易中代表交易雙方，其客戶是接替租客，希望承接商舖的原租約。在該名地產代理安排下，客戶與現有租客簽訂了一份名為「物業臨時租約」，實質卻是租約頂讓兼業務轉讓的協議文件。同時，該名地產代理在客戶簽訂該「臨時租約」前，並沒有提供現租客與商舖業主所訂之租賃協議副本，供客戶細閱。

是項交易之頂手費為二萬元，客戶支付了五千元作為首期訂金及部分頂手費。接替租客在簽訂「物業臨時租約」後才聯絡商舖業主，要求修訂原租賃協議其中一項條款，卻遭業主拒絕，只得中止交易。但由於「物業臨時租約」中沒有任何關於託管訂金安排或完備之條文足以保障接替租客的權益，現有租客拒絕退還五千元訂金給接替租客。

紀律委員會就個案展開研訊，在聽取過該名代理及其他證人的證供後，裁定該名地產代理除了太過急於達成交易，也沒有足夠能力及知識處理該宗涉及轉讓業務及租賃的交易。那份「物業臨時租約」並非一份用作轉讓業務的適當文件。審慎的地產代理應建議其客戶徵詢法律意見。此外，該名地產代理應該向接替租客清楚說明，一旦未能就租賃轉讓或其他租賃問題與商舖業主達成協議時，他需要承擔甚麼風險。紀律委員會下令該名地產代理停牌一個月，並須於一年內取得十個持續專業進修學分。

Improper handling of takeover of business and lease

An estate agent was a dual agent in a transaction involving a take-over of a lease, and her client was the replacement tenant who wanted to take over the lease of the shop. Through the arrangement of the estate agent, the replacement tenant client entered into a "Provisional Tenancy Agreement" with the existing tenant, which was supposed to serve the dual purpose of taking over both the tenancy and the business. Also, the estate agent failed to provide the replacement tenant client a copy of the tenancy agreement signed between the existing tenant and the landlord prior to the signing of the "Provisional Tenancy Agreement".

The replacement tenant client paid $5,000 as the initial deposit and part payment of the agreed premium of $20,000. Only after signing the "Provisional Tenancy Agreement" did the replacement tenant approach the landlord, who turned down the replacement tenant's request to amend a term in the original tenancy agreement. The replacement tenant then had to abort the deal. In the absence of any stakeholding arrangement or adequate provision in the "Provisional Tenancy Agreement" to protect the interests of the replacement tenant, the existing tenant refused to refund the $5,000 deposit to the replacement tenant.

The Disciplinary Committee held an inquiry hearing to consider the case. Having heard the testimonies of the estate agent and other witnesses, the Disciplinary Committee found that the estate agent was too anxious to conclude the deal, and the transaction regarding the transfer of business and tenancy was beyond the

knowledge and competence of the estate agent. The "Provisional Tenancy Agreement" was not a proper document for the transfer of the business. The estate agent should have advised his client to seek legal advice.

Additionally, the estate agent should have advised the replacement tenant on the risks involved in case he failed to reach an agreement with the landlord on the transfer or on any other matters relating to the tenancy. The Disciplinary Committee ordered that the licence of the estate agent be suspended for one month and the estate agent should obtain 10 CPD points within one year.

沒有向買家透露物業曾進行改建

一名商舖業主口頭委託某地產代理公司代他將一處物業連租約放售，放盤價為七百五十萬元。

任職該地產代理公司的一名代理聯絡賣方，表示有客人有興趣購買該物業。賣方告知該名代理，該物業內的閣樓並未「入則」，而地台設計亦曾經改動過。其後，該名代理帶同一份買方已簽妥的臨時買賣合約去見賣方。聽過該名代理解釋臨時買賣合約的條款後，賣方重提該物業內的閣樓未曾「入則」，以及地台曾經改過，並問該名代理有否向買方交代清楚；更提議該名代理把有關改建清楚列於臨時買賣合約內。惟該名代理表示沒有問題，並指臨時買賣合約中第11條已訂明該物業是以「現狀」出售，足夠保障賣方利益，可以放心。

賣方因此簽署了該份臨時買賣合約，以七百五十萬元把該物業售予買方。臨時買賣合約中完全沒有提及該物業內有加建的閣樓及地台曾作改動。

後來，賣方在簽署正式買賣合約前，接獲其代表律師通知，指買方律師對該物業的業權提出爭議，因為該物業內有僭建閣樓及地台不相稱，而買方卻從沒有接獲任何通知或收到這方面的資料。賣方於是問該名代理究竟有沒有清楚如實地告訴買方有關僭建閣樓和地台改動等事項。該名代理沒有正面回應，只說買方曾親自視察過該物業，理應知道。

其後，買方為此事提出訴訟，要求法院宣布該物業內加建的閣樓及地台所作之改動屬僭建工程或違例改建，致令該物業之業權欠妥。買方要求法庭強制賣方履行臨時買賣合約，並判令賣方賠償其損失。

法院就是項訴訟作出判決，聲明有關該物業的增建及改動屬違例建築，致令其業權欠妥。法院亦頒布雙方須依從臨時買賣合約行事的強制履行令，而因上述之違例建築及改動，賣方須向買方賠償五十七萬元；同時亦要賠償買方因該宗物業交易延誤而蒙受之損失及訴訟費。

根據土地註冊處的紀錄，買賣雙方終於在一年後完成該宗物業交易，成交價為六百九十三萬元。賣方向監管局投訴該名代理。

紀律委員會認為該名代理違反了《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」。他清楚知悉該物業可能進行過僭建工程或改建，卻知情不報，沒有告知買方，亦沒有在臨時買賣合約內註明，導致買賣雙方就該宗物業交易展開民事訴訟。紀律委員會因此暫時吊銷該名代理之牌照及在其牌照上附加條件，限他在指定日期前獲取十個持續專業進修學分。

Failure to disclose to the purchaser that the property has undergone alterations

The owner of a shop verbally appointed an estate agency company to sell the property and the related tenancy agreement at a price of $7,500,000.

An estate agent working at the agency company contacted the vendor and said a client was interested in purchasing the property. The vendor told the estate agent that there were unauthorised building works or alterations concerning a cockloft and a split floor design of the property.

Subsequently, the estate agent brought a provisional agreement for sale and purchase, already signed by the purchaser, to the vendor. After the estate agent explained the terms of the agreement to the vendor, the vendor mentioned the unauthorised cockloft and split floor design again, and asked if the estate agent had explained this clearly to the purchaser. The vendor suggested to the estate agent that the alterations be explicitly stated in the provisional agreement for sale and purchase. The estate agent reassured the vendor that there should be no problem, saying that clause 11 of the agreement specified that the property would be sold on an "as is" basis, which adequately protected the vendor's interests.

As a result, the vendor signed the provisional agreement for sale and purchase to sell the property to the purchaser for $7,500,000. The provisional agreement for sale and purchase did not mention the unauthorised cockloft and alteration of the split floor in the property.

Before signing the sale and purchase agreement, the vendor was informed by his lawyer that the purchaser's lawyer disputed the title of the property, saying there was an unauthorised cockloft and a split floor, and the purchaser was neither informed of this nor provided with any relevant information. The vendor then asked the estate agent if he had clearly told the purchaser about the unauthorised cockloft and the split floor. The estate agent only said the purchaser had inspected the property in person so he should have known.

The purchaser took the matter to court and asked the court to declare the additional cockloft and alteration done to the floor were unauthorised, making the title of the property defective. The purchaser requested the court to order for specific performance of the provisional agreement for sale and purchase on the part of the vendor, and for the vendor to pay damages to the purchaser.

The court ruled that the addition and alteration to the property were unauthorised, making its title defective. The court also declared an order for specific performance for both parties to act according to the provisional agreement for sale and purchase. As a result of the unauthorised addition and alteration, the vendor had to pay damages in the sum of $570,000 to the purchaser, as well as the damages incurred by the delay of the transaction, as well as the costs.

According to the records of the Land Registry, the two parties finally completed the transaction a year later at a price of

$6,930,000. The vendor lodged a complaint with EAA against the estate agent.

The Disciplinary Committee was of the view that the estate agent was in breach of paragraph 3.4.1 of the Code of Ethics, which states, "Estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction." The estate agent clearly knew the property might have undergone unauthorised building works or alterations, but failed to inform the purchaser of the same, and failed to specify the relevant information in the provisional agreement for sale and purchase, leading to a civil dispute between the vendor and the purchaser.

The Disciplinary Committee suspended the licence of the estate agent and attached a condition to the licence, requiring the estate agent to obtain 10 CPD points before a certain date.

安排買方簽署沒有填上樓價的臨約

某地產代理安排一位準買家視察有關物業。準買家對有關物業感興趣，該名代理以方便與業主議價為由，請準買家簽署一份已預備好的臨時買賣合約及簽發訂金支票。該份臨時買賣合約上關於物業價錢及付款日期的部分均是空著的。準買家依據指示，簽妥臨時買賣合約並給該名代理開出一張支票。準買家離開前請該名代理於知悉業主還價後立即通知他，因為他需要先了解清楚所有交易細節，才決定是否買入該物業。

數日後，準買家致電聯絡該名代理，始得悉業主已簽署該份臨時買賣合約。由於準買家事前對交易詳情一無所知，該名代理亦沒有事先聯絡他及請他確認交易，準買家即時要求取回該份臨時買賣合約及所發支票。

準買家經諮詢律師後，決定終止支票付款，並發信向有關物業業主解釋事件經過。結果，該宗交易泡湯了。

在準買家單方面簽訂該物業的臨時買賣合約前，由於該名代理未有在臨時買賣合約上填上樓價及付款日期等重要項目，未能保障客戶利益，因而違反《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。」

由於客戶沒有蒙受金錢損失，該名代理只是被訓誡，而其牌照亦附加了條件，限定她在指定日期內獲取十個持續專業進修學分。

Arranging for buyer to sign a provisional sale and purchase agreement with no stated property price

An estate agent arranged for a prospective purchaser to view a property. The prospective purchaser was interested in the property, and the estate agent asked him to sign a provisional agreement for sale and purchase and to write a cheque for the deposit, so as to facilitate the negotiation with the vendor.

The estate agent prepared a provisional agreement for sale and purchase, on which the space for the property price and the dates of payment were left blank when the prospective purchaser signed it. The prospective purchaser, upon instruction of the estate agent, handed a cheque to the estate agent. Before he left, the prospective purchaser requested the estate agent to let him know as soon as the vendor reverted with an offer, and explained that he needed to understand all details of the transaction before deciding whether to purchase the property or not.

A few days later, the prospective purchaser, upon calling the estate agent, found out that the vendor had already signed the provisional agreement for sale and purchase. The prospective purchaser did not know the transaction details before hand, nor did the estate agent contact him to obtain his confirmation in advance. The prospective purchaser asked immediately for the agreement and the cheque to be returned to him.

Upon consulting his lawyer, the prospective purchaser decided to terminate the payment of the cheque, and sent a letter to the vendor to explain what happened. The transaction fell through.

Before the prospective purchaser signed the provisional agreement for sale and purchase for the property, the estate agent failed to fill in the property price and dates of payment, which were important terms. As the estate agent failed to protect her client's interests, she had breached paragraph 3.4.1 of the Code of Ethics, which says, "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."

As the client did not suffer from financial losses, the estate agent was admonished and had conditions attached to her licence, requiring her to obtain 10 CPD points before a certain date.

以恐嚇手段追收佣金

一名地產代理（「代理甲」）委託某地產代理公司為一名準買家商議單位價錢，其後買家簽署了一處物業之臨時買賣合約。根據臨時買賣合約的內容，買家無須向該地產代理公司繳付佣金。

後來，買家先後接到代理甲的來電及代表代理甲的律師行發出的一封信，要求買家向代理甲繳付佣金。買家認為臨時買賣合約已訂明他不用繳付佣金，因此沒有理會。

其後，買家又接到一名自稱代表代理甲的人士來電，以恐嚇語句要求他繳付佣金。而且還有兩名男子前去買家在香港的辦公室，留下恐嚇字條；買家在深圳的辦事處也收到類似字條。

買家向監管局投訴。監管局調查後發現，代理甲指示一間收數公司為他向買家追討佣金，但他和收數公司所訂之協議並沒有規定收數公司不准使用恐嚇或暴力手段收取欠款。代理甲也承認自己不清楚收數公司採取甚麼手段向買家追討佣金。代理甲接到監管局之查詢後，已指示收數公司停止向買家追討佣金。

紀律委員會裁定代理甲沒有在與收數公司訂立的合約中加入適當條款，而且沒有監察收數公司的行為，決定訓誡代理甲，並在他的牌照上附加條件，規定他取得十個持續專業進修學分。

Using threatening means to collect commissions

An estate agent ("Agent A") asked an estate agency company to negotiate prices for flats on behalf of a prospective purchaser. The purchaser subsequently signed a provisional agreement for sale and purchase (PASP) of a property, where it was stipulated that the purchaser was not required to pay any commission to the estate agency company.

Later, the purchaser received a telephone call from Agent A, followed by a letter from a law firm acting for Agent A, demanding a commission payment. The purchaser ignored the demands, as he believed he was not required to pay any commission under the PASP.

Since then, the purchaser has received threatening telephone calls from a person claiming to be the representative of Agent A demanding payment. Furthermore, two men visited the purchaser's office in Hong Kong and left a note containing threats. The purchaser's office in Shenzhen also received a similar note.

The purchaser lodged a complaint with EAA. An investigation revealed that Agent A had instructed a debt collection company to demand payment from the purchaser. However, nothing in the agreement made between Agent A and the debt collection company stipulated that the debt collection company must not use intimidation or violence in collecting debt. Agent A also admitted that he had no idea what steps the debt collection company had taken to collect the commission from the purchaser. After receiving enquiries from EAA, Agent A instructed the

debt collection company to stop demanding payment of the commission from the purchaser.

The Disciplinary Committee decided that Agent A failed to include proper terms in the agreement with the debt collection company and to monitor the conduct of the debt collection company. Agent A was admonished and had a condition attached to his licence, requiring him to obtain 10 CPD points.

無牌從事地產代理工作

某地產代理於受僱期間，在未有向僱主披露實情下，於一宗物業交易中同時擔任買賣雙方之代理。該名地產代理先安排買賣雙方訂立臨時買賣協議，繼而於辭職翌日完成該宗交易，並向買賣雙方收取佣金。

該名代理所持地產代理牌照早於其辭職前期滿，卻沒有向監管局申請牌照續期。因此，該名地產代理在安排客戶訂立臨時買賣協議時及於物業交易完成時，並沒有有效牌照。

該名地產代理其後被裁定兩項罪行：(i) 觸犯《地產代理條例》第16(1)(a)及第55(1)(b)條 — 在無合理辯解的情況下無牌以營業員身分行事；及 (ii) 觸犯《地產代理條例》第15(1)(b)及第55(1)(a)條 — 在無合理辯解的情況下無牌以地產代理身分行事。該地產代理就每項罪行被罰款五千元。

有關事件亦轉交予紀律委員會，以便委員會根據《地產代理條例》第19(1)(c)條，決定該地產代理是否持有或繼續持有地產代理牌照的適當人選。

紀律委員會考慮過證據及各方在研訊期間所作的陳述後，認為申領牌照是規管制度的首要規定，而且該名地產代理所犯罪行嚴重，影響其誠信。紀律委員會有責任保障公眾避免因從業員缺乏操守而受損，故決定撤銷該名地產代理之牌照。

該名地產代理就紀律委員會的裁決提出上訴，但上訴審裁小組維持原來的裁決，駁回上訴。

Unlicensed estate agency work

An estate agent acted as a dual agent for both the purchaser and the vendor of a property without disclosure to his employer. He arranged for the parties to enter into a provisional agreement for sale and purchase while he was still in his employment. He then concluded the deal on the day after he had resigned from his employer and received commissions from both the vendor and the purchaser.

The licence of the estate agent expired well before his resignation, and he failed to renew it with EAA. At the time of arranging for his clients to enter into the provisional agreement for sale and purchase, and at the time of concluding the deal, the estate agent did not have a valid licence.

The estate agent was subsequently convicted of the offences of (i) without reasonable excuse acting as a salesperson for a licensed estate agent without licence contrary to sections 16(1)(a) and 55(1)(b) of the Estate Agents Ordinance (EAO); and (ii) without reasonable excuse acting as an estate agent without licence contrary to sections 15(1)(b) and 55(1)(a) of the EAO. The estate agent was fined $5,000 for each of the offences.

The matter was referred to the Disciplinary Committee for determining whether the estate agent was a fit and proper person to hold or continue to hold an estate agent's licence under section 19(1)(c) of the EAO.

After considering the evidence and representations made by the parties at the inquiry hearing, the Disciplinary Committee was

of the view that the licensing requirement was fundamental to the regulatory regime and that the offences committed by the estate agent were serious which impinged on his integrity. The Disciplinary Committee has a duty to protect the public against unscrupulous practitioners, and the Disciplinary Committee therefore revoked the licence of the estate agent.

The estate agent appealed against the decision of the Disciplinary Committee, but the Appeal Tribunal upheld the original decision and dismissed the appeal.

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