

## 紀律研訊個案分享— 訂金託管

## Inquiry hearing case — Stakeholding of deposits



監管局曾經發出執業通告，提醒地產代理應建議準買家，在安排各立約方訂立買賣附有未解除按揭的物業的臨約前，他須向買家提出有關直接向業主支付訂金的風險，以及向買家提出將所有訂金（包括首期及後續訂金）託管在律師行內。

在一宗紀律研訊個案中，一名從業員是雙邊代理。他安排買賣雙方訂立物業的臨約，但刪除了臨約的訂金託管條文，同時安排買方向賣方直接支付訂金。此外，從業員沒有在緊接臨約簽訂之前，為物業進行土地查冊。

事實上，有關物業的按揭在臨約簽署時仍未解除，而且在物業的土地登記冊上已註上了一個由賣方簽立的「不可撤銷的授權書」，該授權書是作為賣方向財務公司借入款項的還款保證。在這些情況下，買方直接支付訂金給賣方所涉及的風險甚大。

該從業員沒有向買方充份解釋風險，便刪去該臨約中的訂金託管條文，安排買方直接支付訂金給賣方，沒有保障和促進客戶的利益，未有遵守《操守守則》第3.4.1段中「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」。有關從業員在緊接物業的臨約訂立之前，亦未有遵守《地產代理（一般責任及香港住宅物業）規例》第13(4)條的規定，就物業進行土地查冊和向買方提供土地查冊結果的文本。

監管局紀律委員會就上述個案進行紀律研訊。紀律委員會暫時吊銷該名從業員的牌照七天，並在其牌照附加條件，要求他在一年內取得12個持續專業進修計劃核心科目的學分。

The EAA has issued a practice circular to remind estate agents that before a PASP in respect of a property with an undischarged mortgage is entered into, agents should advise the purchaser of the possible risks in payment of deposits directly to the vendor and suggest the purchaser pay all deposits (both the initial and further deposits) to a firm of solicitors as stakeholders.

In an inquiry hearing case, an estate agency practitioner acted for both the purchaser and the vendor in a property transaction. He made arrangements for both parties to sign a PASP in respect of the property, but he deleted the terms on stakeholding the deposits in the PASP and arranged for the purchaser to pay the deposits directly to the vendor. Furthermore, the practitioner did not conduct a land search immediately before the PASP was entered into.

In fact, the property remained encumbered by an undischarged mortgage when the PASP was signed, and an irrevocable power of attorney executed by the vendor was registered in the land register of the property. The power of attorney was security for a loan from a finance company to the vendor. Under such circumstances, the risk involved in the purchaser's paying the deposits directly to the vendor was rather high.

In crossing out the stakeholding clause in the PASP and arranging for the purchaser to pay the deposits directly to the vendor without explaining to the purchaser the risks involved, the practitioner failed to protect and promote his client's interests, and thus did not comply with the relevant regulation in paragraph 3.4.1 of the Code of Ethics, which states that "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". Moreover,

the practitioner did not conduct a land search and provide a copy of the land search to the purchaser immediately before the PASP was entered into, and therefore failed to observe section 13(4) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

The EAA Disciplinary Committee conducted an inquiry hearing into the case, and suspended the practitioner's licence for seven days and attached a condition to his licence, requiring him to obtain 12 CPD points in core subjects of the CPD Scheme within one year.

## 監管局紀律委員會主席馬豪輝先生的意見 Comments from Chairman of the EAA Disciplinary Committee Mr Ma Ho-fai

**土**地查冊是物業買賣中非常重要的文件，監管局曾經發出執業通告及舉辦培訓講座，提醒從業員為物業進行土地查冊的重要性。不過，從業員未有遵守有關查冊的規定，仍然是常見的違規事項。監管局希望通過本期《專業天地》的紀律研訊案例，再次提醒從業員必須遵守有關規定。

土地查冊中所載有資料，例如擁有權、有效的產權負擔等，對於買家十分重要。為了保障和促進客戶的利益，並根據《地產代理常規（一般責任及香港住宅物業）規例》，地產代理從業員須於緊接買賣方雙方訂立臨約之前，就有關物業進行土地查冊，並向買方提供查冊結果的文本。

在這一宗紀律研訊個案中，從業員沒有為物業進行查冊和向客戶提供查冊文本，令客戶未能掌握有關物業的基本資料。此外，雖然土地登記冊內登載死亡登記紀錄，但由於從業員並沒有進行查冊，令客戶也因而無法知悉這項重要的參考資料。從業員未有保障和促進客戶的利益，因而被監管局紀律處分。



**L**and searches are important documents in property transactions. To reflect the importance attached to this requirement, the EAA has issued a practice circular and organised CPD seminars on the subject to remind practitioners of the significance of conducting land searches. However, failure to comply with the relevant laws on land searches is still one of the common types of non-compliance among practitioners. The EAA hopes that practitioners will be alert to the regulations after reading the inquiry hearing case in *Horizons*.

The information in the land search, such as the ownership and subsisting encumbrances on the property, is very important to the purchaser. In order to protect and promote clients' interests, and pursuant to the relevant provisions in the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, practitioners should, immediately prior to the signing of the PASP by the purchaser and the vendor, conduct a land search in respect of the property and provide a copy of the land search to the purchaser.

In this inquiry hearing case, the practitioner did not carry out a land search and supply a copy of the search to the client. As a result, the client failed to obtain basic information about the property, in particular, the death certificate registered in the land register of the property concerned, information which was critically important to the purchaser. Consequently, the EAA imposed disciplinary sanctions on the practitioner for failing to protect and promote his client's interests.