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ADSAN LAW

## A BRIEF GUIDE ON CONSIDERATIONS IN THE SALE OR PURCHASE OF PROPERTY

A common issue that we encounter is the erroneous drafting of the Option to Purchase (“Option”), and clients are left confused or unaware of the implications of terms drafted into it. By the time lawyers step into the picture to exercise the Option for their clients, the Option has already been negotiated and put in writing, with minimal time left for amendments to be made before its expiry.

Once exercised, it is even more challenging to have the terms within varied or amended as it would require both parties’ mutual agreement, and the party accepting the amendment may still reserve his or her right to revert to the original contractual terms.

The following guide is to help you navigate the jargon and terminology found in Options, and pick up some good practices or issues to consider in order to ensure that your property purchase is a pleasant and hassle-free one, right from the beginning.

### **A. OPTION FEE, BALANCE DEPOSIT, STAKEHOLDING MONIES**

Once the sale price has been agreed upon, parties need to state clearly what the Option Fee (deposit paid to get an Option to Purchase) and Balance Deposit (usually 5% or 10%, less the Option Fee) are.

The Balance Deposit is usually held as stakeholding monies paid to the seller's lawyers' conveyancing account (e.g. "TopLawFirm LLP – CVY"), rather than to the sellers directly pending the successful completion of the matter.

There are cases where the purchaser agrees for the stakeholding monies to be released to the seller at the seller's request. Such a request is rarely agreed upon because it would remove a safeguard when compensation or penalties need to be claimed by either party. This Balance Deposit is only released to the seller on completion day, and must be approved by the lawyers acting for the purchasers, pending the satisfactory furnishing of documents from the sellers.

## **B. TIMING YOUR COMPLETION**

Parties must agree on a fixed completion date or the length of time they need from the exercise of the Option for completion to take place. This period is typically 8-12 weeks long, but may be shortened (usually no earlier than 6-7 weeks after exercise and depending on whether there is any bank loan and/or CPF monies involved) or lengthened by mutual agreement.

This may be requested if the seller has an outstanding bank loan or needs to coordinate the timing of completion with a subsequent purchase. For example, the seller could be buying a replacement property with conditions tied to it or the seller may need time for their CPF monies to be refunded into their account from the sale, then withdrawn for their purchase.

If you are the seller, you may need to ensure that you serve the requisite 3-months' notice of redemption to your bank, or redeem the loan on a specific date in order to avoid interest-in-lieu or breakage fees respectively. This is likely to happen if you have your loan tied to SIBOR rates, and your bank decides not to waive those charges pursuant to a sale. Before selling your property, it is best to enquire with your financier if you should be looking out for any of these penalties/additional charges in your sale before issuing your Offer to Purchase i.e. the offer issued to the purchaser upon their payment of the 1% Option fee.

For sellers who may be looking to buy a replacement property, they will need to consider how long they require to get their replacement property ready, and how long any renovations may take. They may then request for the buyer to let them continue staying in the property for a rent-free period, but offer to pay for utilities and maintenance fees as a reasonable compromise. There would then be a Letter of Indemnity and Undertaking prepared by the lawyers that the sellers will need to sign, to indemnify the purchasers from any losses or reinstate the property if the purchase falls through, and undertake to hand over the property at the end of the rent-free period.

For the avoidance of doubt, a "replacement property" in this article refers to a 2<sup>nd</sup> property that is purchased to replace the owner's current property, and where the current property will be sold within the timeline required for remission of stamp duty.

### **C. PURCHASING WITH EYES WIDE OPEN**

A clause that is commonly highlighted by conveyancing lawyers is the “*as is where is*” clause, which means you are buying the property in the current state and condition that you had viewed it in, save for reasonable wear and tear. Do ensure that you have made all enquiries into the condition of the property as far as is practicable, and are satisfied with its condition before you put down any deposit.

Another clause that you would want to ensure is filled out correctly, is whether the property is being sold with vacant possession or with tenancy, furnished or unfurnished. You may want to ensure that properties being sold with tenancy come with a complete and accurate inventory list, and confirm if the items listed within the inventory list will come with the sale as it is not to be presumed as such.

You will want to avoid a situation where there is no inventory list, and you take over a property after the cessation of a tenancy, not knowing what items you may be able to ask the tenant to replace, or what item has been removed by the tenant without your knowledge.

By knowing what items were in the property at the time of purchase and if they come with the sale, you will then be able to make deductions from the rental deposit to replace any missing items, based on what is provided in the Tenancy Agreement. Even for properties that you are purchasing with vacant possession, it would be prudent to know, for example, if the fridge, washing machine or bed frames that you saw during your viewing would come with the property or would be removed by the seller for their own use.

We have come across a case where our client took possession of a property, and was shocked to find fixtures like the faucets wrongfully removed. Such cases are few and far between, but highlights how unreasonable some sellers or purchasers may be, and why it is safer to have expectations clearly set out in writing in the Option and inventory list, rather than to be caught by surprise.

### **D. STAMP DUTY IMPLICATIONS**

Stamp duty is payable on the purchase price or the market value, whichever is the higher. In the event that the valuation report of the property reflects a higher value than your purchase price, you will be required to up-stamp on the Option to purchase within 14 days from the date of the valuation report.

The lawyer in-charge of your purchase would alert you to this difference and would need you to top up the stamp duty difference in time in order to comply with IRAS timelines and avoid having to pay any late stamping penalties.

Purchasers of replacement properties must also note the need to pay stamp duty upfront, and that they will only get the remission (if applicable) after their first residential property has been sold.

Their first residential property (co-owned or separately owned) must be sold within 6 months after:-

- (a) the date of purchase of the second property for completed property; or
- (b) the issue date of the Temporary Occupation Permit (TOP) / Certificate of Statutory Completion (CSC), whichever is earlier, if the property was uncompleted at the time of purchase.



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