



THE LAW SOCIETY  
OF SINGAPORE

# Law Society's Conveyancing Circulars, Practice Directions and Rulings 2014

**Note to Reader:**

This PDF may not represent the latest Practice Directions and Guidance Notes. Readers should refer to the Law Society Ethics Portal.

***The Law Society's Conveyancing Circulars, Practice Directions and Rulings 2014***

**Publication History:**

First Edition on 17 March 2014

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## INTRODUCTION

Since the last major revamp of the Law Society's Conveyancing Practice Directions and Rulings in 2009, the Law Society and its Conveyancing Practice Committee (the "Committee"), has been active in maintaining the uniformity of practice with the issuance of Practice Directions, Circulars and Rulings to members. These Practice Directions, Circulars and Rulings are the fabric on which conveyancing practice is woven.

The 2014 edition of the Law Society's Conveyancing Circulars, Practice Directions and Rulings ("2014 CPDR") prepared by the Committee, seeks to provide a comprehensive guide which is relevant for all Conveyancing Practitioners.

The 2014 CPDR not only updates the earlier 2009 version, but it improves on the version by elaborating and detailing as much relevant information as possible.

The 2014 CPDR includes:

- a) Council's Practice Directions which are relevant to Conveyancing Practice;
- b) Circulars issued by the Committee as well as other relevant authorities. These Circulars are included in the 2014 edition as they are useful as practice markers for Conveyancing transactions although they do not have the force of Practice Directions;
- c) Rulings made by the Committee on queries by members in relation to Conveyancing Practice, for example, in relation to the interpretation of the Law Society's Conditions of Sale 2012; and
- d) Legislative Guidance from the Ministry of Law relating to the introduction of the Amendments of the Conveyancing and Law of Property Act and the Rules that were passed in 2011. These assist in the interpretation of the rules relating to the control, management and security of Conveyancing money held by law firms' Conveyancing accounts.

It is hoped that the 2014 CPDR will achieve the objective of assisting all Conveyancing practitioners to speak a common Conveyancing language when dealing with one another.

**Lok Vi Ming, SC**

President, the Law Society of Singapore

February 2014

## SECTION 1 - GIVING EFFECT TO RULES, REGULATIONS AND LEGISLATION

### 1. Conflict of Interest: Section 79(1) of the Legal Profession Act (Cap. 161)

Section 79(1) of the Legal Profession Act (Cap. 161) prohibits a solicitor for a housing developer in a sale of immovable property developed under a housing development (“**develop**”, “**housing developer**” and “**housing development**” as defined in the Housing Developers (Control and Licensing) Act (Cap. 130)) from acting for the purchaser in the purchase of the property being developed (except when the Certificate of Statutory Completion has been issued).

Sub-section (3) preserves the law affecting solicitors who act for parties where there is a conflict of interest or where a conflict of interest may arise.

The basis of the prohibition in cases of a solicitor acting for a vendor-developer is a presumption of conflict of interest in that no solicitor acting for a developer can fairly represent the interests of the purchaser in the same transaction (the interest of the purchaser being puny by comparison).

Although legislation has not been enacted in respect of commercial property specifically, the Council is of the view that there is clear conflict of interest if purchasers of shop or office units engage the same solicitor as the developer (except when the Certificate of Statutory Completion has been issued) and would advise members that the solicitor or firm of solicitors acting for the developer in the sale of office or shop units in a commercial complex should not act for the purchaser as well.

*Note 1: Section 79 (1) of the Legal Profession Act applies whether the solicitor or firm of solicitors acts for the developer in the sale of some and not all of the units in the development project.*

*Note 2: This Practice Direction originated from the Practice Directions and Rulings of the Law Society 1989.*

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### 2. Residential Property Act (Cap. 274): Sale to Foreigners

It has come to the notice of the Council that agreements for sale and purchase of residential property are being entered into in direct contravention of the Residential Property Act, (Cap. 274).

Such agreements for sale and purchase or other documents headed options or by whatever name called, that purport to bring about a transfer purchase or other acquisition in favour of a foreign person or a Singapore citizen or approved purchaser in trust for a foreign person, are null and void as enunciated in Sections 3, 12, 13 and 14 of the Residential Property Act.

Members of the Bar are reminded to be vigilant in observing the law and to bear in mind the serious consequential effect of such contracts especially in cases where the purchaser could have parted with sums of money to the vendor, his solicitor or estate agent. There is also the



penal sanction of Section 36 of the Residential Property Act which members of the Bar would do well to note.

*Note: This Practice Direction originated from the Practice Directions and Rulings of the Law Society 1989.*

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### **3. Certificate of Correctness under Section 59 of the Land Titles Act (Cap. 157)**

The Society issued a circular on the above subject on 18th July 1987 - LS/79/78 - advising members against signing certificates under Section 59 of the Land Titles Act where substantial particulars in the instrument are left blank. It has since been brought to the attention of the Council that despite the above circular, there have been cases where solicitors acting for equitable mortgagees of newly developed properties (where no separate Certificates of Title have been issued) have been insisting that solicitors acting for the mortgagor/borrower in such cases should sign the Certificate of Correctness under Section 59 of the Land Titles Act in the mortgages with material particulars left blank, before the loans are disbursed.

The Council is of the view that it is improper for a solicitor acting for such a mortgagor/borrower to sign the Certificate of Correctness. Solicitors acting for a mortgagee in such cases should advise their client against requiring a solicitor for the mortgagor/borrower to sign such a certificate when material particulars have not been inserted. In any case, the mortgage should not be acceptable for registration if the solicitor who signs the certificate is dead or no longer in practice at the date of the mortgage. Such an unreasonable requirement made by mortgagees not only has undesirable consequences but may also turn out to be quite futile. The profession must stand firm and not allow its members to be pressurised into doing improper acts.

Solicitors are requested to desist from calling on other members of the Bar to sign certificates under Section 59 of the Land Titles Act where substantial particulars in the instrument are left blank.

*Note: This circular became a Practice Direction and was reproduced in the Practice Directions and Rulings of the Law Society 1989.*

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### **4. Certificate of Correctness under the Land Titles Act (Cap. 157)**

In view of the representations implied by the solicitor giving his certificate under Section 59 of the Land Titles Act, viz:

- (a) the instrument is made in good faith;
- (b) the matters set forth therein are substantially correct;
- (c) such person acquiring or divesting title thereunder accepts proprietorship or is the party entitled to divest title as the case may be and is of full age and legal capacity,

members are urged to recognize the significance of this section and to exercise care in signing such certificates. The solicitor would be incorrect in signing the certificate if, for example:

- (i) he has knowledge that the vendor is transferring the property to defraud creditors;
- (ii) the matters are not set forth therein and are in substance merely a form with substantial particulars left blank;
- (iii) the party is under disability, e.g. is an undischarged bankrupt.

Members are urged to ensure that at the date of certification of the instrument, the practising certificate has been issued to them by the Registrar of the Supreme Court.

*Note: This Practice Direction originated from the Practice Directions and Rulings of the Law Society 1989.*

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## **5. Stamp Duty and the Value of Property**

The attention of members of the Bar is drawn to sections 62 and 67 of the Stamp Duties Act (Cap. 312), particularly in relation to the stamping of instruments of sale of property under Article 3 of the First Schedule to the Stamp Duties Act.

Members are reminded that stamp duty is payable on the value of the property and not simply the consideration stated in the instrument.

Where it is patently obvious to the solicitor concerned that the property is worth more than the consideration stated in the instrument, it is the solicitor's duty to advise his purchaser-client that:

- (a) the consideration stated in the instrument need not necessarily be accepted by the Commissioner for Stamp Duties as the value of the property;
- (b) the Commissioner for Stamp Duties can have the property valued to assess the stamp duty;
- (c) his client should apply for an adjudication under section 37 of the Stamp Duties Act.

If a solicitor is aware that the consideration is understated, he may be regarded as party to defrauding the Government of revenue if he proceeds with the stamping based on the understated consideration without applying for an adjudication.

*Note: This Practice Direction originated from the Practice Directions and Rulings of the Law Society 1989.*

## **6. Conditions for Issuance of Fresh Sale and Purchase Agreement under the Housing Developers Rules**

The Committee has considered the practice of developers imposing certain conditions/terms for the issuance of a fresh sale and purchase agreement on the sub-sale of a property under the Housing Developers (Control and Licensing) Act (Cap. 130).

The Committee has, in consultation with the Controller of Housing, taken the view that developers will be justified in requesting for the following:

- (a) that a fresh sale and purchase agreement be entered into between the developers and the sub-purchaser in accordance with the Housing Developers (Amendment) Rules 2012;
- (b) that a sum not exceeding \$200 (exclusive of GST) be paid to the developers as their administrative fees;
- (c) that a sum of up to \$400 (exclusive of GST) be paid to the developers' solicitors as their legal costs;
- (d) that the existing sale and purchase agreement between the developers and the original purchaser be returned to the developers for cancellation on completion;
- (e) that a letter of authority be given by the original purchaser to the developers on completion authorising the developers to cancel the existing sale and purchase agreement and issue a fresh sale and purchase agreement to the sub-purchaser and to credit the moneys paid by the original purchaser to the account of the sub-purchaser and confirming that the original purchaser shall have no further claim or interest in the property;
- (f) that a copy of the Notice of Transfer be handed over on completion if the Temporary Occupation Permit has been issued and possession has been taken by the original purchaser;
- (g) that copies of each of the duly executed sub-sale deed of assignment, Withdrawal of Caveat, Discharge of Charge and other withdrawal / discharge / release of encumbrances be handed over to the developers' solicitors on completion;
- (h) that all sums (including interest) outstanding and due, if any, under the existing sale and purchase agreement entered into between original purchaser and the developers be paid or settled by or on the date of completion of the sub-sale;
- (i) that where the original purchaser has previously made any choice of finishes and/or agreed to any changes to the unit layout and/or the specifications and/or plans for development or where the original purchaser has requested for alterations and additions (if any) to be undertaken in respect of the property, the sub-purchaser shall be deemed to have accepted and agreed to such choice and/or changes and/or alterations and additions and shall not raise any objection

thereto (and no further written or signed confirmation need be required from the sub-purchaser for the purpose of issuing a fresh sale and purchase agreement);

- (j) that the sub-purchaser or the sub-purchaser's solicitors confirm that all notices for payments served on the original purchaser under the original sale and purchase agreement will be deemed to have been served on the sub-purchaser and the sub-purchaser will be bound thereby and shall comply with same; and
- (k) that sufficient particulars be promptly given by the sub-purchaser/sub-purchaser's solicitors to facilitate the preparation of the fresh sale and purchase agreement.

*Note: This is Circular 2 of 2012 issued on 9 October 2012 by the Conveyancing Practice Committee of the Law Society.*

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## SECTION 2 – CONVEYANCING AND LAW OF PROPERTY (CONVEYANCING) RULES 2011

### PREFACE:

The Conveyancing (Miscellaneous Amendments) Act 2011 ("**Amendments Act**") was passed by Parliament on 11 April 2011 to amend the Conveyancing and Law of Property Act (Cap. 61 of the 1994 Revised Edition) and the Legal Profession Act (Cap 161 of the 2009 Revised Edition). Pursuant to the insertions made by the Amendments Act to the Conveyancing and Law of Property Act, the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("**Rules**") were promulgated and came into operation on 1 August 2011.

In the course of implementing the Rules, Guidance Notes and Circulars were issued by the Council of the Law Society and the Conveyancing Practice Committee ("**CPC**") respectively, to assist members and legal practitioners in the interpretation of these Rules. At the same time the Ministry of Law also issued its Legislative Guide on the key legislative provisions of the measures that were effected under the Rules.

The collation of four Guidance Notes and Circulars and the Legislative Guide are found in this Section for the convenient and useful reference for all legal practitioners. It must be remembered that these are not practice directions issued and do not have the authority of legal enforcement under the Legal Profession Act. However these have the support and consideration of the Ministry of Law and provide sound reasons why these guidelines should be adhered to. The interpretation of the Rules reflects the mindset during the material period when the drafting of the Rules took place and also during the transition and implementation phases after the Rules were made. Members are strongly recommended to observe and closely adhere to them.

Section 5 contains the applicable Reference and Rulings with respect to the implementation of and adherence to the Rules. The many references posed by members and the answers given add to the store of valuable experiences encountered in the course of practice. However, members are reminded that if there is a dispute that demands expeditious adjudication, members should avail themselves to the adjudication process prescribed under the Rules. Members should not expect expeditious guidance to be given by the CPC especially when there is an impending completion. Notwithstanding, the CPC will try to assist members' queries in interpreting the Rules generally and only when it is appropriate to do so.

Conveyancing Practice Committee  
2013



## THE LAW SOCIETY OF SINGAPORE

### COUNCIL'S GUIDANCE NOTE 1 OF 2011

#### IMPLEMENTATION OF MEASURES TO SAFEGUARD CONVEYANCING MONEY

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1. This Guidance Note takes effect on 18 May 2011.
2. This Guidance Note sets out the following:
  - (i) To inform solicitors that the Ministry of Law ("**MinLaw**") will implement the new measures to safeguard conveyancing money on 1 August 2011;
  - (ii) To urge law practices that wish to continue to receive and hold conveyancing money, when the new measures are introduced, to take steps to open a conveyancing account as soon as possible before 1 August 2011;
  - (iii) To explain the transitional framework for receiving and holding of conveyancing money; and
  - (iv) To request solicitors to try to access the Singapore Land Authority's ("**SLA**") electronic Payment Instructions ("**ePI**") system with their Netrust token to ensure there is no technical impediment and to notify MinLaw and SLA whether their law practice wishes to and has opened a conveyancing account.

#### A. Implementation Timeline of MinLaw's Measures

3. The Conveyancing (Miscellaneous Amendments) Bill was passed by Parliament on 11 April 2011. The Bill amends the Conveyancing and Law of Property Act and the Legal Profession Act. Together with the Rules to be made subsequently under the Conveyancing and Law of Property Act, the amendments will effect the following changes:
  - (i) Solicitors will be prohibited from holding conveyancing money on behalf of their clients except in the manner permitted by the Rules.
  - (ii) Breach of this prohibition will be a criminal offence punishable with a maximum of three years' imprisonment or a fine of up to \$50,000. It may be compounded by the Public Prosecutor in appropriate circumstances.
  - (iii) Solicitors receiving conveyancing money shall deposit the money in special conveyancing accounts held with certain entities appointed by the Minister for Law (participating banks or the Singapore Academy of Law).
  - (iv) Withdrawal of conveyancing money deposited in such an account with an appointed entity will require the signatures of two parties.

- (v) The Law Society will administer an adjudication scheme for the expedited resolution of disagreements in respect of the withdrawal of conveyancing money from special conveyancing accounts.
- 4. MinLaw has informed the Law Society that it is working towards gazetting the legislation by June 2011 in time for implementation of the measures on 1 August 2011.

**B. Opening of conveyancing account and conveyancing (CPF) account**

- 5. For law practices that wish to continue to receive and hold conveyancing money when the new measures are introduced, they must open a conveyancing account. Law practices that are on the Central Provident Fund ("CPF") Board's panel and will receive and hold conveyancing money from the CPF Board are required to open a separate conveyancing (CPF) account.
- 6. Timely opening of these accounts will enable law practices and their solicitors to comply with the new measures when they are implemented.
- 7. For a listing of the banks that law practices can open a conveyancing account with, please refer to MinLaw's conveyancing web-site at [www.minlaw.gov.sg/conveyancing](http://www.minlaw.gov.sg/conveyancing). Law practices can open more than one conveyancing account with one or more of these specified banks.
- 8. In opening these accounts, the banks may require the law practice to also open an office account for the deduction of the bank's transaction fee and/or fee for preparing Cashier's Orders. The Law Society emphasizes that this requirement is strictly a commercial arrangement between the bank and the law practice and the Law Society is not in a position to endorse this requirement.
- 9. The workflows for the new measures and how to use prescribed pay-out forms to initiate payments are also detailed in a Guidebook available from MinLaw's conveyancing web-site.
- 10. If a law practice wishes to place conveyancing money in a conveyancing account or conveyancing (CPF) account before 1 August 2011, the banks will also require the law practice to execute certain documents and permit the law practice to try up to 5 cases per month without levying any transaction fee other than for the costs of preparing Cashier's Orders. In deciding whether to try out cases, law practices should note the transitional framework as explained below.

**C. Transitional framework for receiving and holding of conveyancing money**

- 11. The transitional framework that will be put in place during the period from 1 August 2011 to 1 January 2012 is as follows:
  - (i) For conveyancing money received before 1 August 2011:
    - (a) Law practices may choose to deposit conveyancing money in their client account or conveyancing account;

- (b) If the **conveyancing money is deposited in a client account**, the new conveyancing rules will not apply, and withdrawal of existing conveyancing money in client accounts on or after 1 August 2011 will be governed by the existing Legal Profession (Solicitors' Accounts) Rules ("**Solicitors' Accounts Rules**"), in particular, Rules 8 and 11B. However, all conveyancing money in client accounts must be transferred to a conveyancing account before 1 January 2012; and
  - (c) If the **conveyancing money is deposited in a conveyancing account**, any withdrawal of conveyancing money before 1 August 2011 would be governed by the terms and conditions governing the use of pilot conveyancing accounts, as well as by the Solicitors' Accounts Rules, in particular, Rules 8 and 11B. Law practices have the option of withdrawing conveyancing money without the need for a counter-signature from the other party to the transaction or that party's solicitors. Any withdrawal of conveyancing money on or after 1 August 2011 will be subject to the new Conveyancing and Law of Property (Conveyancing) Rules 2011.
- (ii) For conveyancing money received on or after 1 August 2011:
- (a) Law practices must deposit the conveyancing money into a conveyancing account, even if a prior payment of an earlier sum for the same conveyancing transaction was deposited before 1 August 2011 into a client account;
  - (b) The new Conveyancing and Law of Property (Conveyancing) Rules 2011 will apply, and the banks may charge a transaction fee for payments received on or after 1 August 2011; and
  - (c) The requirement of a second signatory under Rules 8(5) and 8(6) of the Solicitors' Accounts Rules will not apply to conveyancing money placed in a conveyancing account on or after 1 August 2011 as it will only apply to monies placed in a client account. The requirements governing the receipt and holding of conveyancing money by a solicitor, which are found in Rule 11B of the existing Solicitors' Accounts Rules, will be governed by the new Conveyancing and Law of Property (Conveyancing) Rules 2011 effective 1 August 2011.

#### **D. Check in service with the Singapore Land Authority**

##### Testing by member

12. Solicitors who hold a Netrust token and have yet to try out the ePI system should familiarise themselves with the Pay-Out forms and ascertain that their law practice's hardware and/or software are compatible with the ePI. Every solicitor of the law practice with a Netrust token should log into SLA's STARS e-Lodgement System (ELS) web-site at <http://www.stars.gov.sg> with their Netrust token from their office

computer. The ePI module can be accessed from the left frame upon login. An option is available for the member to create, sign and submit a POBC-Test form. If solicitors encounter issues or have queries during testing, please contact SLA's ELS Helpdesk at 6778 3606 or [starshelp@ncs.com.sg](mailto:starshelp@ncs.com.sg).

Opening of conveyancing account

13. For feedback purposes, a solicitor of the law practice with a Netrust token who accesses SLA's web-site will see a screen prompt upon login, asking if the solicitor's law practice has opened a conveyancing account. The solicitor need only input the conveyancing account details once, even though the law practice may have opened more than one conveyancing account. Subsequently, the prompt will not be shown to the other solicitors of the law practice that accesses ELS. The solicitor may also indicate if his law practice does not have any intention to open a conveyancing account.

**E. Further Information**

14. For further information on the proposed measures to safeguard conveyancing money, please refer to MinLaw's web-site at [www.minlaw.gov.sg/conveyancing](http://www.minlaw.gov.sg/conveyancing).

Date: 18 May 2011

**THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE**

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## THE LAW SOCIETY OF SINGAPORE

### COUNCIL'S GUIDANCE NOTE 2 OF 2011

#### GUIDELINES FOR SOLICITORS ACTING AS COUNTER-SIGNATORIES UNDER THE CONVEYANCING AND LAW OF PROPERTY ACT (CAP. 61) AND THE CONVEYANCING AND LAW OF PROPERTY (CONVEYANCING) RULES 2011

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1. This Guidance Note takes effect on 1 August 2011.
2. This Guidance Note sets out the guidelines for solicitors acting as counter-signatories under the Conveyancing and Law of Property Act (Cap. 61) ("**Act**") and the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("**Rules**") which will come into operation on 1 August 2011.

#### A. Introduction

3. The amendments to the Act and the enactment of the Rules do not permit lawyers to hold conveyancing money (as defined in Rule 2 of the Rules). Instead all conveyancing money is to be held in the Law Practice's Conveyancing Account with appointed entities and the Singapore Academy of Law. An exception is where conveyancing money is kept in an escrow account held by two law practices.
4. Under this new regime, the conveyancing money being maintained in the Law Practice's Conveyancing Account will not be released by the relevant body except in the following circumstances:
  - (a) when the payment out is made to a Category A payee, in which case no countersigning is necessary on the Pay-Out Form A;
  - (b) when the payment out is made to a Category B payee, the countersigning Law Practice verifies "*that the specified payee is a Category B payee*";
  - (c) when the payment out is made to a Category C payee, the countersigning Law Practice (or other authorized signatory) verifies "*that the conveyancing money is to be paid to the specified Category C payee and the amount of the conveyancing money that is to be paid*"; or
  - (d) when the payment to any payee is authorized by an order of court.
5. This Guidance Note seeks to provide guidance to all Law Practices on the verification process and emphasizes the need for the party requesting for payment to give clear and full information and provide all relevant documents to the party who has to verify the payment.
6. For further reference, Rules 7(9), 7(10) and 7(11) of the Rules, which deal with payment of conveyancing money from a conveyancing account or conveyancing (CPF) account, are found in **Annexure A** to this Guidance Note. All Law Practices are urged



to understand the importance of Rules 7(9) and 7(10) and the exemption given to counter-signing solicitors under Rule 7(11) who exercise good faith and proper conduct in carrying out their legal duty. For payment of conveyancing money under the Singapore Academy of Law (Conveyancing Money) Rules 2011, please refer to Rule 17 of the Rules.

## B. Definitions

7. The following definitions apply only to this Guidance Note:

- (a) **“Requesting Party”** refers to those individuals, persons or corporations that are stated in the Option to Purchase, Sale and Purchase Agreement or other Agreement (**“Agreement”**) that prima facie are entitled to call for the payment to be made to them on or before the completion of the transaction in that Agreement. If a Law Practice acting for the Requesting Party calls for any payment to be made, that Law Practice shall be deemed to be acting with authority for and on behalf of the Requesting Party.
- (b) **“Approving Party”** refers to the other Law Practice that is authorised under the Rules to verify the mode of payment requested by the Requesting Party.
- (c) **“Countersigning Party”** is the Law Practice which is required by the Rules to countersign a Pay-out Form.

## C. Brief Explanation of the position of the Parties under Agreement

8. There are two usual scenarios that Law Practices may encounter to verify or countersign a request for payment:

(a) *Where payment out refers to the monies held by stakeholders*

9. More often than not, the request for payment out refers to money paid in an exercise of the Option to Purchase or under a Sale and Purchase Agreement and where such conveyancing money is held either by the Singapore Academy of Law or by the Vendor's Law Practice in the Conveyancing Account with a bank as a stakeholder. In this case, the Requesting party is the Vendor and the Vendor's Law Practice initiates the Pay-out Form BC for the Approving Party to sign.

(b) *Where payment requested refers to the balance of the purchase price*

10. There are three possible sub-scenarios here.

- (i) In the first case, the Vendor's Law Practice requires and calls for payment to be made in accordance with the mode of payment necessary for completion. In this instance, no Pay-out Form BC is sent by the Vendor's Law Practice. If the Approving Party cannot verify from the letter containing the mode of payment, it should request from the Vendor's Law Practice a Letter of Authority and/or other documents. If the Vendor's Law Practice fails to provide or does not adequately

provide such documents, the Approving Party may invoke Rule 18(1) or 18(2) of the Rules which is to pay such applicable amount to the Requesting Party directly.

- (ii) In the second case, the conveyancing money representing the balance of the purchase price is held under the Purchaser's Law Practice Conveyancing Account. Similarly, as in (i) above, the Approving Party (Purchaser's Law Practice) may request the Letter of Authority and/or other documents. If the Approving Party is not satisfied, it may send out the Pay-out Form BC with the appropriate mode of payment directed to the Requesting Party [see Rules 18(1) and (2) of the Rules]. If the Vendor's Law Practice does not countersign, the Approving Party (being the Purchaser's Law Practice, which initiates the Pay-out Form BC for payment out of its conveyancing account) may seek adjudication. Adjudication is covered in section F below.
  - (iii) In the third case, part of the balance of the purchase price may be paid by the Purchaser's mortgagee or chargee who is represented by a different Law Practice ("**relevant Law Practice**"). That relevant Law Practice would have called for the monies for purposes of completion and in the case of usage of Purchaser's CPF money, this would be paid into the relevant Law Practice's conveyancing (CPF) account. In disbursing this same money, the relevant Law Practice would issue a Pay-out Form to the Purchaser's Law Practice for countersigning. If assuming that the relevant Law Practice is not satisfied with the information given in the documents (or the lack of them) for payment out to the Category B or C Payee (as directed by the Vendor), it may be possible for the relevant Law Practice to issue the Pay-out Form with the mode of payment directly to the Vendor under Rules 18(3) and (4) of the Rules. Such a scenario may also lead to adjudication.
11. Law Practices should understand the significance of the scenarios described in paragraphs 8 to 10 and apply their minds to the intent of the Act and the Rules and appreciate the meaning of "verification" in each case.
  12. Alternatively, the Law Practice acting for the Requesting Party (its client) may want to impress upon the client to have the balance of the conveyancing money paid directly to the client rather than to an unknown person or corporation not connected in any way to the transaction. This will avoid the necessity of having to provide details or documents that may reveal client's confidential information or explain the amount of the payment to the Category C payee. A direct payment to the client will place the responsibility on the client to deal with the conveyancing money.

#### **D. Internal Controls**

13. In complying with the new legal framework for the payment out of conveyancing monies, each Law Practice must set out its own internal controls and guidelines regarding:

- (a) the calling of the balance of the sale price to be paid in accordance with the Requesting Party's mode of payment;
  - (b) the preparation, execution and delivery of the Pay-out Form BC; and
  - (c) countersigning, dealing with and returning the Pay-out Form BC.
14. The Law Practice should also examine the internal controls and the security of the Netrust token. The Law Practice should not entrust the Netrust token to the conveyancing paralegals.

## E. Guidelines

15. Below is a broad set of guidelines for reference by the Law Practice. The guidelines are also meant to assist the Law Practice in developing its own internal controls and guidelines in the matter. The guidelines do not envisage all types of scenarios or situations. There will be special cases where the Law Practice must use common commercial sense and apply their minds to the objective and intention of the Rules. Of paramount importance is to have in place a system that gives rise to the security and safety of clients' money. All Law Practices should endeavour to observe and adhere to the guidelines, which can be treated as best practices. Eventually, the uniformity of approach and practice will transform into customary practices for the good of the professional practice.
- (a) *When preparing the Request for Payment or Payment Out*
16. In preparing the request for payment including the mode of payment or the Pay-out Form BC, the Law Practice must take into consideration the comfort level of the Approving Party to verify *"that the specified payee of the conveyancing money is a Category B payee"* or *"that the conveyancing money is to be paid to the specified Category C payee and the amount of the conveyancing money that is to be paid"*.
17. Where the **Law Practice on behalf of the Requesting Party** requests payments to be made, whether or not from conveyancing accounts, the Law Practice should note the following:
- (i) Where payment is to be made to a **Category B payee**, give the correct names that co-relate to or are in accordance with the Agreement or other associated transaction documents. If it is not apparent on the face of the associated transaction documents, further particulars of that payee must be given. Where reasonably appropriate or on request by the Approving Party or Countersigning Party, the link or nexus to the Requesting Party are to be provided to verify the identity of the payee.
  - (ii) As to a **Category C payee**, provide a signed Letter of Authority preferably executed under oath or affirmation before a Commissioner for Oaths or if abroad, before a notary public or the equivalent of a notary public in that territory. The Letter of Authority should provide full details of the payee as stated under (i) above, the amount to be paid out and, where reasonably appropriate or on request by the Approving Party or Countersigning Party, the link or nexus. In

exceptional circumstances, a very brief rationale for the payment may be asked to clear any doubt that the Approving Party may have. A detailed justification for the payment to be made to the Category C payee is not necessary. A sample Letter of Authority can be found at **Annexure B**.

- (iii) Where it is helpful to confirm the identity, the Requesting Party should attach certified true copies of documents as supporting documents to the Letter of Authority. Mere photocopies may not be adequate. By personally signing the Letter of Authority, the Requesting Party (not the Law Practice on its behalf) is deemed to have permitted disclosure to the Approving Party or Countersigning Party. Providing certified true copies of documents at the outset in support of the direction given in the Letter of Authority will significantly help to reduce queries or questions made by the Approving Party or Countersigning Party for verification purposes.
- (iv) If the Approving Party or Countersigning Party requests documents additional to those initially provided by the Requesting Party for verification purposes, and the Requesting Party is willing and able to provide these additional documents, the Requesting Party should forward such documents within two (2) clear business days of the request by the Approving Party or Countersigning Party.
- (v) When approval is required from the Approving Party to pay the balance of the purchase price, the Requesting Party must provide the Approving Party with five (5) clear business days to prepare the payment. Similarly when requiring the Countersigning Party to countersign a Pay-out Form BC, the Requesting Party must provide at least five (5) clear business days for it to check, countersign and return the Pay-out Form BC. Please note that these requirements only apply where the vendor sends the mode of payment to the purchaser.

*(b) When Approving a Payment or Countersigning a Pay-out Form BC*

18. Upon receipt of the request for payment from the Requesting Party or a Pay-out Form BC for countersigning, the Law Practice approving or countersigning should carry out the following:

- (i) Check the particulars of the Category B payee that are described in the written request or the Form with the Agreement and associated transaction documents available to it.

Illustration:

If Tan Ah Kow is listed as a Category B payee and described as the Vendor, then the counter-signing lawyer should check that the Sale and Purchase Agreement indicates Tan Ah Kow as the current registered proprietor of the property that is being sold.

- (ii) When payment is made to a Category C payee, check the particulars of the Category C payee that is described in the written request or the Pay-out Form

BC. If there is a Letter of Authority executed under oath or affirmation together with the supporting documents, it is prima facie acceptable. Nevertheless, check that the information and details identify adequately the payee and the amounts stated. No further verification is required if the Approving Party or Countersigning Party is satisfied that the request for payment out does not appear to be extraordinary or suspicious in the light of the circumstances. If the Letter of Authority does not provide adequate details to make such verification, the Approving or Countersigning Party must without delay, give notice in writing to the Requesting Party, to request additional information or documents to satisfy itself.

- (iii) There are four situations in which the Approving Party and, in an exceptional case, the Approving Party's Mortgagee's/Chargee's Law Practice, may pay directly a part of the purchase price to the Requesting Party (Vendor) regardless of whether the conveyancing money is held in conveyancing accounts or deposited with the Singapore Academy of Law. These situations are found in Rules 18(1)(c), 2(c), (3)(c) and (4)(c) of the Rules, which are concisely summarized as follows:
  - (a) where the Requesting Party's Law Practice fails to provide documents or information requested by the Approving Party or its mortgagee/chargee;
  - (b) where the authenticity of the documents supplied by the Requesting Party's Law Practice is in doubt;
  - (c) where there is any material discrepancy: (i) between any information or document furnished by the Requesting Party or his solicitor and the instruction of the Requesting Party or his solicitor; or (ii) in the information and documents furnished by the Requesting Party or his solicitor; and
  - (d) where the Approving Party's Mortgagee's/Chargee's Law Practice believes that there are other reasonable grounds to refuse to pay in accordance with the mode of payment given by the Requesting Party's Law Practice.
- (iv) In any of the situations in (iii) above, the balance of the purchase price or part thereof may be paid directly to the Vendor, as the Purchaser's solicitor, who is not a counter-signing solicitor, does not enjoy the protection from liability under Rule 7(11). However, solicitors should bear in mind that the situation in scenario (iii)(d) above requires that the burden of proving "the reasonable ground" lie with the party that alleges it, i.e. the Approving Party if it refuses to pay in accordance with direction of the Requesting Party.
- (v) The intent of the amendments to the Act and the Rules is to have the Approving Party (who has a duty to verify the mode of payment, whether through initiating a pay-out form or otherwise) or the Countersigning Party cast a second eye over the payment out as requested by the Requesting Party with the aim of ensuring that any such payments are directions by the Requesting Party (and not his/her/their solicitors acting without clients' instructions).



19. For payment to Category C payees, proper verification must be carried out especially when the circumstances reveal suspicious directions e.g. large sums of conveyancing money to be paid to persons who are completely unconnected to the transaction.

## **F. Adjudication**

20. Law Practices should try to mediate any disputes or differences between them regarding the pay-out of conveyancing money before proceeding to adjudication.
21. Adjudication applies only when there is any dispute arising from a refusal by a countersigning party to countersign a Pay-out Form BC (including a variation pay-out form). However, the substance of the dispute can relate to the Approving Party's refusal to pay according to the Requesting Party's instructions as set out at paragraph 18(iii) above. If a Countersigning Party does not wish to countersign the Pay-out Form BC for any reason, the Requesting Party may avail itself to the expedited adjudication scheme that is established and administered by the Law Society ("**Scheme**") pursuant to Rule 20 of the Rules.
22. Solicitors should study carefully the situations that are described in paragraph 10 above. In particular, in the situation under paragraph 10(iii), the Purchaser and the Purchaser's mortgagee's/chargee's solicitors are the parties that may choose to proceed to adjudication in respect of a relevant dispute if the Purchaser's solicitors refuse to countersign the pay-out form initiated by the Purchaser's mortgagee's/chargee's solicitors. In this scenario, the Purchaser's solicitors may bring in the Vendor as a third party to the adjudication proceedings. However, if the Purchaser's solicitors countersign the pay-out form initiated by the Purchaser's mortgagee's/chargee's solicitors, the Vendor is precluded from commencing adjudication proceedings directly against the Purchaser's mortgagee's/chargee's solicitors as there is no pay-out form between the Vendor and the Purchaser's mortgagee's/chargee's solicitors. The only choice for a quick resolution for the Vendor will likely be a vendor-purchaser summons.
23. The procedure for the adjudication of any relevant dispute under the Scheme and the terms and conditions of the Scheme are found in the Fourth Schedule of the Rules. Notice of the submission of a relevant dispute must be given immediately by the Requesting Party to the Law Society and the Countersigning Party. Immediately thereafter, the Law Society will initiate the appointment of an Adjudicator under the Scheme.
24. The Adjudicator can make a determination of a relevant dispute submitted for adjudication under the Scheme, as well as orders for compensation (including interest for the late completion of a conveyancing transaction) and costs. Such a determination is binding on the parties to that dispute, and on any person claiming through or under any such party, unless the determination or order is set aside or varied by the Court.
25. If the Adjudicator determines that the Countersigning Party is to countersign the Pay-out Form BC, and that Party fails to do so with a specified period, the Requesting Party may tender the same to the Law Society, and a Director of the Law Society appointed

by the Council of the Law Society may counter-sign the Pay-out Form BC on behalf of the Countersigning Party.

26. Any party who is dissatisfied with the Adjudicator's determination or order may apply to the Court by originating summons to set aside or vary the determination or order. If such an application would cause any delay in the completion of any conveyancing transaction, the Court may extend the time for the completion of that conveyancing transaction and make such other order as it considers necessary or appropriate.
27. For more information on the Scheme, Law Practices may refer to the Law Society's New Conveyancing Regime website at [www.lawsociety.org.sg](http://www.lawsociety.org.sg) from 1 August 2011.

**G. Questions that may be raised**

28. For a list of the questions that may be raised, please refer to **Annexure C**.

**H. Annexures**

29. For easy reference, the annexures to this Guidance Note are as follows:

Annexure A – Rules 7(9), 7(10) and 7(11)  
Annexure B – Example of a Letter of Authority  
Annexure C – Questions that may be raised

Date: 12 July 2011

**THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE**

## **ANNEXURE A**

### **RULES 7(9), 7(10) and 7(11)**

#### **Rule 7(9):**

Where a solicitor requests that any person countersign a pay-out form or variation pay-out form (referred to in this paragraph as the relevant form) relating to the payment of any conveyancing money from the solicitor's conveyancing account or conveyancing (CPF) account to a specified payee that purports to be a Category B payee:

- (a) that person shall be entitled to request that the solicitor provide him with such information and documents as may be necessary to enable him to verify that the specified payee is a Category B payee;
- (b) the solicitor shall promptly furnish the information and documents to that person; and
- (c) that person shall refuse to countersign the relevant form, if
  - (i) the solicitor refuses or neglects to furnish any information or document under sub-paragraph (b), after being requested to do so in accordance with sub-paragraph (a);
  - (ii) that person is not satisfied of the authenticity of any document furnished by the solicitor under sub-paragraph (b); or
  - (ii) there is any material discrepancy between any information or document furnished by the solicitor under sub-paragraph (b) and the relevant form, or there is any material discrepancy in the information and documents furnished by the solicitor under sub-paragraph (b), as regards whether the specified payee is a Category B payee.

#### **Rule 7(10):**

Where a solicitor requests that any person countersign a pay-out form or variation pay-out form (referred to in this paragraph as the relevant form) relating to the payment of any conveyancing money from the solicitor's conveyancing account or conveyancing (CPF) account to a specified Category C payee:

- (a) that person shall be entitled to request that the solicitor provide him with:
  - (i) a statutory declaration, or any other document, that specifies:
    - (A) that the conveyancing money is to be paid to the specified Category C payee; and
    - (B) the amount of the conveyancing money that is to be paid; and
  - (ii) such other information and documents as may be necessary to enable him to verify:
    - (A) that the conveyancing money is to be paid to the specified Category C payee; and
    - (B) the amount of the conveyancing money that is to be paid;
- (b) the solicitor shall promptly furnish the information and documents (including the statutory declaration or document referred to in sub-paragraph (a)(i)) to that person; and
- (c) that person shall refuse to countersign the relevant form, if
  - (i) the solicitor refuses or neglects to furnish any information or document under sub-paragraph (b), after being requested to do so in accordance with sub-paragraph (a);

- (ii) that person is not satisfied of the authenticity of any document furnished by the solicitor under sub-paragraph (b); or
- (iii) there is any material discrepancy between any information or document furnished by the solicitor under sub-paragraph (b) and the relevant form, or there is any material discrepancy in the information and documents furnished by the solicitor under sub-paragraph (b), as regards:
  - (A) whether the conveyancing money is to be paid to the specified Category C payee; or
  - (B) the amount of the conveyancing money that is to be paid.

Rule 7(11):

Where a person requested to countersign a pay-out form or variation pay-out form under paragraph (9) or (10) does so in accordance with this rule, rule 10(4) and the First Schedule, the person shall not be liable to be sued for the act of countersigning the pay-out form or variation pay-out form, if the act:

- (a) was done in good faith; and
- (b) did not involve any fraud or wilful misconduct on his part.

**ANNEXURE B**

**Example of a Letter of Authority**

*Name and Address of the Requesting Party*

*To: [Opposite Party e.g. the Purchaser]*

*Date:*

*Dear Sir/Madam*

**Re: Letter of Authority** for payment of \_\_\_\_\_ on completion  
of the sale and purchase of [property description.....]

*I/We [name(s) .....] the [Vendor in the transaction] confirm that I/We  
have agreed to permit the payment of the sum of [\$.....] due to me under the  
abovenamed transaction in the manner as follows:*

- (a) the amount of \$..... in favour of [name of Category C payee] being [the  
caveator under a caveat no .....] ;*
- (b) the amount of \$..... in favour of [name of Category C payee], [my spouse];*
- (c) the amount of \$..... in favour of [name of Category C payee] being  
[payment to my/our estate agent / business creditor/assignee]; and*
- (d) the amount of \$..... in favour of [name of Law Practice], for payment of  
legal costs and expense.*

*[if applicable attach certified copies of supporting documents]*

*As against me/us, I/We exempt you (and/or any party under your instruction), from any  
liability whatsoever, from any act matter or thing that is performed under the directions given  
in this letter of authority.*

*I/We declare that this letter of authority is irrevocable unless you have notice of and had not  
initiated any act under this instruction before receiving my/our revocation of this letter of  
authority.*

*[And I make this solemn declaration by virtue of the provisions of the Oaths and Declarations  
Act (Cap. 211), and subject to the penalties provided by that Act for the making of false  
statements in statutory declarations, conscientiously believing the statements contained in  
this declaration to be true in every particular.]*

*[Declared in \_\_\_\_\_*

*By [Name of Requesting Party]*

*On [date]\_\_\_\_\_*

*in the presence of:]*

*Commissioner for Oaths*

## **ANNEXURE C**

### **QUESTIONS THAT MAY BE RAISED**

- Q1: The mode of payment requests for the balance of the payment less that due to the CPF and the discharging Bank to be made in favour of Mr. "X". No Letter of Authority is given. What shall I do?
- A1: It will be prudent to request urgently for the Letter of Authority to be signed under oath or affirmation or if the Requesting Party is a foreigner residing overseas, a Letter of Authority to be executed before a notary public or equivalent.
- Q2: Further to Q1, what if the sum is a small amount?
- A2: Then a signed Letter of Authority will suffice. However, please remember that the description 'small' is subjective. The payment must be measured against the totality of the proceeds to be paid out.
- Q3: What do you mean by supporting documents?
- A3: Under ordinary circumstances, the supporting documents are those that on the face of it show that the payment request(s) is/are directions by the Requesting Party (and not his/her/their solicitors acting without clients' instructions).
- Q4: Further to Q3, what if the payment is made to a caveator but the supporting document does not mention any amount claimed but just rights, interest and title?
- A4: It is adequate that the Requesting Party specifies an amount in the Letter of Authority that requires to be paid to the caveator.
- Q5: What if the Letter of Authority states that it is a payment of a debt to a Category C payee? Will this one line simple statement be adequate for me to authorise payment?
- A5: If the Letter of Authority is declared under oath and clearly specifies the intention to pay the creditor, it can be accepted without the need for further investigation.
- Q6: What if a large amount is to be paid to an Estate Agent?
- A6: Ordinarily, a commission for a sale is between 1% and 2% of the sale price. Anything more than that may appear extraordinary but may not necessarily be suspicious. If it appears "suspicious", ask for the Letter of Authority declared under oath, clearly specifying the intention to pay that amount to the estate agent, and where reasonably appropriate, also ask for the signed contract between the Requesting Party and the estate agent. It is now necessary for an estate agent's commissions to be substantiated by a contract in the approved form under the rules of the Estate Agents Act 2010. If that payment cannot be verified, the Approving Party should not verify or countersign and may give notice to pay the whole sum meant for the estate agent, to the Requesting Party.
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**CONVEYANCING PRACTICE COMMITTEE'S CIRCULAR 3 OF 2011**  
**GUIDELINES FOR SOLICITORS PERFORMING VERIFICATION AND COUNTER-SIGNING ROLE UNDER THE CONVEYANCING AND LAW OF PROPERTY (CONVEYANCING) RULES 2011**

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This circular provides a guide to solicitors performing the verification and counter-signing role under the Conveyancing and Law of Property (Conveyancing) Rules 2011 [**"CLP Rules"**].

For the purposes of this circular:

"Initiating Lawyer" refers to the lawyer who initiates a pay-out form for the payment of conveyancing money held either in a conveyancing account of his law practice, or with the Singapore Academy of Law.

"Counter-signing Party" refers to the party or the party's lawyer who counter-signs the pay-out form.

**BROAD PRINCIPLES**

1. Both the Initiating Lawyer and the Counter-signing Party:
  - (a) have a role to play in verifying the mode of payment or the pay-out form respectively.
  - (b) need to consider their roles in the context of the following scenarios:
    - (i) payment of money held by stakeholders (seller's lawyer);
    - (ii) payment of balance of the purchase price;
    - (iii) release of CPF money where the buyer, seller and CPF Board are separately represented;
    - (iv) release of bank loan<sup>1</sup> where the buyer, seller and bank are separately represented; and
    - (v) where the buyer chooses to or is directed to buy his own cashier's orders to pay under (b) (ii) above (i.e. the money does not flow through an appointed entity (i.e. a conveyancing account)).
  - (c) should encourage or advise their clients to receive payment directly instead of nominating Category C payees.
  - (d) should ensure that their law practices have internal controls vis-à-vis the verification and counter-signing process as well as the use of the Netrust token.
2. The scope of verification depends on whether payment out is made to a Category B or Category C payee:

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<sup>1</sup> This may happen if a bank has a practice of releasing the bank loan to the law firm's conveyancing account.



- (a) For a Category B payee, the Initiating Lawyer or the Counter-signing Party must verify that the specified payee is a Category B payee; and
  - (b) For a Category C payee, the Initiating Lawyer or the Counter-signing Party must:
    - (i) verify that the conveyancing money is to be paid to the specified Category C payee; and
    - (ii) the amount of the conveyancing money that is to be paid.
3. Disputes arising from a refusal of a Counter-signing Party to sign a pay-out form may be referred to the Law Society's Adjudication Scheme. Law practices should try to mediate any disputes before proceeding to adjudication.

## SCENARIOS REQUIRING VERIFICATION & COUNTERSIGNING

### (I) MONEY HELD BY STAKEHOLDERS

4. The role of the Counter-signing Party is crucial in the situation where the buyer, in exercise of his option, places a deposit in the conveyancing account of the seller's lawyer or with SAL as stakeholder. In this situation, the seller's lawyer, as the Initiating Lawyer, must prepare the pay-out form which is to be counter-signed by the buyer's lawyer or buyer (in cases of self-representation), who has a duty as a Counter-signing Party to verify the payment instructions contained in the pay-out form **[CLP Rule 7(9) and (10)]**.
5. For Category B payees, the seller's lawyer should:
- (a) draw attention to the transaction documents that are within the buyer's lawyer's possession and which confirm that the specified payee is a Category B payee e.g. the discharging mortgagee (where the prior title deeds given to the buyer's lawyer contains the mortgage);
  - (b) where the buyer's lawyer in all likelihood does not have the appropriate documents, provide certified true copies instead of photocopies of the information and documents;
  - (c) obtain the consent of the seller to forward the information and documents (if any information in the documents is particularly sensitive to the seller but is not relevant for the purposes of verification, the seller's lawyer may blank out any such information as may be requested by the seller so as to alleviate any concern the seller may have in the release of the document);
  - (d) provide at least 5 clear business days for the Counter-signing Party to check, counter-sign and return the pay-out form;
  - (e) provide any further documents requested by the Counter-signing Party within 2 clear business days of the request, if willing and able to do so. [Note: The CLP Rules do not place an obligation on the seller's lawyer to provide a statutory declaration for Category B payees. Nevertheless, the seller's lawyer may choose to provide one voluntarily.]

6. The guidelines in paragraph 5 above would also apply to Category C payees. It should also be noted that for Category C payees, the seller's lawyer is obligated under the CLP Rules to provide a statutory declaration or any other document that specifies the details required by **CLP Rule 7(10)** upon the request of the buyer's lawyer. If the seller's lawyer wishes to provide a statutory declaration, he may use a signed letter of authority executed under oath or affirmation before a Commissioner for Oaths or Notary Public. A sample letter of authority, which can be converted to a statutory declaration by the addition of the last paragraph in square brackets, can be found at **Annex A.**
7. Upon receipt of the information and documents from the seller's lawyer, the buyer's lawyer should:
  - (a) promptly write to the seller's lawyer to request additional information and documents if those provided are not sufficient; and
  - (b) for Category C payees, *prima facie* accept a signed letter of authority. But if the payment appears to be extraordinary or suspicious, the buyer's lawyer should ask for a statutory declaration.
8. If the seller's lawyer or seller refuses or neglects to furnish the information or documents, or if the information or documents are not satisfactory on account of its authenticity or because of a material discrepancy between the directions of the seller's lawyer and the supporting documents or in the supporting documents furnished, the buyer's lawyer must refuse to counter-sign the pay-out form [**CLP Rule 7(9)(c)**]. However, these grounds **are not exhaustive**. Any dispute arising from the Counter-signing Party's refusal to countersign may be submitted for adjudication. The Counter-signing Party shall not be liable to be sued for the act of counter-signing the pay-out form if the act was done in good faith and did not involve any fraud or wilful misconduct on his part [**CLP Rule 7(11)**].

## (II) **BALANCE OF THE PURCHASE PRICE**

9. When the buyer pays the cash portion of the balance of the purchase price to the buyer's lawyer's conveyancing account or deposits it with SAL, the role of the Initiating Lawyer is crucial as the buyer's lawyer holds the bulk of the balance purchase money in his conveyancing account or with SAL. In this situation, the Counter-signing Party is the seller's lawyer, who will typically provide a completion account with the mode of payment to the buyer's lawyer [**CLP Rule 18(1) and 18(2)**]. To disburse the conveyancing money, the buyer's lawyer will have to prepare the pay-out form based on these directions. **CLP Rule 18** places an obligation on the buyer's lawyer to verify such directions from the seller's lawyer.
10. The verification process for the Initiating Lawyer (in this case, the buyer's lawyer) and the Counter-signing Party (in this case, the seller's lawyer or the seller) are similar to that in paragraphs 5 to 7. Please see Illustrations Q1, Q2 and Q3 for examples of verification in specific cases.

11. If the seller's lawyer refuses or neglects to furnish the information or documents, or if the information or documents are not satisfactory on account of its authenticity or because of a material discrepancy between the directions and the supporting documents or in the supporting documents furnished, the buyer's lawyer has the power to disregard the payment instructions of the seller's lawyer and disburse the amount directly to the seller (instead of the seller's nominee) upon completion [**CLP Rule 18(1)(c)(i) to (iii) and CLP Rule 18(2)(c)(i) to (iii)**]. The buyer's lawyer can also exercise this right of refusal and re-direction on reasonable grounds [**CLP Rule 18(1)(c)(iv) and Rule 18(2)(c)(iv)**].
12. When deciding whether to exercise the right of refusal and re-direction, the buyer's lawyer should first exhaust all means of verification. If the buyer's lawyer has done so and intends to exercise the right, he should bear in mind that he has the burden of proving that he has reasonable grounds for his action.
13. There may be recourse to adjudication in this scenario, but the adjudication scheme is not invoked at the point in time when the buyer's lawyer raises the pay-out form which does not conform to the seller's instructions. Instead, it is only invoked after the buyer's lawyer sends the pay-out form to the seller's lawyer redirecting the payment to the seller. At this point, the seller's lawyer can decide whether:
  - (a) he should counter-sign so that completion is not delayed; or
  - (b) he should refuse to counter-sign whereupon either party can bring the matter for adjudication.

### **(III) WHERE BUYER, SELLER AND CPF BOARD ARE SEPARATELY REPRESENTED**

14. Where the CPF Board places the buyer's CPF money into the conveyancing (CPF) account of the CPF Board's lawyer and the buyer, seller and CPF Board are separately represented, the buyer's lawyer will usually instruct the CPF Board's lawyer based on instructions received from the seller's lawyer. **CLP Rule 18(3) and (4)** similarly provide that the CPF Board's lawyer (who initiates the pay-out form for the CPF money) has the duty to review and verify the payment instructions from the buyer's lawyer. Hence, the CPF Board's lawyer can ask for relevant documents to perform his verification role. The CPF Board's lawyer is also given the power to refuse to pay the CPF money in accordance with the directions of the buyer's lawyer and re-direct such payment to the seller under similar circumstances.
15. The guidelines for the Initiating Lawyer (in this case, the CPF Board) and the Counter-signing Party (in this case, the buyer's lawyer or the buyer) are as in paragraphs 10 to 12. In addition, the buyer's lawyer or the buyer should always endeavour to satisfy the CPF Board's lawyer's request for information and documents to avoid a re-direction of payment.
16. Where the CPF Board's lawyer does not pay the CPF money as instructed by the buyer (but instead redirects the payment to the seller), the buyer's lawyer can decide whether:

- (a) he should refuse to counter-sign the pay-out form initiated by the CPF Board's lawyer whereupon either he or the CPF Board's lawyer can bring the matter for adjudication, in which case, the buyer's lawyer may bring in the seller as a third party [see **CLP Rules, Fourth Schedule, Paragraph 2(a)(iv)** of definition of "party"] to the adjudication proceedings; or
- (b) he should counter-sign the pay-out form initiated by the CPF Board's lawyer and run the risk that the seller may refuse to complete the sale for failing to disburse the balance sale proceeds as per the seller's instructions.<sup>2</sup>

#### **(IV) WHERE BUYER BUYS HIS OWN CASHIER'S ORDERS**

17. Notwithstanding that a buyer chooses to or is directed to purchase his own cashier's orders instead of depositing the conveyancing money in the lawyer's conveyancing account or with SAL, the buyer's lawyer likewise has a duty to verify the seller's instructions before advising his client on procuring the Cashier's Orders. **CLP Rule 18(5)** makes it clear that this duty continues to apply even though the conveyancing money does not flow through an appointed entity (i.e. the conveyancing account). Hence, the buyer's lawyer should be mindful of the guidelines stated in paragraphs 10 to 13 when advising his clients on how to draw up the cashier's order. For cashier's orders issued by the mortgagee, the mortgagee's lawyer is similarly under an obligation to verify payment instructions received before instructing the mortgagee to prepare the necessary cashier's orders.

### **ILLUSTRATIONS**

#### **Q1: The Option to Purchase states:**

**"The Seller agrees to pay XYZ Estate Agency a commission of One (1%) percent of the sale price plus prevailing GST, and the Seller's solicitor will accept this as the Seller's irrevocable authority to retain the commission from the sale proceeds and to pay the same direct to XYZ Estate Agency forthwith on completion of the sale."**

- (a) Can the buyer's lawyer rely on this clause to pay the commission to the seller's lawyer?**

Yes. The buyer's lawyer can rely on this clause to make payment to the seller's lawyer as it is a direction from the seller which enables the buyer's lawyer to verify under the Conveyancing and Law of Property (Conveyancing) Rules: (i) that the commission is to be paid to the specified Category C payee; and (ii) the amount of the commission that is to be

<sup>2</sup> The seller would not be able to commence adjudication proceedings directly against the CPF Board's lawyer as there is no pay-out form between the seller and the CPF Board. The seller is also not able to commence adjudication proceedings against the buyer in this particular instance because any pay-out form between the seller and buyer only relates to the cash portion and not the CPF portion which is in dispute.

paid. The buyer's lawyer is not required to ascertain the validity of such an authorization or the consequences if such an authorization is subsequently revoked.

However, at the time of completion, the buyer's lawyer should still ensure that the mode of payment from the seller's lawyer is consistent with the direction. If there is consistency, it should not usually be necessary for the buyer's seller to ask for further proof e.g. the estate agency's invoice. However, if a large amount is to be paid to the estate agency which appears extraordinary or suspicious, the buyer's lawyer should ask for a signed letter of authority or statutory declaration supported by a certified true copy of the signed contract between the seller and the estate agency. Whether an amount is large depends on the totality of the proceeds to be paid out.

In the ordinary case, the buyer would have a file copy of the Option after exercising the Option and the buyer's lawyer should not need to ask for further proof unless other information or documents are available to the buyer's lawyer that the seller's instruction is contrary to that given in the Option.

**(b) Assuming that the seller's irrevocable authorization is subsequently revoked by the time of completion and the buyer's lawyer is notified of a dispute between the seller and the estate agent vis-à-vis the commission, does the buyer's lawyer need to verify the identity of, and amount to be paid to, the estate agency?**

Yes. The buyer's lawyer should ask the seller to provide at least a signed letter of authority confirming the identity of, and amount to be paid to (if any), to the estate agency. The buyer's lawyer is not required to ascertain the nature of the dispute between the seller and the estate agency.

**Q2: The Option to Purchase provides that:**

- the seller's lawyer is authorized to direct the buyer and/or the buyer's lawyers to approve and effect payments to various specified persons, including Category C payees ("authorized payees"); and
- the seller acknowledges that payment directed by the seller's lawyer to the authorized payees shall constitute a full discharge of the buyer's obligation to the seller provided that such directions do not contravene the Conveyancing Rules.

**At the time of completion, does the buyer's lawyer need to verify the identity of, and amount to be paid to, the authorized payees?**

Yes. The buyer's lawyer continues to be under a duty to verify the identity of, and amount to be paid to, the Category C payees.

This is because the clause which provides that "the seller's lawyer is *authorized to direct the buyer and/or the buyer's lawyers*" is void under section 73D(4) of the Conveyancing and Law of Property Act, which provides that any contractual term that is inconsistent with the CLP Rules shall, to the extent of the inconsistency, not have effect. The instructions for payment to Category C payees must come directly from the seller, and not from the seller's lawyer. Even if there is a Power of Attorney given by the seller that the seller's lawyer may instruct

the buyer and/or the buyer's lawyers, that power will be unenforceable as against the buyer or buyer's lawyer.

**Q3. A law practice acts for all the sellers S1, S2 and S3 in a conveyancing transaction. Before completion, the sellers' lawyer makes a request for payment in favour of S1 and S2 only. Does the buyer's lawyer require a statutory declaration (whether from all the sellers or S3) stating that payment is to be issued to S1 and S2 only?**

No. Under the Conveyancing and Law of Property (Conveyancing) Rules ("Rules"), as S1 and S2 are Category B payees, the buyer's lawyer will only need to verify that the specified payees, S1 and S2, are Category B payees. A seller is a Category B payee as provided in the Rules.

However, in normal conveyancing practice, the sellers' lawyer would have obtained a letter of authority from S3 if he acts for S1, S2 and S3 in the sale, as he would need to ascertain that S3 is willing to allow his portion of the sale proceeds to be paid over to S1 and S2. It is good practice for the seller's lawyer to also furnish this letter of authority to the buyer's lawyer upon request.

DATE: 31 AUGUST 2011

**This Circular outlines the relevant provisions which govern the new conveyancing regime. Please note that while all efforts have been made to ensure the accuracy of the contents of this Circular, readers should refer directly to the relevant text of the legislation and ensure that the relevant provisions are applicable to the reader's specific circumstances before dealing with any money relating to a conveyancing transaction. This Circular may also be updated from time to time where appropriate.**

## CONVEYANCING PRACTICE COMMITTEE'S CIRCULAR 4 OF 2011

### PRACTICAL TIPS FOR SOLICITORS HOLDING UNCLAIMED CONVEYANCING MONEY IN CLIENT ACCOUNT

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This circular provides practical tips to solicitors who wish to determine whether the conveyancing money deposited in the client account before 1 August 2011 are unclaimed conveyancing money ("**UCM**") as defined in rule 17(3) of the Legal Profession (Solicitors' Accounts) Rules, as amended by the Legal Profession (Solicitors' Accounts) (Amendment No. 2) Rules 2011 ("**SAR**"). Please refer to the Law Society's Fact Sheet dated 25 November 2011 for details of the amendments.

1. Solicitors should take immediate steps to peruse their files, accounts sheets and other records to check whether their law practice is holding any conveyancing money (deposited before 1 August 2011) in their client account, and determine whether the moneys remaining in the client account:
  - a. are 'conveyancing' money; and
  - b. fall within the definition of UCM under rule 17(3) of the SAR.
2. Where files have been archived and no electronic records were kept, solicitors should retrieve these files to check the nature of the transaction (to determine whether the moneys are conveyancing moneys), the reason why the moneys are still remaining in the account and the steps taken to disburse the moneys to the entitled party, if any (to determine whether the moneys are unclaimed).
3. Where a solicitor is holding small amounts of unpaid legal costs and disbursements in the client account for which an invoice has yet to be rendered, the solicitor should render invoices for these amounts and fulfil the prescribed requirements before deducting the amounts from the client account (see: rule 7(1)(a)(iv) of the SAR and Council's Practice Direction 2 of 2011 dated 1 August 2011).
4. Where the solicitor is able to ascertain that the entitled payee exists or his address, the solicitor should take immediate steps to tender the money to the entitled payee, if this has not been done. The money is UCM if: (a) the solicitor has tendered it by way of cheque or otherwise, but the person has not accepted the money/encashed the cheque (rule 17(3)(b)-(c) of the SAR); or (b) the solicitor is unable to tender the money to that person, despite making reasonable efforts (rule 17(3)(d) of the SAR).
5. The law practice bears the burden of determining that it has sufficient basis to claim from the client reasonable disbursements for costs incurred in ascertaining the particulars of the entitled payee and/or tendering the money to the entitled payee.
6. Solicitors holding UCM can consider opening a separate client account for purely holding unclaimed conveyancing moneys to facilitate proper record keeping and accounting of these moneys.



7. Law practices should have in place a system of proper accounting and reporting of UCM to ensure a smooth and efficient transfer of UCM to the appropriate entity if subsequently required to do so.

**This Circular outlines the practical tips for solicitors holding unclaimed conveyancing money in clients' accounts. Please note that while all efforts have been made to ensure the accuracy of the contents of this Circular, readers should refer directly to the relevant text of the legislation and ensure that the relevant provisions are applicable to the reader's specific circumstances before dealing with any money relating to a conveyancing transaction.**

**Date: 25<sup>th</sup> November 2011**

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**LEGISLATIVE GUIDE**  
**ON THE KEY LEGISLATIVE PROVISIONS GOVERNING THE NEW MEASURES**  
**TO SAFEGUARD CONVEYANCING MONEY**  
**(Amended as of 25 November 2011)**

- (1) Conveyancing (Miscellaneous Amendments) Act 2011 (Act 17 of 2011)
- (2) Conveyancing and Law of Property (Conveyancing) Rules 2011
- (3) Conveyancing and Law of Property (Conveyancing) (Amendment) Rules 2011
- (4) Conveyancing and Law of Property (Conveyancing) (Amendment No. 2) Rules 2011
- (5) Singapore Academy of Law (Conveyancing Money) Rules 2011
- (6) Singapore Academy of Law (Conveyancing Money) (Amendment) Rules 2011

**(A) INTRODUCTION**

1. The **Conveyancing (Miscellaneous Amendments) Act 2011 (Act 17 of 2011)** introduces **new sections 73D and 73E of the Conveyancing and Law of Property Act** to empower the Minister to *inter alia*, make the **Conveyancing and Law of Property (Conveyancing) Rules 2011** (the “**CLP Rules**”), the **Conveyancing and Law of Property (Conveyancing) (Amendment) Rules 2011** (the “**CLP (Amendment) Rules**”) and the **Conveyancing and Law of Property (Conveyancing) (Amendment No. 2) Rules 2011** (the “**CLP (Amendment No. 2) Rules**”) to regulate conveyancing transactions and the receipt, holding and distribution of conveyancing money. Collectively, these legislative amendments introduce the following key changes:

- (a) Lawyers will be prohibited from holding conveyancing money on behalf of their clients except in the manner allowed for in the CLP Rules [**CLP Rule 4(1)**].
- (b) Breach of this prohibition will be a criminal offence which is punishable with a maximum of three years' imprisonment or a fine of up to \$50,000, or both [**CLP Rule 4(3)**]. It may be compounded by the Public Prosecutor in appropriate circumstances [**Sub-sections 73D(5) and (6) of the Act**].
- (c) Lawyers receiving conveyancing money will have to deposit the money in special conveyancing accounts held with entities appointed by the Minister e.g. Appointed Banks or the Singapore Academy of Law (“**SAL**”) [**CLP Rule 3 and Second Schedule to the CLP Rules**]. The framework will allow the continued use of jointly managed escrow accounts, which may be used in complex commercial transactions [**CLP Rule 4(1)(a)**].
- (d) Withdrawal of conveyancing money deposited in such an account with an appointed entity will generally require the signatures of two parties [**CLP Rule**

**5(7) read with Rule 7].**

- (e) Law Society will administer an adjudication scheme for quick resolution of disagreements in respect of the distribution of conveyancing money held by Appointed Banks or SAL **[CLP Rule 20 read with the Fourth Schedule to the CLP Rules]**.
- (f) The CLP Rules will apply to all conveyancing transactions involving Singapore property [see definition of "land" in **CLP Rule 2**] without exception. Any contractual term in an agreement in respect of a conveyancing transaction which is inconsistent with the CLP Rules will have no effect<sup>1</sup> **[Section 73D(4)]**.

2. Real estate agents, who could potentially be asked by members of the public to hold conveyancing money, are prohibited from so doing through **Regulation 7(1) of the Estate Agents (Estate Agency Work) Regulations 2010**.

**(B) SCOPE OF NEW MEASURES**

***General***

3. Any conveyancing money received by a lawyer in connection with a conveyancing transaction<sup>2</sup> must be paid into (a) a conveyancing account maintained with an Appointed Bank; (b) SAL; or (c) an escrow account in accordance with an escrow agreement, **[CLP Rule 5(1)]**. Failure to do so is an offence **[CLP Rule 4(3)]**.

4. "Conveyancing money<sup>3</sup>" is defined in **CLP Rule 2(2)** and includes the following:

- (a) option deposit, balance purchase price and any other consideration for the land;
- (b) outgoings including rents, property tax and maintenance charges (if any);
- (c) late completion interest;
- (d) rent, licence fee, security deposit and any other money (excluding money payable for repairs or improvements to land) payable in respect of the lease, licence or tenancy;
- (e) money payable in the surrender of a lease, licence or tenancy in respect of land;

<sup>1</sup> **CLP Rule 19** also prescribes a standard term and condition (as set out in the **Third Schedule**) that is applicable to all conveyancing transactions. This standard term makes it clear that where an Option to Purchase (which specifies that the deposit payable in exercise of the option is to be held by the seller's lawyer as stakeholders) does not stipulate that the deposit be made payable to the seller's lawyer's conveyancing account, the acceptance of the Option will not be invalidated by the buyer issuing a cheque or cashier's order in favour of the seller's lawyer's conveyancing account in exercise of the option.

<sup>2</sup> "Conveyancing transaction" is defined in **CLP Rule 2(2)** to include sale, purchase or assignment of land, grant or surrender of lease, licence or tenancy, and grant of mortgage of, or charge on land or the redemption or discharge thereof.

<sup>3</sup> For unclaimed conveyancing money, please refer to the transitional provisions in **CLP Rule 23**, as well as Rule 17 of the Legal Profession (Solicitors' Accounts) Rules inserted via the Legal Profession (Solicitors' Accounts)(Amendment No. 2) Rules 2011.

- (f) goods and services tax (if any) payable;
- (g) money disbursed under a loan, or provided for the repayment of a loan, granted for or in connection with a conveyancing transaction, regardless of whether the loan is secured by the grant of a mortgage or charge on the land and whether any mortgage or charge on the land will be fully or partially redeemed or discharged;
- (h) CPF money withdrawn in connection with the conveyancing transaction [*Note: CPF moneys withdrawn for payment of legal fees and disbursements may be paid into the client account – CLP Rule 5(2) read with CLP rule 5(5)*];
- (i) full stamp duty on any conveyance, assignment or transfer of land (i.e. buyers' and sellers' stamp duty), or any gift involving land [see **Articles 3(a), (b), (ba), (bb) and 7 of the First Schedule to the Stamp Duties Act**] and other relevant documents<sup>4</sup>;
- (j) stamp duty amounting to or exceeding \$5,000 on a lease, licence<sup>5</sup> or tenancy, or a surrender thereof [see **Articles 1, 8(a), (b) or (c) or 12 of the First Schedule to the Stamp Duties Act**]; and
- (k) sale proceeds received after completion by a lawyer who had acted in the conveyancing transaction, upon express instructions from client to do so<sup>6</sup>. [See definition of "conveyancing money" in **CLP Rule 2, CLP Rule 5(1) and CLP Rule 5(9)**].

5. Anticipatory Conveyancing Money: It is an offence for a lawyer to receive and hold any money which a client may wish to place with the lawyer in anticipation of purchasing or renting a property. Such anticipatory conveyancing money cannot be placed in the conveyancing account, client account or otherwise [**CLP Rule 4(2) and (3)**].

6. "Conveyancing money" does not include money paid for the following:

- (a) Legal fees and disbursements: These can be paid into a lawyer's client account [**CLP Rule 5(5)**]. A lawyer acting for CPF Board may also pay into his client account any CPF money received for payment of another lawyer's

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<sup>4</sup> "Conveyancing money" also includes full stamp duty on exchange of land [**Article 6**], settlement involving land [**Articles 3(e) and 11(a)**], transaction between trustees where the beneficial interest in land passes [**Article 3(g)(i)**] and distribution of land in specie to shareholders in company liquidation [**Article 3(h)**].

<sup>5</sup> A license agreement that amounts to a lease is liable to stamp duty.

<sup>6</sup> This may occur for example, in matrimonial cases where a lawyer (who had acted for a party to a conveyancing transaction) may be asked to hold the proceeds of sale of a matrimonial home pending directions from the court on ancillary relief. In such a situation, the lawyer would receive the money from the seller as a "Category C" payee and must hold the money in his conveyancing account until such time a Court order for the pay-out has been received. On the other hand, if the sale proceeds are, with the consent of the seller, handed over to another lawyer (who did not act in the conveyancing transaction), that lawyer may receive and hold the money in his client's account.

legal fees and disbursements **[CLP Rule 5(2) read with CLP Rule 5(5)]**. However, where a bill of costs has been rendered for costs incurred, the money that is paid on account of the bill can be paid directly into the lawyer's office account. Similarly, any money received by a lawyer from any person towards reimbursement of actual expenses incurred may also be paid directly into the lawyer's office account **[CLP Rule 5(6)]**.

- (b) Float: This can be paid into the lawyer's client account for payment of any amount payable for the purposes of the completion of the transaction provided that every amount disbursed from the float is properly accounted for and supported by written documentation. Any unutilised amount must be refunded to the client(s). The quantum of the float is capped at:
- non-collective sale cases: \$5,000 (such amount is over and above the purchase price and cannot be taken out of the option deposit) **[CLP Rule 5(3)]**;
  - collective sale<sup>7</sup> cases: \$2,000 per unit (subject to a total cap of \$200,000 for the collective sale); such amount may be taken out of the option deposit **[CLP Rule 5(4)]**.

#### **Conveyancing money viz client account, CLP Rules and the CLP (Amendment) Rules**

7. From 1 August, **Rule 3(1A) and (3) to (6) of the Legal Profession (Solicitors' Accounts) Rules** applies to every receipt or holding, on or after 1 August 2011, by a lawyer of conveyancing money (without any qualification as to whether the agreement in respect of the conveyancing transaction pursuant to which the conveyancing money is held is entered into before, on or after 1 August 2011). From 1 August 2011, conveyancing money can no longer be deposited in client account unless it falls within the exception in **Rule 4 of the Legal Profession (Solicitors' Accounts) Rules**.

8. The amendment made to **Rule 2(1) of the CLP Rules** via the CLP (Amendment) Rules serves to clarify that the CLP Rules also apply to conveyancing money that is received or held on or after 1 August 2011 regardless of whether the agreement in respect of the conveyancing transaction pursuant to which the money is held is entered into before, on or after 1 August 2011.

#### **(C) ENTITIES APPOINTED BY THE MINISTER FOR LAW: APPOINTED BANKS AND SAL**

##### ***Relationship between CLP Rules and SAL Rules***

9. A number of banks and SAL have been appointed to hold conveyancing money [these entities are listed in the **Second Schedule to CLP Rules**].

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<sup>7</sup> "Collective sale" is defined to mean the sale of 5 or more lots in a strata title plan, or of 5 or more flats in a development (not all of which are owned by the same seller) in a single conveyancing transaction (**CLP Rule 5(10)**).

10. The service provided by the Appointed Banks is governed by the CLP Rules (save for **Part IV** which applies only to SAL).

11. The service provided by SAL is governed by the CLP Rules (save for Part III which applies only to Appointed Banks) and the Singapore Academy of Law (Conveyancing Money) Rules 2011 [**"SAL Rules"**].

12. Where SAL is concerned, the SAL Rules modifies the application of the CLP Rules in two key ways:

- (a) the scope of "conveyancing transactions" for which conveyancing money can be deposited with SAL is narrower; and
- (b) a different scheme applies to the holding of option deposits (also known as stakeholding deposits) by SAL.

***(a) Narrower scope of conveyancing transactions for SAL***

11. Unlike Appointed Banks which will hold conveyancing money for the full gamut of conveyancing transactions, SAL's service only extends to the sale and purchase of land (i.e. freehold and leasehold but not sub-lease, licences and tenancies) which involves a direct relationship between seller and buyer. In other words, SAL does not deal with ancillary transactions like mortgages and payments to CPF. The SAL Rules further excludes any direct sales by housing developers and collective sales from the scope of SAL's service (which would otherwise be a sale and purchase involving a direct relationship between seller and buyer) [see the **respective definitions of "conveyancing transactions"** in both the SAL Rules and CLP Rules].

***(b) Stakeholding deposits***

12. Any conveyancing money which is deposited with SAL as stakeholder for the seller and buyer (e.g. stakeholding deposits) can only be withdrawn by the joint signatures of both the buyer and seller. This applies even where the payee is a Category A payee [**CLP Rule 17** read with **SAL Rule 7**]. The procedure for payment out for all other types of conveyancing money (e.g. balance purchase price) which is held with SAL follows the same procedure as outlined in paragraphs 19 to 23 below.

13. For more details on the service provided by SAL, including information on the operational details peculiar to SAL, please refer to [www.sal.org.sg](http://www.sal.org.sg).

**(D) CONVEYANCING ACCOUNTS – THE RECEIPT AND DISTRIBUTION OF CONVEYANCING MONEY**

***Difference between a conveyancing account and conveyancing (CPF) Account***

14. Where a buyer intends to use his Central Provident Fund money ("CPF money") to meet the balance sale proceeds in part or in full, CPF Board will deposit the buyer's CPF money in its CPF Board's lawyer's conveyancing (CPF) account [see definition of "conveyancing (CPF) account" in **CLP Rule 2**]. All other conveyancing money is to be deposited into the regular conveyancing account.

***Receipt of conveyancing money: payment into conveyancing account***

15. Any party to a conveyancing transaction may pay conveyancing money into a lawyer's conveyancing account by way of cheque, bank draft<sup>8</sup>, electronic fund transfer<sup>9</sup> or telegraphic transfer **[CLP Rule 6(1)]**. No inter-bank GIRO is allowed, except for CPF money **[CLP Rule 6(2)]**.

16. Every payment of conveyancing money into a conveyancing account must be accompanied by a duly completed pay-in form signed by any authorised signatory of the account holder law firm **[CLP Rule 6(3)]**. Where the payment of conveyancing money is made by way of electronic fund transfer or telegraphic transfer, the relevant pay-in form should be given to the Appointed Bank as soon as practicable to enable the Appointed Bank to create the necessary records and ring-fence the money **[CLP Rule 6(4)]**. Payment of conveyancing money into the conveyancing (CPF) account will not require a pay-in form, but must be accompanied by written instructions from CPF Board in an electronic format **[CLP Rule 6(5)]**.

17. Where any conveyancing money has been paid into the conveyancing account, the lawyer must give written notice to the counter-signing party referred to in the pay-in form or in the written instructions given by CPF Board. This is so that the counter-signing party who has been so named will have advance notice of his/her role **[CLP Rule 6(6)]**.

***Money wrongly paid into a conveyancing account***

18. In the event that any money has been erroneously paid into a lawyer's conveyancing account, the Appointed Bank may, with the consent of the lawyer, reverse the payment transaction and refund the money to the person who provided the money **[CLP Rule 13]**. An example of this is where a client has erroneously paid money into the conveyancing account that is intended for the lawyer's client account.

***Distribution of conveyancing money: paying money out of a conveyancing account***

19. Money from a conveyancing account and from SAL can only be paid out in 2 ways – either pursuant to an order of court, or in accordance with a pay-out form. The CLP Rules provide for 3 different categories of payees – A, B and C **[CLP Rule 2(2)]**, categorized according to their connection to the property transaction and likelihood of being a legitimate payee. All payment out shall be by way of bank drafts or SAL cheques<sup>10</sup>.

***Category A payees***

20. Category A payees are the safest category of payees e.g. Commissioner of Stamp Duties, Commissioner of Lands, Comptroller of Income Tax, Jurong Town Corporation and the SAL<sup>11</sup>. As such, there is no requirement for counter-signing **[CLP Rule 7(2)]** or cross-checking by the lawyer initiating the pay-out form [see **CLP Rule 18** which does not impose a duty to verify payments to Category A payees].

<sup>8</sup> This would include cashier's orders and foreign currency bank drafts.

<sup>9</sup> Example: via MEPS+

<sup>10</sup> Except where the conveyancing money consists of stamp duty and the payment is to be made to the Commissioner of Stamp Duties. See **Rule 7(13)(a)**.

<sup>11</sup> This would apply where conveyancing money is payable to the SAL as stakeholder pursuant to the (a) Housing Developers Rules; (b) Sale of Commercial Properties Rules; (c) Housing and Development (Design-Build-and-Sell Scheme – Form of Contract) Rules; or (d) Executive Condominium Housing Scheme Regulations.



**Category B payees**

21. Category B payees are the usual recipients of conveyancing money e.g. the seller, buyer, mortgagee, CPF Board. These also include a buyer's or seller's executor or administrator, assignee or other successor in title, and anyone authorised by a buyer or seller to act on his behalf in the sale and purchase of land pursuant to a power of attorney<sup>12</sup> [see respective definitions of "purchaser" and "vendor" in **CLP Rule 2**]. Payments to Category B payees must be counter-signed [**CLP Rules 7(3) & (9)**] and cross-checked by the lawyer initiating the pay-out form [**CLP Rules 18(1), (1A), (3) & (3A)**]. The CLP Rules require that the party with a duty to check take steps to verify that the payee specified in the pay-out form is indeed a Category B payee. The party performing the verification role is entitled to request for any information and documents necessary for him to perform his role.

**Category C payees**

22. Category C payees refer to persons who are not Category A or Category B payees, and are payees for which the payment of conveyancing money is not as common. As such, the CLP Rules requires that parties perform two-levels of verification [**CLP Rules 18(2), (2A), (4) & (4A); CLP Rules 7(3) & (10)**]:

- (a) that the conveyancing money is to be paid to a specified Category C payee; and
- (b) the amount of conveyancing money that is to be paid.

23. Parties with a duty to verify the payments for Category C payees can, additionally, request for a statutory declaration. For example, the buyer's lawyer who is initiating the pay-out form for the balance purchase price can request that he be provided with a statutory declaration stating the seller's decision for a Category C payee to receive the conveyancing money.

**Conveyancing money placed with SAL**

24. For conveyancing money held by SAL, slightly different considerations apply. For stakeholding deposits, as SAL is a stakeholder for both parties, SAL thus requires the joint signatures of the buyer and seller (or their respective lawyers) to withdraw such stakeholding money. Hence, the pay-out form for the withdrawal of stakeholding deposits has to be counter-signed [**CLP Rule 17(1)**] even though the payment is to a Category A payee. For all other types of conveyancing money (e.g. balance purchase price) placed with SAL, the same requirements and policy considerations as outlined above in paragraphs 20 to 22 would apply; in other words, the pay-out form does not need to be counter-signed if the payment is made to a Category A payee [**CLP Rule 17(1)**], and counter-signing of the pay-

<sup>12</sup> In the case of a lawyer who is appointed (in his professional capacity) as an attorney, the question as to whether the conveyancing money received by him should be paid into his conveyancing account or client's account would depend on whether the lawyer is also acting for the donor in the conveyancing transaction and whether the money is received in the course of the conveyancing transaction or after the completion of the same. If the money was received **in the course of the conveyancing transaction**, then the money should be paid into a conveyancing account regardless of whether the lawyer is also acting for the donor in the conveyancing transaction. However, if the payment is made **post-completion**, it must be paid into the lawyer's conveyancing account if the lawyer had also acted for the donor in the conveyancing transaction; but if the lawyer did not act for the donor in the conveyancing transaction, the money can be paid into his client account.

out form is only required for payments to payees which fall under Category B **[CLP Rule 17(1)]** or Category C **[CLP Rule 17(2)]**. Please refer to [www.sal.org.sg](http://www.sal.org.sg) for further details.

### ***Amendments to pay-in forms and pay-out forms***

25. CLP Rules 10 and 11 deal with the operational details of when and how to amend particulars (including a change of counter-signatories) in the forms used for conveyancing accounts held by the Appointed Banks.

26. For more information on these operational details, please refer to [www.conveyancing.sg](http://www.conveyancing.sg) for the "Guidebook for Lawyers" (for conveyancing money held with Appointed Banks) and [www.sal.org.sg](http://www.sal.org.sg) (for conveyancing money held with SAL).

## **(E) TWO-PARTY SIGNATORY SYSTEM**

27. In order to withdraw money from a conveyancing account or from SAL, a lawyer will need the counter-signing of the other party or its lawyer (if the party is legally represented) in the transaction<sup>13</sup>. This creates a level of check and balance. The parties who are authorised<sup>14</sup> to sign and counter-sign the relevant form(s) are set out in the **First Schedule** to the CLP Rules. If there is a change in the counter-signing party in relation to conveyancing money placed in a conveyancing account with an Appointed Bank, the change must be notified by way of a change of counter-signatory form **[CLP Rule 10(2)(a) and (b)]**.

### ***Self-representation***

28. If a party acts in person ("lay client") and is required to counter-sign a form, he must do so in the presence of an authorised officer of the Appointed Bank or in such other manner as may be agreed between him and the Appointed Bank **[CLP Rule 7(4) and (5)]**. Where conveyancing money is deposited with SAL, the lay client must countersign in the presence of an authorised officer of SAL. However, where the withdrawal is effected via the electronic Payment Instructions ("ePI") service provided by the Singapore Land Authority ("SLA"), the form will be routed to SLA and the lay client will be required to attend at SLA with the relevant documents. SLA will, upon being satisfied with the documents produced and payment of a fee, counter-sign the form on behalf of the lay client (refer to **Part E11 of the Guidebook** for the detailed procedure involved).

### ***Separate representation***

29. Save for some exceptions, where conveyancing money is or will be paid into a conveyancing account, the parties to the transaction should be separately represented in order for the relevant form(s) to be counter-signed **[CLP Rule 5(7)]**.

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<sup>13</sup> For example, the withdrawal of an option deposit held by a seller's lawyer in his conveyancing account would require the endorsement of the buyer's lawyer, whilst the withdrawal of any balance purchase price held by a buyer's lawyer in his conveyancing account would require the endorsement of the seller's lawyer.

<sup>14</sup> **CLP Rule 8** sets out the eligibility criteria of a lawyer authorised to sign / counter-sign the relevant form(s).

***Joint representation***

30. A party can be represented by the same lawyer even when conveyancing money is or will be paid into a conveyancing account or conveyancing (CPF) account in the following situations **[CLP Rule 5(8)]**:

- (a) where the conveyancing money deposited is payable only to a Category A payee (where no counter-signing is required);
- (b) where a lawyer acts for a buyer, the same lawyer can also act for the buyer's mortgagee and CPF Board (to whom the buyer gives a charge);
- (c) where a lawyer acts for a seller, the same lawyer can also act for the seller's mortgagee and CPF Board (to whom the seller gives a charge);
- (d) where a lawyer acts for a mortgagor/chargor, the same lawyer can also act for the mortgagee/chargee in the grant of a mortgage of/charge on land, or in the redemption of mortgage/discharge of charge.

31. Where the same lawyer acts for all parties in a (1) refinancing; or (2) partial or full redemption of mortgage/discharge of charge; or (3) partial or full repayment of a loan (which is not secured by a mortgage) granted for or in connection with a conveyancing transaction, the following should not be paid into a conveyancing account:

- (a) the cash component payable by the mortgagor/chargor/borrower;
- (b) money disbursed by the mortgagee.

If this is paid into a conveyancing account, the Appointed Bank may, with the lawyer's consent, reverse the payment transaction and refund the money to the party who provided the money, in which event, all expenses incurred pertaining to the refund shall be borne personally by the lawyer **[CLP Rule 7(6)-(8)]**.

**(F) ROLE OF LAWYER WHEN INITIATING A PAY-OUT FORM*****General***

32. The lawyer who initiates a pay-out form has a duty to verify the payment instructions that are received, and is empowered to request for the necessary documents to perform his verification role **[CLP Rule 18]**. This would apply even in the situations where the buyer buys his own Cashier's Orders (i.e. the money does not pass through a conveyancing account or SAL) or is self-represented. However, this duty does not extend to escrow accounts **[CLP Rule 18(5)]**.

***Importance of role involving balance purchase money***

33. This duty is crucial in the situation where the lawyer holds the balance purchase money in his conveyancing account or with SAL, and the counter-signing lawyer is the seller's lawyer. In this situation, the seller's lawyer will typically provide a completion account to the buyer's lawyer which stipulates to whom the balance sales proceeds should be payable **[CLP Rule 18(1) and 18(2)]**. The buyer's lawyer will then prepare the pay-out form

based on these instructions. Since the seller's lawyer who instructed the buyer's lawyer on how to prepare the pay-out form is not an effective check and balance against his own instructions, CLP Rule 18 places an obligation on the buyer's lawyer to verify the instructions from the seller's lawyer.

34. If the seller's lawyer refuses or neglects to furnish the information or documents, or if the information or documents are not satisfactory on account of its authenticity or because of a material discrepancy, CLP Rule 18 gives the buyer's lawyer (who has the discretion on stating the payee name and payment amount in the pay-out form), the power to disregard the payment instructions of the seller's lawyer and disburse the amount directly to the seller (instead of the seller's nominee) upon completion **[CLP Rule 18(1)(c)(i) to (iii) and CLP Rule 18(2)(c)(i) to (iii)]**. The buyer's lawyer can also exercise this right of re-direction on any other reasonable grounds **[CLP Rule 18(1)(c)(iv) and Rule 18(2)(c)(iv)]**, for example where he has reason to suspect that a statutory declaration has been procured by undue influence.

35. Where the buyer chooses to purchase his own Cashier's Order instead of depositing the conveyancing money in the lawyer's conveyancing account, CLP Rule 18 places a duty on that lawyer to similarly verify the seller's instructions before advising his client on procuring the Cashier's Order. The buyer's lawyer (or the buyer himself if he is acting in person) has a corresponding right, where necessary, to request for documents and exercise the right to re-direct payment from the seller's nominee to the seller. **[CLP Rules 18(1A) and (2A)]**.

***Where buyer, seller and CPF Board are separately represented***

36. Where the buyer, seller and CPF Board are separately represented, the buyer's lawyers will usually instruct the CPF Board based on instructions received from the seller. **CLP Rule 18(3) and (4)** similarly provide the lawyer acting for the CPF Board (who initiates the pay-out form for the CPF money) with the duty to review the payment instructions and request for relevant documents to perform his verification role. The lawyer acting for CPF Board is also given the power to re-direct payment to the seller (instead of the seller's nominee) under similar circumstances.

**(G) ROLE OF PARTY WHO COUNTER-SIGNS A PAY- OUT FORM**

***General***

37. The lawyer or lay-client (in cases of self-representation), who is asked to counter-sign a pay-out form also has a duty to verify the payment instructions that are received, and is empowered to request for the necessary documents to perform his verification role **[CLP Rules 7(9) and 7(10)]**. This similarly applies to conveyancing money held by SAL **[CLP Rule 17]**, save the requirement for joint signatures to withdraw stakeholding deposits even when the payment is made to a Category A payee, which is peculiar to SAL as explained in paragraph 24.

38. The counter-signing party shall refuse to counter-sign the pay-out form in the 3 situations stipulated in the **CLP Rule 7(9)(c) and 7(10)(c)** (which applies to conveyancing money held by Appointed Banks) or **CLP Rule 17(1)(c) and Rule 17(2)(c)** (which applies to conveyancing money held by SAL). He may however, choose to refuse in any other

circumstances. A counter-signing party is protected from legal actions for the act of counter-signing **[CLP Rule 7(11) and CLP Rule 17(3)]**. His duty to counter-sign pay-out forms continues even after the completion of the conveyancing transaction to which the pay-out form relates **[CLP Rule 9 and CLP Rule 17(5)]**.

### ***Importance of role involving stakeholding money***

39. The role of the counter-signing party is crucial in the situation where the buyer, in exercise of his option, places a deposit with the seller's lawyer or SAL as stakeholder. In this situation, the seller's lawyer must prepare the pay-out form which is to be counter-signed by the buyer's lawyers or buyer (in cases of self-representation), who has a duty as a counter-signing party to verify the payment instructions contained in the pay-out form. If the counter-signing party refuses to counter-sign, he has no power to re-direct that payment be made only to the seller. Instead, any dispute arising from this situation may be submitted for adjudication.

## **(H) ADJUDICATION SCHEME**

### ***General***

40. There is an adjudication scheme (the "Scheme") administered by the Law Society to deal with disputes arising from the distribution of any conveyancing money held by the Appointed Banks and SAL **[CLP Rule 20]**. The Scheme is intended to be a quicker and cheaper alternative to court proceedings and can also be used by lay clients [see definition of "party" in **Fourth Schedule CLP Rules, Paragraph 2**].

41. The main features of the Scheme are:

- (a) The Scheme is triggered by the refusal of a counter-signing party to counter-sign a Pay-Out Form [see definition of "**relevant dispute**" in **CLP Rule 20(4)**];
- (b) Once initiated, the Scheme is mandatory and the decision of the adjudicator can be made even if one party does not appear for the hearing [**Fourth Schedule CLP Rules, Paragraph 4(2)(f)**];
- (c) A party may at any time during the course of the adjudication make an application to court **[Section 73E(3)]**, in which case the adjudication will be stayed pending the outcome of the court hearing [**Fourth Schedule CLP Rules, Paragraph 4(6)**];
- (d) An adjudicator is empowered to make the following decisions [**Fourth Schedule CLP Rules, Paragraph 5(4)**]:
  - (i) order a party to counter-sign the pay-out form;
  - (ii) order either the counter-signing party or the initiating lawyer to pay compensation to the other party (including the payment of late completion interests);
  - (iii) order costs; and

- (iv) determine whether the case is outside the purview of the Scheme.
- (e) The decision of the adjudicator is binding on the parties **[Fourth Schedule CLP Rules, Paragraph 6]** and can be enforced in the following manner:
  - (i) if the adjudicator determines that counter-signing should be done and the counter-signing party still refuses to counter-sign, Law Society Council can appoint a Director of Law Society to sign the pay-out form on behalf of any unco-operative party (including non-lawyers) **[Fourth Schedule CLP Rules, Paragraph 7]**; and
  - (ii) the order for payment of costs and compensation (including late completion interest) if unpaid, can be recovered by an action for debt in court **[Fourth Schedule CLP Rules, Paragraph 7(3)]**;
- (f) A party who is dissatisfied with the decision of an adjudicator has up to 3 working days to apply to court to set aside or vary the adjudicator's determination **[Section 73E(4) read with Fourth Schedule CLP Rules, Paragraph 8]**.

***Where initiating lawyer does not initiate pay-out form as instructed***

42. Although the trigger for the Scheme is the counter-signing lawyer's refusal to counter-sign a pay-out form, the substance of the dispute can relate to the initiating lawyer's decision to exercise his right of re-direction. This would typically occur in the situation involving the payment of the balance purchase price. In this case, the Scheme is not invoked at the point in time when the buyer's lawyer raises the pay-out form which does not conform with the seller's instructions. Instead, it is only invoked after the buyer's lawyer sends the pay-out form to the seller's lawyer redirecting the payment to the seller. At this point, the seller's lawyer can decide whether:

- (a) he should counter-sign so that completion is not delayed; or
- (b) he should refuse to counter-sign whereupon either party can bring the matter for adjudication.

***Where buyer, seller and CPF Board are separately represented***

43. In the situation where the buyer, seller and CPF Board are separately represented and the CPF Board's lawyer does not pay the CPF money as instructed by the buyer (but instead redirects the payment to the seller), the buyer's lawyer can decide whether:

- (a) he should refuse to counter-sign the pay-out form initiated by the CPF Board's lawyer whereupon either he or the CPF Board's lawyer can bring the matter for adjudication, in which case, the buyer's lawyer may bring in the seller as a third party **[see Paragraph 2(a)(iv) of definition of "party"]** to the adjudication proceedings; or
- (b) he should counter-sign the pay-out form initiated by the CPF Board's lawyer and

run the risk that the seller may refuse to complete the sale for failing to disburse the balance sale proceeds as per the seller's instructions<sup>15</sup>.

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**This Legislative Guide outlines the relevant provisions which govern the new conveyancing regime. Please note that while all efforts have been made to ensure the accuracy of the contents of this Guide, readers should refer directly to the relevant text of the legislation and ensure that the relevant provisions are applicable to the reader's specific circumstances before dealing with any money relating to a conveyancing transaction.**

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<sup>15</sup> The seller would not be able to commence adjudication proceedings directly against the CPF Board's lawyer as there is no pay-out form between the seller and the CPF Board. The seller is also not able to commence adjudication proceedings against the buyer in this particular instance because any pay-out form between the seller and buyer only relates to the cash portion and not the CPF portion which is in dispute.



## SECTION 3 - PROPER PRACTICE INTER-SE SOLICITORS

### 1(a). Conveyancing Practice - Title Deeds

It has been the practice and tradition in conveyancing matters for the solicitor acting for the purchaser or mortgagee to borrow the title deeds of properties from the solicitor for the vendor or mortgagor on a solicitor's undertaking. These deeds are normally sent in a bundle with an accompanying schedule and a covering letter, the particulars of which are set out in the despatch book for the purpose. Usually, the recipient solicitor on receipt of the cover, signs the despatch book of the other solicitor after opening the cover to ascertain the nature of the enclosures.

The Council's attention has recently been drawn to the very undesirable practice of accepting the bundle of title deeds and then chopping the despatch book with a rubber stamp bearing the words "Contents not Verified". If this practice continues, a solicitor for the vendor will have no alternative but to call upon the solicitor for the other party to inspect the title deeds in his office. Solicitors for mortgagors, who are in a weaker position, will then have to take other steps for their protection before parting with any title deeds.

In view of the above, the co-operation of all solicitors is requested to observe, and to refrain from upsetting, a generally accepted convenient practice.

*Note 1: The current practice is to have an acknowledgement copy of the covering letter and accompanying schedule, rather than a despatch book, for acknowledgement of receipt by the recipient solicitor.*

*Note 2: This originated from the Practice Directions and Rulings of the Law Society 1989.*

### 1(b). Lending of Title Deeds

Although there is no obligation on the part of the Mortgagee's Solicitors to hand over the title deeds to the Mortgagor's Solicitors, Council rules that wherever possible, solicitors should follow the generally accepted and convenient practice of lending title deeds on the usual undertaking to facilitate the expeditious despatch of conveyancing work.

*Note: This is extracted from Law Society's Circular No 6 of 1991.*

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## 2. Title Deeds (Certification of Copies – Originals and Copies)

The Council has noted a growing tendency among conveyancing practitioners, when acting for vendors and for mortgagors, to lend to the solicitors for the purchasers or mortgagees, as the case may be, copies of the title deeds instead of the originals.

The Council appreciates that in the case of building estates, it is not always practicable to lend the original deeds, and in such cases, the Council is of the view that the copies should

be certified by the solicitor concerned as being true copies of the originals, or they should be copies certified by the Registrar of Titles/Deeds as being true copies. At the same time that the certified copies are sent, the solicitor should state where the originals may be inspected.

In other cases, unless the contracts provide otherwise, or unless there are justifiable grounds for refusing the loan of such deeds, the original deeds should always be lent.

The Council further advises solicitors to refrain from demanding an undertaking to return copies of the deeds when such copies are readily available. However, the solicitor borrowing the photocopies of the title deeds should ensure that if he is unable to return the photocopies of the deeds to the vendor/mortgagor's solicitors, then he should pay the photocopying charges of the deeds. The Society's circular no. 24 dated 12 May 1982 is hereby cancelled.

*Note 1: The current practice for units under development is for the developer's solicitors to provide copies of the title deeds to the original purchaser of the unit from the developer at no additional photocopying charge.*

*Note 2: This originated from the Practice Directions and Rulings of the Law Society 1989.*

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### **3. Undertakings Demanded By Mortgagee's Solicitors**

It has come to the attention of the Council that some solicitors acting for mortgagees where strata or other separate title for the mortgaged property has not yet been issued are imposing unreasonable undertakings on mortgagors' solicitors before advancing the loan. The Council is of the view that:

- (a) As a general rule, mortgagees' solicitors should not take undue advantage of their position to demand undertakings which are unreasonable. In this context, "unreasonable" means undertakings which cannot reasonably be given on an unqualified basis by the Mortgagors' solicitors, e.g. to obtain Partial Discharges or to deliver executed Transfers or Certificates of Title;
- (b) If the mortgage documents are properly drafted, the mortgagees should have adequate protection for themselves by using the powers conferred on them in the equitable mortgage to perfect their security;
- (c) Mortgagors' solicitors (and solicitors generally) should be careful in issuing undertakings (particularly when unqualified) and should ensure that they only give undertakings which they are capable of fulfilling. In this connection, the attention of the profession is drawn to the Privy Council decision in *Damodaran v Choa Kuan Him* [1979] 3 WLR 383.

The Council disapproves of mortgagees' solicitors taking undue advantage of their position in demanding unreasonable undertakings.

*Note: This originated from the Practice Directions and Rulings of the Law Society 1989.*

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#### **4. Courtesy in Practice in Sending Drafts of Documents**

Past practice amongst conveyancing solicitors drafting conveyances, assignments, mortgages and reconveyances, etc. whereby two copies of the draft were forwarded to the solicitors for the other party or parties for their approval should continue to be observed.

*Note: This is extracted from the Practice Directions and Rulings of the Law Society 1989.*

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#### **5. Mortgagee's Solicitors Charging Fees for Stamping**

In a case where the conveyance and mortgage were completed at the same time, both the Indenture of Conveyance and Indenture of Mortgage were delivered to the solicitor for the mortgagee for registration. A dispute arose as to whether the solicitor for the mortgagee was entitled to charge a fee or costs of \$15.00 for registering the Indenture of Conveyance. At the time of completion, the usual costs, stamp fees and other dues payable by the mortgagor were duly paid to the mortgagee's solicitor and no demand was made for the payment of the costs of registering the conveyance until the documents were handed over to the mortgagee's solicitors for registration.

In cases of this kind, it has long been the practice for the mortgagee's solicitors to undertake the registration of all the documents involved without asking for any additional fee. This practice is particularly useful for overcoming the difficulties of a three-cornered completion and benefits all parties involved.

Although this is a matter which affects the legal rights of parties, the Council feels that if the request for payment of such costs was not made on or before the time of completion, the mortgagee's solicitors who accepted the documents for registration should be deemed to have adopted the usual practice and to have agreed not to make any charges for registering the conveyance. There should be some finality to a completion.

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#### **6(a). Payment by Way of Cheques**

A solicitor stated that it was a common practice in Singapore for advocates and solicitors on completion of conveyancing matters to make payment of the moneys due by means of a private cheque of the solicitors acting for the purchaser in the matter. The Committee was of the opinion that this was a practice strongly to be deprecated and that the proper method was for payment to be made by means of a bankers draft or a bankers cheque.

Note that the Council has ruled that in substance a bank manager's cheque should be accepted in the same way as a cashier's order from other banks.

## **6(b). Issue of Cashier's Orders/Banker's Drafts/Banker's Cheques on Completion**

The Council has determined that in a sale of property, the party who requires more than four (4) cashier's orders or banker's drafts or banker's cheques on completion shall be required to pay the bank charges (if any) for such additional orders, drafts or cheques.

*Note 1: This is extracted from Circular 1 of 2009 issued on 29 December 2009 and applies to all transactions entered into on or after 15 January 2010.*

*Note 2: The above 6(a) was a revision to remove the reference to marked cheques as an acceptable mode of payment for completion monies. This is because a marked cheque is subject to there being sufficient funds in the account and is therefore no different in substance from a private cheque.*

*Note 3: The above 6(b) was a revision to take into account the additional payment to the CPF Board's solicitors for the redemption monies and aligns it with the above revised Ruling 6(a) of Section 3.*

*Note 4: This requirement should continue to apply notwithstanding that the introduction of the measures to safeguard conveyancing moneys under which payments from conveyancing accounts are made by way of cashier's orders under Rule 7.13(b) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLP Rules 2011"). This is because it strikes the appropriate balance between the interest of the purchaser and the interest of the vendor.*

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## **7. Rules of Etiquette on Conveyancing**

The Council wishes to remind members of the following:

- (a) It is improper for a solicitor acting for a vendor to allow his client to offer to provide the legal expenses of a purchaser subject to a condition that the purchaser employs the vendor's solicitor or any other solicitor named by the vendor.

The following are examples of objectionable offers, advertisements or announcements:

- (i) "The selling price is inclusive of legal expenses for conveying the property, provided our solicitors Messrs. A & B are used."
  - (ii) "We have made arrangements with Messrs. A & B to convey the property free to all purchasers."
  - (iii) "Price to include all transfer and legal costs. If the purchaser instructs a solicitor other than the vendor's solicitor, such purchaser shall be personally responsible for the solicitor's charges."
- (b) If the vendor proclaims that the selling price includes the purchaser's legal expenses, then the solicitor acting for the vendor must make it clear to the purchaser wishing to engage him that the purchaser is at full liberty to instruct any other independent

solicitor to act for him. Furthermore, the purchaser must be told that if the purchaser elects to instruct an independent solicitor, a sum would be allowed off the purchase price to enable the purchaser to pay the legal costs to his independent solicitor.

- (c) It is improper for a solicitor acting for the vendor to insert in a contract any clause providing that the vendor's solicitor or any particular solicitor shall act for the purchaser in the transaction at the expense of the vendor. Such a clause constitutes an unfair inducement to prospective purchasers to employ the vendor's firm of solicitors or any particular solicitor.
- (d) It is improper either to advertise or insert in a contract a clause containing an offer by the vendor to pay the stamp duty if the purchaser instructs the vendor's solicitor or a particular solicitor to act for him.
- (e) It is also improper either by advertisement or insertion of a clause in a contract to offer a purchaser a fixed sum to defray part of the purchaser's costs subject to a condition that the purchaser has to employ the vendor's solicitor or a particular solicitor.

Solicitors acting for vendors, particularly building developers, are advised to warn their clients that they should on no account insert any advertisement or announcement whether in their brochures or any newspapers or otherwise that they are prepared to offer any of the abovementioned or similar inducements to purchasers. If such prior warning is not given by any solicitor and any of the abovementioned infringements should be committed, the Committee will take such omission into account when considering any plea that the client has acted without the knowledge of the solicitor in question.

*Note: After the introduction of the CLP Rules 2011 to safeguard conveyancing money, it would be necessary for the solicitor to check whether in the circumstances of each particular case, separate representation for vendor and purchaser will be required.*

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## 8. Witnessing of Execution of Documents

It has come to the attention of the Council that some financial institutions in giving loans to borrowers have imposed a requirement that the borrowers have to call at the office of the lender institution's solicitors to sign documents, as only that institution's solicitors are authorised to witness the signature.

The Council holds the view that this requirement is improper in that it compels the solicitors acting for the financial institution to breach a rule of etiquette – that of dealing directly with a client of another solicitor.

Members who are so instructed by such financial institutions should not act in accordance thereto and should advise their clients of the professional etiquette applicable.

*Note: This is extracted from Law Society's Circular No 5 of 1990.*

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## 9. Statutory Declaration of Non-Revocation of Powers of Attorney

A firm of solicitors acting for a mortgagee bank sought a ruling that it was not necessary for the attorney of the mortgagee bank to execute a statutory declaration of non-revocation of his Power of Attorney on execution of a common law Deed of Reconveyance, placing reliance on the provisions of Section 47(1) of the Conveyancing and Law of Property Act (Cap. 61) to maintain that such statutory declaration of non-revocation could be furnished within three months of the date of execution by the attorney. The mortgagee's solicitors also placed reliance on Condition 16 of the Law Society of Singapore's Conditions of Sale 1999.

The Council is of the view that the mortgagor's solicitors were entitled to the statutory declaration of non-revocation on the date the mortgage was redeemed because:

- (a) The onus was on the mortgagee bank to show that the Power of Attorney was still "subsisting" at the time the mortgagor redeemed the mortgage;
- (b) Condition 16 of the Law Society of Singapore's Conditions of Sale 1999 had no application in this case since those provisions related to investigation of the prior documents of title;
- (c) The mortgagor at the date of redemption of the mortgage was entitled to rely upon execution by the attorney under a valid and subsisting Power of Attorney and in accordance with the provisions of Section 47(1) of the Conveyancing and Law of Property Act was entitled to receive a statutory declaration as to non-revocation of the Power of Attorney at the date of redemption

*Note: This is extracted from Law Society's Circular No 7 of 1990.*

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## 10. "Certificate of Explanation" by Solicitor Attending To the Execution of Security Documents by the Mortgagor and/or Borrower

It has come to the Council's attention that some solicitors acting for the mortgagees have requested solicitors acting for the mortgagors to furnish a "certificate of explanation" along the following lines:

"I, \_\_\_\_\_ (NRIC No. \_\_\_\_\_), an advocate and solicitor hereby certify that the above mentioned \_\_\_\_\_ personally attended before me and that I had explained to him/her the full nature, effect and extent of the terms of this instrument as well as the full nature, effect and extent of his/her liability(ies) under this instrument. The said \_\_\_\_\_ thereafter acknowledged to me that he/she understood the contents of this instrument and that he/she voluntarily executed this instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (year)"

The Council has ruled that solicitors acting for mortgagees should refrain from demanding such certificates from solicitors acting for the mortgagors.

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**11. Granting Access for E-Lodgement and Registration of Singapore Land Authority ("SLA") Documents / Instruments for Conveyancing Transactions**

1. This Practice Direction takes effect on 26 March 2013.
2. It has recently been brought to the Council of the Law Society's (the "Council") and the Conveyancing Practice Committee's (the "Committee") attention that there have been solicitors acting for one of the parties in sale and purchase transactions who have encountered difficulties obtaining grants of access from solicitors of the other party for encryption and e-lodgement of the SLA documents / instruments within 3 working days after completion (for the purpose of registration of such documents / instruments).
3. This Practice Direction is issued following consideration by the Council of the Committee's recommendations.
4. In all conveyancing transactions and unless otherwise agreed between parties, solicitors acting for any party(s) are obliged to grant access for encryption and e-lodgement of SLA documents / instruments shall do so within 3 working days after completion (for purpose of registration of documents / instruments).
5. For the avoidance of doubt, this Practice Direction does not seek to affect any contractual rights and obligations between parties in a conveyancing transaction including the rights and obligations set out in Condition 14 of the Law Society of Singapore's Conditions of Sale 2012 (where it is incorporated by reference into the terms and conditions of the contract for sale and purchase of the property).

*Note: This is Council's Practice Direction 1 of 2013 issued on 26 March 2013.*

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## SECTION 4 - COSTS, INTERESTS, DISBURSEMENTS & CHARGES

### 1. Costs of acknowledgement for production of deeds

The Council of the Law Society would advise that in dealings under common law, that is to say, where a sale and purchase has not been completed, the purchaser is entitled to require a covenant for production and delivery of copies of deeds and documents (normally drawn up in the form of an acknowledgement) and the vendor is under an obligation to execute such covenant. Each party is to pay its own costs viz. the costs of perusal and execution by the vendor and the cost of preparation of the acknowledgement by the purchaser.

Section 3(11) of the Conveyancing and Law of Property Act (Cap. 61) sets out the position.

Consequently, where the vendor's solicitor is presented by the purchaser's solicitor with an acknowledgement which he has to peruse on behalf of his client and the execution whereof has to be witnessed by him, each party should pay its own costs. The stamp duty on the acknowledgement is, of course, to be borne by the purchaser being the person requiring the acknowledgement.

The position is different once the sale and purchase has been completed and an acknowledgement is required. In such a case, the vendor is under no obligation to give the purchaser the acknowledgement unless he is indemnified for his costs for the same.

*Note: This originated from the Law Society's Circular no. 75 dated 17 October 1978 [LS/38/78] and was reproduced in Practice Directions and Rulings of the Law Society 1989.*

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### 2. Preparation of Forms 33 & 34, Companies Act (Cap. 50): Costs

This matter was the subject of consideration by the Conveyancing and Non-Contentious Costs Sub-Committee. Among other matters, the following factors were considered by the Sub-Committee:

1. It is the duty of the borrower company to file Forms 33 and 34 with the Registrar of Companies;
2. In most cases, the mortgagee arranges for his solicitor to deal with the filing of these forms so as to protect the mortgagee but there is no obligation on the mortgagee to see to the filing of the forms. The mortgagee is, however, entitled to have his solicitor's charges paid by the mortgagor.

*Note: This is extracted from paragraph 6 of the Law Society's Circular dated 8 June 1973 which was reproduced in the Practice Directions and Rulings of the Law Society*

*1989. Forms 33 and 34 no longer apply since electronic filing was implemented. Nevertheless, the spirit of this Ruling should continue to apply.*

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### **3. Xerox charges in conveyancing matters**

The Council's attention has been drawn to the widespread practice of members of the Bar charging fees for making duplicate copies of documents on "Xerox" or other duplicating machines, when but for the existence of such machines, the solicitors would in any case be under an obligation to cause such duplicate copies to be made by their typists. The fact that the making of such duplicate documents is done by through a duplicating machine does not give solicitors the right to levy a charge.

*Note: This originated from the Law Society's Circular issued in 1979 [LS/34/79] and was reproduced in the Practice Directions and Rulings of the Law Society 1989.*

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### **4. Billing for disbursements in conveyancing matters**

It has been noted that some firms have been charging relatively high amounts in their conveyancing bills for postage, transport, photocopying and other incidental expenses, which are usually charged as a lump sum without breakdown. This problem is particularly acute where mortgagees' solicitors present their bills to mortgagors for settlement.

Members are reminded that, strictly speaking, such items need to be justified if queried. In the normal course of practice, the Council would not expect mortgagors' solicitors to query small sums charged for incidentals and would not encourage such a practice where the total amount charged does not exceed \$100.00. However, where charges for incidentals exceed \$100.00 in a normal mortgage transaction, the Council recommends that a breakdown of the figure be furnished in the bill.

*Note: This originated from the Law Society's Conveyancing Practice Directions and Rulings 2009.*

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### **5. Cause book searches in conveyancing matters**

The attention of the Council has been drawn to the practice of some solicitors acting for mortgagees/chargees to charge fees for conducting cause book searches (other than the usual bankruptcy and related searches) costing several hundreds of dollars. The Council is of the view that such cause book searches (other than the usual bankruptcy and related searches) are unwarranted in the case of normal conveyancing transactions. However, should a mortgagee/chargee require such cause book searches to be made to ascertain

whether any legal proceedings had been filed against an intending mortgagor/borrower/chargor/guarantor, then unless otherwise agreed to by the mortgagor/borrower/chargor, the fees for such cause book searches should be borne by the mortgagee/chargee personally. There should be no reason why mortgagors/borrowers/chargors should be saddled with charges for cause book searches in addition to the search fee they are now required to pay.

*Note: This originated from the Law Society's Circular No. 6 of 1993 and was reproduced in the Law Society's Conveyancing Practice Rulings and Directions 1996.*

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## **6. Completion delayed by Vendor – Claim for late completion interest and account of rent.**

It was recently brought to the attention of the Conveyancing Practice Committee ("the Committee") that the Ruling reproduced in the Law Society's Conveyancing Practice Directions and Rulings 2009 (3<sup>rd</sup> Edition) Section 5: Questions and Answers on Section 4 – Costs, Interests, Disbursements and Charges, Question 23 (at page 33) might no longer represent the current legal position in light of the Court of Appeal's decision in *Chan Ah Beng v Liang and Sons Holdings (S) Pte Ltd* [2012] 3 SLR 1088 ("*Chan Ah Beng*").

The Committee has carefully deliberated this issue and its views are as follows:

- (a) In the light of the judgment in *Chan Ah Beng*, where completion is delayed due to the default of a vendor, a purchaser is not entitled to claim an account of rent pursuant Condition 6.2 of the Law Society's Conditions of Sale 1999 ("1999 Conditions") in addition to late completion interest pursuant to Conditions 8.2 of the 1999 Conditions.
- (b) In the foregoing situation, since the innocent purchaser is not able to claim rent, it would follow that the innocent purchaser shall not be liable for the expenses/outgoings on or before the date of actual completion.
- (c) The position stated in sub-paragraph (a) to (b) above applies mutatis mutandis in the situation where the Option or the Sale and Purchase Agreement for the transaction concerned incorporates the Law Society's Conditions of Sale 2012 ("2012 Conditions") in general, or Conditions 6.2, 9.2 and 9.3 of the 2012 Conditions in particular.

This Circular supersedes the Ruling on "Vendor Delayed Completion – Computation of interest, Outgoings and Profits" reproduced in the Law Society's Conveyancing Practice Directions and Rulings 2009 (3<sup>rd</sup> Edition), Section 5 Questions and Answers on Section 4 - Section 4 – Costs, Interests, Disbursements and Charges, Question 23 (at page 33)

*Note: This is the Conveyancing Practice Committee's Circular 2 of 2013 dated 23 April 2013 – Amendment to the Law Society's Conveyancing Practice Directions and Rulings 2009.*

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## SECTION 5 – MISCELLANEOUS

### 1. Conflict of Interest

Members of the Bar are reminded that where they act for both vendor and purchaser (including sub-purchaser) or mortgagor and mortgagee (including surety or guarantor), they put themselves in a position that they may be liable to one or the other. The member in such cases has a “double duty” to perform in that he must safeguard the adverse interest of each of his clients and must discharge his duty impartially in the interest of each of his clients. This requires the highest standards of integrity and experience. Members are reminded of what Sir Thomas Lund said in his book “The Professional Conduct and Etiquette of Solicitors” which is reproduced below:

*“The position seems to be reasonably clear that as soon as litigation is probable the solicitor must see that one at least of his clients is separately represented, and if he would be embarrassed in representing even one in litigation by reason of the knowledge which he acquired of the other one’s case, he should see that both clients are separately represented.”*

Members are therefore required to have both their clients, put into writing that they are aware of and do consent to their solicitor acting for both parties and in the event a conflict does arise, the solicitor must discharge himself/herself from acting for both parties.

*Note: This Practice Direction published in Circular No 2 of 1992 supersedes the Practice Direction published in Circular No 1 of 1992.*

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### 2. Restriction on Solicitor Acting as Housing Agents

Council has recently received a query as to whether a solicitor retained to act for an intended vendor of a property may also act as the housing agent and receive a commission on the transaction and whether Section 13(b) of the Auctioneer Licences Act Cap 16 is applicable in the situation. Council has ruled as follows:-

- (1) There is an inherent conflict of interest in a firm of solicitors assuming the dual function of acting as the client’s solicitors as well as the client’s estate agent in the sale of the property. As solicitors, the firm is duty bound to act in the clients’ best interest, whereas as the clients’ estate agent it is in the firm’s own interest to find a buyer, so as to earn commission thus pitting the client’s interest against the firm’s interest. To avoid such a conflict, a solicitor should not subsequently choose to act as an estate agent instead.
- (2) The solicitor may, however, in appropriate cases, charge a negotiating fee on the scale prescribed by the Solicitor’s Remuneration Order or by agreement with the client, charge a commission under Section 109 of the Legal Profession Act when the

work done by the solicitor justifies a commission and was incidental to work by him as a solicitor.

- (3) Section 13(b) of the Auctioneer's Licence Act which provides that where an advocate and solicitor acts as a house agent, he does not need to apply for a licence does not detract from Council's ruling aforementioned.

*Note: The above Circular No 8 of 1990 was reproduced to provide the initial background of the sentiments behind Council's direction that solicitors do not indulge in professional activities that may be synonymous with that of the housing agent. However as time developed Council had published further circulars which then resulted in varying the practice direction to permit the charge of a "Finder's Fee".*

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### **3. Solicitors Doubling or Acting as Estate Agents**

1. This Practice Direction takes effect from 16 November 2010.
2. The Council of the Law Society had published: (a) the Practice Ruling and Direction on *Solicitors Doubling or Acting as Housing Agent* in April 1994 ("the 1994 Ruling"); and (b) the Ruling 2 of 2001 on *Solicitors Doubling or Acting as Housing Agent* in August 2001 ("the 2001 Ruling").
3. In view of the enactment of the Estate Agents Act 2010 ("the Act"), this Practice Direction supersedes the 2001 Ruling. The new Practice Direction is set out at paragraphs 4 to 8 below.
4. In the 1994 Ruling, the Council ruled as follows:

*"It is not only a tradition but an article of faith of the Bar that the honour and dignity of the profession should at all times be maintained.*

*In the view of the Council carrying on the business of a housing agent in tandem with that of a lawyer would not be compatible.*

*The provisions of Section 83 of the Legal Profession Act which deals with the disciplining of members of the Bar states that an advocate and solicitor may be struck off or suspended for cause such as:*

*(i) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or in any way incompatible with it, or is employed in any such trade, business or calling.*  
*[sub-section (2), para (i)]*

*The calling of a housing agent, "broker" in common parlance, would detract from the honour and dignity of the Bar. The Council is therefore of the opinion*

*that the business of a housing agent is incompatible with that of an advocate and solicitor."*

5. The Council re-considered the 1994 Ruling in 2001 and informed members by the 2001 Ruling that if in the course of the practice of the advocate and solicitor (the "solicitor"), the opportunity arose for the solicitor to make an agreement with a prospective vendor or purchaser that the solicitor would be paid a commission as a finder's fee if the solicitor could secure a purchaser or vendor (as the case might be), to "broker" a deal in such circumstances would not necessarily detract from the honour and dignity of the Bar and the solicitor was not prohibited from doing so (the "Amended Rule").

6. The Council is of the view that the Amended Rule remains applicable after the enactment of the Act, as section 4 of the Act provides that "[the] Act does not apply to anything done –

... (b) by a solicitor, in the course of practising his profession, or by any person employed by him and acting in furtherance of that course, in introducing to the client, third persons who wish to acquire or dispose of a property (whether for remuneration or otherwise), if the solicitor and any person employed by him do not perform any other work that falls within the definition of "estate agency work" in section 3..."

7. Under section 3(1) of the Act, an "estate agent", subject to section 3(3), "means a person who does estate agency work, whether or not he carries on that or any other business". The term "estate agency work", subject to section 3(3), means:

"any work done in the course of business for a client or any work done for or in expectation of any fee (whether or not in the course of business) for a client —

(a) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a property, or to the negotiation for the acquisition or disposition of a property by the client; or

(b) being work done, after the introduction to the client of a third person who wishes to acquire or dispose of a property or the negotiation for the acquisition or disposition of a property by the client, in relation to the acquisition or disposition, as the case may be, of the property by the client."

8. The Council is also of the view that as in the 2001 Ruling, the solicitor must nevertheless at all times observe the following qualifications to the Amended Rule:

- 8.1. where, in addition to securing the purchaser or the vendor (as the case may be), the solicitor goes further to act in the conveyancing transaction, the solicitor will not be entitled to the benefit of the Amended Rule, which will no longer apply, and the solicitor must comply strictly with the Legal Profession (Solicitors' Remuneration) Order enacted on 1 February 2003; and

- 8.2. the Amended Rule is not meant to permit and is not to be read as permitting a solicitor to be an estate agent (as defined in section 3(1) of the Act) in tandem with his law practice. To be an estate agent in tandem with being a solicitor continues to be prohibited.

Date: 16 November 2010

*Note: This is Council's Practice Direction 2 of 2010 which is now known as The Law Society of Singapore's Practice Directions & Rulings 2013, Paragraph 81E.*

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#### **4. Recommended Stakeholding Clauses in Options to Purchase and Sale and Purchase Agreements**

##### **CONVEYANCING PRACTICE COMMITTEE CIRCULAR 2 OF 2011 – RECOMMENDED STAKEHOLDING CLAUSES IN OPTIONS TO PURCHASE AND SALE & PURCHASE AGREEMENTS**

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In view of the new measures introduced by the Conveyancing (Miscellaneous Amendments) Act 2011, the Conveyancing and Law of Property (Conveyancing) Rules 2011 (the "Conveyancing Rules") and the Singapore Academy of Law (Conveyancing Money) Rules 2011 ("SAL Rules"), which will be coming into operation on 1 August 2011, it is necessary to re-draft the standard stakeholding clauses to reflect the new measures in respect of payment of deposits to stakeholders, in accordance with the requirements under the Conveyancing Rules and the SAL Rules.

The Conveyancing Practice Committee of the Law Society of Singapore had collaborated with the Ministry of Law and other stakeholders to prepare recommended stakeholding clauses to be incorporated in the Option to Purchase ("Option") and the Sale and Purchase Agreement ("S&P Agreement").

Annexed to this practice circular are the recommended stakeholding clauses in the Option and the S&P Agreement for members' reference. Members may adapt these recommended clauses as may be appropriate to suit the circumstances of the matter at hand.

Sgd Derrick Wong  
Chairman, Conveyancing Practice Committee  
Dated: 19 July 2011

*Note: Please see the amendments to the recommended stakeholding clauses in the following item.*

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**5. Amendments to Recommended Stakeholding Clauses in Options to Purchase and Sale and Purchase Agreements**

**CONVEYANCING PRACTICE COMMITTEE**

**CIRCULAR 1 of 2013**

**AMENDMENTS TO RECOMMENDED CLAUSES IN OPTIONS TO PURCHASE AND SALE AND PURCHASE AGREEMENTS**

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In light of the issuance of the Law Society of Singapore's Conditions of Sale 2012, the Conveyancing Practice Committee (the "Committee") has reviewed the recommended clauses for the Option to Purchase (the "Option") and the Sale and Purchase Agreement (the "S&P Agreement") as set out in the Committee's Circular 2 of 2011, and updated the recommended clauses. In particular, the amendments include the following:

- (a) updating the reference to the Law Society's Conditions of Sale from the 1999 version to the 2012 version; and
- (b) providing a 3rd option for payment of deposit to the vendor directly if no stakeholding is intended in the recommended clauses for the S&P Agreement.

The revised recommended clauses for the Option and S&P Agreement are set out in Annex A and Annex B respectively for members' reference.

Date: 29 January 2013

**THE CONVEYANCING PRACTICE COMMITTEE OF THE LAW SOCIETY OF SINGAPORE**

**ANNEX A****OPTION TO PURCHASE**

1. To exercise this Option, the Purchaser shall sign at the portion of this Option marked "ACCEPTANCE COPY", and deliver this Option duly signed to the Vendor's solicitors, \_\_\_\_\_ at \_\_\_\_\_, Singapore \_\_\_\_\_, (Attention: \_\_\_\_\_) and make payment of Singapore Dollars \_\_\_\_\_ (\$\_\_\_\_\_), which together with the Option Money shall constitute the "Deposit" for the purchase.
  - \*The said payment of \$\_\_\_\_\_ shall be in favour of the "Singapore Academy of Law" by \*\*cheque/telegraphic transfer to [*Singapore Academy of Law's designated account*] excluding bank charges and deductions. The Singapore Academy of Law shall hold the said payment as stakeholder pending completion in accordance with the Singapore Academy of Law (Conveyancing Money) Rules 2011 and instructions referred to therein.
  - \*The said payment of \$\_\_\_\_\_ shall be in favour of [(*name of*) Vendor's solicitors' law practice - CVY] by \*\*cheque/telegraphic transfer to [*bank name & account no:* \_\_\_\_\_] excluding bank charges and deductions, to be held by the Vendor's solicitors as stakeholders pending completion.

*\* Delete if not applicable. If both not applicable i.e. money to be paid to the Vendor, to delete both.*

*\*\* Delete option that is not applicable.*

**Compliance with statutory rules, law and the Law Society of Singapore's Conditions of Sale 2012.**

2. This sale and purchase is subject to the Law Society of Singapore's Conditions of Sale 2012 (the "Conditions") in so far as the Conditions are not contrary to or in conflict with the following:
  - (a) Conveyancing and Law of Property (Conveyancing) Rules 2011 as promulgated under the Conveyancing and Law of Property Act (Cap. 61) ("Conveyancing Rules"); and
  - (b) Singapore Academy of Law (Conveyancing Money) Rules 2011 as promulgated under the Singapore Academy of Law Act (Cap. 294A) ("SAL (Conveyancing Money) Rules") (if applicable).
3. Where the terms and conditions of this Agreement are in conflict with the Conditions, the former shall prevail. Where the terms and conditions of this Agreement are in conflict with the Conveyancing Rules and/or the SAL (Conveyancing Money) Rules, the Conveyancing Rules and the SAL (Conveyancing Money) Rules shall prevail.

**ANNEX B****SALE & PURCHASE AGREEMENT**

1. The Purchaser having paid the sum of Singapore Dollars \_\_\_\_\_  
\_\_\_\_\_ (\$\_\_\_\_\_) (the "Deposit") to:
  - ☐ \*the Singapore Academy of Law by \*\*cheque/telegraphic transfer to [*Singapore Academy of Law's designated account*: \_\_\_\_\_] excluding bank charges and deductions, such Deposit to be held by the Singapore Academy of Law as stakeholders pending completion herein in accordance with the Singapore Academy of Law (Conveyancing Money) Rules 2011 and instructions referred to therein, the Vendor agrees to sell to the Purchaser the Property at the Sale Price subject to the terms and conditions hereinafter stated.
  - ☐ \* [(*name of*) *Vendor's solicitors law practice – CVY*] by \*\*cheque /telegraphic transfer to the [*bank name & account no*] excluding bank charges and deductions, such Deposit to be held by the Vendor's solicitors as stakeholders pending completion herein, the Vendor agrees to sell to the Purchaser the Property at the Sale Price subject to the terms and conditions hereinafter stated.
  - ☐ \*the Vendor, the Vendor agrees to sell to the Purchaser the Property at the Sale Price subject to the terms and conditions hereinafter stated.

\* *Delete if not applicable.*

\*\* *Delete option that is not applicable.*

Compliance with statutory rules, law and the Law Society of Singapore's Conditions of Sale 2012.

2. This sale and purchase is subject to the Law Society of Singapore's Conditions of Sale 2012 (the "Conditions") in so far as the Conditions are not contrary to or in conflict with the following:
  - (a) Conveyancing and Law of Property (Conveyancing) Rules 2011 as promulgated under the Conveyancing and Law of Property Act (Cap. 61) ("Conveyancing Rules"); and
  - (b) Singapore Academy of Law (Conveyancing Money) Rules 2011 as promulgated under the Singapore Academy of Law Act (Cap 294A) ("SAL (Conveyancing Money) Rules") (if applicable).
3. Where the terms and conditions of this Agreement are in conflict with the Conditions, the former shall prevail. Where the terms and conditions of this Agreement are in conflict with the Conveyancing Rules and/or the SAL (Conveyancing Money) Rules, the Conveyancing Rules and the SAL (Conveyancing Money) Rules shall prevail.

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## **6. Requests to the Conveyancing Practice Committee for Guidance, Direction(s) or Rulings**

### **COUNCIL'S PRACTICE DIRECTION 3 OF 2013**

#### **REQUESTS TO THE CONVEYANCING PRACTICE COMMITTEE FOR GUIDANCE, DIRECTION(S) OR RULINGS**

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1. This Practice Direction takes effect on 7 May 2013.

#### Functions of the Committee

2. Amongst other functions, the Conveyancing Practice Committee ("the Committee") has been tasked with assisting members in settling disputes in respect of conveyancing transactions so that they need not be settled in Court. In addition, where customary conveyancing practice is unclear, the Committee may be asked to provide guidance. However, where issues are clearly legal disputes of a magnitude that ought to be brought to the Court for a determination, the Committee will not interfere. Further elaboration of the Committee's tasks and assistance are given below.

#### Requesting Guidance

3. Members must first make a distinction between seeking guidance from seeking a ruling or direction. Seeking guidance by a member may be made unilaterally. No 'other party' to the transaction should be named. Guidance given by the Committee is informative in nature and is not binding on any member. Guidance may not be used to indicate to 'another party' how 'that party' should act or conduct itself. The Committee discourages members from seeking guidance on practices that are well established or ought to be known or practised in the ordinary course of a normal conveyancing transaction.

#### Requesting Direction(s) or Rulings

4. Direction(s) and Rulings are given when two or more members agree to place before the Committee the identified area of dispute in the relevant conveyancing transaction and for the Committee to either provide the Direction or give a Ruling. Requests by members should comply with the following protocols, otherwise the Committee may not consider the request:
  - a. the facts of case must be agreed upon by all requesting members; the issues must be identified and clearly presented. Both members must state their respective positions;
  - b. the presented issues should only be in respect of conveyancing practice matters that do not require interpretation of any relevant legislation (including subsidiary legislation). Where aspects of common law are referred to, that common law

must hinge on well-known decided principles that are already enunciated by the Court. If the principle of law is being question or queried, the Committee may decline the request and recommend to the members to settle their dispute in Court;

- c. the facts of the case must not be hypothetical – as stated in (a) above, these facts must relate to the actual circumstances that have taken place and from which the issues arose;
- d. to summarise, requests by members for a Direction or Ruling should set out for the Committee's consideration:
  - i. a full and accurate account of all material facts, bearing in mind the need to observe any obligation of confidentiality;
  - ii. a summary of the conveyancing issues involved and the submission of the respective members;
  - iii. all relevant case authorities or referred to legislation bearing on the presented issues should accompany the respective member's submission; and
- e. the requesting members must also adopt the following terms in the protocol:
  - i. all submissions and copies of documents, case authorities, legislation etc. must be copied to the other member;
  - ii. requesting members must agree to abide and be bound by the Direction or Ruling of the Committee without qualification; and
  - iii. when asked to provide further documents by the Committee or to answer questions raised, the members should respond within five business days.

#### Effect of a Decision by the Committee

- 5. Although the Committee does not monitor the actions or conduct of members after the Direction or Ruling is given, the Committee expects that members take the necessary action(s) to abide by and comply with the Direction or Ruling given.
- 6. Any guidance, direction or ruling given is confidential and is intended only for the benefit of or to bind (as the case may be) the requesting members. The Committee may publish anonymised versions of the case referred to by members and the decision of the Committee where the subject-matter of the request is one of general application or interest to members who practise conveyancing.
- 7. Whilst the Law Society and the Committee recognise that the recitation of facts and circumstances by requesting members are confidential, the Committee may be under

a duty to report any professional misconduct or criminal wrongdoings or breach of current professional conduct rules or code.

#### Timelines and Conclusion

8. The Committee generally will provide its decision to any request within three to six weeks from date of the request. This is after all the necessary documents are received by the Committee. Members should not expect instantaneous responses as the Committee members are also working lawyers. No query will be entertained over the telephone. Members must not expect the staff of the Law Society or the Director-in-charge of the particular portfolio to answer such queries. Expedited response will only be given as an exceptional case where the matter at hand is of utmost urgency.

Date: 7 MAY 2013

*Note: This Practice Direction is now known as The Law Society of Singapore's Practice Directions & Rulings 2013, Paragraph 62D.*

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## **7. Storage and Destruction of Documents**

This Practice Direction supersedes the Council's Practice Direction published in the 1989 Publication, the Law Society's Practice Direction & Rulings.

### **Return of Documents and Storage of Files**

- a) It is advisable to return to clients all documents that belong to them once the retainer is terminated, subject to such rights as may arise by reason of the solicitor's lien.
- b) In addition, members may as a matter of prudence, wish to advise clients in writing immediately prior to a file being sent to storage:
  - i) of the intended storage of the files;
  - ii) that clients should notify their lawyers concerned if they require any documents in the file, prior to despatch of the files to storage; and
  - iii) that the files will in due course be destroyed.

### **Retention Period of Closed Files**

The Law Society is unable to specify fixed periods of retention for individual files. However, the following are relevant considerations for determining retention periods.

### **General Considerations**

- a) As a general rule, the Law Society considers it advisable for members to retain all files for a minimum of 6 years from the time when the subject matter is wholly completed.
- b) At the end of this period, members should review the files again according to the nature of the particular transactions, and the likelihood of any claims arising to decide if further retention is appropriate.
- c) It is acceptable for members to agree a shorter storage period (followed by destruction of the files) with their clients. However members must carefully consider the implications in each case, arising from the specific consideration outlined below.

### **Specific Consideration**

- a) In cases where a party was under a disability at the time of the action or where judgment for provisional damages has been obtained, files should be retained for a minimum period of 6 years from the date on which the client would have a cause of action or final judgment has been obtained.

Members should also take into account the relevant statutory provisions, some examples of which are set out below:

- i) Section 24A of the *Limitation Act* (Cap. 163, 1996 Rev. Ed. Sing) allows actions in negligence within 6 years from the date from when the cause of action accrued or 3 years from the date on which the Plaintiff knew or ought to have known the relevant facts, whichever is later, subject to an overriding time limit of 15 years under Section 24B.
  - ii) Section 46 of the *Goods and Services Tax Act* (Cap 117A, 2005 Rev. Ed. Sing.) require tax related records to be kept for not less than 5 years, subject to the Comptroller agreeing to a shorter period.
  - iii) Section 67 of the *Income Tax Act* (Cap 134, 2008 Rev. Ed. Sing.) requires records and receipts to which income relates to be kept for 5 years from the relevant year of assessment.
  - iv) Section 199 of the *Companies Act* (Cap 50, 2006 Rev. Ed. Sing.) requires accounting and other records that explain the transactions and financial position of the company concerned to be retained by the company for 5 years from completion of the relevant transaction or operation.
- b) Members should retain conveyancing files for 6 years from completion of the relevant transaction.



## **Destruction of Documents**

Documents, in particular, original documents, such as agreements, deeds, guarantees and certificates, etc, should not be destroyed without the prior consent of the Owner of that document.

## **Ownership of Documents**

For directions on ownership of documents, members are referred to paragraphs 1-3 of the revised February 1999 edition of Cordery on Legal Services (Issue 35) Guidance Note on ownership, storage and destruction of documents, which is reproduced with the kind permission of the Law Society of England as an annexure to this practice direction.

## **Annexure**

### *Guidance - ownership, storage and destruction of documents*

Is the client entitled to the whole file once the retainer is terminated?

Not necessarily. Most files will contain some documents which belong to you, some which belong to the client and possibly, others belonging to a third party. Documents in existence before the retainer, held by you as agent for and on behalf of the client or third party, must be dealt with in accordance with the instructions of the client or third party (subject to your lien). Documents coming into existence during the retainer fall into four broad categories (*see also Cordery on Solicitors*).

- (a) Documents prepared by you for the benefit of the client and which have been paid for by the client, either directly or indirectly, belong to the client.

*Examples: instructions and briefs; most attendance notes; drafts; copies made for the clients benefit of letters received by you; copies of letters written by you to third parties if contained in the client's case file and used for the purpose of the client's business. There would appear to be a distinction between copies of letters written to the client (which may be retained by you) and copies of letter, written to third parties.*

- (b) Documents prepared by you for your own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to you.

*Examples: copies of letters written to the client; copies made for your own benefit of a letter received by you; copies of letters written by you to third parties if contained in a filing stem of all letters written in your office; tape recordings of conversations; interoffice memoranda; entries in diaries, time sheets; computerised records; office journals; and books of account.*

- (c) Documents sent to you by the client during the retainer, the property in which was intended at the date of despatch to pass from the client to you, belong to you.

*Examples: letters, authorities and instructions written or given to you by the client.*

- (d) Documents prepared by a third party during the course of the retainer and sent to you (other than at your expense) belong to the client.

*Example: receipts and vouchers for disbursements made by you on behalf of the client; medical and witness reports, counsel's advice and opinion; letters received by you from third parties.*

*Who owns the file where there has been a joint retainer?*

In the Law Society's opinion the documents which fall into category (a) above belong to both or all of the clients jointly. Such documents can only be disclosed to third parties with the consent of both or all of the clients and the original papers can only be given to one client with the authority of the other(s). Each client is entitled to a copy of the relevant documents at their own expense.

*Who owns the file where there is a single file but two separate retainers?*

This is usually the case where you have acted for the buyer/borrower and for the lender on a contemporaneous purchase and mortgage, or for the borrower and for the new lender on a mortgage. You will need to sort through the file to determine the ownership of the various papers. There may, however, be documents which belong to the borrower but which the lender is nevertheless entitled to see as they relate to that part of your work where the lender and borrower can be said to have a common interest, such as the deduction of title, the acquisition of a good title to the property and ancillary legal issues such as the use of the property.

*Note: This is extracted from The Law Society of Singapore's Practice Directions and Rulings 2013, Paragraph 46 which amended the Council's Practice Direction 1 of 1999.*

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## **REFERENCE TO AND RULINGS BY THE CONVEYANCING PRACTICE COMMITTEE**

### **RULINGS ON:**

#### **SECTION 1 – GIVING EFFECT TO RULES, REGULATIONS AND LEGISLATION**

##### **1. Investigation Fee under Section 150 of the Land Titles Act (Cap.157)**

Reference:

Is a Purchaser entitled to an investigation fee under section 150 of the Land Titles Act (Cap.157) if the Transfer is executed by the vendors' attorney on completion?

Ruling:

The purchaser is entitled to such investigation fee for inspection of each Power of Attorney - such Powers of Attorney not being general Powers of Attorney.

Date: 25.6.1996

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##### **2. Obligation to furnish copy of Seller's Stamp Duty Declaration Form**

Reference:

Is a vendor legally obliged to provide a copy of the Seller's Stamp Duty Declaration Form (SSDDF) on or before completion to the purchaser/purchaser's solicitor?

Ruling:

Assuming that Condition 7.4.1 of the Law Society's Conditions of Sale 2012 has not been incorporated into the contract, the vendors should still furnish the purchasers with a copy of the SSDDF before the date scheduled for completion as a matter of good practice. This is especially because IRAS has taken the position that the agreement is not duly stamped without the payment of the SSD.

Date: 17.11.2011

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##### **3. Rule 16(6) of the Housing Developers Rules**

Reference:

In a case where the purchaser of a housing accommodation wanted to include his wife as

joint purchaser, the developers' solicitors requested as one of the conditions for entering into a fresh agreement that a sum of \$450.00 be paid by the purchaser.

A dispute arose as to whether the developers' solicitors were entitled to charge anything more than the authorised sum of \$200.00 for the fresh agreement as laid down under Rule 16(6).

Ruling:

This matter was considered by the Council and the Council has ruled that the second purchaser was not obliged to pay any fees to the developers beyond \$200.00 and fees payable to the developers' solicitors, if any, are not chargeable to the second Purchaser.

*Note: Under Rule 16(6) of the Housing Developers Rules (as amended by the Housing Developers (Amendment) Rules 2012), the housing developer shall be entitled —*

- (a) to charge the assignee a fee not exceeding \$200 (exclusive of goods and services tax); and*
- (b) to require the assignee to reimburse him up to the amount of \$400 for costs payable by the housing developer to his solicitor.*

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## **GUIDANCE GIVEN:**

### **SECTION 2 – IMPLEMENTATION OF THE CONVEYANCING AND LAW OF PROPERTY (CONVEYANCING RULES) 2011**

#### **1. What constitutes “conveyancing money”?**

##### **a) Question:**

Is an agreed sum, held by a solicitor as stakeholder, pending assessment of property tax and maintenance charges considered “conveyancing money”?

Guidance:

Yes, money held by a solicitor pending assessment of property tax and maintenance charges, being “money payable in the sale and purchase of any land, pursuant to the sale and purchase agreement”, is “conveyancing money” under Rule 2 of the CLP Rules.

Date: 30.9.2011

b) Question:

Pursuant to a Sale and Purchase Agreement, stamp duty was chargeable and the Agreement was duly stamped before the sale was aborted and subsequently, the stamp duty was refunded. Is the refund of the stamp duty arising from an aborted sale considered "conveyancing money"?

Guidance:

Yes, the stamp duty refund is "conveyancing money". Rule 2(2)(n) of the CLP Rules 2011, clarifies that conveyancing money means any stamp duty chargeable under section 4(1) of the Stamp Duties Act on the relevant instrument.

Moreover, Rule 2(1) of the Legal Profession (Solicitor's Accounts) Rules ("SAR") expressly excludes conveyancing money from the definition of "client's money". The SAR does not provide any exception for conveyancing money to be converted into client's money merely because the conveyancing transaction has been aborted.

Date: 8.11.2011

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**2. Queries regarding holding of monies**

a) Question:

Law firm A acted for the vendors in the sale of the property and completion took place. Law firm B acted for one of the vendors in her divorce proceedings against the other vendor, her former husband. Law firm B informed Law firm A that the sale proceeds of the property is a matrimonial asset and requested that the latter hold the sale proceeds pending resolution of the divorce matter.

Can Law firm A hold the sale proceeds in its client account?

Guidance:

No, pursuant to Rule 5(9) of the CLP Rules 2011, Law firm A cannot hold the sale proceeds in its client account because it acted in the conveyancing transaction.

*Note: Law firm A should advise its clients, i.e. the vendors, on the obligations and effect of the CLP Rules 2011, including any additional costs and expenses that may be incurred if the sale proceeds are required to be placed in its conveyancing account (the other options being depositing the money in an escrow account or with the SAL).*

Date: 15.12.2011

b) Question:

Law firm C acted for the vendors in the sale of a property, whereas Law firm D acted for the purchasers. Law firm E acted for one of the vendors in the High Court matrimonial suit, while the other vendor was unrepresented. One of the Court orders issued by the High Court held that Law firm E should hold the net proceeds of the sale.

Can the net sale proceeds be made in favour of Law firm E's client account?

Guidance:

Yes, the net sale proceeds can be made in favour of Law firm E's client account because Law firm E did not act for any of the parties in the conveyancing transaction. Rule 2(2) read with Rule 5(9) of the CLP Rules 2011 allows a lawyer who did not act for any party in the conveyancing transaction to receive and hold the sale proceeds in its client account after the completion of the conveyancing transaction.

Date: 5.12.2011

c) Question:

Where can the sale proceeds of a Housing Development Board ("**HDB**") property, to be paid to Law firm F's client as the administrator of the estate and subsequently released to the beneficiaries (Law firm G's clients), be placed in?

Guidance:

The sale proceeds can be placed in Law firm F's conveyancing account, in which case the HDB would be in the position to counter-sign the pay-out form for payment out of the sale proceeds to the beneficiaries or Law firm G.

If the sale proceeds are transferred to Law firm G, the proceeds (being conveyancing money) must be transferred to its conveyancing account. However, any subsequent pay-out of the proceeds from Law firm G to the beneficiaries would probably require a court order because there is no counter-signatory provided in the Rules for this scenario.

Hence, to avoid complications that may arise from transferring the proceeds to Law firm G's conveyancing account, an option available to Law firm F is to make payment to the beneficiaries directly by way of cashier's orders upon completion and inform Law firm G to recover its clients' legal costs directly from them, instead of deducting their costs from the proceeds. Law firm F may also need to recover directly from the beneficiaries any legal costs incurred in handling the distribution.

Date: 13.9.2011

d) Question:

Upon the sale of a property owned by the estate of a deceased person, a law firm received the deceased person's share in the property sale for distribution and duly paid out to the living beneficiaries. However, one of the beneficiaries had already passed away and the law firm continues to hold the residual amount for the deceased's estate. The amount has not been released to that beneficiary's authorised representative yet due to various clearances required. This law firm had not acted for any party in the conveyancing transaction involving this property sale.

Can the residual amount be placed in the client account?

Guidance:

Yes, the residual amount can be placed in the client account because Rule 2(2) read with Rule 5(9) of the CLP Rules 2011 allows a lawyer who did not act for any party in the conveyancing transaction to receive and hold the sale proceeds in its client account after the completion of the conveyancing transaction.

Date: 20.12.2011

e) Question:

Pursuant to an order of the Syariah court dissolving the marriage between the two Vendors, the sale of the matrimonial flat in the open market was ordered, with division of the net proceeds to be in the proportion of 70% to the Ex-wife and 30% to the Ex-husband. The Ex-husband has been missing since 2009. The Solicitors acting for the Ex-wife in the sale of her matrimonial flat wants to know who should hold the 30% of the net sale proceeds for the Ex-husband.

Guidance:

While the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR") does not prescribe which party should hold on to the sale proceeds on behalf of a missing Vendor, the Committee notes that the Ex-wife's Solicitors do not act for the husband in the sale of the Property and hence, does not have the authority to hold on to the 30% share of the sale proceeds on behalf of the husband. The Ex-wife's Solicitors may seek an order from the Syariah Court to direct the 30% share of the sale proceeds to be held by the Accountant – General in trust for the husband or, consult the Public Trustee to ascertain that the Public Trustee can hold the 30% of the sale proceeds in trust for the husband.

Date: 10.7.2012



### 3. **Obligation to counter-sign a pay-out form or variation pay-out form – queries on who should be the proper counter-signing party**

#### a) Question:

Law firm X acted for the purchasers and mortgagee in the sale of the property and completion of the sale took place. Law firm X claimed that since they were not privy to the ongoing divorce proceedings between the vendors (Law firm Y's clients), there was no reason for them to be the counter-signing party, given the onerous obligations imposed on such a party. Law firm X claimed that the correct counter-signatory should be Law firm Z, the law firm acting for the parties in the divorce matter.

Which Law firm has the obligation to counter-sign the pay-out form or variation pay-out form? Does this obligation to counter-sign continue even after completion?

Guidance:

Pursuant to Rule 9(1) of the CLP Rules 2011, Law firm X bears the obligation to counter-sign the pay-out form if it is identified to be the authorised signatory in the First Schedule to the CLP Rules 2011. Rule 9(2) clarifies that this obligation to counter-sign the pay-out form continues even after the completion of the conveyancing transaction. This is in line with the policy intent that there should be an additional check for withdrawals of conveyancing money from the conveyancing account. Law firm Z, the firm acting in the divorce proceedings, cannot be the counter-signatory because it was not involved in the conveyancing transaction.

Date: 15.12.2011

#### b) Question:

The buyer and CPF B are represented by the same solicitors in the sale and purchase of a unit in a development project. The stamp duty for the purchase of the property has been paid by the buyer to IRAS directly. Pursuant to the buyer's request that CPF monies be utilized for reimbursement of payment of the stamp duty, CPF B transferred the reimbursement amount into the buyer's solicitors' conveyancing (CPF) account for the same to be refunded to the buyer. The buyer's solicitors proceeded to initiate a Pay-Out form for payment out of the reimbursement monies to the buyer, and indicated on the Pay-Out Form the developers'/sellers' solicitors to be the counter-signatory. Are the developers'/sellers' solicitors the proper counter-signatory in this situation?

Guidance:

The Committee is of the view that the developers'/sellers' solicitors are obliged to counter-sign the Pay-Out form in the above situation, as the reimbursement to the buyer for payment of stamp duty flows from the sale and purchase transaction. Paragraph 2(c) of the First Schedule to the Conveyancing and Law of Property

(Conveyancing) Rules 2011 also provides that any authorized signatory of the seller's solicitor should be the counter-signatory in this situation.

Date: 27.1.2012

c) Question:

The Vendor is the sole registered owner of the Property. Law Firm X is acting for the Vendor in the sale of the Property. Shortly before completion of the sale, Law Firm X found out that a caveat had been lodged by the Vendor's sister. The Vendor then appointed Law Firm Y to dispute the purported claims made by his sister. The parties subsequently agreed that in the interim, the Vendor's sister would remove the caveat on the Property so that the sale will not be impeded. This is on the condition that a sum of \$750k from the sale proceeds is to be held by Law Firm Y as stakeholders pending the resolution of the purported claims.

Law Firm Y wants to know who the proper counter-signing party will be for the purposes of this sum of stakeholding money.

Guidance:

The issue of who the proper counter-signatory is does not apply. This is because the stakeholding monies do not fall within the definition of 'conveyancing money' under the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR"), hence can be held in the firm's client's account instead.

The definition of "conveyancing money" in the CLP (as amended by CLP (Amendment No. 2) R) includes "any such money which is held by a solicitor who acts for a party in the sale, purchase or assignment of any land, or in the grant or surrender of a lease, license or tenancy in respect of land..."

As Law Firm B did not act for the Vendor in the sale of the Property and the cashier's order was issued in favour of the law firm and not specifically of the law firm's CVY account, the stakeholding money does not have to be held in Law Firm B's Conveyancing account.

Date: 13.9.2011

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#### 4. Fees that a counter-signatory may charge

Question:

Can a counter-signatory charge a fair and reasonable fee for work done under the Conveyancing and Law of Property (Conveyancing) Rules 2011 (the "Rules")?

Guidance:

After careful consideration, the Council is of the view that this query falls outside of the Council's purview. The Council notes that there appears to be no express prohibition under the Rules against charging a fair and reasonable fee, although this has not been tested in Court or adjudicated to date. The Council is, however, not in a position to recommend whether such a fee may be charged under the Rules because any such recommendation may be construed as having the object or effect of restricting competition.

The Council would leave it to law practices to determine whether such a fee may be charged under the Rules. Parties may have recourse to adjudication or to the Court should a dispute over the charging of such a fee arise.

Date: 20.9.2011

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## **5. Requirements for Letter of Authority and other supporting documents**

### **a) Question**

The mode of payment requests for the balance of the payment less that due to the CPF and the discharging bank to be made in favour of Mr "X". No Letter of Authority is given. What shall I do?

Guidance:

It will be prudent to request urgently for the Letter of Authority to be signed under oath or affirmation or if the Requesting Party is a foreigner residing overseas, a Letter of Authority to be executed before a notary public or equivalent.

### **b) Question:**

Further to question (a), what if the sum is a small amount?

Guidance:

Then a signed Letter of Authority will suffice. However, please remember that the description "small" is subjective. The payment must be measured against the totality of the proceeds to be paid out.

### **c) Question**

What do you mean by supporting documents?

Guidance:

Under ordinary circumstances, the supporting documents are those that on the face of it show that the payment request(s) is/are directions by the Requesting Party (and not his/her/their solicitors acting without clients' instructions).

d) Question:

Further to (c), what if the payment is made to a caveator but the supporting document does not mention any amount claimed but just rights, interest and title?

Guidance:

It is adequate that the Requesting Party specifies an amount in the Letter of Authority that is required to be paid to the caveator.

e) Question:

What if the Letter of Authority states that it is a payment of a debt to a Category C payee? Will this one line simple statement be adequate for me to authorise payment?

Guidance:

If the Letter of Authority is declared under oath and clearly specifies the intention to pay the creditor, it can be accepted without the need for further investigation.

f) Question:

What if a large amount is to be paid to an Estate Agent?

Guidance:

Ordinarily, a commission for a sale is between 1% and 2% of the sale price. Anything more than that may appear extraordinary but may not necessarily be suspicious. If it appears "suspicious", ask for the Letter of Authority declared under oath or affirmation, clearly specifying the intention to pay that amount to the estate agent, and where reasonably appropriate, also ask for the signed contract between the Requesting Party and the estate agent. If that payment cannot be verified, the Approving Party should not verify or countersign and may give notice to pay the whole sum meant for the estate agent, to the Requesting Party.

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## **6. Whether documents executed before a notary public can be accepted at face value**

Question:

When a solicitor has to verify payment instructions for countersigning pay-out forms, may a solicitor accept letters of authority, statutory declarations and/or powers of attorney for sale which have been executed before a Notary Public at face value? Or does the solicitor have a further duty to verify the authenticity of the document?

Guidance:

The scope of a lawyer's duty to verify the mode of payment or the pay-out form with reference to supporting documents depends on the category of payee involved. Refer to Council's guidance Note 2 of 2011 and the Committee's Circular 3 of 2011 for general guidance on the solicitor's duty of verification for purposes of payment out from a conveyancing account. In particular, Annexure C of the Council's Guidance Note 2 of 2011 provides guidance on the extent to which the counter-signing solicitor must scrutinise such documents.

Under ordinary circumstances, the supporting documents provided must reasonably show or indicate that the payment request is a clear direction by the Requesting party and not his/her solicitors acting without clients' instructions. If at face value there is nothing suspicious, the counter-signing solicitor generally need not go further.

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## **7. Duty of verification – Option to Purchase contains irrevocable direction to pay sale proceeds to Seller's Solicitors**

Question:

The Option to Purchase states:

"The Seller agrees to pay XYZ Estate Agency a commission of One (1%) percent of the sale price plus prevailing GST, and the Seller's solicitor will accept this as the Seller's irrevocable authority to retain the commission from the sale proceeds and to pay the same direct to XYZ Estate Agency forthwith on completion of the sale."

- (a) Can the buyer's lawyer rely on this clause to pay the commission to the seller's lawyer?
- (b) Assuming that the seller's irrevocable authorization is subsequently revoked by the time of completion and the buyer's lawyer is notified of a dispute between the seller and the estate agent vis-à-vis the commission, does the buyer's lawyer need to verify the identity of, and amount to be paid to, the estate agency?

## Guidance:

- (a) Yes. The buyer's lawyer can rely on this clause to make payment to the seller's lawyer as it is a direction from the seller which enables the buyer's lawyer to verify under the Conveyancing and Law of Property (Conveyancing) Rules: (i) that the commission is to be paid to the specified Category C payee; and (ii) the amount of the commission that is to be paid. The buyer's lawyer is not required to ascertain the validity of such an authorization or the consequences if such an authorization is subsequently revoked.

However, at the time of completion, the buyer's lawyer should still ensure that the mode of payment from the seller's lawyer is consistent with the direction. If there is consistency, it should not usually be necessary for the buyer's seller to ask for further proof e.g. the estate agency's invoice. However, if a large amount is to be paid to the estate agency which appears extraordinary or suspicious, the buyer's lawyer should ask for a signed letter of authority or statutory declaration supported by a certified true copy of the signed contract between the seller and the estate agency. Whether an amount is large depends on the totality of the proceeds to be paid out.

In the ordinary case, the buyer would have a file copy of the Option after exercising the Option and the buyer's lawyer should not need to ask for further proof unless other information or documents are available to the buyer's lawyer that the seller's instruction is contrary to that given in the Option.

- (b) Yes. The buyer's lawyer should ask the seller to provide at least a signed letter of authority confirming the identity of, and amount to be paid to (if any), to the estate agency. The buyer's lawyer is not required to ascertain the nature of the dispute between the seller and the estate agency.

Date: 31.8.2011

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## 8. Verification

Question:

A letter of authorisation ("LA") contains the following clause:

"This letter shall act as an irrevocable direction from the seller to the Housing & Development Board and/or buyer's solicitors to pay the proceeds of the sale of the above-captioned property (after deducting any deposit paid to the seller by the buyer, monies owing to the HDB/Mortgagee and/or monies to be refunded to the seller's CPF accounts, if any) to the seller's solicitors. The seller irrevocably authorizes the Housing & Development Board and/or buyer's solicitors to issue cashier's orders for the said monies in favour of [name of seller's solicitors] and/or in any mode and manner of payments as directed by the seller's solicitors on completion. Such payment by the Housing & Development Board and/or buyer's

solicitors shall constitute a full discharge of the Board's/buyer's payments to the seller".

Can the buyer's solicitors accept the LA for the purposes of performing their duty of verification of payment of conveyancing money?

Guidance:

The Committee is of the view that such a LA is not acceptable as it purports to authorize any mode and manner of payment as directed by the seller's solicitors on completion. If the buyer agrees to the direction in the LA, such an agreement would effectively be void under section 73D(4) of the Conveyancing and Law of Property Act. Section 73D(4) provides that any contractual term in the conveyancing agreement that is inconsistent with the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("Rules") shall, to the extent of the inconsistency, not have effect. The intent of the Rules is that the instructions for distribution of sale proceeds must come directly from the seller, and not from the seller's solicitors. Hence, the seller's irrevocable direction is unenforceable as against the buyer or the buyer's solicitors and the buyer's solicitors are entitled to ask for other documents that will enable them to perform their duty of verification under Rule 18 of the Rules.

Date: 22.9.2011

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## **9. Duty of verification – Option to Purchase contains clause for Seller's Solicitors to direct Buyer or Buyer's Solicitors**

Question:

The Option to Purchase provides that:

The seller's lawyer is authorized to direct the buyer and/or the buyer's lawyers to approve and effect payments to various specified persons, including Category C payees ("authorized payees"); and the seller acknowledges that payment directed by the seller's lawyer to the authorized payees shall constitute a full discharge of the buyer's obligation to the seller provided that such directions do not contravene the Conveyancing Rules. At the time of completion, does the buyer's lawyer need to verify the identity of, and amount to be paid to, the authorized payees?

Guidance:

Yes. The buyer's lawyer continues to be under a duty to verify the identity of, and amount to be paid to, the Category C payees. This is because the clause which provides that "the seller's lawyer is authorized to direct the buyer and/or the buyer's lawyers" is void under section 73D(4) of the Conveyancing and Law of Property Act, which provides that any contractual term that is inconsistent with the CLP Rules shall, to the extent of the inconsistency, not have effect. The instructions for payment to Category C payees must come directly from the seller, and not from the seller's lawyer. Even if there is a Power of



Attorney given by the seller that the seller's lawyer may instruct the buyer and/or the buyer's lawyers, that power will be unenforceable as against the buyer or buyer's lawyer.

Date: 31.8.2011

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## **10. Duty of verification – Payment made to multiple sellers**

a) Question:

A law practice acts for all the sellers S1, S2 and S3 a conveyancing transaction. Before completion, the sellers' lawyer makes a request for payment in favour of S1 and S2 only. Does the buyer's lawyer require a statutory declaration (whether from all the sellers or S3) stating that payment is to be issued to S1 and S2 only?

Guidance:

No. Under the Conveyancing and Law of Property (Conveyancing) Rules ("Rules"), as S1 and S2 are Category B payees, the buyer's lawyer will only need to verify that the specified payees, S1 and S2, are Category B payees. A seller is a Category B payee as provided in the Rules. However, in normal conveyancing practice, the sellers' lawyer would have obtained a letter of authority from S3 if he acts for S1, S2 and S3 in the sale, as he would need to ascertain that S3 is willing to allow his portion of the sale proceeds to be paid over to S1 and S2. It is good practice for the seller's lawyer to also furnish this letter of authority to the buyer's lawyer upon request.

Date: 31.8.2011

b) Question:

Lawyers acting for the purchasers (P1 and P2) had requested for the developer's solicitors to counter-sign an urgent pay-out form from a CVY-CPF account in two scenarios:

- (i) for stamp duty reimbursement to P1 only
- (ii) for stamp duty reimbursement to P1 and/or P2.

Are the developer's solicitors required to have a Letter of Authority ("LA") (whether from P2 or the purchasers collectively) stating that payment is to be issued to P1 only before they countersign the pay-out form in these scenarios?

Guidance:

In both scenarios, the developer's solicitors will not require a Statutory Declaration or LA stating that payment is to be issued to P1 only. The relevant solicitor need to only verify that the specified payee (P1) is a Category B payee (see the Conveyancing and Law of Property

(Conveyancing) Rules 2011). In the second scenario however, parties should check with the appointed bank whether it could accept such a payment instruction, as some banks might not accept payment to alternative payees.

However, as a matter of good practice, it would be prudent for the purchaser's lawyers to obtain a LA from P2 to ascertain that P2 is willing to allow his portion to be paid over to P1. Purchaser's lawyers should cooperate and furnish this LA to the developer's lawyers upon request.

Date: 24.10.2011

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### **11. Payment to Vendor's Executor/Administrator – Whether Vendor's Executor/Administrator is a Category B or Category C payee**

Question:

Where conveyancing money is payable to the executor or administrator of the estate of a deceased vendor, is the executor or administrator considered a Category B or Category C payee?

Guidance:

The executor or administrator of the estate of a deceased vendor is considered a Category B payee. Under Rule 2(2) of the Conveyancing and Law of Property (Conveyancing) Rules 2011, the term "vendor" includes the vendor's executor or administrator, and should be read together with the definition of "Category B payee", which includes a vendor.

Date: 27.9.2011

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### **12. Requirements for Witness to the Letter of Authority**

Question:

Does a vendor's execution on a letter of authority ("LA"), it not being a statutory declaration, have to be witnessed?

If so,

- a) can the witness be any of the payees named in the LA?
- b) Can the lawyer handling the conveyancing transaction be a witness of the vendor's execution of the LA if, under the LA, payment (for related legal costs and expenses) will be authorized to the Law practice in which the lawyer is practicing?

Guidance:

The vendor's execution on the LA has to be witnessed although it is not a statutory declaration.

- a) the witness should not be any of the payees named in the LA, as the LA should not be witnessed by someone with an interest in the payment.
- b) Notwithstanding that the LA would authorize payment to the law practice, a lawyer of that law practice can witness the vendor's execution of the LA provided that documentary proof of how the payment was incurred is provided, and the costs and expenses are within the usual range expected of a similar conveyancing transaction. If the payments are not usual, the LA should be witnessed by a person independent of the law practice. A statutory declaration executed by the vendor under oath or affirmation before a Commissioner for Oaths or Notary Public might be required.

Date: 10.11.2011

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### **13. Query regarding disputed post-completion sale proceeds**

Question:

After Completion has taken place, the two Vendors are in dispute over the proportion of sale proceeds that each of them are entitled to. One of the Vendors, the Ex-husband, who had previously given his ex-wife the Power of Attorney to act on his behalf in the sale of the Property, has revoked the Power of Attorney and has applied to Syariah Court for a variation of the divorce order of court seeking a larger share of the sale proceeds of the Property. The Solicitors who acted for the Vendors in the sale of the Property are holding the sale proceeds as stakeholders pending the outcome of the intended variation application. In the situation where the Ex-wife and the Ex-husband have been issuing conflicting instructions to the Solicitors on the release of the post-completion sale proceeds, what should the Solicitors do?

Guidance:

Pursuant to Rule 7(1) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR"), the two prescribed modes for payment of money out of a conveyancing account are:-

- (1) a duly-signed pay-out form or variation pay-out form, in compliance with Rule 7(12); or
- (2) an order of court authorising the appointed bank to make payment in accordance with that order.

Hence in this situation, the Committee is of the view that the options available to the Solicitors are to either submit a pay-out form countersigned by the Purchaser's Solicitors or to get the Ex-wife to obtain an order of court for the disposition of the stakeholders' money in the conveyancing account. The Solicitors may also wish to refer to Q26 of the Ministry of Law's Frequently Asked Questions on Measures to Safeguard Conveyancing Money (updated as at 25 November 2011) regarding a similar situation.

Date: 8.3.2012

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#### **14. Query regarding what constitutes an "Order of Court" under Rule 7(1) of the Conveyancing and Law of Property (Conveyancing) Rules 2011**

Question:

In a Final Judgment passed down by the Court, it was stated that "a sum of \$31,381 shall be paid out to the Plaintiff from the stakeholders' money [held in the Plaintiff's law firm's conveyancing account and] the balance of the stakeholders' money shall be paid over to the Defendant." Does this constitute an Order of Court authorising the Appointed Bank to make payment of both the sums apportioned to the Plaintiff and the Defendant from Plaintiff's law firm's conveyancing account pursuant to Rule 7(1) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR")?

Guidance:

Rule 7(1)(b) of the CLPR states that:-

"Subject to paragraphs (6), (7) and (14) and rules 11(2), 12, 13 and 14, an appointed bank shall not pay any conveyancing money from a solicitor's conveyancing account or conveyancing (CPF) account, unless the appointed bank receives an order of court authorising it to make payment in accordance with that order".

Hence in this regard, the Committee is of the view that a practical way forward may be to check with the appointed bank as to whether the Final Judgment is sufficient for the purpose of authorising the bank to pay out the said sums from the Plaintiff's law firm's conveyancing account. If a fresh Order of Court is required, the Plaintiff's Solicitors are advised to consider seeking the appointed bank's confirmation on whether any specific details would be required by the appointed bank.

Date: 25.5.2012

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## 15. Query regarding format of Letter of Authority

Question:

For verification purposes, is it acceptable if a Letter of Authority ("LA") provided is general in form but does refer to an enclosed completion account which states the specific amounts to be paid to the various relevant payees?

Guidance:

The Committee highlights that the Solicitor verifying the LA should be guided by the following in making the decision whether to counter-sign the payout form:-

- (i) Rules 7(9) and 7 (10) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR"), on the documents to be provided for the purposes of verification and the situations where the party verifying the payment shall refuse to counter-sign, in relation to Category B and C payees respectively.
- (ii) Paragraphs 8 and 11 of the Committee's Circular 3 of 2011, which provide that if the information or documents provided are not satisfactory on account of its authenticity or there is a material discrepancy between the directions and the supporting documents or in the documents furnished, the solicitor verifying the payment must refuse to counter-sig the pay-out form (see: Rule 7(9)(c) of the CLPR) or exercise the power to disregard the payment instructions of the seller's lawyer and disburse the amount directly to the seller (see: Rule 18(1) of the CLPR).
- (iii) For the avoidance of doubt, the sample LA annexed to the Committee's Circular 3 of 2011 and contained in Annexure B of the Council's Guidance Note 2 of 2011 was intended as a sample which may be adapted by the parties to suit the matter at hand and was not intended as a prescribed form for LAs.

As stated in the Committee's Circular 3 of 2011, if the Solicitor chooses to counter-sign, he shall not be liable to be sued for the act of counter-signing the pay-out form if the act was done in good faith and did not involve any fraud or wilful misconduct on his part (see: Rule 7(11) of the CLPR). However, should he not choose not to accept the LA, any disputes arising from his refusal to counter-sign may be referred to the Law Society's Adjudication Scheme.

Date: 12.10.2012

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## 16. Query on refund of monies in conveyancing account

Question:

In the course of obtaining refinancing, the Mortgagor was required to pay part of the redemption monies for the redemption of an existing mortgage with their own funds. As such, the Mortgagor remitted the monies into their Solicitor's conveyancing account. The Solicitors in this case are acting for all parties (i.e. the mortgagor, existing mortgagee and new mortgagee). However, the Solicitors wish to know how to withdraw the monies from the Conveyancing account as this being a refinancing matter, there is no counter signatory involved.

Guidance:

The Committee is of the view that this situation falls under section 7(7) of the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR"). Thus, pursuant to this section, the appointed bank at which the conveyancing account is maintained may reverse the payment transaction and refund the whole part of the money to the Mortgagor with the consent of the Solicitor.

The Solicitor's law practice should also bear in mind that all expenses incurred in obtaining the refund shall be borne personally by the solicitor pursuant to section 7(8) of the CLPR.

The Ministry of Law's FAQs on Measures to Safeguard Conveyancing Money (as at 25 November 2011) at Q37 and Q38 also provides guidance. Q37 clarifies that in refinancing or redemption situations where the same law firm acts for all the parties, the lawyer should arrange for any conveyancing money to be transferred directly between the parties. Q38 clarifies that in refinancing or redemption situations where the same law firm acts for all parties, if the law firm mistakenly deposits money into its conveyancing account, Rules 7(6) and (7) of the CLPR allow the appointed bank to reverse that payment transaction and refund that conveyancing money to the person who provided it.

Date: 18.9.2012

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## 17. Clarification of Rule 5(3) – whether the Vendor can direct that a sum of money not exceeding \$5000 be paid out of the Purchaser's Solicitor's client account

Question:

The Vendor's Solicitors requested the Purchaser's Solicitors to pay by way of their firm's cheque, \$2500 for legal costs incurred. The Purchaser's Solicitors informed the Vendor's Solicitors that their firm's cheque can no longer be issued for this as provided by the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("CLPR"). The Vendor's Solicitor is of the view that pursuant to Rule 5(3) of the CLPR, a sum of money not exceeding \$5000 held in the Purchasers' Clients' account may still be used for this payment.

The parties are now requesting for clarification of Rule 5(3) as to whether the Vendor's Solicitors are entitled to the Purchaser's Solicitors' firm's cheque in payment of their legal costs.

Guidance:

The Committee is of the view that the intent of Rule 5(3) is to provide flexibility to a law firm to request, receive and hold a sum of not more than \$5000 in the firm's client account (as float money) for settling amounts for the purpose of completion. It is not up to the Vendor's Solicitors to direct that any costs under \$5000 must be paid out of the Purchaser's Client account. Unless provided for in the contract, it is up to the Purchaser's Solicitors to exercise their discretion as to whether they wish to call upon their client, the Purchaser, to pay, as float money into their client account, such sum not exceeding \$5000 towards the balance sales proceeds.

In light of the above, there is no requirement that the Purchaser must produce a law firm's cheque for such payment towards the balance sale proceeds.

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**18. Whether stakeholding sum can be deposited into clients' account and who to bear the charges levied if stakeholding sum is paid into the conveyancing account**

Question:

A solicitor acted for the Purchaser ("Purchaser") of an uncompleted property from a developer. The Purchaser sub-sold the property with completion of the sub-sale scheduled on a particular date. Another solicitor acted for the Sub-Purchaser ("Sub-Purchaser"). The Temporary Occupation Permit for the property had been issued but the property had not been separately assessed for property tax. The Sub-Purchaser's solicitor requested for a sum to be held by the Purchaser's solicitor as stakeholder pending separate assessment of property tax and the Purchaser had in-principle agreed to the stakeholding sum of \$3,000.00.

The Purchaser's solicitor sought a ruling on whether the stakeholding sum can be deposited into its clients' account instead of its conveyancing account given that the quantum involved is small and that conveyancing account charges will be levied by the SLA and bank for additional Cashier's Orders.

If the sum must be paid into the conveyancing account, who is to bear the various charges levied by the SLA and the bank.

Guidance:

As a "stakeholding sum" falls within the definition of conveyancing money, this sum should be deposited into the Purchaser's solicitor's conveyancing account.



When a party pays monies as a "stakeholding sum" to his solicitors to be deposited into the clients' account, the solicitors who hold the stakeholding sum bear the expenses incurred in relation to this deposit. Therefore, in the absence of agreement on who should bear the expenses incurred if the stakeholding sum is deposited into the conveyancing account, the same should apply i.e. the Purchaser's solicitor should bear the expenses incurred in relation to this deposit.

Date: 5.12.2013

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**RULINGS ON:**

**SECTION 3 - PROPER PRACTICE INTER-SE SOLICITORS**

**1. Certified Copy of Option**

Reference:

Whether the Vendor's solicitors can be required by the Purchaser's solicitors to certify a copy of the Option which had been exercised by the Purchaser.

Ruling:

The Vendor's solicitors were under no obligation to certify a copy of the Option as required by the Purchaser's solicitors. The Purchaser's solicitors could always make a photocopy of the Option (as exercised) and certify the same if it was required by their client, or the Purchaser's Mortgagees.

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**2. Time for Completion**

Reference:

Where a contract only stipulates the date but not the time for completion, are the Vendor's solicitors entitled to demand that completion takes place on the day in question during normal banking hours rather than normal office hours, failing which an additional day's interest would be charged?

Ruling:

If the Vendor's solicitors wish to restrict the time for completion to normal banking hours, special provision should be made in the contract.

*Note: The 2012 Conditions does not define a timeline in the definition of "Business Day".*

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### **3. Production of illegible copies of Titles Deeds**

Reference:

If one of the title deeds produced by the Mortgagor's solicitors to the Mortgagee's solicitors is not legible, who is obliged to obtain a clear copy from the Registry of Titles?

Ruling:

On the assumption that the title deeds are produced for purposes of deducing a good title, the Mortgagor should produce either the originals or legible copies.

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### **4. Place for Completion**

Reference:

In a case where the property is mortgaged to a bank and charged to the Central Provident Fund Board, should completion take place at the office of the Mortgagees' solicitors or at the office of the Central Provident Fund Board's solicitors?

Ruling:

The Charge in favour of the Central Provident Fund Board having priority, completion should take place at the office of the Central Provident Fund Board's solicitors.

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### **5. Withdrawals of Caveat rejected - Party liable to pay the Additional Lodgment Fees**

Reference:

On completion, the Vendor's solicitors produced, inter alia, two Withdrawals of Caveat to the Purchaser's solicitors who proceeded to register them after completion. Both were rejected by the Registry of Titles, one for failing to quote the particulars of the relevant Certificate of Title and the other for omission of the solicitor's name in the Certificate of Correctness. Which party would be liable to pay the fees for the lodgment as the original fees had been forfeited?

On the Vendor's solicitors' part, they maintained that the re-lodgment fees should be paid by the solicitors for the Purchaser as they should have checked the Withdrawals of Caveat before registration. The Purchaser's solicitors countered that the responsibility for checking the Withdrawals of Caveat should be that of the Vendor's solicitors as they prepared the Withdrawals of Caveat.

Ruling:

There was an obligation on both parties to check the Withdrawals of Caveat and the lodgment fees should be paid by them equally.

Date: 27.02.1996

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## **6. Party to Retain Option/Agreement**

Reference:

Who should retain the original stamped Option after it has been exercised?

Ruling:

The original stamped Option or Agreement should be retained by the Purchasers' solicitors for a number of reasons, the main of which were that the Option/Agreement would be required by the Purchasers:-

- a) for stamping of the Conveyance/Transfer;
- b) for production to the Mortgagees' solicitors (if required); and
- c) for production in Court should there be any dispute between the parties.

Date: 5.11.1996

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## **7. Transfer Rejected For Registration - Whose Liability To Bear Additional Registration Fees?**

Reference:

On completion of a sub-sale, the tri-partite Transfer was presented for registration by the Sub-Purchaser's solicitors. The Registrar raised a "material objection" to the Transfer as the place of incorporation of the Original Purchaser was not inserted in the Transfer. As a result of the objection, additional registration fees of \$50.00 had to be paid. Who should pay such additional registration fees?

Ruling:

The additional registration fees should be borne by the solicitors acting for the parties equally.

Date: 30.07.1996

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## **8. Title - Production of Vendor Company's resolution to sell**

Reference:

In a sale by a company as Vendor, solicitors acting for the Purchaser's Mortgagees requested for the Vendor's directors' resolution in respect of the sale to the Purchaser. The Vendor Company's solicitors refused. Were the Mortgagees' solicitors entitled to have such a resolution produced to them?

Ruling:

The matter is covered by the case of *Royal British Bank v. Turquand* [1856] 6 E & B 327 and Section 58 of the Land Titles Act (1994 Edition). Both the Purchaser's and Mortgagees' solicitors are not entitled to the directors' resolution. Moreover, there is no privity of contract between the Vendor Company and the Mortgagees and consequently, the solicitors for the Mortgagees are not entitled to request for such a resolution.

Date: 27.8.1996

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## **9. Entitlement to Sub-sale Deed of Assignment**

Reference:

The original purchasers of an apartment had not requested for the sub-purchasers to engross a usual draft Sub-Sale Deed of Assignment in Duplicate. Is the original purchaser now entitled to retain the original Sub-Sale Deed of Assignment with the sub-purchaser's signatures thereto?

Ruling:

By convention, the original Sub-Sale Deed of Assignment should be returned to the Sub-Purchaser on completion as it is the Sub-Purchaser who will require the said instrument to prove his rights, title and interest in the purchased property. This practice is similar to that of signing and returning the executed Transfer (of title to a purchaser on completion). It would be ideal for law firms to avoid this problem by adopting the practice of sending out two Sub-Sale Deeds of Assignment to be executed and engrossed in duplicate.

Date: 17.8.2009

## **10. Withholding money to be paid as property tax pending assessment**

Reference:

Does condition 7 of the Law Society's Conditions of Sale 1999 require the Vendor's solicitors to hold a sum of money for payment of property tax pending assessment by the Property Tax Department? What would be an acceptable amount to be withheld by the Vendor's solicitors as stakeholders pending the tax assessment?

Ruling:

Condition 7 does not impose a legal duty on the Vendor to set aside a certain amount of his/her money to be held by a stakeholder to be used to off-set the property tax due from and payable by the vendor pending the publication of the assessed valuation of the property by IRAS. However, it would be good practice for the Vendor and the Purchaser to arrive at a compromise on this issue to put both parties' minds at ease following completion of the sales and purchase.

While there is no established formula to correctly ascertain the desired amount to be stake held by Vendors pending assessment of property tax, common factors considered include:

- a) the estimated rent that the property is expected to fetch
- b) the period of time commencing 14 days from the date of issuance of the temporary occupation permit (TOP Date) to the date of completion of the sale and purchase of the subject property (Completion Date) – being the period during which the Vendor is liable to pay property tax.

It would also be good practice to incorporate any stakeholding requirements within the sale and purchase agreement to avoid future disputes as such.

Date: 17.11.2008

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## **11. Whether Bank Charges for issuance of Cashier's Orders/banker's drafts apply to a solicitor's law firms' cheques**

Reference:

In light of the Council's Practice Direction issued in February 1999 stating that "in a sale of property, the party who requires more than four cashier's orders or bank drafts or bankers cheques on completion shall be required to pay bank charges (if any) for such additional cashiers orders, or bank drafts or cheques", are law firms allowed to impose any charge(s) for issuance of their own firm's cheque(s)?

Ruling:

The Committee is of the view that the requirement for payment of bank charges under the 1999 Practice Direction does not apply to cheques issued by law firms. A law firm should not impose any charges on another law firm for the issuance of their own firm's cheque(s).

Date: 2.10.2007

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**RULINGS ON:**

**SECTION 4 – COSTS, INTEREST, DISBURSEMENTS & CHARGES**

**Sub-Section A on Late Completion:**

**Apportionment of Outgoings, Rents and Profits vis-à-vis late completion interest**

**A1. Variation in terms of Option to Purchase – apportionment of rent and late completion interest**

Reference:

The Option to Purchase ("OTP") between the Vendor and the Purchaser adopted the Law Society's Conditions of Sale 2012 ("2012 Conditions"). On 8.1.13, the Vendors informed the Purchasers that they would not be ready to complete on 15.1.13, the original date scheduled for completion. The Purchasers informed the Vendors that they were prepared to postpone completion to 31.1.13 without claiming late interest subject to the Vendors giving the Purchasers possession of the Property on 15.1.13, with rent from 15.1.13 onwards belonging to the Purchasers. They would however, start charging late completion interest from 1.2.13 onwards if completion was still not completed by then. On 15.1.13, the Vendors responded by giving the Purchasers the keys to the Property. However, on 16.1.13, the Vendors wanted to vary one of the terms. They requested that completion be rescheduled to 2 weeks after they obtain a Court Order that they required for completion, free of interest. They asked the Purchasers to return the keys if the Purchasers were not agreeable to this variation. The Purchasers returned the keys on 18.1.13. The Vendors subsequently agreed to pay late interest from 1.2.13 if they failed to complete on 31.1.13. Actual completion took place on 26.2.13. Vendors paid late completion interest, but not rental proceeds, to the Purchasers.

The Purchasers want to know if they can claim rental proceeds in addition to late completion interest considering that:-

- (i) There was an agreement by exchange of letters between solicitors that the Purchasers are entitled to the rent, and further;
- (ii) Circular 2 of 2013 (set out above in *Section 4 – Item 6*) was issued on 23.4.13 after actual completion took place.

**Ruling:**

For the avoidance of doubt, the Committee first sets out that in this instance, the “Scheduled Completion Date” as defined in the 2012 Conditions should refer to the subsequently varied date of 31.1.13 and not 15.1.13.

The Committee is of the view that based on the documents provided, it does not appear that there was any express agreement that the Vendors would be liable for rent **in addition to** late completion interest in the event of default by the Vendors. Furthermore, and in any case, this situation will fall foul of the principle against double compensation expounded in *Chan Ah Beng v Liang and Sons Holdings (S) Pte Ltd* [2012] 3 SLR 1088 (“Chan Ah Beng”).

Circular 2 of 2013 highlighted to members that the Committee’s previous ruling that “where completion is delayed due to the default of a vendor, a purchaser is entitled to claim both an account of rent pursuant to Condition 6.2 of the 2012 Conditions and late completion interest pursuant to Condition 9.2 of the 2012 Conditions”, has been superseded by the *Chan Ah Beng* judgment. Although Circular 2 was issued after the actual completion of this transaction, the *Chan Ah Beng* judgment was published way before the completion of this transaction.

Hence, applying the judgment in *Chan Ah Beng* to the circumstances, the Committee is of the view that the Purchasers will not be able to claim rental proceeds from 1.2.13 to the date of actual completion as the Purchasers have already elected to receive late completion interest. In addition, the Vendor must also account for the outgoings and expenses from 1.2.13 until date of actual completion.

Date: 27.6.2013

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**A2. Late completion due to Purchaser’s default - Apportionment of outgoings when Property is sold with vacant possession**

**Reference:**

Where the property is sold with vacant possession, the Vendor is deemed to continue being in occupation of the property, and the Purchasers are not receiving any apportionment in rents and profits. How should outgoings from the day after the scheduled completion date to the actual completion date (i.e. 5.7.11 to 15.7.11) be apportioned between the Purchasers and the Vendor?

**Ruling:**

In this instance, the Purchaser is still liable for all outgoings from 5.7.11 to 15.7.11. Conditions 6.1 and 6.2 of the Law Society’s Conditions of Sale 1999 state that the Vendor must discharge the outgoings down to and including the date fixed for completion, while the Purchaser must discharge all outgoings and will be entitled to all the rents and profits after the date fixed for completion. The obligation of the Purchaser to pay for all outgoings after



the scheduled completion date is not affected by whether the Purchaser has received any apportionment of rent and profits.

Date: 5.8.2011

*Note: This ruling was made with reference to the 1999 Conditions of Sale. Conditions 6.1 and 6.2 of the 1999 Conditions of Sale are now Conditions 6.1 and 6.2 of the Law Society's Conditions of Sale 2012.*

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**A3. Late completion due to Purchaser's default – apportionment of outgoings pursuant to Condition 6.4 of 2012 Conditions of Sale**

Reference:

The Option to Purchase ("OTP") between the Purchaser and the Vendor incorporated the Law Society's Conditions of Sale 2012 ("2012 Conditions"). Completion date was fixed for 28.2.13 but due to the Purchaser's default, actual completion took place on 28.3.13. It is undisputed that the Purchaser is to pay the Vendors late completion interest. However, the Purchaser argues that pursuant to Condition 6.4 of the 2012 Conditions, the Vendors should only be allowed to claim property tax and maintenance fees from 28.3.13 and not 28.2.13.

Ruling:

Regarding the Vendor's liability for property tax, it is Condition 7.1.1 of the 2012 Conditions that provides for apportionment. Pursuant to Condition 7.1.1, Vendor's liability for property tax is until (and including) the Scheduled Completion Date, regardless of whether there is a delay in completion. Hence, the Purchaser is liable for property tax after 28.2.13.

Regarding maintenance fees, Conditions 6.1 and 6.2 provides that the Vendor is liable for all expenses, outgoings and levies up till (and including) the Scheduled Completion Date, while the Purchaser is liable for all expenses, outgoings and levies after the Scheduled Completion Date.

Condition 6.4 does not affect Conditions 6.1 and 6.2 unless the Vendor elects not to receive late completion interest under Condition 9.1, electing to retain rents and other profits instead. In such a situation, the Vendor will be liable to pay for expenses, outgoings and levies up till and including the actual completion date.

However, this is not the case here. In this situation, the Vendor has elected to receive late completion interest. Accordingly, the Purchaser is liable for property tax and maintenance fees after 28.2.13.

Date: 11.6.2013

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**Sub-Section B on Liability for Additional Search Fees incurred:**

**B1. Purchaser's solicitor not informed of Vendor's inability to complete as scheduled – Vendor liable for additional search fees incurred**

Reference:

Solicitor A acted for the Vendor and Solicitor B acted for the Purchaser. The sale and purchase was scheduled for completion on 14.11.96. The Vendor was not ready to complete on 14.11.96 but no indication was given by Solicitor A to Solicitor B that the Vendor would not be able to complete on 14.11.96. Solicitor B made their searches on the afternoon of 14.11.96. At 4.00 p.m. on 14.11.96, Solicitor B was informed that the Vendor would not be able to complete on 14.11.96. The sale and purchase was completed on 16.11.96. Solicitor A wanted to know whether:-

- a) the Vendor was liable for the disbursements incurred by Solicitor B for the searches made on 14.11.96;
- b) the Vendor was liable for late completion interest.

Ruling:

The delay was attributable to the Vendor and consequently, it was liable to pay interest for delay in completion. As there were no specific provisions in the contract for payment of disbursements (search fees) in the event of delay in completion, the Purchaser was not entitled to claim such disbursements.

Date: 18.2.1997

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**Sub-Section C on Apportioning Liability for Late Completion Interest**

**C1. Liability for Delay in Completion – Miscellaneous Causes**

- a) Delay in rendering a completion account

Reference:

If a Purchaser delays in completing the purchase on the day fixed for completion due to the Vendor's failure or delay in rendering a completion account, is the Purchaser liable for payment of interest?

Ruling:

The decision in the case of *Toh Teck Sun v Mandarin Gardens Pte Ltd* [1988] 2 M.L.J. 276 applies. The Purchaser is still obliged to complete on the scheduled completion

date and hence, the Purchaser is liable for payment of interest arising from the delay in completion.

The Committee has upheld this rule in the following situations:

- i) There is an error in the computation of the completion account furnished by the Vendor;
- ii) The Vendors only forwarded the completion account to the Purchasers' solicitors 4 days before the date of completion, resulting in a delay in the Purchasers obtaining approval from their Mortgagees for the release of the housing loan that is required for completion.

Date: 3.3.2008; 30.7.2010

*Note: In view of the introduction of the CLP Rules, this Ruling may well be different hereon.*

- b) Conveyance forwarded for execution three days before completion

Reference:

Can the Vendor properly claim interest for the Purchaser's delay in completing the purchase of a property in the following circumstances:-

- i) The Vendor's solicitors forwarded the Conveyance to the Purchaser's solicitor for execution three days before the date fixed for completion;
- ii) The Purchaser's solicitor maintained that the time given to their clients (who were foreigners) to execute the Conveyance was insufficient and that they required ten days;
- iii) Completion was delayed and the Vendor claimed interest for late completion.

Ruling:

The parties should act reasonably in matters of this nature and the Vendor should not insist on the payment of interest by the Purchaser in the circumstances of this case.

- c) Conveyance forwarded for execution on the day of completion

Reference:

A Transfer was sent by the Purchaser's solicitors reaching the Developer's solicitors only on the date fixed for completion. The Developer executed the Transfer and notified the next day that they were ready for completion.

Ruling:

To the question as to who was responsible for the interest arising from the delayed completion, the Council ruled that as the delay was caused by the Purchaser in not forwarding the Transfer well before the date fixed for completion, the Purchaser should bear the interest.

d) Tight timeline to completion due to delays by both Parties

Reference:

Are the Sub-Purchasers liable to pay late completion interest to the Vendors/Original Purchasers for a delay in completion of 7 days, considering the fact that the Sub-Purchasers were on a tight timeline due to delays on the part of the Vendors?

In this instance, the Vendors took more than 2 months to obtain consent to the sub-sale from the Developers after the Option to purchase was exercised. As a result, the sub-purchasers only had 7 days before the completion date to carry out their part of the bargain.

Ruling:

Based on Condition 8.3 of the Law Society Conditions of Sale 1999, neither the Original Purchasers nor the Sub-Purchasers were liable to pay late completion interest as both parties were at fault. The Original Purchasers' solicitors were at fault for their delay in obtaining consent from the Developers for the Sub-Sale. The Sub-Purchasers did not manage to give a satisfactory explanation as to why they could not have attended at their solicitor's office shortly before the date of completion to execute the Sale and Purchase Agreement.

The Committee was also of the view that in the course of dealings between solicitors in a conveyancing transaction, respect and consideration must be given to the other party to carry out their part of the transaction, and in this case, the Original Purchasers' solicitors fell short of providing that respect and consideration.

*Note: This ruling was made with reference to the Conditions of Sale 1999. Condition 8.3 is now Condition 9.4 under the Singapore Law Society's Conditions of Sale 2012.*

e) Completion unable to proceed due to notice given too late in the business day

Reference:

In a sale and purchase agreement subject to an existing tenancy, the original date of completion agreed upon between the Sub-Purchaser and the Vendor/Original Purchaser was 1.5.10. Completion was then delayed as the Vendor lost the Original

tenancy agreement. The Vendor found the Original tenancy agreement and was ready for completion on 7.5.10. The Vendor's solicitors notified the Sub-Purchasers late into the business day, as such, the Developer's solicitors were not able to arrange for completion on 7.5.10 on such short notice. Completion then took place on the next available business day, 10.5.10. Should late completion interest payable by the Vendors be calculated from the scheduled date of completion to 7.5.10 or 10.5.10?

Ruling:

The Committee is of the view that in this instance, the notification was inadequate for the Sub-Purchasers' solicitors to convene a completion on the very same day. The Vendor is liable to pay late completion interest from the scheduled date of completion to 10.5.10.

Date: 12.4.2011

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## **C2. Liability for delay in completion - Misplaced title deeds**

- a) Misplaced title deed – Vendors responsible cannot expect to profit from their own default

Reference:

The Vendors and Purchasers were separately represented in the sale and purchase of a unit where strata title had been issued. Completion of the sale was scheduled for 21.6.96. The Vendors misplaced the strata title certificate and had to apply for a replacement of the certificate. The Purchasers, as a matter of goodwill, agreed to postpone completion to 1.7.96 free of late completion interest. On 12.7.96, the Vendors' solicitors requested for completion. As the Purchasers' Mortgagees and the CPF Board required some time for the mortgage and CPF moneys to be released, the Purchasers asked for completion to be deferred to 17.7.96. The matter was finally completed on 19.7.96 and the Purchasers' solicitors sought interest from the Vendors from 2.7.96 to 12.7.96 (11 days) whilst the Vendors' solicitors counter-claimed interest from the Purchasers from 13.7.96 to 17.7.96. The parties also disputed as to how the outgoings should be apportioned.

Ruling:

As the Vendors were not in a position to complete on the date fixed for completion, i.e. 21.6.96, the Purchasers (who had extended time without charging any interest) were entitled to a reasonable time to complete the purchase. The Purchasers had completed within a reasonable time by completing on 19.7.96 and the Vendors were therefore not entitled to charge any interest for late completion. Further, as the delay in completion was due to the default of the Vendors, the Purchasers should, in the

circumstances of this case be exonerated from paying any outgoings from the date fixed for completion until and including the date of actual completion.

The Vendors, being the defaulting party, cannot expect to profit from their own default.

Date: 1.10.1996

- b) Delay in obtaining title deeds attributed to both parties – No interest payable

Reference:

The Purchaser exercised the Option on 8.12.95 and completion was scheduled for 18.4.96. On 12.1.96, the Vendor's solicitors forwarded part of the title deeds to the Purchaser's solicitors. Subsequently, on 4.4.96, the Purchaser's solicitors requested for the prior title deeds and received them on 16.4.96. Completion only took place on 26.4.96. Who was liable for interest for late completion?

Ruling:

The Vendor was under an obligation to send the full set of title deeds (including prior common law deeds) to the Purchaser. On the other hand, the Purchaser should have requested for the prior title deeds say within two weeks of receipt of the first batch of title deeds instead of waiting for more than two months to request for the prior deeds. In the light of the above, both parties were at fault and the delay was attributable to both sides. In the circumstances, no interest should therefore be payable by either party for the delay in completion.

Date: 18.2.1997

*Note: This ruling was made with reference to the Conditions of Sale 1994. Condition 8 is now Condition 9 under the Singapore Law Society's Conditions of Sale 2012.*

- c) Lost title deeds – Vendor's tardy conduct in obtaining replacement

Reference:

On 29.6.11, the Vendor wrote to the Mortgagee to request for the title deeds to the property. The Mortgagee confirmed from their correspondence with the CPF Board on 19.8.11, that the title deeds have been lost. On 22.8.11, the Vendor wrote to the Mortgagee enquiring if action had been taken for replacement of lost title deeds pertaining to a property. The Mortgagee replied on the same day that they were prepared on a goodwill and without prejudice basis to assist in the application of a replacement SSCT and to bear the costs of the application. The Mortgagee also suggested for the Vendor to seek the Purchaser's agreement to complete the matter as scheduled with the application papers for the replacement SSCT, so that no late

completion interest would be charged. On 31.8.11 the scheduled date of completion, the Purchaser wrote that it was ready and willing to complete, but was not agreeable to the Vendor's reply with the Mortgagee's suggestion. On 1.9.11, the Vendor contended that Clause 1.1 of the Option to Purchase applied – including, *inter alia*, that *'the Purchaser shall not require the delivery or production of any deeds... not in the Vendor's possession nor... make any requisitions or objections in respect thereof'*. The Purchaser rejected this, and on 2.9.11 served on the Vendor a 21 days' notice to complete. The replacement SSCT was issued on 20.9.11, but completion only occurred on 21.9.11 because of a dispute on payment of late completion interest.

Is the Purchaser or Vendor responsible for paying the late completion interest from 1.9.11 to 21.9.11?

Ruling:

The Vendor is liable for late completion interest under Condition 8.2 of the 1999 Conditions from 1.9.11 to 21.9.11.

The term "default" means: *"either not doing what you ought or doing what you ought not, having regard to your relations with the other parties concerned in the transaction; in other words, it involves the breach of some duty you owe to another or others. It refers to personal conduct and is not the same thing as breach of contract"* (*Alivestone Investment Pte Ltd v Splendore Investments Pte Ltd* [1996] 1 SLR(R) 678; See *Bee Hoon v Quah Poe Hoe* [1989] 1 SLR(R) 623).

Here, the Committee found that the delay in completion was due solely to the default of the Vendor for the following reasons:

- (1) The Vendor was under a duty under Condition 28.2 of the 1999 Conditions to ensure that they *"deliver the documents to the Purchaser of the lot on completion"*, unless expressly excluded by the parties. The Purchaser was therefore not obliged to chase for the title deeds before completion or follow up on this matter with the Vendor. The Vendor's duty under Condition 28.2 was not altered by the fact that the Mortgagee did not have the title deeds in its possession.
- (2) The cause of delay was not beyond the Vendor's control:

A party is liable for late completion interest under Condition 8 if the delay was not *"due to circumstances beyond the [party's] control..."* (*Liang and Sons Holding(S) Pte Ltd v Chan Ah Beng* [2011] SGHC 236, such as if the vendor fails to show that diligent efforts had been made to obtain the relevant documents, and that in spite of such efforts, the vendor had not been able to obtain them by the scheduled completion date (*Orchard Twelve Investments Pte Ltd v Golden Bay Realty Pte Ltd* [1986])).

Here, the Vendor's conduct fell short of the requisite level of diligence and therefore constituted a "default". Although the Vendor had requested the



Mortgagee for the title deeds to the property about 3 months before the scheduled completion date, it did not follow up on this request until it was informed by the Mortgagee about 2 months later (8 days before the scheduled completion date) that the title deeds had been lost. The fact that the Mortgagee did not have the title deeds in its possession did not alter or affect the Vendor's duty to make diligent efforts in obtaining the title deeds by the scheduled completion date.

- (3) Clause 1.1 refers to the previous conveyancing practice where common law title can be deduced by making the proper search at the Registry of Deeds of dealings or events affecting property or the owners thereof going back for at least 30 years, to ascertain the title of the vendor even if the original title deeds were lost (*Algemene Bank Nederland NV v Tan Chin Tiong* [1985-1986] SLR(R) 1154 at [11]). In those circumstances, certified true copies of the relevant deeds from the Registry were sufficient to prove good root of title and the vendor was not legally compelled to the production of the original deeds. In contrast, modern conveyancing practice requires the purchaser to surrender the instrument of title to enable registration and in order to receive the new title, in compliance with Singapore Land Authority's procedures. Hence, it is necessary for the vendor to hand over the instrument of title to the purchaser on completion.
- (4) Finally, the Purchaser is not liable for late completion interest arising from the one day delay in completion from 20.9.11 to 21.9.11, as the Purchaser is entitled to a reasonable time to complete.

Date: 25.4.2012

*Note: This ruling was made with reference to condition 28.2 of the 1999 Conditions of Sale which has since been removed from the 2012 Conditions of Sale.*

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### **C3. Liability for delay in completion - Delay in obtaining necessary documents**

#### **a) Inability to satisfy HDB's Conditional Approval**

Reference:

Completion between the Vendor and the Purchaser was subject to the Housing and Development Board's approval upon rectification of unauthorized items by the transferor (Vendor) and/or upon HDB's receipt of an undertaking by the transferee (Purchaser) to rectify the same within one month after completion. As the Vendor/Purchaser were unable to meet these demands, completion only eventuated on 29.2.08 instead of 4.1.08. Was the Vendor liable to the Purchaser for late completion interest?

**Ruling:**

Late completion interest should not be charged to the Vendor. In this case, the “as is where is” Clause 11 of the Option to Purchase stated that the Purchaser accepted the condition of the property as it stood at the time of contract. The liability or burden of the acceptance applies notwithstanding that the contract for sale and purchase was subject to the HDB’s approval, where such approval would have been conditional upon the removal of any unauthorized work or structures present at the time of the inspection. This burden would not shift to the Vendor just because the HDB imposes conditions for the removal of any unauthorized work. Thus the Vendor should not be liable for any delay caused by the imposition of HDB’s conditions.

Date: 28.4.2008

- b) Delay in obtaining necessary approvals from Mortgagee and CPF Board – Neither liable to pay interest since both parties at fault

**Reference:**

Completion was originally scheduled for 31.5.10, but was delayed to 3.6.10 because the Vendor only furnished a copy of the Instrument of Restriction to the Purchaser on the scheduled date of completion, which made it impossible for the Purchaser to complete her title investigation and obtain the necessary approvals from the Mortgagee and CPF Board in time for completion. Prior to the scheduled completion date, the Purchaser’s solicitors had given consent to the registration of the Instrument of Restriction without requesting for and checking the Instrument.

Was the Vendor or Purchaser liable to pay late completion interest?

**Ruling:**

Neither the Vendor nor the Purchaser were liable to pay late completion interest because both parties were at fault.

The Vendor should have forwarded a copy of the Instrument of Restriction (to be registered only after the option was exercised) to the Purchaser for consent, together with the relevant documents for the Purchaser’s investigation of title to the property.

On the other hand, the Purchaser should not have relied solely on the Vendor’s information concerning the Instrument of Restriction. The Purchaser’s solicitors ought to have sought a copy of the Instrument for review before giving consent to the registration. Hence, the Purchaser was in no position to object to completion on the ground that it was the Vendor’s default which caused the Purchaser’s delayed acquisition of the necessary approvals.

Date: 19.7.2010

c) Vendor's delay in providing Original or Duplicate Tenancy Agreement

Reference:

On the initial scheduled date of completion 1.5.10, the Vendor informed the Purchasers that she was unable to produce a signed or certified true copy of the existing tenancy agreement as she had misplaced it. The Purchasers refused to complete and completion was delayed till the Vendor found and produced her copy of the tenancy agreement. The Vendor insisted that the Purchasers pay late completion interest for the delay. Her stand was that the Purchasers already had a photocopy of the tenancy agreement and had no right to delay completion. The Purchasers made payment under protest to facilitate completion. The Purchasers have submitted the following queries to the Committee:-

- (i) In a sale made subject to an existing tenancy agreement, is it not implied that on completion, the Vendor must hand over a certified true copy of the existing tenancy agreement?
- (ii) In this instance whereby the Vendor failed to do so, are the Purchasers entitled to late completion interest from the Vendor?

Ruling:

The Committee has ruled that:

- (i) Even if the contract does not specify that the original or duplicate stamped tenancy agreement is to be handed over on completion, the Vendor is obliged to provide sufficient evidence of the tenancy. It is not reasonable to require the Purchasers to accept only a photocopy of the tenancy agreement. The Vendor should have at least been prepared to provide a statutory declaration to state that the photocopy is a true copy of the tenancy agreement.
- (ii) Accordingly, late completion interest is payable by the Vendor to the Purchasers.

Date: 24.6.2010

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**C4. Liability for delay in completion - terms and conditions of sale**

- a) Both parties at fault for late completion – Purchaser's delay in accepting Developers' terms and conditions for fresh Agreement; Vendor's tardy response.

Reference:

Whether the Vendor is entitled to claim interest for late completion from the Purchaser in the following circumstances:-

- i) One of the terms of the contract was that the Vendor should furnish the Purchaser with a fresh Agreement with the Developers. Completion was to take place on 12.5.93;
- ii) The Purchaser's solicitors wrote to the Vendor's solicitors for the title deeds and fresh Agreement on 3.3.93. On 19.4.93, the Purchaser's solicitors forwarded two cheques for \$200 each being the costs for the fresh Agreement and the Developers' solicitors' costs. On 22.4.93 and 3.5.93, the Purchaser's solicitors sent further reminders to the Vendor's solicitors;
- iii) The Vendor's solicitors sent the fresh Agreement and the title deeds two days before completion. The Purchaser's solicitors returned the fresh Agreement duly signed by the Purchaser on 11.5.93. On 13.5.93, the Vendor's solicitors gave the Purchaser 21 days' notice to complete under Condition 29 of the Law Society's Conditions of Sale 1994. The matter was completed on 19.5.93.

**Ruling:**

There was delay on the part of both parties as it appeared that the Purchaser had delayed in confirming acceptance of the terms listed in the Developer's solicitors' letter of 7.4.93. In the circumstances, Condition 8(c) of the Law Society's Conditions of Sale 1994 should apply.

- b) Primary cause of late completion – Sub-purchaser's delay in accepting Developers' terms and conditions for fresh Agreement

**Reference:**

Can the Original Purchaser/Vendor in a sub-sale claim interest for the Sub-Purchaser's delay in completing the purchase in the following circumstances:-

- i) Developers' conditions for entering into a fresh sale and purchase agreement were sent to the Sub-Purchasers' solicitors on 13.7.99;
- ii) On 25.8.99, after repeated reminders, the Sub-Purchasers' solicitors returned the Developers' Particulars Form with a cheque to the Original Purchaser's solicitors for transmission to the Developers but failed to confirm acceptance of the Developers' conditions;
- iii) The necessary confirmation was given on 27.8.99;
- iv) Completion was fixed for 1.9.99, but was delayed to 7.9.99 after the Developers confirmed on 6.9.99 that the fresh sale and purchase agreement had been signed.

Ruling:

The Sub-Purchaser should pay interest to the Original Purchaser as the delay was caused by the Sub-Purchaser not accepting the terms and conditions imposed by the Developers promptly. This precipitated a chain reaction which resulted in each step being delayed as a result of which completion could only take place after the scheduled date.

- c) Disagreement in parties' obligations to give an undertaking to HDB under the sale and purchase agreement

Reference:

In a letter of approval for the sale of the property on 17.08.09 issued by HDB, the Vendors were imposed with a primary obligation to rectify all infringements 1 week before the completion of the resale transaction, unless an undertaking was given to HDB by the Purchaser to rectify the unauthorised items within 1 month after completion. Correspondence between the parties in May 2009, regarding the sale and purchase of the property, showed that despite the Vendors' repeated requests, the Purchaser did not agree to provide the undertaking to HDB. In reply to the Vendor's letter on 31.08.09 that the Purchaser had agreed to give the undertaking, the Purchaser reiterated on 08.09.09 that it had not agreed to do so. Completion, originally scheduled on 15.9.09, was delayed till 25.9.09 by the Vendors' actions. Is late completion interest payable by the Vendors to the Purchaser?

Ruling:

The Vendors are liable to pay late completion interest to the Purchaser under Condition 8.2 of the Law Society Conditions of Sale 1999. The correspondence showed that despite the Vendors' repeated requests, the Purchaser did not agree to provide the undertaking to HDB. Given that the Purchaser had consistently maintained her position, the Committee found that the 10 day delay in completion was due solely to the default of the Vendors in failing to rectify all infringements based on the timeline required by HDB.

Date: 11.11.2009

*Note: This ruling was made with reference to the Conditions of Sale 1999. Condition 8.2 is now Condition 9.2 of the Singapore Law Society Conditions of Sale 2012.*

## **C5. Intervening Circumstances contributing to late completion**

- a) Strata certificate suddenly issued – Neither party at fault

Reference:

Can the Vendor claim interest against the Purchaser for delay in the completion of a sub-sale where on the date fixed for completion (which was a Friday), a search at the Registry of Titles revealed that a separate Subsidiary Strata Certificate of Title for the property had just been issued and all caveats and withdrawal of caveats (done on the basis of the land lot and the Certificate of Title of the land parcel) had to be re-done and completion postponed to the following Monday.

Ruling:

In the circumstances of this case, no party was at fault and Condition 8(c) of the Law Society's Conditions of Sale 1994 should apply.

Date: 11.8.1998

*Note: This ruling was made with reference to the Conditions of Sale 1994. Condition 8 is now Condition 9 under the Singapore Law Society's Conditions of Sale 2012.*

- b) Transport of documents affected by ash clouds – but fault attributable to Purchaser

Reference:

The Purchasers exercised the Option to Purchase on 11.4.11, and completion was scheduled for 20.6.11. The Bank extended to the Purchasers the housing loan for the purchase of the property on 19.4.11, but its letter of instructions only reached the Purchasers on 8.6.11. Dispatch of documents from the Purchasers would usually take 5 days to reach the Bank, but due to ash clouds in Chile, flights were disrupted and the document was unable to reach in time. Completion only took place on 28.6.11. Are the Purchasers liable for late completion interest for the period of delay in completion, given that the delay was due to natural causes?

Ruling:

The Purchasers are liable to pay the interest for late completion from 21.6.11 to 28.6.11, because the delay was attributable to the Purchasers and the circumstances of this case did not fall within Condition 8.3 of the Law Society's Conditions of Sale 1999.

As the Purchasers were overseas, they/their solicitors should have taken pre-emptive measures to ensure that the security documents were sent to them way in advance of the scheduled completion date to avoid any unforeseen delays arising from the

delivery and return of the documents overseas. The flight disruptions did not affect the obligation on the part of the Purchasers to be ready, willing and able to complete on the scheduled completion date.

Date: 26.8.2011

- c) Completion delayed by caveats lodged by prior purchaser and not withdrawn before completion – Situation provided for in contract

Reference:

Completion was delayed from 5.7.07 to 17.1.08 due to a disagreement between parties regarding the Vendors' failure to remove a caveat lodged by a prior purchaser on the Property. There was a clause in the Option to Purchase stating that "[t]he title to the Property shall be in order and properly deduced and free from encumbrances..." The Purchasers wanted the Property delivered free from the caveat whereas the Vendors took the position that a caveat only serves as mere notice and does not operate as an encumbrance. In this instance, are the Vendors liable to pay late completion interest?

Ruling:

The Vendors are liable to pay the late completion interest from 6.7.07 to 17.1.08.

- (i) Clause 4 was not complied with: A caveat being a notification of an interest claimed by the caveator against the property will result in the purchaser not being able to immediately upon completion become the proprietor of registered land and hold that land free from all encumbrances, liens, estates, and interests that are registered or notified in the land-register upon completion of the sale and purchase.
- (ii) Delay in completion is attributed to the Vendors because they failed to procure the withdrawal of the first caveat before the original completion date on 5.7.07, and in this instance, after the first caveat was removed, the prior purchasers lodged a second caveat that the Vendors took a long time to remove, delaying completion till 17.1.08.

Date: 5.8.2010

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**Sub-Section D on Computation of Interest:****D1. Computation of Interest on Late Completion of Sub-Sale**

Reference:

Whether the balance of the unpaid original purchase price, which is to be paid by a Sub-Purchaser by way of progress payments to the Developer after completion of a sub-sale, should be deducted from the amount of the sub-purchase price for the purposes of calculation of any interest payable under the clause 8(a) of the Singapore Law Society's Conditions of Sale 1994 on completion of the sub-sale between the Original Purchaser and the Sub-Purchaser.

Ruling:

The interest payable would depend on whether the balance of the purchase price payable to the Original Purchaser by the Sub-Purchaser on completion of the sub-sale included the unpaid sum due to the Developer. If it did not, then the interest was only chargeable on the amount paid to the Original Purchaser.

*Note 1: This ruling applies equally to a situation where the Vendor (the Original Purchaser) caused delay in completion of a sub-sale and for the purpose of calculation of interest payable under Condition 8(b) of the Singapore Law Society's Conditions of Sale 1994.*

*Note 2: This ruling was made with reference to the Conditions of Sale 1994. Condition 8 of the Conditions of Sale 1994 is now Condition 9 under the Singapore Law Society's Conditions of Sale 2012.*

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**D2. Offsetting of Late Completion Interest using notional rent for giving early vacant possession**

Reference:

Although completion was scheduled for 9.11.07, the Vendors gave vacant possession of the property to the Purchasers on 26.10.07 at the request of the Purchasers, without the need to pay rental. The Vendors and the Purchasers subsequently mutually agreed to vary the original date of completion to the earlier date of 7.11.07. Unfortunately, due to a default by the Vendors, completion eventually took place only on 9.11.07.

- a) Should the Vendors be liable to pay late completion interest to the Purchasers for 8.11.07-9.11.07?

- b) If the Vendors were liable to pay late completion interest, could the notional rent for the two weeks of early vacant possession given to the Purchasers be used to set off this amount?

Ruling:

- a) As the parties had mutually agreed to vary the original date of completion to an earlier date, the Purchasers were entitled to the late completion interest.
- b) However, Condition 8.2.2 of the Law Society's Conditions of Sale 1999 applies, and hence the late completion interest chargeable should be set off by the notional rental for the period of 2 weeks prior to the completion. As the notional rental based on the annual value of the property was in this case calculated to be more than that of the late completion interest, the latter should not be imposed on the Vendors.

*Note: This ruling was made with reference to Condition 8.2.2 of the Law Society's Conditions of Sale 1999. The said condition is now Condition 9.3 of the Law Society's Conditions of Sale 2012, which makes it clearer that "if the Vendor has delivered vacant possession of the Property to the Purchaser before the Completion Date, and if no rent is payable by the Purchaser to the Vendor, then the interest payable to the Purchaser will be reduced by a sum equivalent to a notional rent calculated on the annual value of the Property as assessed by IRAS under the Property Tax Act (Cap 254)."*

Date: 29.02.2008

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**Sub-Section E on Solicitors' Remuneration:**

**E1. Mortgagee's Solicitors' Costs for Title Search in Redemption**

Reference:

Whether the Mortgagee's solicitors were entitled to charge the search fees made before completion of the redemption.

Ruling:

The Mortgagee's solicitors are entitled to charge title search fees as they are required to ensure that the property is re-conveyed to the correct party.

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## **E2. Mortgagee's Solicitors' Costs in Abortive Mortgage**

Reference:

Are legal costs incurred by a Mortgagee, properly payable by the Mortgagor when the loan transaction becomes abortive?

Ruling:

In the absence of any express agreement, a Mortgagor is not bound to pay the costs incurred by the Mortgagee's solicitor in an abortive loan transaction.

*Note: This originated from the Practice Directions and Rulings of the Law Society issued in 1989.*

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## **E3. Charges for Bankruptcy Searches**

Reference & Ruling:

On a question as to whether the Mortgagee's solicitor on a redemption is allowed to charge for bankruptcy searches on the Mortgagor redeeming the loan, the Council was of the view that the Mortgagee's solicitor is entitled to charge because of Section 77(2) of the Bankruptcy Act (Cap.20).

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## **E4. Judicial Management Searches**

Reference & Ruling:

To a question of whether solicitors for a Chargee may be reimbursed for conducting a 13 year judicial management search on the Developers of the unit to be charged, the Council has ruled that the Chargee's solicitors were only entitled to charge for judicial management searches for a maximum period of two (2) years.

Date: 8.9.1998

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## **E5. Additional legal costs – Transfer upon death of purchasers**

Reference:

Parties entered into a Sale and Purchase Agreement on 15.02.06. However, both Purchasers passed on in 2008 and 2009. The Vendors did not object to executing the

Transfers in favour of the personal representatives of the deceased Purchasers, but requested payment of their solicitor's legal costs in perusing all the relevant documents and approving the Transfer. Under the Sale and Purchase Agreement dated 15.02.06, the term "Purchaser" includes the personal representatives of the Purchaser; and clause 2 provides they are entitled to all estate and interests in the Property and all rights, benefits and advantages of the Purchaser under the Sale and Purchase Agreement. Given the circumstances, is the Vendor obliged, and the Executrices being the personal representatives of the deceased Purchasers entitled, to a Transfer of the property made in the favour of the Executrices without any imposition of the Vendor's legal costs?

Ruling:

The "personal representatives" are entitled to the Transfer without any imposition of the Vendor's legal costs:

- (i) Clause 2 of the Sale and Purchase Agreement accords that they are entitled to the right to a Transfer in the names of the Executrices.
- (ii) The perusal of documents and approval of the Transfer are part of the Vendor's solicitor's duties to his client in the sale transaction, and moreover, additional legal costs are not justified since the Executrices merely step into the shoes of the Purchaser for the purposes of the Transfer. Even if additional legal costs were incurred, there is no reason to impose this on the Purchaser's personal representatives since the work done by the Vendor's solicitor is for the benefit of his client, the Vendor.

Date: 11.12.2009

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**Sub-Section F on Apportionment of Rent:**

**F1. Apportionment of rent whereby Vendors set-off rental arrears against rental deposits in the completion account**

Reference:

Property was sold subject to existing tenancy. The rental deposits of both properties were held by the Vendor's solicitors as stakeholders to be released to the respective parties in accordance with the decisions of the Conveyancing Practice Committee. The Vendor's solicitors set-off the rental arrears against the rental deposits in their completion account. Must the rental deposits be paid in full to the Purchaser without any deductions?

Ruling:

The Vendor did not have to pay the rental deposits to the Purchaser in full. The rental deposits are security for any breaches of conditions on the part of the Tenant under the Tenancy Agreement and the Landlord is entitled to appropriate such part of the deposit to

set off any outstanding rental payable by the Tenant. As it was undisputed that the tenants of the properties in this case were in arrears of rental and therefore in breach of a condition of the tenancy agreements to pay rent on time, the Vendor was entitled to set off the rental arrears against the rental deposits before transferring the balance of the deposits to the Purchaser.

Date: 28.2.2008

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## **F2. No apportionment of rents if no rent has been paid**

Reference:

The Vendors sold a property to the Purchasers subject to a tenancy agreement. The contract provided that the Law Society's Conditions of Sale 1999 applied to the sale. Subsequently, the tenants were in arrears of rent. The Purchasers claimed that the rent should be apportioned as provided in Condition 6 of the Conditions of Sale 1999 and paid to the Purchasers upon completion.

Should rent still be apportioned between the Vendors and Purchasers as per Condition 6 of the Conditions of Sale 1999 even if no rent was collected by the Vendors?

Ruling:

In the absence of any contrary stipulation in the contract between the parties, Condition 6 of the Law Society of Sale 1999 does not apply because the tenants did not pay any rent to the Vendors. Accordingly, it would not be possible to apportion the rents as provided in Condition 6.

Date: 19.4.2010

*Note: This ruling was made with reference to Condition 6 of the Law Society's Conditions of Sale 1999. The said condition is now Condition 6 of the Law Society Conditions of Sale 2012.*

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## **F3. Proper Method of Calculation for Apportionment of Rental**

Reference:

A property sale was scheduled for completion on 22 November 2010. It was sold with existing tenancy at a monthly rent of \$5000 payable on the 10<sup>th</sup> of every month.

Should the method of calculation be:

$$1) \frac{17 \text{ days } (23/11-30/11 + 1/12-9/12) \times 5,000}{30 \text{ days } (10/11/2010 \text{ to } 09/12/2010)}$$

$$= \$2833.33$$

or

$$2) \frac{8 \text{ days } (23/11 - 30/11) \times 5,000}{30 \text{ days (no. of days in November)}} + \frac{9 \text{ days } (1/12 \text{ to } 9/12) \times 5,000}{31 \text{ days (no. of days in December)}}$$

$$= \$2784.94$$

Ruling:

Under these circumstances where the monthly rent is not payable on the first day of a calendar month and needs to be apportioned between two months for completion purposes, it would be more accurate to apportion the rent based on the different number of days in the calendar month(s) in question. Hence, the Committee is of the view that while both Methods can be correct, Method 2 would be more appropriate.

Date: 29.12.2010

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#### **F4. Obligation to collect rent due before completion date**

Reference:

In a case whereby a property was sold subject to tenancy with rental due on the first day of each month, and completion of the sale of property was scheduled on 3.1.13, is the Vendor obliged to collect the rental on its due date (i.e. rental for January 2013 due on 1.1.13)? Or, should the Purchaser collect the rent, reimburse the Vendor the 3 days rental on the completion date and then proceed to collect the rent after completion?

Ruling:

Since rent was due before completion, the Vendor would be entitled to demand rent on that date and should hold the apportioned rent after 3.1.13 on trust for the Purchaser. Unless otherwise having assumed the legal capacity to do so, the Purchaser does not have an obligation to the Vendor to collect the rent. The Purchaser does not have to reimburse the Vendor for the first 3 days of rental on the completion date because even if rental was received by the Purchaser after completion, reimbursement should only be made upon receipt of rent for January 2013.

Date: 21.1.2013

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## **Sub-Section G on Reimbursement of GST**

### **G1. Computation of GST for Sub-sale Agreement**

Reference:

Given that the sub-sale Option to Purchase does not expressly provide that the Sub-Purchaser is obliged to reimburse the GST on the original purchase price (between the original purchaser and the developer), should GST on the remaining purchase price that is not yet due for payment (the 'Uncalled Progress Payment') under the original sale and purchase agreement entered into between the developer and the original purchaser (the 'Original S&P Agreement') be deducted from the sale price as between the original purchaser and the sub-purchaser?

Ruling:

Unless expressly agreed between the original purchaser and the sub-purchaser, there should be no deduction of GST on the Uncalled Progress Payment from the purchase price as between the original purchaser and sub-purchaser. Since the sub-purchaser has purchased the Property by way of assignment, it would be entitled to the rights, title, estate and interest in the Property under the Original S&P Agreement.

Date: 28.7.2011

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### **G2. Obligation to reimburse the vendors for GST**

Reference:

In an Option to Purchase between the Vendors and the Purchasers, Clause 3 stated that "The purchaser shall ... pay all Goods and Services Tax which may be payable in respect of the sale price of the property... where GST has been paid by the Vendor, the Purchaser shall reimburse the Vendor for the same." Were the Purchasers obliged to reimburse the Vendors for the GST paid in advance by the Vendors to the Developers on the last 10% of the purchase price under the original sale and purchase agreement between the Vendors and the Developers ("the original purchase price")?

Ruling:

The Purchasers' obligation to reimburse the Vendors for GST paid should be read in the context of the preceding phrase "GST which may be payable in respect of the sale price of the Property", which in this context naturally referred to the sub-sale price and not the original purchase price. Hence, the Purchasers were only obliged under Clause 3 to reimburse the Vendors for GST that the Vendors have paid in relation to the sub-sale and not the GST paid by the Vendors to the Developers under the original sale and purchase agreement.

Although the Purchasers appeared to have covenanted under Clause 1 of the Sub-sale Deed of Assignment to pay the last 10% of the original purchase price to the Developers, the Purchasers did not covenant to reimburse the Vendors the GST paid as such.

Date: 2.7.2010

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**Sub-Section H on Others**

**H1. Reflection of Personal Obligations in Completion Account**

Reference:

In a sale of property subject to existing tenancy, it was stated in a Supplemental Agreement between the Vendors and the Tenants that "the Landlords will pay \$2000 to the Tenant to help cover his moving-out expenses". The parties are seeking guidance on whether the Purchasers are liable for this \$2000 to be paid to the Tenant – in other words, can a sum of \$2000 be deducted from the balance sale proceeds payable to the Purchasers?

Ruling:

The obligation to pay \$2000 to the Tenant is personal to the Vendors/Landlords and should not be deducted from the completion account.

Although the sale of property was subject to existing Tenancy, there was no formal assignment by the Vendors of the Tenancy Agreement or the Supplemental Agreement to the Purchasers. Thus, there is only privity of estate when the Purchasers become the Landlords of the Tenant. In the absence of privity of contract and where there is only privity of estate between the parties, only covenants of the lease which touch and concern the land will bind the parties. Hence, the purchasers are not liable to pay \$2000 to the Tenant here as it is a purely contractual arrangement between the Vendors/Landlords and the Tenant.

This position under the general law is not changed by the Law Society's Conditions of Sale 1999, Paragraph 6.1 of which states that "the Vendor must discharge the outgoings down to and including the date fixed for completion". The High Court in *Lim Kay Lip v. Lee Chee Peng* [1994] 2 SLR 716 at 726H has previously observed that the term "outgoing", though of wide import, generally referred to payments of a recurrent nature as opposed to payments of a capital nature. As the \$2000 for the Tenant's moving out expenses is not a payment of a recurrent nature, it would not be an outgoing of the property and the Vendors are not obliged to discharge the payment on completion.

Date: 30.10.2009



**RULINGS ON:**

**SECTION 5 - MISCELLANEOUS**

**1. Protection of Solicitor's Lien for Costs**

Reference:

Whether there was a breach of undertaking if a second solicitor, having given an undertaking to protect a former solicitor's lien for costs, on receiving the cause papers, writes a letter stating that "there are no costs owing as instructed by the client" and purports to act in the matter without further reference to the former solicitor.

Ruling:

The solicitor who has given an undertaking to protect another solicitor's lien for costs is not released from his undertaking by writing to say he is instructed by his client that no costs is owing.

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**2. Transfer into Nominee's or Sub-Purchaser's Name**

Reference:

Has the Purchaser a right to call upon the Vendor to convey or transfer a property into a nominee's or Sub-Purchaser's name in view of the following circumstances:-

- a) A Developer sold to an Original Purchaser who in turn sold to a Sub-Purchaser.
- b) Title had not yet been conveyed by the Developer to the Original Purchaser.
- c) The Developer as a condition precedent to entering a tripartite transfer in favour of the Sub-Purchaser, wished to have a sum of \$4001- paid as its administrative fee and its solicitor's legal costs.

Ruling:

The decision in *Curtis Moffat Ltd v. Wheeler* [1929] 2 Ch. 224 would be applicable. It was held in that case that a Purchaser is entitled to insist upon the conveyance being made to his nominee, for example to a Sub-Purchaser (in any number of lots provided that the Purchaser meets any additional expenses) unless the Purchaser's personal qualifications are material. If the conveyance is to be subject to obligations, the Vendor can insist on the Purchaser joining as a party to guarantee observance of the obligations. Therefore, the Vendor is under an obligation to accede to the Purchaser's request to transfer to a nominee though entitled to reasonable recompense for any expenses incurred in so doing.

### **3. Entitlement of Purchaser to a Statutory Declaration of Non-Revocation**

Reference:

A question posed was whether the solicitors for the Purchaser of a unit were entitled to a Statutory Declaration of Non-Revocation in respect of a Reassignment of the Assignment of Charge, executed by the Attorney of a Bank in favour of the Vendor/Mortgagor, where the strata title for the unit had not been issued although the whole project had been brought under the Torrens System.

Ruling:

The Council viewed that the Purchaser's solicitors were entitled to a Statutory Declaration of Non-Revocation as the strata title for the unit had not been issued and the Purchaser was not a Purchaser of registered land within the meaning of Section 148 of the Land Titles Act (Cap.157).

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### **4. Applicability of Foreign Laws**

Reference:

The Vendors were two Indonesians. The Purchaser's solicitors requested from the Vendors a consent in writing from the Vendors' spouses to comply with the Indonesian Civil Code Marriage Law No 1, Article 35(1) and 36(1) which provided "that property obtained during marriage becomes the joint property and spouses' consent is required in dealing with such joint property". The Vendors' solicitors opined that such Indonesian Laws do not have extra-territorial effect.

Ruling:

The Council viewed that the Vendors were under no obligation to furnish the Consent because the Indonesian Civil Code was not part of the Laws of Singapore.

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### **5. Party Entitled To Retain Stamped Executed Lease**

Reference:

A Lease duly executed by the Tenant was, at the Landlord's request, forwarded to the Landlord's solicitors together with the stamp fee for the Landlord's execution and stamping. The Landlord's solicitors released the original stamped Lease to the Landlord and forwarded the duplicate to the Tenant's solicitors. In the absence of an express agreement, who is entitled to keep the original and can the Landlord's solicitors charge the Tenant costs for retrieving the original?

Ruling:

The Tenant is entitled to retain the ad valorem stamped Lease. The Landlord's solicitors are not entitled to charge the Tenant any costs for retrieving the original Lease for the Tenant.

Date: 12.5.1998

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## **6. Survey Fee**

Reference:

In the sale of a commercial unit in a mixed development of both residential and commercial units, the licensed Developer adopted the prescribed form of sale and purchase agreement for commercial properties. There was no provision in the agreement for payment of resurvey fees to the Developer. Is the Developer entitled to collect resurvey fees from the Purchaser?

Ruling:

As there was no specific provision in the Agreement for the Purchaser to pay resurvey fees, the Purchaser was not liable to pay.

Date: 15.4.1997

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## **7. Maintenance Charges**

Reference:

In the sale and purchase of a strata unit, is the vendor or purchaser liable for the payment of quarterly payment of maintenance fees to be paid in advance to the Management Corporation Strata Title (the "MCST")?

Ruling:

The vendor is liable for the instalment payments of the levy which fall due and payable to the MCST before the completion date, while the purchaser is liable for instalment payments of the levy due and payable to the MCST after the completion date. A vendor cannot be liable for a contribution which is not due and payable at the time he ceases to be a subsidiary proprietor (*Lim Kay Lip v. Lee Chee Peng* [1994] 2 SLR 716).

The liability to pay any contribution to the MCST does not arise merely on the passing of the resolutions for the payment of the contribution, but on the date when it is due and payable as decided by the MCST.

Following the above, it is irrelevant whether the levy is capital or recurrent in nature, or whether the levy is considered an "outgoing" under Condition 6 of the Law Society's Conditions of Sale 1999.

Date: 11.7.2011

*Note: This ruling must be read in light of the Law Society's Conditions of Sale 2012. The current Condition 6 makes it clear that unless agreed otherwise, the vendor is liable to pay for all expenses, outgoings and levies down to and including the completion date whereas the purchaser is liable to pay for all expenses, outgoings and levies after the completion date.*

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## **8. Reimbursement of Resurvey Fee**

Reference:

Whether the Purchaser in a sub-sale was obliged to reimburse the resurvey fee paid to the Developers.

Ruling:

The matter was governed by the contract between the parties. As there was no special provision in the contract for the reimbursement of the resurvey fee, the Vendor was not entitled to a reimbursement of such resurvey fee from the Purchaser.

Date: 23.11.1999

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## **9. Requirement of an Acknowledgment for Production of Common Law Deeds**

Reference:

Can a Purchaser claim that a good title has not been deduced and refuse to complete if the Vendor is unable to produce an Acknowledgment for Production in respect of the original common law deeds?

Ruling:

The Purchaser cannot insist, firstly, because an Acknowledgment for Production is a creature of statute (see section 9 of the Conveyancing and Law of Property Act (Cap.61)) and applies only to deeds under the common law system. There is no corresponding provision in the Land Titles Act (Cap.157) or the Land Titles (Strata) Act (Cap.158).

Secondly, where land has been brought under the Torrens System (as in this case) all the prior common law deeds are cancelled on conversion. Any solicitor intending to inspect such cancelled deeds for purposes of investigation of title can do so by purchasing copies from the Registry of Deeds or by inspecting the same in the Registry - see *Algemene Bank Nederland N.V. v. Tan Chin Tiong* [1986] SLR 526, [1987] 2MLJ 278. The Purchaser can therefore deduce a good title without such Acknowledgment for Production.

Date: 11.8.1998

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## **10. Query on Vehicle Transponder Issued by MCST**

Reference:

In a sale and purchase of a condominium unit sold on an "as is" basis, the Vendor failed to hand over to the Purchaser a vehicle transponder issued by the MCST. The vehicle transponder was missing, lost or misplaced. Is the Vendor liable for the replacement of the vehicle transponder which is necessary to give access to the car park?

Ruling:

Yes, the Vendor is liable for the replacement of the vehicle transponder. The car park is common property that the Purchaser is entitled to upon completion and, in the absence of any contractual provision to the contrary, access to the car park is integral to the Purchaser's entitlement.

Date: 15.01.2010

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## **11. Query on Access Cards Issued By MCST**

Reference:

In a sale and purchase of a condominium unit sold on an "as is" basis, the Vendor provided to the Purchaser 3 out of the 5 access cards issued. The remaining 2 access cards, which were not in the Vendor's possession, did not provide any additional access to the Purchaser. Is the Vendor liable for replacement charges of the 2 remaining access cards?

Ruling:

The Vendor is not liable for the replacement of the 2 remaining access cards. However, the Vendor is encouraged to:-

1. Reimburse the Purchaser for the missing, lost or misplaced access cards; and

2. Provide a written confirmation that the access cards were lost or misplaced during the Vendor's ownership as, in some instances, the new owner would be required to confirm or affirm that the access cards are misplaced before replacements are issued.

Date: 19.5.2009

**NOTE:**

Recent Developments:

*Following the Ruling in 2009 above, it has been brought to the Committee's attention that:*

- (1) *There has been an increasing number of new developments which utilises card key access systems for direct access to the individual units of the development; and*
- (2) *For some of these systems, there may be significantly high costs involved in calibrating and replacing the access card keys. The high costs involved in calibrating the systems and replacing all the access card keys although only one is lost. This method of replacement is used to preserve the security of the apartment against anyone in possession of the lost access card key.*

Committee's views:

*A purchaser of an apartment with such a modern access card security system and who wishes to obtain all the access card keys on completion may negotiate to include an expressed provision in the Option or the Sale and Purchase Agreement for the vendor to hand over all issued and duplicated access card keys on completion. In the event that the purchaser fails to negotiate the inclusion of such a provision and the vendor does not handover all issued and duplicated card keys on completion, the purchaser may bear the charges for recalibrating and replacing the full set of access card keys, if the purchaser wishes to do so in order to preserve the security of the apartment.*

*The Committee continues to maintain the position that handing over of at least one key (or access card key, as the case may be) to the apartment and one access card to the development (where applicable) on completion of the sale of an apartment would suffice as handing over possession of the apartment.*

Date: 12.6.2012

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## **12. Obligation for Grant of Probate before being issued with fresh Sale and Purchase Agreement**

Reference:

A deceased joint purchaser's written declaration evinced an agreement between the purchasers that the purchase was of joint tenancy. The surviving joint purchaser wanted the Developer's solicitors to issue a fresh Sale and Purchase Agreement solely in his name. Is it reasonable for the Developer's solicitors to require that a Grant of Probate of the deceased joint purchaser's estate be given to them before doing so?

Ruling:

Assuming that the agreement in the written declaration had not been nullified, and that the joint tenancy had not been alienated, severed or terminated, the Committee is of the view that the developer should be able to issue a fresh Sale and Purchase Agreement without requiring the production of a Grant of Probate of the deceased joint purchaser's estate. However, this is subject to two qualifications. Firstly, it is not a legal obligation for the Developer to issue a fresh Sale and Purchase Agreement unless the Original Sale and Purchase Agreement provides otherwise. The Developer is only obliged to transfer (when separate title has been issued) the property to the correct owner of the property (in light of the Grant of Probate which would have been issued by then). Secondly, issuing a fresh Sale and Purchase Agreement could also possibly open the Developer to the risk of being sued by beneficiaries contesting the joint tenancy in the event that the joint purchasers had separately entered into another agreement to alienate, sever or terminate the joint tenancy before the deceased passed away.

Hence, a possible solution here would be to seek a statutory declaration from the surviving joint purchaser that to the best of his knowledge he is unaware of any circumstance, or document expressing that the deceased had, or had intended to, alienate sever or terminate the joint tenancy.

Date: 23.2.2011

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## **13. Entitlement to movable household items**

Reference:

A sale and purchase agreement between the Developer and the Original Purchaser ("the Original Agreement") included a number of movable household items as part of the sale. The Original Purchaser then found a Sub-Purchaser and an Option to Purchase was issued by the Original Purchaser to the Sub-Purchaser ("the Sub-sale Agreement"). It was not expressly provided for in the Sub-sale Agreement as to whether the Original Purchaser or the Sub-Purchaser is entitled to the movable household items. The question is who is entitled to the movable household items.

**Ruling:**

The Committee ruled that the Sub-Purchaser was rightfully entitled to the household items. At that time, the development was still under construction by the Developer and the TOP for the Development had not been issued. There was a high chance that the completion of the Sub-sale might take place before the TOP was issued. In this situation, the Sub-Purchaser would be entitled to receive vacant possession of the premises together with the number of movable household items, bearing in mind that there were no express provisions to the contrary in the Sub-sale Agreement.

Date: 28.12.2007

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**14. Proper Practice when Vendors revoke authority to pay Commission to Estate Agent**

**Reference:**

In a case where the vendors have instructed their lawyers to refuse payment of the commission to the estate agent and to subsequently return the amount that represents the commission to the vendor (as in *Areco International Pte Ltd v Lam Cheng Yee* [2009] SGHC 9), what is the appropriate sequence of actions that should be taken by the law firm?

**Ruling:**

The law firm should first decide whether the clause containing the "instruction" to retain and pay the commission from the sale proceeds is governed by the Contracts (Rights of Third Parties) Act, in particular Section 2. If the Act does not apply, then it is the end of the matter for the law firm.

However, if the law firm decides that there is a legal nexus between itself and the estate agent, it should notify the estate agent of the competing claim of the vendors for the monies held in its hands. The law firm can then return the monies to the vendors if the estate agent makes no claim to the monies.

If the estate agent does make a competing claim for the monies, the law firm should then institute an interpleader action to hold the monies until proceedings between the vendors and the estate agents have been determined.

Date: 17.4.2009



## 15. Presentation of cheque for net sale proceeds after completion

Reference:

A law firm acted for X and Y in the sale of property. Several months after completion, the law firm made out a cheque for the net sale proceeds in the joint names of X and Y upon their instructions and X personally collected the cheque. Almost half a year later, the cheque has not been presented. How should the cheque for net sale proceeds be dealt with?

Ruling:

Since the cheque has been collected by X (an authorised person), the only thing left to be done is to present the cheque into the nominated bank account.

Date: 19.2.2010

*Note: The law firm should inform X and Y in writing that the cheque has not been presented for clearance. X and Y must also be reminded of the validity period of the cheque and be warned of the consequences of not presenting the cheque within the validity period. If there are disputes as to the allocation of the net sale proceeds, then an interpleader action should be adopted.*

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## 16. Proper Practice when unable to obtain certificate ("Certificate") under Section 47(1)(c) of the Building Maintenance & Strata Management Act 2004

Reference:

The Purchaser's solicitors faced difficulties in obtaining the Certificate under Section 47(1)(c) of the Building Maintenance & Strata Management Act 2004 from the Managing Agent of the MCST of the property. The managing agent had claimed that they had just taken over from another agent and their accounts were not in order. What is the proper practice to be adopted by the Purchaser's solicitors here to avoid being held responsible for the Vendor's outstanding debts towards the MCST in the absence of the certificate? How can the Purchaser's solicitors avoid liability for late completion interest should there be a delay before the certificate can be obtained?

Ruling:

- 1) The Purchaser's solicitors should first inform their clients of the situation and advise on the various modes of attempting to resolve or mitigate the risks involved and the implications that would follow.
- 2) The Purchaser's solicitors could then also try to negotiate with Vendor's solicitors to hold back a reasonable agreed sum as stakeholders pending completion to be used towards settling any outstanding sums due to the MCST following completion.

3) The Purchaser's solicitors are advised to complete subject only to the Purchaser's completing with reservation of rights, or with the Purchaser's understanding the full implications of completing without the Certificate.

Date: 14.7.2008

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