

SUPERSEDED

***PRACTICE
GUIDELINES
ON OPTIONS
TO
PURCHASE
AND SALE &
PURCHASE
AGREEMENTS
PG 3/2011***

***DATE OF ISSUE:
12 JULY 2011***

CEA Council for
Estate Agencies

Practice Guideline on Options To Purchase and Sale and Purchase Agreements PG 3/2011

Preamble

1. This Practice Guideline seeks to provide that Options to Purchase and Sale and Purchase Agreements shall contain certain provisions to facilitate compliance with:
 - (a) new measures to safeguard conveyancing as provided in the Conveyancing (Miscellaneous Amendments) Act (Act 17 of 2011), the Conveyancing and Law of Property Rules 2011 (CLP Rules) and the Singapore Academy of Law (Conveyancing Money) Rules 2011 which will be brought into effect on 1 August 2011; and
 - (b) the Residential Property Act Cap. 274 (RPA).
2. With effect from 1 August 2011, where an estate agent or salesperson makes available an Option To Purchase or Sale and Purchase Agreement to his/her client for use in the course of estate agency work, he/she shall comply with the following terms of this Practice Guideline.

Part I: Payment of stakeholder money to be held pending completion of sale

3. From 1 August 2011, the Government will implement new measures to safeguard conveyancing money.
4. Key features of the new measures for the receipt, holding and distribution of conveyancing money are:
 - (a) Lawyers will no longer be allowed to receive and hold conveyancing money in their normal client accounts (as is the current practice). A breach of this prohibition will result in a fine of up to \$50,000 and/or an imprisonment term of up to three years.
 - (b) Lawyers will only be allowed to receive and hold conveyancing money in a new type of bank account, called a Conveyancing Account. These Conveyancing Accounts will be opened with Appointed Banks designated by the Minister for Law. Withdrawal or pay-out of money from Conveyancing Accounts will require two-party authorisation. Typically, the counter-signatory will be the lawyer representing the other party in the conveyancing transaction. Lawyers holding on to CPF money on behalf of clients or CPF Board will be able to do so in separate Conveyancing (CPF) Accounts.

- (c) Purchasers and vendors who wish to place conveyancing money in such accounts will have to indicate the payee's name on their cheque/cashier's order in the format: "<Name of law firm>-CVY".
 - (d) Purchasers and vendors who do not wish to deposit money with their lawyers can instead instruct their lawyers to engage the Singapore Academy of Law (SAL) to hold conveyancing money, through a newly created Conveyancing Money Service. Payment of such money via cheque/cashier's order should be made to "Singapore Academy of Law".
 - (e) Alternatively, lawyers can receive and hold conveyancing money under escrow agreements between both purchasers' and vendors' lawyers. These are more relevant for complex transactions.
5. Where the estate agent or salesperson representing the vendor is assisting the vendor in the preparation of an Option to Purchase or Sale and Purchase Agreement and the vendor would like the deposit payable to be paid or held on a stakeholder basis, the estate agent or salesperson shall :-
- (a) Ensure that the Option to Purchase or the Sale and Purchase Agreement contains the requisite provisions to comply with the new measures for payment of conveyancing money. In this regard, estate agents or salespersons may use the two sets of clauses in Annex A, as the case may be;
 - (b) Explain to the vendor that he can stipulate in the Option to Purchase or Sale and Purchase Agreement whether he would like the deposit to be held by his lawyer or the Singapore Academy of Law as a stakeholder; and
 - (c) Request the vendor to select the appropriate stakeholder (i.e. vendor's lawyer or the Singapore Academy of Law) and delete the clause that is not applicable.
6. Estate agents or salespersons shall not abet the commission of any offence under the Conveyancing and Law of Property Act (CLP Act) or CLP Rules.

Part II: Purchase of landed residential property by foreign persons

7. Where the purchase of residential property by a foreign person is restricted or prohibited by the RPA, the Option to Purchase or Sale and Purchase Agreement shall provide that it is subject to approval from the Controller of Residential Property (Land Dealings (Approval) Unit, Singapore Land Authority). A sample provision which may be used if applicable is attached hereto as Annex B.
8. The requirement specified at paragraph 7 above is to provide for compliance with the RPA which restricts the acquisition of landed residential property by foreign persons.

Part III: Concluding Comments

9. Paragraph 5 of the Code of Ethics and Professional Client Care provides that estate agents and salespersons shall comply with the law in their conduct of estate agency work. Paragraph 5 reads as follows:

Due diligence and compliance with law and statutory requirements

5.—(1) Estate agents and salespersons shall conduct their business and work with due diligence, despatch and care, and in compliance with all laws including statutory and regulatory requirements, and practice circulars and guidelines.

10. Estate agents and salespersons who provide Options to Purchase or Sale and Purchase Agreements to their clients are required to ensure that such documents are suitable or fit for their intended purpose and comply with this guideline to avoid any breach or potential breach of the law including the CLP Act, CLP Rules or RPA.
11. For the avoidance of doubt, unless the context indicates otherwise, terms used in Part I above shall bear the same meaning as used in the CLP Act and CLP Rules and terms used in Part II above shall bear the same meaning as used in the RPA.

This Practice Guide shall be strictly complied with by estate agents and salespersons.

While every effort has been made to ensure that the contents of this Practice Guide are accurate and relevant, the Council for Estate Agencies shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or in reliance on, any error,

omission, statement or misstatement contained in the whole or any part of this Practice Guide.

The copyright of this Practice Guide vests in the Council for Estate Agencies. No part of it may be copied, reprinted or excerpted in any way or in any place for any commercial purpose except with the written consent of the Council for Estate Agencies.

SUPERSEDED

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 _____, 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 the [*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 and instructions referred to therein.

*The said payment of \$ _____ shall be in favour of the [(*name of Vendor's solicitors' law practice - CVY*)] by **cheque/telegraphic transfer to the [*bank name & account no: _____*] excluding bank charges and deductions, to be held by the Vendors' solicitors as stakeholders pending completion.

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

** *Delete if not applicable*

Compliance with statutory rules, law and the Singapore Law Society's Conditions of Sale 1999.

2. This sale and purchase is subject to the Singapore Law Society's Conditions of Sale 1999 (the "Conditions") in so far as the Conditions and the terms and conditions of this Agreement are not contrary to or in conflict with the following:
- (a) Conveyancing & Law of Property (Conveyancing) Rules 2011 as promulgated under the Conveyancing & Law of Property Act ("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.

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/telegraphic transfer to the [*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 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.

the [(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.

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

*** Delete if not applicable*

Compliance with statutory rules, law and the Singapore Law Society's Conditions of Sale 1999.

2. This sale and purchase is subject to the Singapore Law Society's Conditions of Sale 1999 (the "Conditions") in so far as the Conditions and the terms and conditions of this Agreement are not contrary to or in conflict with the following:
- (a) Conveyancing & Law of Property (Conveyancing) Rules 2011 as promulgated under the Conveyancing & Law of Property Act ("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.

Annex B

Sample provision for use in Options To Purchase or Sale and Purchase Agreements if landed residential property is purchased by a foreign person

Where the Purchaser is not a Singapore citizen, the purchase of the Property shall, where applicable, be subject to the Purchaser obtaining written approval from the Controller of Residential Property (Land Dealings (Approval) Unit, SLA) to purchase the Property.

Note: Modification to the sample provision is allowed provided the intent of the provision is not changed.