

***PRACTICE
GUIDELINES ON
OPTIONS TO
PURCHASE AND
SALE &
PURCHASE
AGREEMENTS
PG 1/2015***

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Practice Guidelines on Options to Purchase and Sale and Purchase Agreements PG 1/2015

Preamble

1. These Practice Guidelines seek to provide that Options to Purchase (OTP) and Sale and Purchase (S&P) Agreements are suitable for their purposes and shall contain appropriate provisions to facilitate compliance with:

- (a) 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 were brought into effect on 1 August 2011;
- (b) The Residential Property Act Cap. 274 (RPA); and
- (c) The Law Society of Singapore's Conditions of Sale 2012, if applicable.

2. Where an estate agent or salesperson makes available an OTP or S&P Agreement to his client for use in the course of estate agency work, he shall comply with these Practice Guidelines.

3. These Practice Guidelines shall supersede PG 3/2011.

Part I: The Law Society of Singapore's Conditions of Sale 2012

4. The Law Society of Singapore's Conditions of Sale 2012 (COS 2012) was launched on 19 Jan 2012 and updates the Law Society's Conditions of Sale 1999. The Conditions of Sale are a set of standard terms and conditions which the buyer and seller may wish to incorporate by reference into contracts for the sale and purchase of immovable properties. Parties may however contract out of the COS 2012 or any particular Condition by providing their own terms and conditions in the contracts, where appropriate, to meet the particular circumstances of their transaction.

5. The COS 2012 brings the Conditions in line with current conveyancing practices and introduces new provisions in line with legislative and regulatory changes e.g. the measures to safeguard conveyancing money implemented from 1 Aug 2011. These include new Conditions on payments to be made to solicitors' conveyancing accounts and the obligations to both the vendor and purchaser towards payment of additional stamp duty.

6. The COS 2012 amends the rate of interest payable on late completion due to the default of a party. Taking into account existing market interest rates, the rate of interest has been revised from 10% per annum to 8% per annum after consultation with conveyancing practitioners and other stakeholders. The reduced rate is meant

to represent adequate compensation for the non-defaulting party, be it the purchaser or the vendor. There are also new conditions on when interest is not payable because of postponement of completion (e.g. death of a party and failure of vendor to specify mode of payment on time).

7. The COS 2012 has also addressed certain prevailing conveyancing practices to balance the interests of the vendor and purchaser. For instance, the vendor is obliged to represent and warrant to the purchaser that the vendor has not carried out any unauthorised additions or alterations to the property and that the property has not been the subject of any transaction at an undervalue (including a gift) within the period of 5 years before the date of contract. Estate agents and salespersons representing the vendor should remind the vendor that he is making such representations and warranties. Estate agents and salespersons should also take note of Condition 13 in COS 2012 on when risk passes from the vendor to the purchaser and Condition 7.3 in relation to Withholding Tax.

8. Vendors and purchasers are free to negotiate as to whether they will be using the 1999 or 2012 versions of the COS. The COS 2012 is an update to the 1999 Conditions but does not supersede the 1999 Conditions. If a contract incorporates by reference the 1999 Conditions, the contract will still be subject to the terms of the 1999 Conditions, and not the 2012 Conditions. Where the Law Society's Conditions of Sale is being adopted by the vendor for the S&P Agreement or OTP i.e. either the 1999 or 2012 Conditions, salespersons shall be fully conversant with and explain to their clients such Conditions. At any time, if in doubt about whether to use either set of Conditions or any term of such Conditions or if otherwise appropriate, the salesperson shall advise the client to seek legal advice.

9. A copy of the COS 2012, including an explanatory brochure, can be found at the following website:

<http://www.lawsociety.org.sg/forMembers/ResourceCentre/ConditionsofSale2012.aspx>

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

10. From 1 August 2011, the Government implemented measures to safeguard conveyancing money.

11. Key features of the measures for the receipt, holding and distribution of conveyancing money are:

- (a) Lawyers are not allowed to receive and hold conveyancing money in their normal client accounts. A breach of this prohibition could result in a fine of up to \$50,000 and/or an imprisonment term of up to three years;
- (b) Lawyers are only allowed to receive and hold conveyancing money in a Conveyancing Account. Conveyancing Accounts are opened with Appointed Banks designated by the Minister for Law. Withdrawal or pay-out of money from Conveyancing Accounts requires two-party authorisation. Typically, the counter-signatory is the lawyer representing the other party in the

conveyancing transaction. Lawyers holding on to CPF money on behalf of clients or CPF Board are able to do so in separate Conveyancing (CPF) Accounts;

- (c) Purchasers and vendors who wish to place conveyancing money in such accounts 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 Conveyancing Money Service. Payment of such money via cheque/cashier's order should be made out to "Singapore Academy of Law"; and
- (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.

12. Where the estate agent or salesperson representing the vendor is assisting the vendor in the preparation of an OTP or S&P 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 OTP or the S&P Agreement contains the requisite provisions to comply with the measures for payment of conveyancing money. Estate agents or salespersons may use the two sets of clauses in Annex A (incorporating the COS 2012), as the case may be;
- (b) Explain to the vendor that he can stipulate in the OTP or S&P 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.

13. 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 III: Purchase of landed residential property by foreign persons

14. Where the purchase of residential property by a foreign person is restricted or prohibited by the RPA, the OTP or S&P 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 as Annex B.

15. The requirement specified at paragraph 14 is to provide for compliance with the RPA which restricts the acquisition of landed residential property by foreign persons.

Part IV: OTP/S&P Agreement

16. 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.

17. Estate agents and salespersons who provide OTP or S&P Agreements to their clients are required to ensure that such documents are suitable or fit for their intended purpose and comply with these guidelines to avoid any breach or potential breach of the law including the CLP Act, CLP Rules or RPA.

18. For the avoidance of doubt, unless the context indicates otherwise, terms used in Part II shall bear the same meaning as used in the CLP Act and CLP Rules and terms used in Part III shall bear the same meaning as used in the RPA.

19. The signing of the OTP/S&P Agreement is a critical stage for the buyer and seller in any transaction as, once signed, the OTP or S&P Agreement forms a legally binding contract. Salespersons shall be fully conversant with the terms of the OTP or S&P Agreement used. Salespersons shall explain to their clients the meaning of such terms and the implications of signing these Agreements, e.g. the consequences of not proceeding with the purchase. Salespersons of both parties shall also do due diligence checks on all matters related to the OTP or S&P Agreement, such as the payment of option money or deposit. This shall include, but is not limited to, sighting the details of the cheque (such as name of drawee, date and amount) or other forms of payment to ensure that they are in order. Salespersons shall also take due care in arranging for or advising clients on the option period (especially on the number of days to expiry of option), and recommend the obtaining of legal advice if necessary or appropriate.



These Practice Guidelines shall be strictly complied with by estate agents and salespersons. While every effort has been made to ensure that the contents 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 these Practice Guidelines.

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Annex A - Sample provisions of payment of Stakeholder money and incorporating the Law Society of Singapore's Conditions of Sale 2012 for use in Options to Purchase or Sale and Purchase Agreements

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.

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.*

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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

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.