

***PRACTICE
GUIDELINES ON
OPTIONS TO
PURCHASE AND
SALE &
PURCHASE
AGREEMENTS
PG 1-2021***

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Practice Guidelines on Options to Purchase and Sale and Purchase Agreements (PG 1-2021)

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) The Law Society of Singapore's Conditions of Sale 2020, if applicable;
- (b) 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; and
- (c) The Residential Property Act Cap. 274 (RPA).

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 are issued following the launch of the new Law Society of Singapore's Conditions of Sale 2020 (COS 2020) on 24 November 2020. These Practice Guidelines shall supersede PG 1-2015 and takes effect from 24 February 2021.

Part I: The Law Society of Singapore's Conditions of Sale 2020

4. The Law Society of Singapore's Conditions of Sale (COS) are a set of standard terms and conditions which the purchaser and vendor may wish to incorporate by reference into contracts for the sale and purchase of immoveable properties. Parties may however contract out of the COS or any particular Condition by providing their own terms and conditions in the contracts, where appropriate, to meet the particular circumstances of their transaction. To date, the Law Society of Singapore has issued 3 sets of COS, namely COS 1999, COS 2012 and COS 2020.

5. The COS 2020 enhances the COS 2012 by increasing protection for vendors and purchasers through amendments to Conditions 9.5 and 9.6 of the COS 2012. Condition 10.2 was also amended to bring it in line with the provisions of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA 2018). The COS 2020 also introduced a new Condition 16 to encourage parties to consider settling conveyancing disputes governed by COS 2020 amicably through mediation.

6. In the COS 2020, in addition to situations of death, Condition 9.5 now provides for situations where the vendor or purchaser (or one of the vendors or purchasers) loses mental capacity, and which necessitates a postponement of the

Scheduled Completion Date. Accordingly, under the amended Condition 9.5, if the vendor or purchaser, or one of the vendors or purchasers, loses mental capacity before the Scheduled Completion Date, the Scheduled Completion Date may be postponed for a reasonable period that is not more than 3 months. This postponement begins from the date of the loss of mental capacity based on medical evidence, for an Order of Court for Appointment of Deputies (as the case may be) to be obtained for completing the conveyance. No interest shall be payable by either party during this extension period.

7. Condition 9.6 of the COS 2020 increases the minimum number of business days prior to the Scheduled Completion Date for which the vendor is to furnish the mode of payment of the purchase price to the purchaser, from 5 to 7 business days.

8. Where a property was the subject of a transaction at an undervalue (including a gift) within a relevant time period, the Courts may make an order to restore the position to what it would have been had the undervalued transaction not been entered into. Following the repeal of the Bankruptcy Act and the consolidation and amendments of the written laws in relation to corporate and individual insolvency into the IRDA 2018, the relevant time period is now 3 years. Consequently, Condition 10.2 was amended in the COS 2020 to reflect the reduction of the relevant time period from 5 years, as previously provided by the repealed Bankruptcy Act, to 3 years.

9. Finally, the COS 2020 address the need for effective dispute resolution mechanisms in relation to disputes arising from the conveyance through the introduction of a new Condition 16 which provides that purchasers and vendors are to consider resolving any issues or any disputes through mediation before commencing court proceedings or arbitration. This is to encourage parties to resolve their differences amicably and reach mutually satisfactory conclusions to save valuable time and costs which may be wasted should they commence court proceedings or arbitration.

10. The COS 2020 is an update to the COS 2012 but does not supersede the COS 2012 or COS 1999. Vendors and purchasers are free to negotiate as to whether they will be using the 1999, 2012 or 2020 versions of the COS. The contract will be subject to the terms of the Conditions which it incorporates by reference. For example, if a contract incorporates by reference the 2012 Conditions, the contract will be subject to the terms of the 2012 Conditions, and not the 1999 or 2020 Conditions. Where the Law Society of Singapore's Conditions of Sale is being adopted by the vendor for the S&P Agreement or OTP, i.e. either the 1999, 2012 or 2020 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.

11. A copy of the COS 2020 can be found at the following website:

<https://law-society-singapore-prod.s3.ap-southeast-1.amazonaws.com/2020/11/The-Law-Society-of-Singapores-Conditions-of-Sale-2020.pdf>

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

12. Since 1 August 2011, the Government has implemented measures to safeguard conveyancing money.

13. 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.

14. 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. For transactions involving resale of private residential properties, estate agents or salespersons may use the two sets of Standard Contract Templates for OTP and S&P Agreement (incorporating the COS 2020), as the case may be, which can be found on CEA's website at the following links:

- (i) OTP : <https://www.cea.gov.sg/docs/default-source/Professionals/Agreements-Checklists/option-to-purchase-for-transaction-of-private-residential-property-2021.pdf>
 - (ii) S&P Agreement : <https://www.cea.gov.sg/docs/default-source/Professionals/Agreements-Checklists/agreement-for-the-sale-and-purchase-of-private-residential-property-2021.pdf>
- (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.
15. 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

16. 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 to this document (PG 1-2021).

17. The requirement specified at paragraph 16 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

18. 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.

19. 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.

20. 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.

21. 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 on Options to Purchase and Sale and Purchase Agreements are to be read with the Code of Ethics and Professional Client Care (CEPCC). Under paragraph 4(2)(a) of the CEPCC, estate agents and salespersons must be fully conversant and comply with the Estate Agents Act, the regulations made under the Act, the CEPCC, and the policies, practice circulars and guidelines of the Council for Estate Agencies. Non-compliance of these Practice Guidelines may result in disciplinary action. 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

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.