

ISSUES TO CONSIDER WHEN PURCHASING A PROPERTY (PART 2)

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OVERVIEW

This is the second of a two-part series where we discuss several key points which prospective purchasers might wish to take note of when purchasing a residential property. You may recall that in Part One, the key points highlighted include the negotiating position of a purchaser prior to the grant of an Option to Purchase ("**OTP**"), the option exercise period, the completion date of the transaction, the two versions of the Law Society Conditions of Sale, and the inventory list attached to an OTP.

In this second part, we bring to your attention additional key points prospective purchasers should take note of. This includes Additional Buyer's Stamp Duty, additions and alterations to the property, certain clauses in the Law Society's Conditions of Sale 2012 and the risks of purchasing old landed properties.

ADDITIONAL BUYER'S STAMP DUTY ("ABSD**")**

In recent years, the Singapore government has implemented several measures to cool the property market. One of the measures which have affected many purchasers is ABSD. As of date, ABSD is payable in the following manner:

1. Individuals who are neither Singaporean Citizens ("**SC**") nor Permanent Residents ("**PR**"), as well as

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- entities (such as companies), pay ABSD of 15% on the purchase of any residential property.
2. PRs pay ABSD of 5% on the purchase of their first residential property. PRs who own at least one residential property pay ABSD of 10% on the purchase of subsequent residential properties.
 3. SCs do not have to pay ABSD on the purchase of their first residential property. SCs who own one residential property pay ABSD of 7% on the purchase of a second residential property. Subsequent purchases of residential properties after the first two are subject to ABSD at the rate of 10%.

Property Count

It is important and useful for purchasers to be aware of circumstances when they are considered to have an additional residential property under their property count.

According to the most recent Inland Revenue Authority of Singapore ("IRAS") ABSD Guidelines published on 11 January 2013, a property is to be included in the count of properties owned by a person if there is already a contract to purchase the property even though the property has not been legally transferred to him yet. This would refer to the date when the Sale and Purchase Agreement or the OTP is executed (or "exercised") by the purchaser. Similarly, the property is to be excluded from the count of properties owned by a person if there is already a contract to sell his property.

It is important to distinguish the date which the OTP is exercised from the date of the OTP itself. The former is the date the contract for sale is formed while the latter has no significance in the context of ABSD.

Therefore, in order to avoid payment of ABSD, purchasers should ensure that the contract for the sale of their existing property has already been executed by the purchaser(s) of their existing property before they enter into a contract for the purchase of their new property.

PROPERTIES UNDER TENANCY

When purchasing a property subject to a tenancy agreement, it would obviously be prudent to request for a copy of the tenancy agreement and review its terms. This is to ensure that the purchaser is fully aware of the terms and conditions which will bind him as the new landlord.

A good example of something to look out for is an option to renew, which is quite a common clause in many tenancy agreements. If there is an option to renew, which gives the tenant the option to renew the tenancy upon the expiry of the initial term, the purchaser will be bound by this and will have to accept the tenant's renewal of the tenancy for another term if the tenant chooses to exercise this option. This may lead to an unexpected situation where the purchaser expects to be able to take possession by a certain date but is caught out by an option to renew.

Another factor to take note of is the security deposit. Almost invariably, the tenant would have had paid over to the existing landlord-vendor a deposit; as security for the tenant's performance of his obligations

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under the tenancy. To prevent disputes regarding the refund of the security deposit, a prospective landlord-purchaser should ask the existing landlord-vendor to transfer the security deposit to him.

ADDITIONS AND ALTERATIONS TO THE PROPERTY

It is not uncommon for homeowners to make additions and alterations to their properties. Depending on the nature of the additions and alterations, approval may have to be sought from the relevant authorities.

Pursuant to condition 10.1 of the Law Society's Conditions of Sale 2012 ("Condition 10.1"), the vendor warrants to the purchaser that there are no unauthorised additions and alterations made to the property in question. The Law Society's Conditions of Sale 2012 are a set of terms drawn up by the Law Society of Singapore in order to provide a standard platform for the sale and purchase of properties. They are usually incorporated by reference into Options to Purchase/Sale and Purchase Agreements for properties. Therefore, unless the Conditions of Sale have not been incorporated, or unless there is an express clause in the OTP/Sale and Purchase Agreement stating otherwise; a purchaser usually does not have to worry about the existence of unauthorised additions and alterations.

HDB Property

The HDB will conduct an inspection before approving the resale of a HDB flat. If the Board discovers any unauthorised additions and alterations, the vendor will be obliged to rectify/regularise them prior to completion. Therefore, there is little need for the purchaser to worry about unauthorised additions and alterations to the property.

However, if a potential purchaser is particularly interested in a specific modification in the HDB flat that he wishes to purchase, he should check to make sure that the modification has been approved. This will avoid an unfortunate situation where the HDB forces the vendor to remove the modification prior to the completion of the sale and purchase, leaving the purchaser with a flat that no longer has the modification he wants.

Private Property

For private properties, the situation is somewhat different as there will be no inspection of private property by any governmental authority prior to completion.

This means that there may be a situation where unauthorised additions and alterations remain on the property on completion. Nevertheless, if Condition 10.1 applies, the purchaser is protected in that he can seek damages from the vendor should he subsequently be required to rectify/regularise the unauthorised works.

However, if Condition 10.1 does not apply for whatever reason, the purchaser should take care to enquire as to the status of any unusual additions and alterations. Once the sale and purchase is completed, the

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purchaser will be taken to have taken over all aspects of the property and consequently become liable for unauthorised works. This could mean having to pay for rectification/regularization in the future when a subsequent purchaser raises the issue, or if the authorities intervene.

THE LAW SOCIETY OF SINGAPORE'S CONDITIONS OF SALE 2012 ("CONDITIONS OF SALE 2012")

Having looked at one specific Condition in the Conditions of Sale, we now examine a few other important Conditions.

Condition 5

Condition 5.1 states that the vendors shall deliver the property “in the same state and condition as it was at the date of the contract”, save for fair wear and tear. Condition 5.2 provides that if the sale is with vacant possession, all movable property not included in the sale are to be removed from the property by completion unless otherwise agreed to by the parties.

There are two measures which purchasers may wish to adopt in view of Condition 5. Firstly, purchasers may wish to take pictures or videos of the property upon obtaining the OTP. This is to ensure that there is evidence to rely on for comparison if any part of the property is found to have deteriorated between the grant of Option and the completion of the sale and purchase. Secondly, purchasers may wish to negotiate for the insertion of a clause that gives them a right to inspect the Property prior to completion. Purchasers can then ensure that everything (such as the removal of movable property) is in order prior to completion.

There is an added advantage to the purchasers’ right of inspection of the property before completion – such a right will allow purchasers an opportunity for renovation planning prior to completion of the sale and purchase of the property.

Condition 8

Condition 8 should be read in tandem with Condition 5. Condition 8 provides that the purchasers are deemed to have notice of the actual state and condition of the property as regards access, repair, light, air, drainage and in all other respects. The important thing to note is that purchasers cannot later raise an issue with regard to minor defects on the property, such as pipe leakages, or presence of termites in the property. Hence, purchasers are encouraged to inspect the property carefully for such issues prior to the grant (or the exercise of the option).

Condition 9

Condition 9 provides that for any delay in completion solely due to the default of one party, the non-defaulting party will be able to obtain late completion interest of 8% per annum pro-rated according to the

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number of days delayed. It will be prudent for prospective purchasers to map out their financing plans to ensure that there are sufficient funds before agreeing to complete on a certain date. As mentioned in Part 1 of our update, the completion date may be negotiated by both parties prior to any grant of the OTP.

Condition 16

It is useful to note that Condition 16 provides that if there is a conflict between any "special conditions" stipulated in a contract (i.e. the OTP or the Sale and Purchase Agreement) and the Conditions of Sale, the conditions in the contract shall prevail. Henceforth, purchasers ought to be aware that they, as well as the vendors, are free to negotiate additional terms by indicating in the contract that they are entering into.

RISKS OF PURCHASING OLD LANDED PROPERTIES

When purchasing old landed property, it may be prudent to check whether there are any encroachments on the property and whether the property itself is encroaching upon neighbouring property in some way. For example, there may be boundary walls which have been wrongly erected and simply left intact over the years. This could lead to potential boundary disputes in the future. To avoid this, it may be necessary to engage the services of a surveyor to map out the true physical boundaries of the Property.

A more common problem is that of road or drainage reserves that lie within the boundaries of the property. Road and drainage reserves are physical setbacks affecting the land which are intended by the government to be acquired for the expansion of existing road and drainage network respectively in the future. Usually, these road and drainage reserves are realized (i.e. actually acquired by the government) when there is either redevelopment of the property (more common) or when the government requires the land for road construction/improvement. The existence of substantial road or drainage reserves (some of which could potentially affect up to 40% or more of the property) would certainly impact upon the value of the property and potential purchasers would do well to take them into account when negotiating the purchase price.

If it is important to the purchaser that there are no road or drainage reserves over the property (especially if the property is being purchased with a view towards redevelopment), purchasers may wish to consider applying for a Road Interpretation Plan or Drainage Interpretation Plan before paying the option fee for the grant of the OTP.

CONCLUSION

With this, we have come to the end of this series on matters which a potential purchaser of residential property should look out for. Purchasing a property is likely to be the single most significant transaction in our lives for many of us. As such, we have endeavoured to highlight the more common and important facets of a property purchase for your benefit.

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