

THE LAW SOCIETY CONDITIONS OF SALE 2012

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The Law Society of Singapore released a 2012 version of the Conditions of Sale on 19 January 2012. This new set of Conditions is meant to be an update on the somewhat outdated 1999 version which had been in force for over a decade. The update is intended to ensure that the applicable terms and conditions are in keeping with current standard conveyancing practices and prevailing legislative and regulatory changes and also to remove redundant provisions.

The Conditions of Sale are a set of terms and conditions designed to facilitate property sale and purchase transactions by regulating the common rights and obligations of the vendor and purchaser at various stages of the transaction. From time to time, the Law Society will issue conveyancing practice directions and rulings giving an interpretation of some of these Conditions where specific queries have been directed to the Law Society or where disputes may have arisen in practice and these directions and rulings will help to give added clarity to its operational effectiveness. This will establish useful precedents for future transactions and serve to cultivate conveyancing practices that are more uniform so that transactions are better handled with more expediency and fewer disputes.

The Conditions of Sale, whether the 1999 or the 2012 version, are not mandatory in the application and it is up to the parties to choose to incorporate them into their property sale and purchase transactions.

In practice, the vast majority of residential property Options to Purchase and Sale and Purchase Agreements do incorporate the Conditions of Sale by reference.

The rest of this article will draw the attention of potential vendors and purchasers to the most salient features of the Conditions of Sale 2012 and compare its differences with the 1999 version where appropriate.

Condition 16 – Special Conditions

The first thing to note about the Conditions of Sale 2012 is that Condition 16 specifically provides that, should there be a conflict between any “special conditions” stipulated in a contract and the Conditions of Sale, the former shall prevail. This means that vendor and purchaser can choose to both avail themselves of the general facilitative effect of the Conditions of Sale while remaining free to negotiate additional or alternative terms, even if those terms may conflict with any of the Conditions of Sale.

Condition 9 – Late Completion Interest

If completion is delayed due solely to the default of one party, the other party shall be entitled to payment of “Late Completion Interest” as liquidated damages.

Late Completion Interest is calculated based on a “Relevant Sum” at 8% per annum pro-rated according to

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the number of days delayed. The Relevant Sum is the purchase price of the property fewer payments, if any, already made to the vendor or developer (such as the deposit and previous progress payments).

The method of calculation for Late Completion Interest under the Conditions of Sale 2012 and the Conditions of Sale 1999 remains the same, except that previously, it was 10% rather than 8% of the Relevant Sum per annum. The change is to better reflect market reality now that interest rates are generally lower than they were in 1999.

Condition 6 – Outgoings, Rents, and Profits until Completion

This condition stipulates that the vendor is (1) entitled to rents and profits and (2) responsible for outgoings and levies on the property up to and including the scheduled completion date. As a corollary, the purchaser is (1) entitled to rent and profits and (2) responsible for outgoings and levies on the property after the scheduled completion date. This is materially similar to what is provided for in the Conditions of Sale 1999.

One thing that is now being highlighted is that, where any levies relating to the common property (whether lump-sum or installment payments for repair or upgrading works etc.) of development is payable before the scheduled completion date, the vendor shall be liable for such payment.

Further, in the event of late completion due to the purchaser's default, the vendor may elect not to receive late completion interest and instead be responsible for outgoings and be entitled to rent up to and including an actual completion date. This will be beneficial to the vendor in cases where the property sold is tenanted and the apportioned rental over the period of delay is more than the late completion interest computed at 8% per annum.

Potential vendors and purchasers should bear the above in mind when planning for and negotiating a completion date.

Condition 7 – Tax

The vast majority of this Condition deals with compliance matters relating to the various taxes that may potentially be levied on a property sale and purchase transaction. These include:-

1. The withholding of income tax payable by the vendor (in the event that the vendor has been assessed as a property trader) by the purchaser's solicitors.
2. Provisions to facilitate and regulate the payment of property tax, buyer's stamp duty and seller's stamp duty where applicable.

These requirements should not worry about the parties to a property sale and purchase as they fall within the realm of responsibility of the solicitors handling the transaction.

The most important part of this Condition that parties should take note of is Condition 7.2, regarding the liability for Goods & Services Tax (GST), should it be payable.

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It is now explicitly clear that, unless otherwise agreed, if the contract is silent as to whether the purchase price of the property includes GST, and the property transaction is one which is subject to GST, the purchaser shall be liable for its payment. The previous phrasing of the equivalent Condition in the 1999 version was somewhat ambiguous, and it led to litigation over which party should be liable for GST amounting to \$266,000 because the contract was silent in relation to GST on the purchase price.

Conditions 5, 8 and 10 – “As is where is”?

In the Conditions of Sale 1999, a purchaser of a property is deemed to have notice of its “actual state and condition”. In most property sales and purchase contracts, there will also be a clause to such an effect. These clauses are known as “as is where is” clauses. The effect of such clauses is to preclude a purchaser from alleging that he was not aware of the presence of minor non-latent defects (such as a leaking pipe or a cracked ceiling, for example) and to use such defects to either claim damages or to void the transaction.

In the Conditions of Sale 2012, however, Condition 8, the “as is where is” clause, is now made subject to Conditions 5 and 10.

Condition 5.1 states that the vendor shall deliver the property “in the same state and condition as it was at the date of the ”, save for fair wear and tear.

This places an obligation on the vendor to ensure that the property remains in generally the same condition as it was at the time of contract. The vendor is not allowed to rely on an “as is where is” clause to displace responsibility for the unreasonable deterioration of the property that is not due to fair wear and tear.

Additionally, Condition 10.1 contains a representation and warranty by the vendor that he has not “carried out any unauthorised additions or alterations” to the property.

Unauthorised additions or alterations to a property are not uncommon as homeowners sometimes erect structures or undergo reconstruction works to their property without explicitly obtaining authorization from the relevant authorities. Possession of and responsibility for such unauthorised additions or alterations then get passed on to a new owner; sometimes without his knowledge.

This clause is advantageous to a purchaser (the new owner) because it gives him protection against unauthorised additions or alterations. In the event that a new owner of a property is **later** required by the authorities **or a subsequent purchaser** to rectify any unauthorised additions or alterations, he can rely on such a clause to trace the responsibility back to the vendor who initiated them in the first place. The vendor, based on the representation and warranty in Condition 10.1, may be found to be in breach of such representation and warranty and then be made to pay for the rectification works.

The inclusion of this new Condition should lead to more transparency between vendors and purchasers regarding the existence of unauthorised additions and alterations, and they can then negotiate around it.

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Final Observations

It is good to see that the Conditions of Sale 2012 has been streamlined to a more accessible 16 from the previous 33 number of Conditions. In the process, it has shed many obsolete Conditions which are no longer applicable, while at the same time made provisions for the requirements of the modern conveyancing climate.

At the moment, the 1999 version is still being widely used in most standard printed form contracts such as Options to Purchase issued by various real estate agents. Notwithstanding this, where terms are being negotiated, parties are free to decide on which version of the Conditions of Sale is to govern their contract for the sale and purchase of the property. The above discussion should assist parties to make an informed decision on choosing the appropriate set of Conditions of Sale depending on various factors such as whether they are purchasing or selling, the condition of the property or the risks that they wish to guard against.

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