

**PUBLIC CONSULTATION PAPER
TO SEEK FEEDBACK
ON THE PROPOSED MEASURES
TO SAFEGUARD CONVEYANCING MONEYS**

11 – 26 AUGUST 2009

Introduction

1. The Ministry of Law seeks views on various measures which will prohibit lawyers from receiving conveyancing moneys.

Current Situation

Lawyers acting in different capacities and types of conveyancing moneys

2. Traditionally, lawyers have been holding clients' moneys as part of the conveyancing process. These could occur in both private property and HDB transactions. The lawyers could be holding these moneys as:

- 2.1 a buyer's lawyer,
- 2.2 a seller's lawyer;
- 2.3 the Central Provident Fund Board (CPF Board)'s lawyer (for release of a buyer's CPF moneys).

3. A lawyer acting for a buyer may be holding conveyancing moneys that his client has paid to him to:

- 3.1 pay to the seller's lawyer in exercise of an Option to Purchase;
- 3.2 pay to the Inland Revenue Authority of Singapore (IRAS) for stamp fees, or
- 3.3 complete the purchase of the property.

4. A lawyer acting for a seller may be holding moneys he has received from:

- 4.1 the buyer as deposit for the purchase of the property, and
- 4.2 sale proceeds that the seller has authorised him to receive in his personal or firm's name.

5. A lawyer who has been appointed by CPF Board to act in the release of moneys for the buyer's use will be in receipt of such CPF moneys.

Two ways in which property purchase transactions are commonly entered into

6. Option to Purchase Method:

- 6.1 This is the more common method whereby a buyer is given an Option to Purchase upon paying the seller one per cent of the purchase price as option fee.
- 6.2 The Option to Purchase Form will typically give the buyer 14 days to exercise his Option to Purchase.
- 6.3 The buyer exercises the Option to Purchase by signing an acceptance copy of the Option to Purchase Form together with a deposit of four or nine per cent of the purchase price (depending

on the amount stipulated by the seller in the Option to Purchase) paid to the seller's lawyer.

- 6.4 The seller's lawyer will then hold on to this deposit in his regular client account until such time when it should be released.
- 6.5 Some sellers' lawyers make use of this deposit to sort out minor adjustments of accounts on the completion day.

7. Sale & Purchase Method:

- 7.1 This method is less common.
- 7.2 The buyer will typically pay a certain percentage of the purchase price directly to the seller, and the balance would be paid over on legal completion.
- 7.3 This method may have more variables and there may be some terms in the agreement as to whether the initial payment should be held by a stakeholder, who should be the stakeholder, among others.

Proposed Changes

(I) The law be amended to expressly prohibit lawyers from holding conveyancing moneys in their regular client account

8. It is proposed that the relevant Rules be amended so that lawyers will no longer be able to receive conveyancing moneys into their regular client account.

- 8.1 Buyers' lawyers can no longer ask their clients to pay into their regular client account conveyancing moneys such as purchase price or moneys required for payment of stamp duties¹.
- 8.2 Sellers' lawyers can no longer receive sale proceeds into their regular client account.
- 8.3 Breach of this prohibition will subject the lawyer to disciplinary action.
- 8.4 This prohibition is not meant to prevent lawyers from requiring their clients to make payment into their client account to meet their legal costs or disbursements that are typically incurred in a conveyancing transaction.

¹ Ad valorem duty for sale and purchase of immovable property (which includes ad valorem duty for Sale & Purchase Agreement, Acceptance to Option to Purchase, Letter of Authority and Transfer/Assignment/ Conveyance) and ad valorem duty for transfer of immovable property by way of gift.

(II) It is proposed that conveyancing moneys be held only by entities approved by the Minister

9. Current conveyancing practices allow a seller's lawyer to receive the Option deposit as a stakeholder. The Ministry of Law is proposing alternatives to address the receipt of the Option deposit:

- 9.1 The Option deposit of four or nine per cent of the purchase price which a buyer passes to the seller's lawyer upon exercise of Option will have to be held by entities approved and appointed by the Minister for Law.
- 9.2 The Singapore Academy of Law (SAL)² will be the main entity appointed to hold such conveyancing moneys and its model is outlined below:
 - The seller can specify in the Option to Purchase Form that SAL receives such a deposit.
 - The buyer will be asked to issue a Cashier's Order to the name of SAL or make an electronic payment to SAL.
 - SAL will only pay out the moneys upon the joint submission from both the buyer and seller's lawyers of a Payment-Out Form, with supporting documents such as title search (so that SAL can verify the payees against the names in the title search).
 - SAL's responsibilities will be spelt out in new SAL stakeholding rules, which are being drafted.
- 9.3 The Ministry of Law is also in ongoing discussion with potential participating banks to explore the provision of a service to hold the Option Deposit. If such a service is feasible, the participating banks will be designated as approved entities to hold the Option deposit.
- 9.4 Recommended clauses for insertion into the Option Form as to the payment of the Option deposit to an entity approved by the Ministry of Law will be made available.

(III) Approved entities can only pay out to approved payees

10. To prevent the manipulation of names of payees, the appointed entities will only release the conveyancing moneys that they hold to approved categories of payees namely:

- sellers,
- mortgagee banks,
- buyers,
- the Central Provident Fund Board,

² SAL is currently the stakeholder for developers' deposits for uncompleted projects and is well placed to take on the role.

- the Housing & Development Board,
- the Inland Revenue Authority of Singapore; and
- the Management Corporation of the subject property for arrears in management and sinking funds.

MINISTRY OF LAW
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