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*The law is as stated at January 2003.
The law relating to conveyancing is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should consult a solicitor.*

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Solicitors & Notaries
Hong Kong

LAW GUIDE SERIES No. 11

Land and Land Registration

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INTRODUCTION

The law governing property and conveyancing in Hong Kong is based on English common law and equity as modified by Hong Kong Ordinances.

Hong Kong is part of the territory of China. All land within the Hong Kong Special Administrative Region is State property. The Government of the Hong Kong Special Administrative Region ("the Government") is responsible for their management, use and development and for their lease or grant for use or development.

Therefore, all land in Hong Kong is held on leasehold from the Government by virtue of Government leases or various kinds of Conditions. The title deeds generally for terms of years expiring on 30th June, 2047 are registered at the Land Registry and New Territories Land Registries which are open to public inspection.

However, it must be stressed that the registration system in Hong Kong is only a system of registration of deeds, not title, and the Government gives no guarantee as to the validity of title.

LAND TRANSACTION PROCEDURE

In Hong Kong, a typical land sale transaction is divisible into four district stages: the pre-contract stage, the formal contract stage, the completion stage and the post-completion stage. Sometimes in practice the four stages may not be so distinct and some stages may merge into each other.

1. Pre-contract Stage

The vendor usually puts his property on the market through an estate agent. An intending purchaser will approach the estate agent and a site visit to the property will be arranged. Viewing the property is important to give the purchaser an idea

as to its area, physical conditions and surroundings. Moreover, viewing the property is also important to ascertain the identities of its occupants and to find out whether any third party has rights or interests in the property by virtue of occupation. If you do not view the property and do not find out who has a right to occupy it, you may nevertheless have to take the property subject to the occupier's rights.

In addition, it is prudent for the intending purchaser to search the relevant Land Registry or New Territories Land Registries the ownership and incumbrance records of the property. Such searches serve to establish the apparent current ownership of the subject property.

When both the vendor and the purchaser intend to proceed with the transaction, a preliminary agreement for sale and purchase is drafted and prepared by the estate agent instructed by both parties, invariably on a printed form, which usually contains the following principal terms and conditions:-

- the full particulars of the vendor and the purchaser,
- the full description of the subject property to be sold,
- the purchase price and the manner of its payment,
- the date of completion,
- the payment of legal costs, stamp duty and registration fees, and
- whether vacant possession of the subject property shall be delivered on completion or the property shall be sold subject to existing tenancies.

At this stage, if finance is needed, the intending purchaser should make arrangements with a bank to obtain a mortgage loan.

2. Formal Contract Stage

When the draft preliminary agreement for sale and purchase is acceptable to both parties, both of them will sign the agreement. A land contract must be evidenced in writing (or by part performance) to be enforceable. It must also be borne in mind that subject to certain exceptions any written contract of sale of a residential property must be presented for stamping at the Stamp Office within 30 days after execution.

After signing the preliminary agreement, the parties almost always make a formal agreement for sale and purchase. In most cases solicitors usually become involved at this stage. Since 1989, subject to a few exceptions, the vendor and the purchaser will each instruct their own solicitor to handle the transaction.

It is the duty of the vendor's solicitor to prepare the draft formal agreement for sale and purchase. The purchaser's solicitor approves the draft formal agreement with any amendments as he deems it fit. If the draft is acceptable to both parties, the purchaser's solicitor arranges for his client to sign and exchange

The vendor's solicitor sends all the title deeds relating to the property to the purchaser's solicitor who reviews them and investigates the vendor's title to the property. When the title is in order, the purchaser's solicitor prepares the draft assignment and sends it to the vendor's solicitor for approval. At the same time

the purchaser finalises his mortgage arrangements, if any.

3. Completion Stage

On completion, the purchaser executes the engrossment of the draft assignment and sends it to the vendor together with the balance of the purchase price to the place fixed for completion (usually the office of the vendor's solicitor). A land conveyance must be effected by an instrument under seal, i.e. a deed. The vendor acknowledges his receipt of the full purchase price, executes the assignment and return it to the purchaser's solicitor. As land transactions involve large sums of money, it is important for the vendor and the purchaser each to have a solicitor. Solicitors' conduct of conveyancing matters is governed by strict professional rules to safeguard the interests of both parties.

4. Post-completion Stage

The assignment must then be presented for the payment of stamp duty and registration. After registration, the purchaser's solicitor will return the assignment to the purchaser for safekeeping.

CONVEYANCING SOLICITORS' COSTS

In Hong Kong, the fees a solicitor can charge the client in a conveyancing transaction depend on the price of the property and the amount of the mortgage. For example, if a property is purchased for \$2,000,000 with a mortgage of \$1,200,000 the scheduled fees will be \$15,000 for the conveyance and \$11,000 for the mortgage. These fees and charges are regulated by law. In addition, the purchaser's solicitor arranges for his client to sign and exchange his copy of the agreement for the copy signed by the vendor.

Very often a further deposit is payable by the purchaser on the deeds fit. If the contents are in order, the purchaser's solicitors would arrange for signing of the formal agreement for sale and purchase. Usually the total sum of the initial deposit and the further deposit do not exceed 10 per cent of the purchase price. The purchaser will have to pay half the charges for the preparation of the agreement, \$875, in this example, plus \$300 for attending registration of the agreement in the Land Registry or New Territories Land Registries. In addition to the solicitor's scale, postage, photocopying and other miscellaneous expenses.