



Dealing with lost ownership documents

EVIDENCE OF OWNERSHIP: For properties without individual title, someone along the chain of ownership must have at least a copy or photocopy of the ownership documents

Q 1: Valentine Kwan@KL: My wife and I bought a house last May and we will be the third owners as the first owner has defaulted and the house was subsequently auctioned off. The second owner purchased it in cash. Recently, we found out that the second owner has lost the original Deed of Assignment (DOA) which has the ad valorem stamping on it and a 'copy' (with just the RM10 stamping) was thus presented.

Thereafter, a police report was lodged along with a Statutory Declaration made should any issue arise due to the missing DOA. The second owner also issued a letter of undertaking.

However, at one point, the bank's lawyers were insistent that the DOA be re-stamped ad valorem to which the Vendor (second owner) has flatly declined. Lately, we have been told that the bank is requesting the Stamping Office for an endorsement but we aren't overly confident of the outcome.

ANSWER: Since the property purchased has no Individual Title, the evidence of chain ownership would be the Sale and Purchase Agreements (SPA) and Deeds of Assignment (DOA) executed by the parties in the respective transactions accordingly. These documents will be the evidence of ownership which will govern the rights of parties.

Based on the facts given, there must be someone who has a copy or at least a photocopy of the DOA which has been duly stamped with the relevant ad valorem stamp duty payable thereto. The parties will include the developer, the party who auctioned the property, the Solicitors involved in the auction and the Solicitors acting for the successful bidder, etc. The identity and the addresses of all these parties can be ascertained from the Deeds of Assignment executed and their whereabouts can be traced from public records.

It is unlikely that all parties who ought to have a copy of same do not have it in its archives.



Tan Kim Soon, a lawyer can be contacted at tkimsoon@pd.jaring.my

The lodging of a police report is only part of the safeguard. It would be better to locate or trace the payment made for the ad valorem stamp duty paid to the Stamp Duty Office since all payments made to the Stamp Duty Office has an official receipt. Your Solicitors would have to insist that the Vendor fulfil certain conditions before any payment is released to him as he cannot sell the property if his ownership is suspect. You may insist that the Vendor obtain a certified microfiche copy of the relevant cheque issued for the stamp duty payment from the Vendor's bank as evidence that ad valorem applicable stamp duty was indeed paid.

Since the purchase of the property is on the basis of a good title, the Vendor will have to necessarily comply with your reasonable requests. The flow of ownership must be intact as this is the basis of your entering into the SPA. It is also strange why your Solicitors did not insist on sight of all the chain ownership documents even though it may only be photocopies. Further, the documents must be verified prior to the release of the Purchase Price.

You may wish to obtain a second opinion from another firm of Solicitors who would be able to provide you with independent legal advice of your possible options in order to contain any potential problem in the future.

Q 2: JK Goh@KL: Two years ago, the developer of my condominium was supposed to transfer the strata title to me upon issuance. However, instead of that, they sent a letter to me demanding for RM10,000 being 'adjusted purchase price' due to the difference in size between what is stated in the Sale and Purchase Agreement (SPA) and what is on the strata title. They also said they would not execute the Memorandum of Transfer in our favour unless that amount was paid. What can I do?

ANSWER: First of all, we need to know when the SPA was signed. We have to look at the actual wordings in the SPA to be read in conjunction with the applicable law under the Strata Titles Act 1985 at the time the SPA was signed. The applicable law is dependent on this rather than on when the strata title was issued.

The relevant clause of the latest applicable law would be Clause 12 of the Schedule H of the SPA governing the Sale and Purchase Agreement between a Licensed Housing Developer and a purchaser for strata properties. Clause 12(3) of the SPA states that if the area of the said Parcel as shown in the strata title when issued is less than the area shown in the Building Plan, there shall be an adjustment of the purchase price for the difference (if any) in excess of 2 per cent of the area as shown in the Building Plan. On the other hand, Clause 12(4) of the SPA provides that the Vendor shall not be entitled to any adjustment of the purchase price if the area of the Parcel as shown in the strata title exceeds the area shown in the Building Plan.

In other words, if the strata title states a bigger area, then the developer can't claim extra in adjusted purchase price, but if the area stated in the strata title is smaller by more than 2 per cent, then the developer must pay the purchaser the overpaid purchase price.

Section 40A of the Strata Titles Act 1985 provides that the proprietor shall execute the transfer of the strata titles to the parcel owners within 12 months from the date of issuance of the strata titles by the Land Administrator or any extended period approved by the Director of Land and Mines upon the opening of the strata register. Any original proprietor or any person or body appointed by a court of competent jurisdiction or any purchaser who fails to comply with be liable for a fine of not less than RM1,000-00 or more than RM10,000-00 per parcel.

It is advisable to provide a full set of the Sale and Purchase Agreement together with all correspondences issued by the developer to a firm of Solicitors for full review of the matter and legal advice.

PROPERTY Q&A

Find answers to your questions

Q/A 1

Joe@Ayer Keroh: I own an apartment within the vicinity of a college campus and it is partially furnished. Do you think it will be easier to rent it out fully-furnished?

RED: I would say yes. However, student furnishing should be simple, durable and should not cost much. I would also advise those renting out to students not to have too many electrical appliances other than necessities such as a refrigerator. *By Gavin Tee, property investment consultant.*



Q/A 2

Roland D@Ampang: I recently rented a condominium unit at RM2,000 rental per month. Before signing the Tenancy Agreement, I was asked by the real estate agent to pay her RM500 for preparing the Tenancy Agreement in addition to another amount for the stamping fees for the Agreement. I don't have a problem paying the stamping fees but I feel RM500 fee is too high for preparing the Tenancy Agreement. Moreover, this fee is not stated in the Tenancy Agreement and as far as I am concerned, the Tenancy Agreement is a standard agreement which I am sure she just printed out from a standard template. Should I pay the RM500? It was made clear to me by her that if I don't pay, I can't rent the unit.

RED: Where preparation of Tenancy Agreements is concerned, the usual practice in the industry where an agent is involved, is for the agent to prepare the Tenancy Agreement and charge a nominal fee usually payable by the tenant, usually between RM100 - RM200. This is despite the fact that, as you mentioned, it's an agreement printed out from a standard template. Admittedly, RM500 is a bit on the high side and you could perhaps negotiate with her to reduce it or get the landlord to bear part of the fee. Or, just tell her you could prepare it yourself since it's a standard agreement, and if your landlord agrees, this settles the matter. Worse come to worst, just walk away and see what their response is. *By Jan Yong, Editor, NSTRED.*

DISCLAIMER: The answers are solely the experts' opinions and act as a guide only. NST RED will not be liable for any losses arising out of reliance on the advice here.

Ask the RED expert: Please fax your questions to: 03-2283 1700 or email to nstred@nstp.com.my