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## Wrong title?

You may suffer losses but you have recourse for compensation



By DR ERNEST CHEONG

YOU'VE seen the advertisement, viewed the property, offered a price and your offer has been accepted. Congratulations! The next thing you must do is engage a lawyer to handle your purchase.

One of the first things he or she will do, or delegate to a "runner", is a title search at the Land Office. This involves searching for the title (or "geran") to verify the information given by the property's agent or seller, such as the real identity of the property's owner, lot size of the property, whether it is charged to a bank, whether there are any caveats on it, etc.

At the same time, thousands of land and property transactions are made at Land Offices throughout Malaysia every day. With so many transactions, there are sometimes errors and omissions which result in damages to parties involved.

Some errors include the Land Office's failure to promptly register onto the title document caveats, charges and ownership transfers which may have already been submitted.

If you find out that there is a caveat lodged against the property, or that it has actually been resold to someone else after your Offer to Purchase was accepted and you have already incurred costs including payment of the initial "earnest deposit", you may be deprived of your right to purchase and incur losses.

What you may not know, however, is that according to Section 386 of the National Land Code, if you suffer losses because of an error

in your "certificate of search", you are entitled to compensation.

### Pre-computerised procedures for a property search

The "certificate of search" dates back to the time when the National Land Code was first enacted in 1965.

In those days, procedures were not computerised. A private search (a less official search) involved the enquirer copying down details from the Register of Title, Presentation Book or Correction Note Book at the Land Office.

The result of an official search which cost a bit more, meanwhile, was signed by the Registrar (now the Land Administrator) and called a "certificate of search".

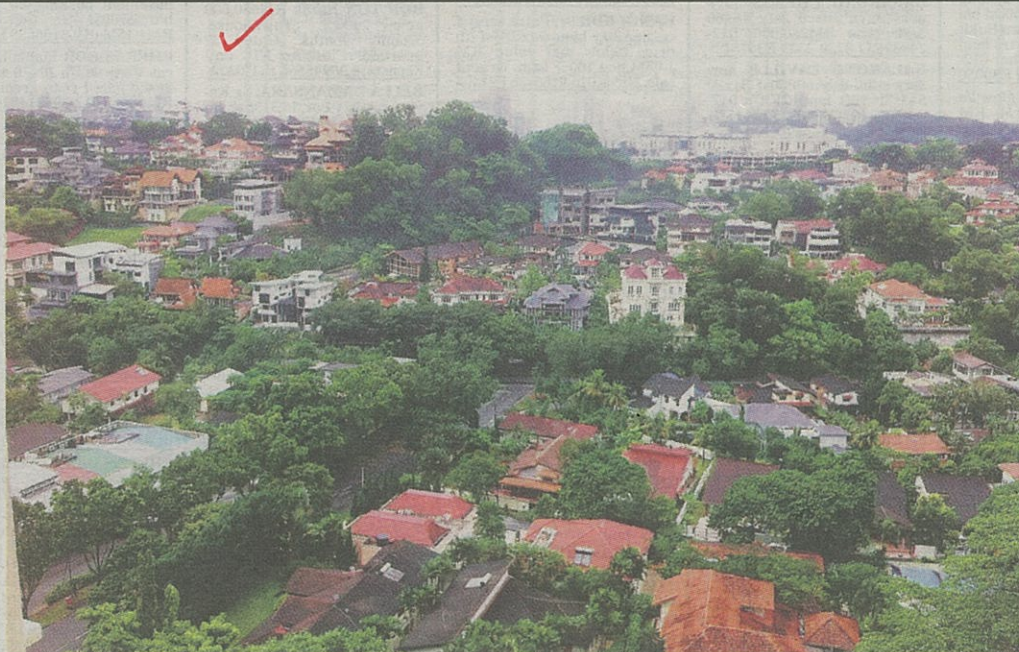
Today, the results of both private or official searches are printed out at the Land Office. For official searches, the printout is signed by the Land Administrator.

Even with procedures changed, Section 386 of the National Land Code must apply should there be errors in the printout made at the Land Office, especially if these are official searches. Those who have suffered losses must be entitled to compensation.

You wouldn't need to engage a lawyer to demand compensation too, as compensation may be agreed upon between the purchaser and the State Director, or by arbitration, according to Sections 386 and 434 of the National Land Code.

### What is arbitration?

Arbitration is an alternative to



What if you lose your dream home because of mistakes in your title search?

**Arbitration is an alternative to litigation, where parties resolve their disputes in private.**



— ERNEST CHEONG

litigation, where parties resolve their disputes in private. This can be included as part of the original contract as an arbitration agreement or clause. Alternatively, if all parties agree to arbitrate, they can sign an ad hoc arbitration agreement after the dispute has arisen.

The person who resolves a dispute in an arbitration is called an arbitrator. Unlike litigation, where you cannot choose who is the judge to resolve your case in Court, parties in an arbitration may agree on a specific arbitrator.

There are specialist arbitrators for disputes requiring specialist knowledge, for example in construction, property, marine/shipping, to name a few. With arbitrations, you need not necessarily engage a lawyer, you can represent yourself or choose someone else.

You can also speed up the process and keep costs to a minimum by agreeing on a documents-only arbitration.

### Final and binding awards

An award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding and may be relied upon by any party in any proceedings in Court, according to Section 36 (1) of the Arbitration Act, 2005.

Arbitration awards made in Malaysia are enforceable through the High Courts in Malaysia in the same manner as Court judgments.

### Limitations of arbitration

Unlike the judge of a Court, an arbitrator has limited powers. For example, a judge can compel an unwilling witness to attend Court through the issuance of a subpoena while an arbitrator cannot.

A judge can also send a witness who refuses to comply with a Court Order to prison but an arbitrator cannot.

Court rules permit multi-party disputes to be heard in the same suit, but arbitration does not. A judge may issue a judgment against a third party not directly involved in the dispute, but an arbitrator may not.

Ultimately, to equitably and judiciously answer and resolve the

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various questions and issues, an arbitrator will need much wisdom and insight.

■ Dr Ernest Cheong is a columnist at [www.StarProperty.my](http://www.StarProperty.my). Cheong is a veteran chartered surveyor, registered valuer, auctioneer and arbitrator and also principal of Ernest Cheong PTL Chartered Surveyors.

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