



Purchase of Residential Premises

What is it that you are going to purchase?

Generally speaking, when you purchase a property, you are purchasing the title to the property.

The land

With a few exceptions, all lands in Hong Kong belong to the Government. The Government grants leases of lands. The duration of Government leases varies, sometimes for 75 years and sometimes for shorter periods, with or without a right of renewal. New Government leases now are typically granted for 50 years from the date of grant. Most Government leases which expired before 30 June 1997 have been extended to 2047 by the Joint Declaration. When you purchase a property, you actually purchase the property for the remaining duration of the relevant Government lease.

The building

Before any property can be occupied, an Occupation Permit of the building in which the property is located must have been issued by the Building Authority. The Occupation Permit states the permitted use of different parts of the building e.g. flats for domestic use or shops for non-domestic use. In cases where the land is held under a new "Government Grant", before the developer can transfer the title of the property to you, it must apply for and obtain from the Government either a Certificate of Compliance confirming that the positive obligations in the Government Grant have been complied with, or a Consent to Assign allowing the developer to transfer the title of the property to you before such compliance.

Is a written agreement for sale and purchase required when purchasing a property?

Yes, as there is no enforceable relationship between the seller and the buyer based on a verbal agreement, before signing any agreement for sale and purchase, you should consult a solicitor to find out about your rights and obligations and ask the solicitor to review the agreement for you.

Provisional agreement for sale and purchase

This is a simple agreement which usually contains the main terms of the agreement including a description of the property, the price agreed, the details of the seller and the buyer, the time for completing the sale and purchase, the time the seller and the buyer are to sign the formal agreement and what will happen if either party breaks the agreement. This agreement normally requires the buyer to pay an initial deposit of about 5% of the purchase price. Under the Residential Properties (First-hand Sales) Ordinance, from 29 April 2013 onward, the initial deposit is now fixed at 5% for the sale and purchase of first-hand residential properties. A provisional agreement for sale and purchase is not a must; the seller and the buyer can proceed to negotiate and enter into a formal agreement for sale and purchase directly. However, if the sale and purchase is introduced by an estate agent, a provisional agreement for sale and purchase is typically arranged by the agent and signed by the seller and the buyer.

Formal agreement for sale and purchase

This document is normally prepared by the solicitor for the seller. Apart from setting out the main terms contained in the provisional agreement for sale and purchase if there is one, this formal agreement includes more comprehensive terms and conditions such as warranties made by the seller, and remedies for breach of the agreement. Normally, this agreement requires the buyer to pay a further deposit (together with the initial deposit to make up to 10% of the total purchase price) by a certain date. The formal agreement for sale and purchase of first-hand residential properties must contain the mandatory clauses prescribed by the Residential Properties (First-hand Sales) Ordinance. You should consult your solicitor to know more about the mandatory clauses.

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Investigation of title

Your solicitor will investigate the seller's "title" to the property to see whether there are problems. This is to ensure that the seller can transfer a good title to the property to you free from any defects. There are many types of defects, for example, the seller might have purchased the property from an owner who did not own 100% of the property, or in an earlier sale the property was sold by an agent of the owner but the agent did not have the right to sell the property under the power of attorney given to him by the owner. Your solicitor will advise you on how any defect will impact the quality of the title the seller can transfer to you.

Deed of assignment

This is the document by which the title to the property will be transferred to you by the seller. On the date fixed to complete the transaction, you have to pay the balance of the purchase price and sign the assignment, in exchange for the return of the assignment signed by the seller. The seller's solicitor will arrange for the seller to sign the assignment and give it to your solicitor together with the title deeds and documents relating to the property.

After signing the sale and purchase agreement

The seller remains the legal owner of the property and continues to pay for all outgoings up to completion of the sale and purchase. Normally you, as the buyer, will have to bear the risk of damage to the property after both the seller and yourself have signed the sale and purchase agreement unless the building is still under construction. Therefore, you should immediately effect insurance to protect you against the risk.

Mortgage loan

If you are purchasing the property with the assistance of a bank loan, you have to sign a deed of mortgage which creates a pledge on your title to the property to the bank. If you fail to re-pay the bank loan and interest according to the terms agreed with the bank, the bank could enforce its rights against you and your property.

What expenses do I have to pay?

Apart from the purchase price, you have to pay your solicitor's legal fees for representing you in the purchase and (if applicable), in preparing the deed of mortgage. In addition, you also have to pay expenses including search fees, stamp duty, registration fees and a levy to the Property Management Services Authority.

When you ask for photocopies of documents signed by you or relating to the title of your property, you will need to pay for the copying charges. If you buy the property from a developer, there are additional expenses for title documents, plans and deposits payable to the manager of the building. Your solicitor will explain these to you.

Stamp Duty

In Hong Kong, payment of stamp duty is required for the transfer of a property. The common market practice in Hong Kong is the purchaser of a property will pay the stamp duty. The rates of stamp duty are subject to adjustment by the Government from time to time. Late payment of stamp duty attracts penalty and adverse legal consequences. Details of the stamp duty for the transfer of a property can be found in the Inland Revenue Department's website: www.ird.gov.hk. You should consult your solicitor if you have doubts on the stamp duty payment and whether you can claim any exemption.

After the transfer

Your solicitor will attend to the stamping of the assignment and registration of the documents at the Land Registry. (If you have signed a mortgage, it will be registered at the same time). After registration, the title deeds will be delivered to you but if you have obtained a loan from a bank, the deeds will be kept by the bank until full repayment of the mortgage loan.

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Property Fraud

Be aware that fraudsters may use forged identity documents to pretend to be property owners and put properties on sale. To avoid falling prey to scams, when you intend to buy a second hand property, you should try to conduct on-site inspections and verify the identity of the seller. Be alert if the property for sale is substantially below the market price, the seller requires a large upfront deposit, or the seller does not provide you with the chance to view the property, for these are some of the common features of scams. If the owner of the property is a private company, you should make a search at the Companies Registry for information on that private company, to make sure that the person representing the seller is a director of the seller. Where there is any recent change of directors of the seller, extra caution should be exercised to watch out for any suspicious circumstances. For further anti-deception measures, you may visit the website of the Hong Kong police force. If you need immediate consultation from the police or if you want to make an urgent report on deception, you may call their Anti-Scam hotline: 18222.

Purchase of units in uncompleted buildings

Sale of units in uncompleted buildings by developers is common in Hong Kong. Such sale is usually regulated through the Consent Scheme monitored by the Director of Lands and the Non-Consent Scheme administered by the Law Society in case a solicitors' firm acts for both the

developer and the purchasers. Both the Consent Scheme and the Non-Consent Scheme aim at offering protection to purchasers who buy units which are still under construction.

The Consent Scheme is imposed by the Government through the terms of the land grant documents. Developers are not allowed to sell except with the consent of the Director of Lands. Strict conditions will have to be complied with by the developers. Under the Consent Scheme, in order to ensure that the developers have the ability to meet all the development costs, the Director of Lands only allow building mortgages and finance undertakings as means to prove the ability to finance the outstanding development costs.

The Non-Consent Scheme is administered by the Law Society for sale of uncompleted buildings which fall outside the ambit of Consent Scheme. Under the Non-Consent Scheme, certain protection is offered to the purchasers where the developer and the purchasers are jointly represented by a solicitors' firm. Unlike the Consent Scheme, the Non-Consent Scheme is only administered by the Law Society through rules of professional conduct and the Law Society is not empowered to impose restrictions on financing arrangements such as the requirement for building mortgages and bank undertakings. Purchasers should consider and assess the risks before they enter into provisional agreements for sale and purchase.

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