36 STEPS in a Property Transaction in Hong Kong

A Guide to the Property Purchaser
The Power of Integrity

solutions • not complications
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ONC Lawyers
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introduction

In this booklet, we set out briefly the steps in a typical property transaction in Hong Kong from the angle of a purchaser. The purpose of this booklet is to give an overview of the legal issues and formalities required in a property transaction in Hong Kong and serve as a general guide to property transactions in Hong Kong for our clients and friends.

signing provisional sales & purchase agreements

finding the property

1. First of all, you have to appoint an estate agent. You have to inform the estate agent what kind of property you are looking for, including but not limited to the usage, area, age, location and price range of the property. The estate agent will then accompany you to inspect those properties which suit your requirements.

engagement authorisation with estate agent

2. At or after inspection of the properties, the estate agent will request you to sign an engagement authorisation. In this document, you agree that if you purchase the property introduced to you by the estate agent within a certain period after the date of
inspection, say three months, you will pay commission to the estate agent notwithstanding that you may have purchased the property through another estate agent. For this reason, you should not inspect or negotiate the purchase of the SAME property through more than one estate agent or you may become liable to pay agency commission to more than one estate agent.

**preliminary valuation**

3. Before you enter into a Provisional Agreement for Sale and Purchase (the Provisional Agreement), it is advisable for you to conduct a valuation of the property through potential mortgagee banks. In addition to knowing the appraised value of the Property by the mortgagee bank, there are two more reasons: (i) to have an estimate of the amount of mortgage loan the mortgagee bank is ready to grant to you to finance the purchase; and (ii) to check whether the property is a blacklisted property because of being involved in homicide or suicide of its previous occupants, or other ‘unlucky’ event. However, such checking may not be conclusive.

**land search**

4. It is necessary for you to conduct an up-dated land search of the property to check, amongst other things, the name of the registered owner, the description of the property and any existing encumbrances registered against the property.
engage lawyer as early as possible

5. It is very important for you to instruct a competent and reputable law firm to act for you in your purchase of the property before you sign the Provisional Agreement which is a legally binding contract between the vendor and the purchaser. This is even more so after the introduction of Special Stamp Duty (SSD), which imposes additional stamp duty payment on transactions in residential properties acquired on or after 20 November 2010 and resold within 24 months after acquisition. Before signing the Provisional Agreement, it is of utmost importance to engage a lawyer to check the holding period of the current owner of the property to determine if SSD is payable and advise on the statutory duty to pay SSD. Further, as SSD is borne by both the vendor and purchaser, the Provisional Agreement should specify who is responsible for payment of the SSD. Please make sure that the Provisional Agreement has been approved by your lawyer before you sign the same.

commission to estate agent

6. Under the Provisional Agreement, you will agree to pay estate agent’s commission to the estate agent. Depending on the terms of the Provisional Agreement, sometimes you may be liable to pay the commission even if the transaction fails to complete. Hence it is important to review the terms carefully and propose amendments if necessary.
7. The time between the date of the Provisional Agreement and the completion of the sale and purchase must not be less than 1 month, otherwise the property may have prior encumbrances that could not be discovered on the date of completion. This is due to the effect of Section 5 of the Land Registration Ordinance which in essence provides that all deeds, conveyances and other instruments in writing which are registered within one month after the date of execution thereof shall have priority and shall take effect respectively by relation to the date thereof, i.e. the date of its execution. For example, if the Provisional Agreement is dated 1/4 and the completion date is 21/4, i.e. less than 1 month from the date of the Provisional Agreement, and suppose there is a prior provisional agreement dated 25/3 by the same vendor to another purchaser which is not registered until 24/4, i.e. within 1 month after the date of execution thereof and after the completion date of the property, by virtue of Section 5, the prior provisional date of the property, by virtue of Section 5, the prior provisional agreement will take effect on its execution date, i.e. 25/3 and will have priority over the Provisional Agreement dated 1/4 which takes effect on 1/4 provided it is registered within one month after its date of execution. The update land search made on 21/4 will not discover the existence of the 25/3 provisional agreement. In other words, you will not be able to confirm before completion that no interest
has been or will be registered against the property in priority to your interest if your completion takes place less that 1 month from the date of your Provisional Agreement. Hence, to secure priority in title, it is necessary that completion should take place at a date which is not less than one month from the date of the Provisional Agreement so that it can be confirmed before completion that no interest has been or will be registered against the property in priority to your interest. In the example given, if completion takes place on 2/5, the update land search made on 2/5 will disclose the existence of the 25/3 provisional agreement with was registered on 24/4.

**initial deposit**

8. Upon signing of the Provisional Agreement, you have to pay an initial deposit to the vendor. There is no strict rule as to the amount of the initial deposit. In most cases, the amount of the initial deposit is in the region of 3% to 5% of the purchase price.

**signing formal sale and purchase agreement**

**checking with management company**

9. You have to send the signed Provisional Agreement to us for our further action. We will write to the vendor’s lawyer to request for a draft Agreement for
Sale and Purchase. Furthermore, we will also write to the Management Company of the property to confirm (i) whether there is any outstanding management fee; (ii) whether there are any notices issued by the Management Company regarding unauthorized structures or alterations in the property; (iii) whether there are any pending legal proceedings which relate to the property; (iv) whether there are any management fee deposit, public utilities deposit, sinking fund etc. and whether they are transferrable; (v) whether there are any contributions required from the owner of the property to make repair, renovation or decoration to common areas or facilities of the building of which the property forms part; and (vi) whether the Owner’s Corporation or management company has procured and kept in force a third party risks insurance policy.

**negotiating terms of the sale and purchase agreement**

10. After receiving the draft Agreement for Sale and Purchase from the vendor’s lawyer, we will approve the draft by making proposed amendments to the draft.

11. The vendor’s lawyer and we will negotiate the terms and conditions of the Agreement for Sale and Purchase until the same are finalized. We may also contact you to seek your instructions on some of the terms and conditions.
The next step is to sign the Agreement for Sale and Purchase and pay the further deposit to the vendor. In most cases, the sum of the initial and further deposit is 10% of the purchase price.

Before sending the Agreement for Sale and purchase and the further deposit of the vendor’s lawyer, we will conduct an update land search of the property to check whether there is any new encumbrance registered against the property since the date of the Provisional Agreement. Furthermore, we will also conduct a bankruptcy search of the vendor if the vendor is an individual or a winding-up search of the vendor if the vendor is a corporation. If there is no new encumbrance and no bankruptcy or winding-up petition has been presented against the vendor, we will send the further deposit to the vendor’s lawyer for the vendor’s execution subject to an undertaking by the vendor’s lawyer to return one counter-part of the Agreement for Sale and Purchase duly signed by the vendor within 3 working days.
The Pursuit of Excellence
post sale and purchase agreement stage

stamping

14. After receiving the Agreement for Sale and Purchase from the vendor’s lawyer, if the property is a residential property, we will arrange the Agreement for Sale and Purchase to be stamped at the Stamp Office. In most cases, the stamp duty is payable by the purchaser. There is a progressive scale for payment of stamp duty. The amount of stamp duty payable ranges from HK$100.00 for properties below HK$2,000,000.00 to 4.25% of the purchase price for properties above HK$21,739,120.00. As no deferral of payment of stamp duty for residential properties below HK$20 million will be allowed after the passing of the Stamp Duty (Amendment) (No.2) Bill 2010, the stamp duty must be paid within 30 days of execution of the agreement. For non-residential property, the Agreement for Sale and Purchase needs not be stamped. Only the Assignment, a document which will be signed by the vendor and you on completion for the transfer of the property from the vendor to you, is to be stamped. The stamping process will take about 6 working days.

registration of the agreement

15. After stamping, we will submit the Agreement for Sale and Purchase to the Land Registry for registration
within one month after the date of the Agreement for Sale and Purchase in order to secure priority under the Land Registration Ordinance. The registration process will take one to two months from the time the document is submitted to the Land Registry for registration.

**approval of vendor’s title**

16. The vendor’s lawyer will send the title deeds and documents of the property to us for approval of the vendor’s title.

17. After receiving the title deeds and documents of the property from the vendor’s lawyers, we will peruse the same and raise requisitions, i.e. questions on title if we discover any from the title deeds and documents. Usually, we have 7 working days after the date of receipt of the title deeds and documents to raise requisitions.

18. The vendor’s lawyer will give their reply to the requisitions.

19. We can raise further requisitions if we think the reply has not fully answered the requisitions. This process will be repeated until we are satisfied that all the requisitions are fully answered.

**mortgage application**

20. After signing the Agreement for Sale and Purchase, you should apply to the mortgagee bank for a
mortgage if you need one to finance your purchase.

21. The mortgagee bank may arrange its own surveyor to make a site inspection of the property to check the legality of the structures, alterations and additions in the property.

22. If the mortgagee bank approves your mortgage, the mortgagee bank will give us instructions to prepare a mortgage. If you choose to purchase the property by a limited company, the mortgagee bank will usually require a personal guarantee from the directors of the said limited company.

23. In order to allow us to have sufficient time to prepare the mortgage, guarantee and other related documents, you should ensure that the mortgagee bank’s instructions reach us at least 10 days before completion.

**application for utilities**

24. After signing the Agreement for Sale and Purchase, you should apply for utilities such as water, electricity and gas to the property. It is not advisable to take up the utilities accounts of the vendor because there may be unpaid arrears from such accounts and you may not be able to get the utilities deposits back when you cease to be the owner because such deposits are in the name of the vendor.
completion of the sale and purchase

signing completion documents

25. After the assignment, mortgage, guarantee and other related documents have been prepared by us, you have to attend our office (i) to sign the said documents at least three working days before completion to allow the mortgagee bank to have sufficient time to prepare drawdown of the mortgage loan on completion; and (ii) to pay the balance of purchase price (less the mortgage loan).

26. Once you have executed the said documents, we will send a confirmation letter to the mortgagee bank confirming that the documents have been executed and requesting the mortgagee bank to drawdown the mortgage loan by crediting the mortgage loan into our account maintained with the mortgagee bank on completion.

final inspection

27. On or before the date of completion, you should arrange with the vendor to make a final inspection of the property to ensure that vacant possession of the property will and can be delivered to you on completion. If you find the property is not vacant, or there are furniture and chattels left in the property, you should inform us immediately.
28. On the date of completion, we will conduct an update land search of the property and bankruptcy search or winding-up search (as the case may be) of the vendor. In addition, we will seek confirmation from the mortgagee bank that the mortgage loan has been credited into our account maintained with the mortgagee bank. Afterwards, we will send the assignment signed by you together with the balance of purchase price to the vendor’s lawyer subject to, inter alia, the undertaking by the vendor’s lawyer to send to us the assignment duly signed by the vendor within 7 working days after the date of completion and to send to us an apportionment account which deals with the apportionment of rates, management fee, government rent, management fee deposit and public utilities deposit and the like within 21 days after the date of completion.

29. After 5:00p.m. on the date of completion, you will be able to collect the keys of the property from the estate agent or us, depending on the arrangement agreed by the vendor and you.
post completion

notifying management company

30. After completion, we will write to the management company of the building to notify the management company of the change of ownership of the property and request the management company to update their ownership records accordingly.

stamping

31. The vendor’s lawyer will send the duly executed assignment to us within 7 working days after completion.

32. After receiving the assignment for the vendor’s lawyer, we will submit the assignment to the Stamp Office for stamping purposes. It will take about 6 working days for the assignment to be stamped.

registration

33. After stamping, we will lodge the assignment and the mortgage with the Land Registry for registration within one month after the date of the assignment and the mortgage. The registration process will take one to two months.
34. After registration, we will report to the mortgagee bank the date of registration and the memorial numbers allotted to the assignment and the mortgage.

35. The vendor’s lawyer will send to us an apportionment account within 21 days after completion. We will verify the apportionment account. If the apportionment account is in order, you will be asked to settle the apportionment account. You should cause the name on the Rates and Government rent demand notes to be changed to your name by filing in your particulars on the back page of the demand notes. You should also keep the receipts for the management fee deposit, public utilities deposit etc which you will be required to produce when you sell the property in future.

36. After collecting the duly stamped and registered assignment and mortgage from the Land Registry, we will send the title deeds and documents of the property to the mortgagee bank for retention. If no mortgage has been created, we will notify you to collect the title deeds and documents of the property from our office. Title deeds and documents are
important documents and should be kept in a safe place. You should also keep the receipts for the management fees and Government rent and rates at least for the latest quarter. You will be required to produce such receipts when you redeem your mortgage or when you sell in future.

The above is only a general description of what take place in a typical property transaction in Hong Kong and is by no means meant to be exhaustive. Complications often arise during a transaction, which if not properly handled may cause serious loss to the parties. Hence, it is very much important for a purchaser to appoint competent and experienced lawyers to handle his purchase. A purchaser should not consider the lawyer’s fee and charge as the most important factor in choosing his lawyer.
The following flowchart summarizes the 36 steps for your quick reference:

### Signing Provisional Sale & Purchase
- 1. Finding the property
- 2. Engagement authorization with estate agent
- 3. Preliminary valuation
- 4. Land search
- 5. Engage lawyer
- 6. Commission payable to estate agent
- 7. Completion time MUST be at least 1 month
- 8. Initial deposit to the vendor

### Signing Formal Sale & Purchase Agreement
- 9. Checking with management company
- 10. Draft agreement from vendor’s lawyer
- 11. Negotiate the terms of formal agreement
- 12. Further deposit
- 13. Update land and bankruptcy searches
## Post Sale & Purchase Agreement Stage

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<td>16.</td>
<td>Title deeds &amp; doc from vendor’s lawyer</td>
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<tr>
<td>17.</td>
<td>Raise requisitions to vendor’s lawyer</td>
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<tr>
<td>18.</td>
<td>Reply from vendor’s lawyer</td>
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<tr>
<td>19.</td>
<td>Repeat steps 17 &amp; 18 until all requisitions are answered</td>
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<td>20.</td>
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<td>21.</td>
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<td>Allow at least 10 days for preparing documents</td>
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<td>Application for utilities</td>
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## Completion of the Sale & Purchase

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<td>26.</td>
<td>Confirmation letter to the mortgagee bank</td>
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<td>27.</td>
<td>Final inspection</td>
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<td>28.</td>
<td>Update search and bankruptcy search</td>
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<td>29.</td>
<td>Send balance of purchase price &amp; assignment to vendor’s lawyer and</td>
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## Post Completion

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<td>Notify management company</td>
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<td>Receive assignment from vendor’s lawyer</td>
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<td>Report to mortgagee bank</td>
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<td>Apportionment account within 21 days and notify Government of change of rate payer’s name</td>
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<td>Deliver title documents to bank or purchaser</td>
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