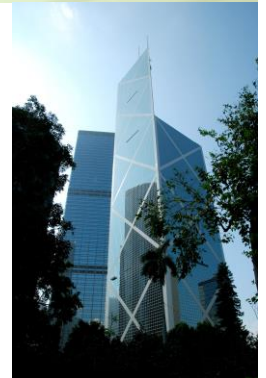


26 STEPS in a Residential Secondary Home Purchase in Hong Kong





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This publication is intended to be general outline of the prevailing law and practices on the subject matter and for reference purpose only. They cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact us at (852) 2810 1212 or realestate@onc.hk.

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Introduction

In this booklet, we set out briefly the procedural steps in a typical secondary-market property transaction in Hong Kong. It outlines the prevailing legal requirements and formalities, and serves as a general guide for conducting a property purchase. Clients and friends are encouraged to read this booklet in conjunction with another publication entitled “*Premium Investment – Avoiding Legal Pitfalls in Hong Kong Property Market*” (the other publication).

Overview on procedural steps of a property transaction

The following flowchart summaries the 26 steps in acquiring a secondary home in Hong Kong:

Signing Provisional Agreement for Sale & Purchase

1. Property inspection
2. Land search
3. Estate agent and commission
4. Preliminary valuation
5. Engage lawyer
6. Completion date MUST be at least 1 month
7. Initial deposit



Signing Formal Agreement for Sale & Purchase

8. Enquires with relevant authorities
9. Negotiate terms
10. Further deposit
11. Land and bankruptcy searches



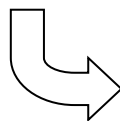
Post Agreement Stage

12. Stamp duty
13. Register agreement
14. Approve title
15. Raise requisitions until satisfactory answered
16. Apply mortgage loan
17. 10 days window for documents' preparation



Completion of Sale & Purchase

18. Sign completion documents in escrow
19. Confirm loan drawdown
20. Final property inspection
21. Updated searches
22. Pay balance and collect keys



Post Completion Stage

23. Notify public authorities
24. Stamp and register assignment and mortgage
25. Settle apportionment account
26. Return title documents

Signing provisional agreement for sale and purchase

Property inspection

1. You will have to appoint an estate agent and specify the kind of property you are looking for, including, but not limited to, the usage, area, age, location and price range. Property inspection is essential as it enables you to identify any irregularities, let alone to meet your needs.

Land search

2. Before property inspection, the estate agent shall conduct land searches on the properties to enable you to check:
 - (i) the name of the registered owner(s);
 - (ii) the date and year of last purchase;
 - (iii) the proper description of the property;
 - (iv) any existing encumbrances, such as mortgages, charging or building orders, registered against the property.

The legal implications on the above due diligence check are elaborated further under para. 5 below and in the other publication.

Estate agent and commission

3. During the process, the estate agent will request you to sign an engagement form. Normally, if you negotiate the purchase of a property introduced to you by the estate agent within a certain period of time, you need to

pay commission to the estate agent, notwithstanding that you may eventually purchase that property through another estate agent. For this reason, you should not inspect or negotiate purchase of the SAME property with more than one estate agent, or you may become liable to pay commission to more than one.

While you will pay estate agent's commission, it shall be paid separately to the estate agent only on completion of the sale and purchase. The amount is negotiable although 1% of the purchase price is the norm. Depending on the terms of the provisional agreement, sometimes you may be liable to pay the commission even if the transaction is cancelled or falls through. It is therefore important to review the terms by your lawyer before signing of the provisional agreement, and to propose amendments, if necessary.

Preliminary valuation

4. Before you sign a provisional agreement for sale and purchase, it is advisable to seek a valuation on the property through potential mortgagee banks. In addition to knowing the appraised value of the property by the mortgagee bank, it serves two other purposes:-
 - (i) to get an estimate of the amount of mortgage loan the bank is willing to finance the purchase; and
 - (ii) to check whether the subject property is "blacklisted" due to happening of "unlucky" events such as homicide or suicide of its previous occupants. However, such due diligence may not be conclusive.

For details on latest Government policy of tightening measures or caps on mortgage lending, please refer to the other publication.

Engage lawyer as early as possible

5. You are strongly advised to instruct as early as possible a competent and reputable law firm to act for you before signing of any provisional agreement which is a legally binding contract between you and the seller/vendor. This is even more so after the introduction of Special Stamp Duty (SSD) under Stamp Duty Ordinance (Cap 117). It is because
 - (i) it imposes additional stamp duty up to 20% of the purchase price is payable on residential properties transactions resold within 36 months after its acquisition by the vendor; and
 - (ii) SSD is jointly and severally payable by both the vendor and the purchaser.

For details on latest payment, types and rates of stamp duty, please refer to the other publication.

Thus, it is vital to conduct due diligence check and specify in the provisional agreement that the vendor is solely responsible for payment of the SSD.

Please ensure the provisional agreement has been approved by your lawyer before you sign the same.

Completion date must be at least one month long

6. The time between the date of the provisional agreement and completion of the sale and purchase must not be less than one month, otherwise the property may be subject to prior encumbrances that could not be discovered on completion. This is essentially the uniqueness of title documents registration system of Hong Kong, and the legal implication of section 5 of the

Land Registration Ordinance (Cap 128) in relation to priority of competing interests.

For example, your provisional agreement is dated 1 April and the completion date is 21 April, i.e. less than 1 month from the date of the provisional agreement. Meanwhile, the vendor has entered into another provisional agreement of the same property on 25 March with another purchaser which is not registered until 24 April, i.e. within 1 month after the date of agreement. By virtue of section 5, such provisional agreement will take effect on 25 March and have priority over your Provisional agreement dated 1 April. The land search will not reveal the existence of such provisional agreement dated earlier than yours. In other words, you will not be able to verify 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 than one month from the date of your provisional agreement. Hence, in order to ensure your title interest is free from any prior interests or undischarged encumbrances, the date of completion of the sale and purchase must be longer than or over one month from the date of the provisional agreement.

Initial deposit

7. You will pay the initial deposit on signing of the provisional agreement. There is no strict rule as to the amount of initial deposit. It is normally within the region of 3% to 5% of the purchase price. However, a higher percentage is recommended in a rising market in order to minimise the chance of the vendor backing out of the transaction. It is also advisable to register the provisional agreement (after due stamping) at the Land Registry to protect your interest in the property against the vendor.

Signing formal agreement for sale and purchase

Enquiring the management company

8. After receiving the signed provisional agreement from you, we shall
 - (i) request the vendor's lawyer for a draft formal agreement for sale and purchase and the title documents of the property for review; and
 - (ii) make enquires on:
 - whether there is any outstanding management fee;
 - whether there are any notices issued by the management company regarding unauthorized structures or alterations in the property;
 - whether there are any pending legal proceedings which relate to the property;
 - whether there are any management fee deposit, public utilities deposit, sinking fund etc. and whether they are transferrable or refundable;
 - 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
 - whether the owner's corporation or management company has procured and kept in force a third party risks insurance policy.

Negotiating terms of the formal agreement

9. After receiving the draft formal agreement for sale and purchase from the vendor's lawyer, we will review and

amend the draft to tally with what has been agreed in the provisional agreement.

We will negotiate with the vendor's lawyer on the terms and conditions of the formal agreement with a view to balancing the rights, obligations and liabilities between you and the vendor, until the same are finalized and ready for execution.

Further deposit

10. Please ensure payment of further deposit in the remaining balance of 10% of the purchase price is only required when the parties execute the formal agreement.

Updated land and bankruptcy searches

11. Before sending the further deposit and the formal agreement to the vendor's lawyer, we will conduct again
 - (i) an updated land search of the property to check whether there is any new encumbrance registered against the property since the date of the provisional agreement; and
 - (ii) a bankruptcy search on the vendor if the vendor is an individual or a winding-up search if the vendor is a corporation.

If no encumbrance is registered, nor any bankruptcy or winding-up petition is presented against the vendor, we will then send the further deposit and the formal agreement to the vendor's lawyer for execution by the vendor.

Post agreement

Stamp duty

12. After the formal agreement for sale and purchase has duly been signed by the vendor, we shall lodge, on your behalf, the formal agreement for stamping at the Stamp Office within 30 days after the date of execution. In most cases, stamp duty is payable by the purchaser.

With effect from 5 November 2016, the ad valorem stamp duty (AVD) rates for all residential properties transaction is fixed at 15% of the purchase price, irrespective of whether the purchaser is an individual or a company.

However, if you are a Hong Kong permanent resident (HKPR) acquiring a residential property on your own behalf and do not own any other residential property in Hong Kong at the time of the purchase, you may apply for charging the AVD at a lower rate (Scale 2). The relevant rate of stamp duty chargeable under Scale 2 is:

Purchase Price/Value of consideration (HK\$)	Stamp Duty (HK\$)
\$2,000,000 or below	\$100
\$2,000,001 to \$2,351,760	\$100 + 10% of the amount exceeds \$2,000,000
\$2,351,761 to \$3,000,000	1.5%
\$3,000,001 to \$3,290,320	\$45,000 + 10% of the amount exceeds \$3,000,000
\$3,290,321 to \$4,000,000	2.25%
\$4,000,001 to \$4,428,570	\$90,000 + 10% of the amount exceeds \$4,000,000
\$4,428,571 to \$6,000,000	3%
\$6,000,001 to \$6,720,000	180,000 + 10% of the amount exceeds \$6,000,000
\$6,720,001 to \$20,000,000	3.75%
\$20,000,001 to \$21,739,120	\$750,000 + 10% of the amount exceeds \$20,000,000
\$21,739,121 or above	4.25%

If you are a non-HKPR, you are also required to pay, in addition to AVD of 15%, a Buyer's Stamp Duty at a flat rate of 15% (BSD), unless the residential property is acquired by you jointly with a close relative or relatives who is/are a HKPR or HKPRs.

For application of charging AVD rates under Scale 2 and for exemption of BSD, you are required to make a statutory declaration under the Oaths and Declarations Ordinance (Cap 11) and to produce supportive documentary evidence.

There are a number of permissible exceptions for charging Scale 2 AVD rates under Stamp Duty Ordinance. You should consult a competent lawyer for advice.

For non-residential properties, the amount of AVD chargeable on an agreement for sale is calculated under Scale 1, the rates of which range from 1.5% for the purchase price below HK\$2,000,000 to 8.5% for the value exceeding HK\$21,739,130.

Detail discussions on stamp duty can be found in the other publication.

Registration of the agreement

13. After due stamping, we will register at the Land Registry the formal agreement within one month after the date of its execution in order to protect your interest and secure priority highlighted in paragraph 6. The registration process normally takes one to two months from the time the document is submitted for registration.

Investigation of vendor's title

14. The vendor shall produce the title deeds and documents of the property for our approval.

To ensure a good title is given to you by vendor, we will raise requisitions or objections on all issues we discover from the title deeds and documents. Usually,

we will have a time limit of 7 working days to approve title and raise requisitions.

15. The vendor's lawyer is obliged to give answers and solutions to the title requisitions we raised to our satisfaction.

This title requisition process is vital in particular to transactions where the property involves multiple changes of ownership.

Mortgage application

16. If you have haven't done so, you should make application to banks or other institutions for financing your purchase upon signing the formal agreement. You need to allow sufficient time for banks to process the mortgage approval.

Your bank may arrange for property inspection by its own surveyor and obtain independent valuation report on any illegal structures, alterations and additions in the property.

17. If your loan application is approved, your bank will instruct us to prepare the security documentation. To allow sufficient time for us to prepare the mortgage and other related documents, you should ensure that the mortgagee bank's instructions reach us at least 10 working days before completion.

Completion of the sale and purchase

Signing completion documents

18. After the assignment, mortgage, guarantee and other related documents have been prepared by us, you have to attend our office
 - (i) to sign in escrow the said documents three working days before completion to allow the mortgagee bank time to prepare loan drawdown on completion; and
 - (ii) to pay the balance of purchase price (less the mortgage loan) and other expenses.
19. Once you have executed the said documents, we will issue formal confirmation to the mortgagee bank and request for drawdown of the mortgage loan on the date of completion.

Final inspection

20. On or immediately before the date of completion, you should arrange with the vendor for a final inspection of the property to ensure vacant possession will and can be delivered to you on completion. Should you find the property is still occupied by vendor or third party, or any excluded furniture and chattels are still left behind in the property, you should inform us immediately.

Updated searches

21. On the date of completion, we will conduct searches again on the property and the vendor. In addition, we will check that the mortgage loan has been credited by your bank into our clients' account maintained with your bank.

Completion normally takes place via solicitors' undertaking rather than formal completion. When all things are in order, we will send the duly signed assignment (by you) together with the balance of purchase price to the vendor's lawyer subject to their undertaking to return to us the assignment duly signed by the vendor and attested within 7 working days after the date of completion.

The vendor's lawyer will also undertake to produce release(s) of any encumbrance (such as mortgage), and any other outstanding title documents to us. If the apportionment of rates, management fee, government rent, management fee deposit and public utilities deposit has not been provided by the vendor for verification before completion, the same will be settled within 21 days after the date of completion.

Collection of keys

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

Post completion

Notifying Government and management company

23. After completion, we will write to the Inland Revenue Department and the management company of the building on your behalf to notify the change of ownership of the property. 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.

Stamping and registration of assignment

24. After receipt of the assignment from vendor's lawyer, we will submit it to the Stamp Office for stamping of HK\$100. Thereafter, the duly stamped assignment and the mortgage will be registered with the Land Registry within the statutory period of one month from the date of execution. The registration process will take one to two months to complete.

Settlement of apportionment account

25. After the vendor's lawyer had produced an apportionment account of rates and management fees etc. for our verification, you will be asked to pay and settle it. You should keep in safe custody the original receipts for

- (i) the management fee deposit, public utilities deposit etc. of the property as you will be required to produce the same when you sell the property in future; and
- (ii) the management fees and Government rent and

rates for the last quarter of year as such receipts will be required for production when you redeem the mortgage or sell the property in future.

Return of title documents

26. After all the title deeds and documents have been returned or collected from relevant authorities, we will forward the same to the mortgagee bank for safe custody. Otherwise, they will be returned to you. Title deeds and documents are important documents and should be kept in a safe place.

The above 26 steps outline the essential process of a residential home purchase in the secondary market of Hong Kong. It is by no means exhaustive. Complications often arise during a property transaction, which, if not properly handled at the outset or in the interim, may cause serious frustration and unexpected loss. Hence, it is important for a purchaser to be properly advised and guided by a quality, competent and experienced lawyer. A purchaser is strongly advised not to take legal fee as the primary determining factor in choosing a right lawyer.

About us

ONC Lawyers is a professional and dynamic legal practice based in Hong Kong. We have been growing continuously since our establishment in 1992, and have now become one of the largest local law firms with more than 40 lawyers and a total staff of over 130.

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Contact us

For enquiries, please contact members of our Real Estate Department:

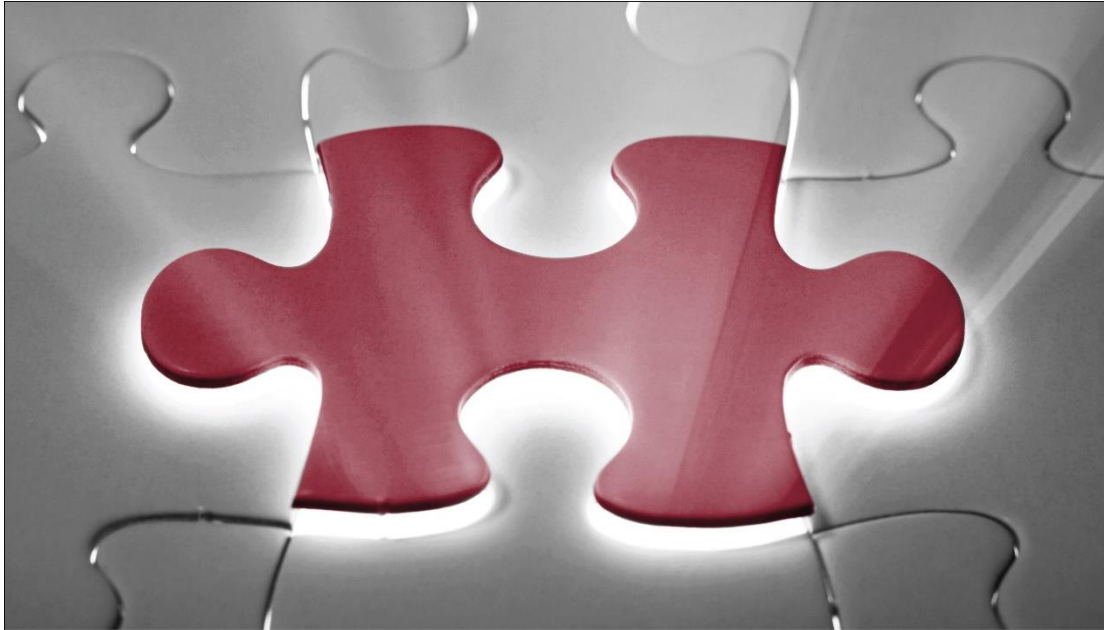


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