



Conveyancing: Best Practices

There are many traps that trip in conveyancing practice, but in this article we attempt to distinguish them into four main categories: Conflict, Identity, Land Searches and Managing Client's Interest. These appear to be very broadstroke groupings, but are in essence, the many pitfalls that can stumble a conveyancer.

Cutting Out Conflict

Determine early on which party to the conveyancing matter you are or will be acting for.



A. Sale and Purchase between a Developer and Purchaser:

If you are acting for the Developer, and the Purchaser is unrepresented, make it known to the Purchaser that you are not allowed to act for the him/her and that you do not represent them in any capacity. This extends to cover a Developer's marketing strategy advertising "Free SPA Fees" or "Free Legal Fees" to potential customers.

Explain to them that the sale and purchase agreement and instruments of transfer can be scrutinised by their solicitor if they have representation. If the Purchaser however chooses to remain unrepresented, the Purchaser must sign a waiver showing that he/she does not intend to engage an Advocate and Solicitor.

B. Sub-Sale and Purchase between an Individual/Company Vendor and Purchaser:

Again, be mindful of which party is your client and keep in mind to notify the other party that your representation only extends to your client.

Frequently asked questions to the above:

1. What must a solicitor do when acting for the Purchaser and the Vendor remains unrepresented?

- The Purchaser's solicitor must include a clause into the SPA stating that the Vendor has chosen not to be represented.

- The Purchaser's solicitor can witness the Vendor's signature
- The Purchaser's solicitors can explain the clauses of the SPA to the vendor but must be cautious when doing so as explaining what the clauses mean must not be confused with advising the unrepresented Vendor.

2. When representing a Purchaser, can you represent the Vendor in the discharge of charge or receipt of reassignment?

Yes. As this is a separate transaction, in essence you will be acting for the Vendor's financier even though the fees will be paid ultimately, by the Vendor.

3. When representing the Purchaser, can you represent the Purchaser's financier that will be financing the very same property you are representing the Purchaser to acquire?

Yes. Again, as this is a separate transaction, you can represent the Purchaser's financier although you will need to obtain a Letter of Acknowledgment [See Page 4 PII Did You Know and also refer to Addendum on Page 18].

Establishing Identities

Play Who's Who Perfectly!



As fraud and identity theft is becoming a rampant statistic to the Scheme's Claims portfolio and in particular conveyancing claims, Members are encouraged to pay more attention to what used to be, straightforward procedures. There are many ways in which a fraudster

can "take over" a person's identity examples of which are provided below. We have proposed some measures (not exhaustive and may not always apply) to minimise the potential of being duped by fraudsters:

WHAT THE FRAUDSTER MAY DO:	WHAT YOU SHOULD LOOK OUT FOR:
<p>Provide a genuine-looking, but fake NRIC. The fake NRIC will contain the fraudster's picture, but with the name and address of the true owner of the land whose name is reflected on the property's title.</p> <p>Also, instead of producing a fake NRIC, alternative to this is providing a fake temporary NRIC claiming that they had lost their original document.</p>	<p>Scrutinise the NRIC and the temporary NRIC to ensure the full name, IC number and house address are correct and is the information appearing in the title.</p> <p>Always ask for a secondary photo ID. Most simple fraudsters will only have one fake photo ID available. Request for a driver's licence as a backup.</p>
<p>If the fraudster is a foreign national or represents themselves as foreign nationals, they will provide a fake passport.</p> <p>Alternatively, they will even provide a passport with a different serial number as reflected on the land title claiming the original to be lost or stolen.</p>	<p>Scrutinise the details of the passport. If another passport is produced with differing serial numbers, contact the relevant High Commission or Embassy to verify the travel document.</p> <p>Again, where possible, request for a secondary photo ID.</p>
<p>Provides a Power of Attorney alleging that the true owner has granted them the power to dispose of the property.</p>	<p>Check the validity of the Power of Attorney:</p> <ul style="list-style-type: none"> - Has it been witnessed correctly and duly stamped? - Every Power of Attorney has to be lodged with the High Court so contact the Registrar to establish its validity with them.

Go One Step Further

With Identification



Prior to signing the SPA, ask the owner of the property to provide the following:

- Bills and receipts for water, electricity and sewerage for the last three months, and
- Bills and receipts for Quit Rent and Assessment from City Hall or town Municipality for the last three years

This exercise will benefit you two-fold:

1. Your identity check of the true owner of the land is further solidified, as the original receipts will most likely be in the possession of the true owners.
2. You will ascertain that there are no arrears (unpaid bills) for any of the utilities/services that will later cause problems and become a burden to the Purchaser.

Land Searches

Two Is Always Good

Conduct the first land search prior to the execution of the SPA, whilst advising the Purchaser NOT to pay a deposit to the Vendor until you are satisfied that the title is clear. Do not rely on any land searches conducted by any other party other than the members of your own firm or a delegatee ie an office despatch.

When reviewing the results of the searches pay attention to:

- The purported **Vendor** is the actual registered owner of the land;
- Determine the **category of land** use ie building (commercial or residential), industrial or agriculture;
- Ascertained the **acreage of land**;
- Determine if the land is **freehold or leasehold**; if it is leasehold, how many years are remaining;



- Existence of any **express condition** i.e. "To be used only for residential purposes only";
- Existence of any **restrictions in interest** ie are there any requirements for State's consent to transfer the title; and
- Existence of any **encumbrances**, ie are there any pre-existing caveats that can negate any possible transfers.

As there may be a delay between the first land search and the signing of the SPA, conduct the second land search just prior to the transfer as in cases of fraud, the true owner may have promised the land for sale to several prospects.

Client's Interest

Safeguard At All Times



Personally Attend To The Client

Ensure that the lawyer in charge of the file personally meets the client/s and is present at all critical junctures of the transaction, in particular, the signing of the SPA. A solicitor cannot sign as witness to the SPA if he was not present to witness his client's signature. The prevailing practice in conveyancing law firms of allowing their staff to oversee conveyancing matters cannot be tolerated. Lawyers must always make it a point to oversee each case and have full control of its proceedings.

Lodge A Caveat

Do so preferably as soon as the SPA is executed and the Purchaser pays the Vendor a deposit towards the SPA. The lodgement of the caveat on the property pending the presentation for the transfer of ownership should be done to safeguard the clients' interest on the property, and this should be conducted according to the terms and conditions of the SPA.

Dealing With Fellow Lawyers

If you are dealing with another lawyer you have not had prior transactions with, be cautious as there have been a number of complaints received by Bar Council of fraudsters purporting to be the branch-partner of reputable law firms.

Managing Deadlines

It is no secret that almost every step of conveyancing procedures is captioned by a deadline. Do not put your client's interest, time and money at stake by taking shortcuts or forgetting completely. We encourage Members to use the Practice Area Checklist CD-ROM and place a hard copy on every Conveyancing file.