

## **Look before you leap, Know the laws before you invest (Interviewed Teh Tai Yong)**

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Photographs courtesy of Teh Tai Yong

### **Look before you leap**

Know the laws before you invest

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Novice property investors need to arm themselves with the facts before signing the Sale and Purchase Agreement (SPA). A new buyer may not need to worry if the property is a new housing development under construction, as the SPA between a home buyer and property developer has been standardised throughout Malaysia. And such an agreement is governed by the Housing Development (Control and Licensing) Act 1966. It would be a different matter, if you were to sign the SPA for a “sub-sale” transaction, as such an agreement is not governed under the Act. So, the terms are not standardised. This is where it would be good, if you have some knowledge on the legal aspects of acquiring property.

*Profitability Starts From the Legal Aspects* is a book written by Teh Tai Yong, 31, a lawyer who has been specialising in real estate issues for the past seven years. “I took four months to write this book but I have readers who told me that they finished reading the book within three hours and after that have more confidence to buy property than before,” says Teh. Some of the highlights in the book, are sample documents of SPA for new developments and sub-sale deals as well as search documents for land titles, loan documentation, typical fees for new development and sub-sale transactions. Most importantly, it tells you the things that your lawyer should do or advise you before you purchase the property.

### **Sub-sale agreements**

There is no law regulating the SPA for a sub-sale property transaction, here are a few pointers that Teh suggests that home buyers should pay heed.

- **Payment term**

In a typical transaction, the payment term will be three months after the signing of the SPA and buyers who cannot meet the payment term will usually be given one-month extension. This extension usually comes with an 8% interest on the outstanding payment.

- **Condition Precedent**

There are cases where the sub-sale property is still under construction when it is transacted to a new buyer. One thing that the vendor or the seller needs to fulfil is that the property must be issued with a Certificate of Completion and Compliance (CCC) previously known as Certificate of Fitness for Occupation (CF).

- **Tenure**

Sub-sale property buyers need to know whether the property is freehold or leasehold before purchasing it. If the property transacted is a leasehold property then it would usually require the state authority's consent which would take between one to three months to process. A similar duration is also required to process the disbursement of loan. Therefore, one would only be expected to move into the property within the range of six months. This is different for freehold property as the release of loan can be processed soon after the SPA is signed.

- **As is, where is**

A buyer needs to check thoroughly for any defects found on a sub-sale property and inform the seller to rectify it before signing the SPA. This is because the new owner would be liable to rectify any defects found, after he or she moves into the property. In contrast to the standard SPA for new property under construction, the developer is responsible for the defect liabilities for the buyers, up to two years.

Explains Teh: "One of the reasons for this arrangement, is because in a sub-sale (transaction) the property is tangible. Therefore, the responsibility to check for defects, lies with the buyer whereas for a new development, the property is not constructed yet, therefore the purchaser is given the benefit of the doubt. And the developer will be held responsible for any defects on the new development."

### **Foreign ownership**

For foreigners who want to purchase property in Malaysia, Teh will explain what are the issues expected. For example, Malaysian law states that a foreigner can only buy a home valued at RM500,000 and above. And any property transacted, need to have prior consent from the state authority.

### **Power of Attorney**

"Recently, there have been many cases of fraud involving the transfer of property. One common method is by producing a document called the Power of Attorney (PA)," says Teh.

According to him, this document is so powerful that one who is entrusted with it, not only can sell but receive money on behalf of the owner.

"About three years ago, someone claimed that he represented the owner of a particular property that my client was interested to purchase. He did this, by showing me the Power of Attorney. Everything seemed fine on the surface but a thorough check revealed that the details provided were fake. For example, the document not only states that it was attested by a lawyer who was non-existent but even the law firm did not exist!" points out Teh.

“A responsible lawyer would run a thorough search to find out the authenticity of the document and check with the court whether the document has been registered with them,” he adds.

## **Bangsar**

“I am a lawyer and a partner of Messrs Teh Kim Teh, Salina & Co., which is a law firm originally based in Klang. We have relocated to Setia Alam and expanded to Kota Damansara handling projects such as i-Residence serviced apartments by KLIA Land in Kota Damansara and Setia EcoPark by SP Setia in Setia Alam,” says Teh.

“The latest project we will be handling, has a gross development value of RM6bil. This project is sited on 10 hectares (25 acres) of prime land in Bangsar and will comprise commercial lots including offices, high-end retail outlets, serviced apartments and residential towers,” says Teh, whose company is one of the legal firms handling the SPA documentation for SP Setia.

“We plan to expand our company to Puchong and the southern part of the Klang Valley as these areas have upcoming townships,” adds Teh.

## **Property trends**

“The trend now is not whether it is landed or high-rise property. The most important consideration is security. More buyers prefer a development that is gated and guarded,” says Teh.

## **Hedging on a lease option**

Even if you are highly-g geared and can no longer get a bank loan, there is still a way to “invest” in property and get rental yields.

According to lawyer and property investor Teh Tai Yong, the usual reasons for investing in property are for rental returns or capital appreciation. But with the current market situation and Bank Negara’s new policies making it more difficult to get a bank loan, less people will have the funds to invest.

“There is another way to go about it. Although, this is only applicable to property in the sub-sale sector but it is perfectly legal. This is called the lease-option agreement, which is still a new term in the Malaysian property market,” says Teh.

A lease-option agreement is when a property owner leases out a property to you, within a stipulated duration at a fixed-rate based on a legal contract. You, on the other hand, as a property investor would rent the property out to get a rental yield. This agreement is a way for property investors to invest for rental returns if they can’t borrow from the banks anymore.

## **Team work**

“For those who are keen to invest in property, they would need to know the game well,” cautions Teh.

“One way is to choose the right seminars to gain knowledge and have a good team of lawyers and bankers. You know you have a good team when they can give you practical advice on property investment more than just what they do for a living.”

Teh got into the legal fraternity specialising in real estate matters due to family influence.

“It is family influence that led me to choose law as a career,” says Teh, whose wife and brother are also lawyers.

He got into property investment while working for his uncle, Teh Kim Teh, who is also lawyer and property investor as well as having interests in a development firm.

## **100% returns**

According to Teh, he started investing in property about three years ago. He claimed that some of his rental properties were giving him more than 10% returns. And some of the properties sold, generated over 100% returns.

Teh believes his business acumen and frequent dealings with other property investors such as real estate consultant Nancy Ng as well as developers and industry players, helped him in his decisions. However, the market is not as favourable now, due to high property prices. This means, investors like him will have to be more selective and select a property that can generate at least, five percent rental returns.

“I will only focus on residential and commercial properties in the Klang Valley. At present I have about 20 properties and 30% of the properties are high-end investments. They comprise semi-detached houses and bungalows, while the other 70% are medium-range properties costing RM300,000 to RM500,000,” says Teh.