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Sale and Purchase of Properties: Why Do We Need Lawyers?

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Abstract

Many believe that in getting a dream house requires the presence of a lawyer to act on behalf of the parties (seller and buyer) since the lawyer can advise accordingly in completing the transaction. However, some people think that dealing with the sale and purchase of properties can be more economical without a lawyer because they can manage the sale and purchase transaction themselves throughout the whole process. In fact, buying and selling real estate is not as easy as it seems. There are various situations where the presence of the lawyer is required to facilitate the transaction. The approach taken by conducting this research was based on qualitative methods of in-depth interviews from the respondents. Hence, this paper aims to identify reasons for hiring a lawyer in dealing with real estate business. Finding from this paper shows the parties need to appoint the right conveyancing lawyer as a stakeholder to ensure the rights and interests of the parties are protected. This study contributes to literature gap on the lack of awareness to engage lawyers in sale and purchase transactions, and further research is expected focusing on the potential buyers and sellers by using quantitative study.

Keywords: Conveyancing Lawyer, Sale and Purchase, Properties, Real Estate Business, Stakeholder

Introduction

Having a house of our own is a dream for each of us as it provides with comfort, security, and happiness (Hassan et al., 2022). The home is also called the social unit formed by the family living together (Hong & Yew, 2012), and (Mariadas et al., 2019). The process of having a house, however, involves many parties such as bankers, agents, lawyers, state authorities etc.; Speaking of the lawyer, he is trusted to handle your real estate transaction who is skilled in the field of 'conveyancing'. Conveyancing means matters related to documentation and transfer of real estate ownership from one individual to another. A conveyancing lawyer assists in a property transaction between a buyer and a seller by assisting in the process of

conveyance to ensure that the property is successfully registered under the name of the buyer from the seller with ease.

Does it compulsory to hire a property lawyer to represent the clients in selling and buying a house? Technically, it's not a must to have a lawyer when you want to purchase a home in Malaysia. Everything about conveyancing is already spelt out clearly in the National Land Code 1965, Stamp Act 1949, Housing Development (Control and Licensing) Act 1966, Strata Titles Act 1985, Banking and Financial Institutions Act 1989 as well as the Contract Act 1950. Hence, by referring to the Acts above, potential buyers or sellers can draft their own sale and purchase agreement (SPA) in no time! Also, there are runners who can do the conveyancing work for them, and the fees usually less than that of a professional. So, why would anyone want to hire a lawyer?

Literature Review

A transaction involves in SPA of the property is usually subject to the Contract Act 1950, the National Land Code (Act 828), the Stamp Act 1949, and the Real Property Gains Tax Act 1976. If the buyer or seller are not well versed in legal issues, it is advised do not take any risk to manage it this real estate business. In practice, the sale and purchase of real estate must be sealed in a sale and purchase agreement signed by the seller and the buyer in front of a conveyancing lawyer who has a valid practice certificate in Malaysia. Next, the agreement must be stamped to ensure that the sale and purchase agreement is valid and can be used in court if there are any legal issues (Jamil & Ibrahim, 2022). The clients need to make sure that the appointed conveyancing lawyer protects your rights and interests in the agreement. There are several reasons as to the importance of having a conveyancing lawyer in SPA.

Professional Assurance

When it comes to conveyancing, lawyers are bound by the Legal Profession Act 1974, while runners or agents are obviously not. So, hiring a conveyancing lawyer in the early stages of purchasing a property will give the client an edge in negotiations as they are obliged to do everything in the best interests of their client every step of the way (PropertyGuru, 2021).

The payment of legal fees for the sale and purchase of real estate has been set in the Solicitor Remuneration Order 2005 based on the sale price/valuation of a property. So, it is not easy for a lawyer to manage the sale and purchase of real estate until it is completed because the lawyer is faced with various liabilities and responsibilities if the lawyer fails to perform reasonable responsibilities to ensure that the client's rights and interests are protected (Felbinger, 2015)

Clients can also sue the lawyer if there is negligence and failure on the part of the lawyer to protect their rights and interests. The lawyers are also faced with the risk of losing their practicing certificate if the client makes a report to the Malaysian Bar. Therefore, the legal fee is worth the professional guarantee given by the lawyer in managing the sale and purchase until it is completed. The legal body governing lawyers in West Malaysia is the Malaysian Bar, whereas for Sabah and Sarawak, it's the Sabah Law Association and the Advocates' Association of Sarawak respectively (Noordin & Supramaniam, 2016). Hence, this professional assurance is a life saver to the client as the lawyer acting as an agent to this transaction will be subject to disciplinary action if they breach any rules.

One Stop Centre

It's common for property buyers, especially first timers, to become overwhelmed by the sheer number of documents they need to complete and submit before the deal can be closed. Some of these include the SPA, housing loan, title deed, insurance application, and personal documentation.

A conveyancing lawyer is the best person to guide the client to ensure they do not accidentally miss one or two that could delay the whole process. The worst-case scenario is if the client filled in the wrong details on their own and cause a pricey legal battle down the road. For example, the property buyers do not need to deal with many parties such as land office, bank, developer, owner, and agent by themselves. All of this will be handled by a conveyancing lawyer and as a matter of fact, all the standard procedures in completing the transaction for the property will be managed properly, including the situations such as submitting loan applications, registration of transfer, advising the bank in releasing the loan, applying the low-cost consent regarding the property and many more. The lawyer is a one-stop centre for the client to get all relevant information regarding the status of his or her property.

Security in Transaction

In SPA, the parties need to complete the transaction within the stipulated period. Normally it takes three to six months from the date of the agreement. So, a conveyancing lawyer will ensure the transaction is completed on or before the completion date. Failure which, the interest payment will be incurred to the buyer (in most cases as stipulated in SPA), and usually the buyer is not aware of the interest payment. If they fail to pay the interest payment, most probably they will not get their dream property unless they manage to show the chronology of the delays and this usually with the help and prepared by the lawyers. Not only that, in the sale and purchase agreement, any sale price payment transaction must go through a lawyer who acts as a stakeholder so that the rights and interests of the buyer and seller can be protected. The buyer will pay the sale price to the stakeholder through the Client's Account and all these transactions are recorded to ensure that the buying and selling process runs smoothly. Next, the stakeholder will manage the sale price by paying all previous debt burdens of the seller, paying all arrears of land tax, assessment tax and property maintenance fees, utility bills (if any) before forwarding the money to the seller. The role of the stakeholder in the sale and purchase business is very important to ensure that the rights and interests of all parties are protected. Therefore, it clearly shows how important the existence of the conveyancing lawyer to secure the properties' transaction.

Methodology

This qualitative study aims to explore why a conveyancing lawyer is needed in sale and purchase of a property. Purposive sampling was employed based on several criteria, involving individual who actively participate in dealing with sale and purchase of a property. This paper applies in-depth-interviews which based on the interview protocol that were developed according to the study objective and the data has been examined manually.

Results and Discussion

A thorough literature research and in-depth interview with 15 informants are executed to study each reason. As a result, a conceptual framework is suggested as shown below, which is in accordance with the literature review and as indicated by the results of this study.



Figure 1: Three main factors why the lawyer is needed in Sale and Purchase of properties

Demographic Background of the Informants

Table 1

Demographic Background of the Informants

List of Informants	Position/Education Background
Informant 1	Salesperson (Bank)
Informant 2	Credit Department (Bank)
Informant 3	Real Estate Negotiator (Agent)
Informant 4	Real Estate Negotiator (Agent)
Informant 5	Real Estate Negotiator (Agent)
Informant 6	Developer
Informant 7	Developer
Informant 8	Owner
Informant 9	Owner
Informant 10	Buyer
Informant 11	Buyer
Informant 12	Officer (LHDN)
Informant 13	Officer (Land Office)
Informant 14	Legal Officer (BAR Council)
Informant 15	Practitioner (Lawyer)

Source: Data derived from an in-depth interview conducted by the authors

Professional Assurance

The informants agreed that professional assurance from the lawyers is important in securing the sale and purchase of the property. They are aware and believe in mutual trust and confidence relationships between clients and lawyers (Buhai, 2008). Should anything be not transparent, the lawyers should be responsible for their negligence act. Their statement was revealed in the following excerpts:

“We always make a good team with lawyer in real estate transaction since they are well verse in documentation and procedure wise...” (Informant 1)

“Many undertakings are given by the lawyer in order to complete the real estate transaction. This is their professional assurance to the clients in dealing with banks and developers...” (Informant 6)

“Since we are the one who introducing the lawyer to the buyer / owner, we believe that our files in a good hand from drafting the sales and purchase agreement until the completion of the said agreement...” (Informant 4)

“We are paying legal fees to the lawyers, so we trust them to handle our case professionally without any conflict of interest...” (Informant 10)

“Hiring different lawyer in real estate transaction for buyer and owner ensure the security of the transaction since the stakeholder is the vendor’s solicitor...” (Informant 9)

“A lawyer is reported and answerable to us. Any complaint of unlawful and misconduct will be inspected thoroughly by our disciplinary committees...” (Informant 14)

One Stop Centre

Based on the findings, many of the informants agree that the lawyers are responsible for keeping all information related to the sale and purchase of properties. Every information and reference are kept in one hand through the role played by the lawyers. Hence, it becomes a one-stop centre and all the relevant documents are safe and should be up to date and available to the related parties in the transaction. It can be deduced from the following excerpts:

“We don’t have to ask the customers to compile the documents since the lawyer assist them to do that...” (Informant 2)

“A lawyer is the one-stop centre in real estate transaction from drafting the sales and purchase agreement, dealing with banks, state authorities and other parties, follow up etc...” (Informant 3)

“Hiring a lawyer makes my sale and purchase transaction easier since I don’t have to deal with bankers, agents or developers and state authorities to affect the transfer of the ownership of the property to my name...” (Informant 11)

“Registration of transfer is important to affect the ownership of the property. Hence, a lawyer is the one who compiling all the documents needed for registration purpose and make our job easier...” (Informant 13)

“A lawyer needs to master all the procedure, the law and regulations and the do and don’ts in real estate transaction which is not limited to drafting the sale and purchase agreement only...” (Informant 14)

Security in Transaction

Many of the informants agree that the conveyancing lawyers play a vital role in securing the sale and purchase of the properties. Every procedure matter as the lawyer is not only keeping the money in Client's Account, but to also monitor every transaction so that all the rights of all the parties be protected. The following statements are confirmed from the informants:

"A lawyer needs to stamp any agreements to make it legal and enforceable. So, the agreement is secured and if there is any dispute among the parties, they can bring the matter to the court for further action..." (Informant 12)

"We feel secured when we are represented by the lawyer since any transaction is recorded, all the correspondences are in order and the money is managed by the stakeholder properly..." (Informant 10)

"Original documents shall be submitted by the lawyer in registering the transfer of the property. The original documents are stored and secured in the lawyer's office before the lawyer compiling them for registration purpose..." (Informant 15)

"All the registration of any transaction regarding real estate shall be submitted to the land office to affect the ownership of the property. The registration is secured if the submission of documents is checked and witnessed by the lawyer..." (Informant 13)

"All the financing facility is disbursed to the lawyer firm's client's account. So, the parties don't have to worry since the lawyer is stakeholder of the purchase price and they will manage the money accordingly pursuant to the sale and purchase agreement..." (Informant 2)

Conclusion

Evidently, finding evidence that professional assurance, one-stop centre and security in transaction showed the reasons as the need to be represented by the conveyancing lawyers in sale and purchase of property. Furthermore, the findings support the aim of this paper. Despite the legal fee is troublesome for some clients and some conflict of interest that may arise between the lawyer and client's relationship, one may agree that having the legal representative in the real estate transaction will benefit client the most. The result of this study is expected to stimulate further research focusing on the quantitative study. Therefore, it is very safe to say that the services of a lawyer as a facilitator to complete the real estate transaction between the seller and the buyer is highly needed. Undoubtedly, they operate in the best interests of their clients and ensure due diligence is conducted on behalf of their clients. They will safeguard the clients by not only reducing their stress, but they also will simplify the process and at the same time can save time and money. In addition to choosing a lawyer who is skilled and experienced in your real estate transaction, finding a lawyer who is easy to deal with is an advantage to ensure that the real estate transaction goes smoothly.

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