

LEGAL INSIGHT | Vol. 1, Issue 3

PROPERTY TRANSACTION PITFALLS — THE VENDOR'S EXPOSURE

Why signing the SPA is not where the Vendor's risk ends

A sale and purchase agreement (SPA) is the executed instrument that records the price, parties, completion timeline, and obligations on both sides of a property transaction. It documents the bargain; it does not, on its own, secure the Vendor's position in what follows. Three recurring pitfalls catch vendors most often — each preventable, each rooted in a step not taken before signing.

KEY HIGHLIGHTS

- Engaging the Purchaser's lawyer to act for both sides exposes the Vendor to limited independent advice and constrained recourse on stakeholder funds, redemption-statement timing, and completion-date disputes
- A signed SPA does not immunise the property — Purchasers regularly lodge a private caveat under the National Land Code 1965 after deposit, freezing the Vendor's ability to deal with the title until removal proceedings conclude
- Real Property Gains Tax (RPGT) exposure is locked in once the SPA is executed; failure to compute liability under the Real Property Gains Tax Act 1976 before signing leaves the Vendor with no contractual route to recover the shortfall

WHY THE PURCHASER'S LAWYER CANNOT ACT FOR THE VENDOR

The Legal Profession (Practice and Etiquette) Rules 1978 treat acting for one party only in a property conveyance as a cardinal principle of legal practice in Malaysia. The prohibition is not codified as a rule, but it is the settled professional position, reinforced through the Bar Council's Conveyancing Practice Circulars issued and updated periodically by the Conveyancing Practice Committee. The Purchaser's lawyer is not declining to act for the Vendor as a matter of personal preference — they are professionally precluded from doing so.

Some practitioners take instructions they should not. The fact that this happens does not make it permissible — and the consequences when matters go sideways fall on the Vendor, not on the practitioner who should have declined. Where one firm acts for both sides, the Vendor's interests are subordinate by structure: stakeholder fund handling, redemption-statement timing, and the conduct of completion-date disputes default to the side providing continuing instructions.

Independent representation is the mechanism by which the Vendor secures advice on whether the SPA's standard clauses — default interest, allocation of outgoing, completion remedies — operate in the Vendor's favour or against. In our conveyancing partners' experience, the most contested completion disputes invariably involve transactions where the Vendor was unrepresented at the SPA stage. By the time the dispute crystallises, the Vendor has lost the leverage that early independent representation would have preserved.

WHY THE SPA IS NOT THE FINISH LINE

The deposit is paid; the SPA is signed. From the Vendor's perspective the deal feels secured — but the title remains in the Vendor's name, and so does the exposure if the Purchaser fails to settle the balance.

In practice, a Purchaser who has paid the deposit but has not completed will almost certainly lodge a private caveat against the title. The caveat clouds the title — no resale, no charge, no further dealing — until it lapses or is removed under the National Land Code's caveat-removal provisions. Both routes take time the Vendor does not have or often, cannot afford, if a replacement Purchaser is waiting.

The defensive move is to negotiate, before signing, what happens if the Purchaser defaults: clear forfeiture provisions on the deposit and an agreed mechanism for caveat withdrawal in the event the SPA is rescinded.

WHY RPGT MUST BE COMPUTED BEFORE SIGNING

Under the Real Property Gains Tax Act 1976, the disposal date is fixed by reference to the date of the written agreement. Once the SPA is executed, the Vendor's tax position is locked in: the price cannot be retrospectively adjusted to absorb a tax bill that proves larger than expected, and the transaction cannot be unwound on grounds of fiscal surprise.

The exposure is sharpest where disposal occurs within five years of acquisition, which Schedule 5 of the Real Property Gains Tax Act 1976 places in the highest rate band. The acquirer is also obliged to retain a portion of the consideration on account of RPGT under section 21B of the Real Property Gains Tax Act 1976 — where in practice this happens out of the deposit paid on the signing of the SPA.

A pre-signing RPGT computation is not a tax-planning luxury. It is the only point at which the Vendor still has the bargaining power to set a price that absorbs the tax, or to defer the disposal until a more favourable rate band applies.

WHY THE CHEAPEST LEGAL REPRESENTATION IS THE MOST EXPENSIVE

Conveyancing fees are bound by the scale prescribed under the Solicitors Remuneration Order 2023, but the fee a Vendor pays — and what the fee buys — can vary across the profession at the discretion of the practitioner. An unusually low fee can correlate with searches not run to full extent, weaker stakeholder discipline, and work not performed in places the Vendor cannot inspect at the point of engagement.

Cheap representation rarely advertises what it omits. The omission only surfaces when the Vendor needs the protection that was not built — and by that point, the saving is multiples smaller than the loss.

The point is not that fees should be high; it is that the Vendor cannot evaluate, at engagement, what a discounted fee has been discounted against. In our conveyancing partners' experience, the matters that arrive in distress — caveat disputes, RPGT shortfalls, completion failures — share a recurring upstream pattern of underpriced representation that did not hold up at completion.

PRACTICAL TAKEAWAY

The signing of the SPA is the moment at which the Vendor's options narrow. Before signing, retain independent legal representation — the Purchaser's lawyer cannot act in the Vendor's interest where the two diverge. Ask not whether your lawyer drafted the SPA — they should — but how the stakeholder funds are held, what your RPGT exposure is on the agreed price, and what your recourse looks like if the Purchaser pays the deposit and then stops. Then ask whether your lawyer would, under any circumstances, also act for the Purchaser in this transaction. If the answer is anything other than "no," you are not getting independent representation. The defensibility of the Vendor's position depends on those answers being given before signature, not after.

All information in this Newsletter is correct as at 28 April 2026 unless otherwise stated.

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