

Property Transaction Pitfalls — The Purchaser's Exposure

Why signing the SPA is not where the Purchaser's title begins

A sale and purchase agreement (SPA) is the executed contract 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, place the title in the Purchaser's name.

In Issue 03 we covered the Vendor's exposure on the same transaction. The Purchaser's exposures are different in shape, but rooted in the same place — the checks that belong before signature, not after. Four recurring pitfalls catch Purchasers most often in sub-sale transactions, each preventable, each rooted in a check the SPA itself does not perform.

KEY HIGHLIGHTS

- "As is where is." Three words sit quietly at the back of almost every sub-sale SPA. They do not sound like much. They carry everything. Under "as is where is," the Purchaser absorbs every defect and unauthorised structure the Vendor leaves behind from the moment of completion.
- Two fields on the title — "Sekatan Kepentingan" and "Kategori Kegunaan" under the National Land Code (Revised 2020) — determine what the registered proprietor may do with the land and what the land may lawfully be used for; both are findable on a routine land search before SPA is signed.
- The sub-sale SPA's boilerplate is bespoke, not standard-form — the default interest rate, the dispute resolution mechanism, and the late delivery remedies are where parties fight when things go wrong.

WHY “AS IS WHERE IS” COSTS MORE THAN YOU THINK

"As is where is" is the default basis on which sub-sale properties are transferred. The phrase carries every defect and unauthorised structure the Vendor leaves behind onto the Purchaser at the moment of completion. The usual terms in the SPA does not unwind them, and the Vendor's obligations under the agreement end on delivery.

Unauthorised structures are the sharpest exposure. Building works in Malaysia require local authority approval under the Street, Drainage and Building Act 1974 and the by-laws made under it. An extension, mezzanine, or outbuilding constructed without approval becomes the registered proprietor's compliance burden — and on registration of the transfer, that proprietor is the Purchaser. The enforcement options open to the local authority, up to and including a demolition order, are not extinguished by the change of ownership.

The defensive move is the physical inspection before signing — by a qualified building inspector, architect, or civil and structural engineer. Where unauthorised works are present, the Purchaser still holds two options that survive at the pre-signature stage: negotiate the price down to absorb the regularisation cost, or require the Vendor to regularise before completion. After signature, neither option remains.

WHY EVERY PURCHASE BEGINS WITH A LAND SEARCH

A "restriction in interest" under the National Land Code (Revised 2020) is a limitation imposed by the State Authority on the registered proprietor's powers to deal with the land — whether by transfer, lease, or charge.

Where a restriction in interest is endorsed on the title, the registered proprietor cannot transfer, lease, or otherwise deal with the land without prior State Authority consent. The Purchaser who signs an SPA over a restricted title is contracting to receive an asset the Vendor cannot lawfully transfer until consent is obtained — and the consent timeline sits with the State Authority, not with the parties or their lawyers.

The restriction is visible on the title under "Sekatan Kepentingan" and is captured on a routine land search. The question is not whether the search discloses it — it will — but whether the Purchaser has been walked through what the restriction means before signing. The Purchaser who signs over a restricted title without understanding the consent timeline has not understood what they are buying.

WHY THE BOILERPLATE IS WHERE THE FIGHT HAPPENS

The Solicitors' Remuneration Order 2023 governs the conveyancing scale across both sub-sale and HDA matters. The SPA itself in a sub-sale, by contrast, is bespoke. There is no statutory schedule that prescribes the standard clauses at the back of the agreement — the default interest rate on late payments, the dispute resolution mechanism, the remedies on late delivery.

These clauses are where parties fight when things go wrong. Default interest at a punitive rate compounds quickly against a Purchaser whose financing release has slipped. A dispute resolution mechanism that defaults to litigation rather than mediation determines whether a contested completion takes six months or three years. A late delivery clause that grants the Vendor an extended grace period before the Purchaser's remedies trigger leaves the Purchaser carrying funding costs on an asset whose handover keeps moving.

Sub-sale SPAs vary matter to matter; the boilerplate looks standard, and is not. The Purchaser who signs it without negotiation has accepted the drafter's framing of every dispute that follows.

WHY THE TITLE LIMITS WHAT THE LAND MAY BE USED FOR

Every title issued under the National Land Code (Revised 2020) is endorsed with a category of land use — agriculture, building, or industry — and with the express conditions attached to that category. The category and the conditions together govern what the registered proprietor may lawfully do with the land; they do not bend to the use the Purchaser intends.

A title with "agriculture" as the category cannot be operated commercially. A title with an express condition restricting use to residential purposes cannot host a guesthouse, a short-term rental business, or a coworking premises. The marketing brochure and the listing description do not define what the land is; the title does.

Conversion is possible. The National Land Code (Revised 2020) provides the application route for variation of category and conditions. The State Authority has discretion to refuse, the timeline is outside the parties' control, and conversion premiums and revised quit rent follow successful approval. The Purchaser who has built the intended use into a price assumption — but not into a conversion plan — has built the deal on hope.

The fields to check are "Kategori Kegunaan" and "Syarat Nyata" on the title; both appear on a routine land search. The cost of reading them is zero; the cost of not reading them, where the intended use is not the use the title permits, can be the entire investment.

PRACTICAL TAKEAWAY

The signing of the SPA is the moment at which the Purchaser's options narrow. Before signing, conduct the physical inspection, instruct the land search, and retain independent legal representation. Ask not whether your lawyer reviewed the SPA — they should — but what the inspection disclosed, what the search revealed under "Sekatan Kepentingan" and "Kategori Kegunaan," and which clauses in the boilerplate your lawyer negotiated rather than accepted. The defensibility of the Purchaser's position depends on those answers being given before signature, not after.

All information in this Newsletter is correct as at 12 May 2026 unless otherwise stated.

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