



**Circular No 455/2020
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To Members of the Malaysian Bar

Storage/Safekeeping Fees for Titles

The Bar Council Conveyancing Practice Committee (“CPC”) has been receiving numerous queries relating to solicitors charging fees for storage/safekeeping of property titles.

A typical situation is as follows:

- (1) A solicitor (“A”) receives from the proprietor/developer/vendor (for convenience, “developer”) of a property, the issue document of title of the property, which has not been transferred to the purchaser.
- (2) The purchaser appoints another solicitor (“B”) to attend to the transfer of the title from the developer to him.
- (3) When contacted, A would demand payment of fees for “storage/safekeeping” (or other similar terminology) for the release of the title and related documents to the purchaser or to B.

CPC is of the view that:

- (1) A solicitor ought to know clearly who he acts for.
- (2) Section 7(1) of the Solicitors’ Remuneration Order 2005 (“SRO”) provides that in any transaction referred to in the First, Second, Third and Fourth Schedules of the SRO, a solicitor shall not act for more than one party in a particular transaction. The SRO applies to sales, purchase and other forms of conveyances for completing any transaction involving immovable properties.
- (3) Section 84(3) of the Legal Profession Act 1976 sets out that a housing developer and the purchaser of any property in the housing development, shall each pay for the fees of his own solicitor.
- (4) Ruling 14.18(2) of the Rules and Rulings of the Bar Council sets out that where a solicitor acts for a purchaser in the purchase of a housing accommodation developed under a housing development, he shall not receive his remuneration for the transaction from the housing developer, and the developer and the purchaser shall each pay for the fees of his own solicitor.
- (5) Under the terms and conditions of the prescribed Sale and Purchase Agreement under the Housing Development (Control and Licensing) Regulations 1989, a housing developer has an obligation to deliver to the purchaser of a property thereunder, the duly completed and

executed transfer instrument, title and other relevant documents upon full payment of the purchase price and upon issuance of the relevant title.

- (6) It is the prerogative of the purchaser of any property where its separate/individual title has yet to be issued at the time of the execution of the relevant sale and purchase agreement, upon the issuance of the separate/individual title, to appoint his own solicitor to complete the relevant transfer. A solicitor acting for the purchaser at the time of execution of the sale and purchase agreement when the separate/individual title had yet to be issued, may not presume that he is automatically appointed to act as the purchaser's solicitor to attend to the perfection of the transfer when the separate/individual title is issued.
- (7) In the typical situation outlined above:
- (a) Until the purchaser appoints A as his solicitor to attend to the transfer of the title, A is not his solicitor for that purpose.
 - (b) A copy of the letter from the developer to the purchaser notifying him of the issuance of the separate/individual title, and copied to A, does not tantamount to the appointment of A as the purchaser's solicitor. Whilst the developer may have requested the purchaser to contact certain solicitors, the developer may not direct the purchaser to appoint any particular solicitor to act for the purchaser to attend to the perfection of the transfer. As stated earlier, it is the prerogative of the purchaser to appoint his own solicitor.
 - (c) If A has not been or is not subsequently appointed by the purchaser to act for him to attend to the perfection of the transfer, and A receives the title from the developer, A may be taken as having custody and possession of the title for and on behalf of the developer. In such event, any storage/safekeeping fees which A wishes to charge ought to be paid by the developer and not by the purchaser.
 - (d) It follows that A would not have a lien over the title and other documents for such storage/safekeeping fees.
- (8) In the typical situation outlined above, if A is the solicitor for the financier claiming security over the property for a financing facility given to the purchaser-borrower, the solicitor's client is the financier. The solicitor may not charge the purchaser-borrower fees for storage/safekeeping of the title. The solicitor would not have a lien over the title. Instead, the solicitor ought to act according to the instructions of his client, ie the financier.

Thank you.

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