

CHAPTER 6

REAL ESTATE – TANGIBLE. SOLID. BEAUTIFUL. ARTISTIC.

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Norman is a partner in Rodyk & Davidson LLP's Real Estate Practice Group. A leader in corporate real estate work, he has extensive experience in a wide spectrum of property related transactions and regularly advises banks and financial institutions, property developers, statutory boards, property consultants, investors and purchasers in real estate matters. Norman has also acted for owners and investors in a myriad of developments both within and outside Singapore. In addition to representing clients in the acquisition, sale and leaseback of industrial developments, Norman also represents many financial institutions in Singapore and their facilities to small and medium enterprises.

A recognised leader in collective sale transaction, Norman was selected to make representations to the Select Committee, commissioned by the Singapore Parliament, on amendments to the Land Titles (Strata) Act in 1999 for facilitating collective sale. He was again consulted during a review of en bloc legislation and the ensuing amendments to the Act in 2007.

In addition to writing, Norman is also a regular in the speaking circuit and often gives talks and seminars at the invitation of recognised real estate bodies within and outside the country.

1. Introduction

Real estate law, often also called 'conveyancing law' or 'land law', deals with all transactions relating to any type of real property. This chapter sets out to show the significance of this area of law to aspiring lawyers and law students, what the different areas of real estate practice are, and what skills an aspiring real estate lawyer should possess.

2. The Significance of Real Estate Law

Social Significance

To say that the topic of property ownership is close to the hearts of Singaporeans may very well be an understatement. With the exception of shopping, eating and queuing up for the latest white iPhone, few other things dominate the attention of our countrymen the way that property ownership does. In our land-scarce city state where a property is probably the most valuable investment to most, this phenomena of infatuation cuts across all races, ages and social classes — from couples getting married (in typical Singaporean no less with the five magical words ‘want to apply for flat?’), to the uncle in the coffee-shop, to the savvy sophisticated investor — almost everyone has an opinion about land issues in Singapore. Every other day you can find property-related reports in the newspapers: the latest property prices, which estate has gone en-bloc, parties litigating over a property or which land parcel has been sold and allocated for some exciting usage. Home-ownership is also always one of the most fiercely debated topics at every general election in Singapore (together with the other perennial dilemma of how to increase our nation’s birth rate). And if I may drive home the point, just take a look at your letter box — it will not be a surprise if you find it littered daily with brochures of new developments beckoning you to become the proud owner of a unit (or two) in the newest condominium addition in town!

Economic Significance

We are all familiar with Singapore’s reputation (apart from banning chewing gum) as a resilient and fast growing financial centre. However, more than that, Singapore is quickly becoming the choice country for foreign property investors thanks to its focus on compliance and fiscal discipline, the growth in the global economy and the expansion of Asian markets in the last two decades. In the recent years, there has been a sharp increase in the number of institutional investors (although it would be wise to think twice about any fund bearing the name ‘Madoff’), global property funds, public-listed real estate companies, government-linked companies and onshore and offshore special purpose vehicles purchasing properties in Singapore. Not only does this circumstance significantly enhance the value of land in Singapore, it creates new growth areas for our economy. This can easily be seen from the example of Real Estate Investment Trusts (‘REITs’), the first of which made its debut appearance on the Singapore financial market in 2002 (which was also the debut appearance of a certain Kate Middleton in Prince William’s

life, breaking countless female hearts across the world). In a short span of time, we have seen the emergence of about twenty different REITs in Singapore, giving us the fastest growth rate in Asia. The real estate sector is at the very heartbeat of our economy as land continues to be considered valuable and profitable to acquire.

Practical Significance

Social and economic realities aside, any lawyer must arm himself (and the other arm as well, if it is free of encumbrances) with a solid knowledge of land law in order to be an all-rounded practitioner. This is essential regardless of the field of law he specialises in. Professor Tang Hang Wu sets this out very aptly in Chapter 6 of *Reading Law*, where he observes that this area of the law affects every aspect of our lives (do note that your neighbour may at this time decide to involve you in his life as well once he finds out you are a real estate lawyer by asking you to deal with his picky tenant or harassing you for the latest real estate inside news). More generally, the law of property forms the building blocks of difficult legal concepts such as the commencement and termination of general proprietary rights. As Professor Tang astutely points out, practically, real estate practice involves the transaction of land and interests in property – litigation lawyers commonly handle tenancy disputes and tussles pertaining to land borne out of contractual, insolvency or probate issues. With the increase of high profile and complex corporate deals, often involving transfer of real property in addition to corporate issues, corporate lawyers will also need to be well-acquainted with land law. One can also contemplate that similar issues of proprietary rights can come into play, even for an intellectual property lawyer! Practically, real estate lawyers are the most prestigious of the lot; we deal with royalty on a regular basis as many of our clients are landlords.

3. Areas of Real Estate Practice

Retail Conveyancing

Retail conveyancing involves acting for individuals and companies in the purchase of residential homes or commercial properties, often also encompassing assistance in property financing and mortgage arrangements. This area can be considered the bread and butter (and for many, the main course and dessert) of a conveyancing lawyer's work and is usually where his basic knowledge of real estate practice is first obtained. By handling more straight-forward transactions such as these, a lawyer gains a good grounding in the concepts and procedures

of sale, purchase and financing arrangements which will be essential for later developing his skills in more sophisticated and larger deals (which interestingly enough, does not contain bread, butter nor food of any kind) such as those listed below. After all, one cannot learn to walk before learning to crawl!

There are many lawyers who have focussed their energies on building a niche practice in mass-market retail conveyancing. It is unfortunate that public perception of this has been rather negative. Comments such as retail conveyancing being routine, uncomplicated or even work that can be carried out by a secretary or a real estate agent call for grave concern, and are dangerously erroneous. Even for the simplest and most typical of transactions — that of an individual redeeming the mortgage for his property or selling/purchasing a property, the responsibilities and risks involved for the lawyer are numerous (contrary to popular belief, a mortgage cannot be redeemed with an 8 Days magazine cut-out coupon). His expertise cannot be replaced by that of an individual who is not legally trained. A good conveyancing lawyer will know how to look out for and deal with potential title issues, explain salient clauses in mortgage documents (the legal drafting of which is lost on most laymen (we have yet to conduct research on laywomen and are awaiting further evidence before we decide if they are as lost as the men)), and protect his client's interest against any unfair demands and/or late completion.

Further, due to the scarcity of land, the Singapore government is known to be highly interventionist when it comes to housing policies (for the moment, you may still choose your own furniture), both in allocating housing units to citizens and other residents and in often imposing new rules and regulations with regards to the sale and purchase of residential homes (which includes the financing thereof). This is particularly common when mass market housing prices are on the rise and cooling measures have to be introduced to prevent speculation and the formation of a property bubble. Such information is not always readily available or comprehensible to laymen, especially when housing agents conceal the same whether due to negligence or for self-interested reasons (another reason may be if the individual is suffering from a medical condition known as the 'blur sotong' phenomenon). One example is the introduction of a tiered seller's stamp duty. A conveyancing lawyer should be able to advise his client immediately when and how much (if at all) stamp duty (contrary to popular belief, this type of stamp duty is different from that of a postman's job) is required to be paid for the sale. Having a good conveyancing lawyer handle the sale and purchase

transaction can therefore save a client from enormous legal and financial repercussions later.

Development Work

Generally, development work involves acting for institutional clients in acquiring land parcels or whole buildings for development in Singapore. These institutional clients are typically housing developers or global property funds who are interested in purchasing, amongst others, vacant land, commercial buildings, large numbers of office or residential units, warehouses, industrial plants, hotels and resorts.

Such projects are usually high-profile and more complex. In addition to the expertise of investigation of title and carrying out proper due diligence, the lawyer should come competently armed with an array of other conveyancing skills. This includes being familiar with regulatory requirements, deal structuring, drafting and negotiating management agreements, funding and divestment activities, land use and planning regulations, government land tender procedures and requirements and dealing with leasehold properties granted by government bodies (unfortunately, there is as yet no 'ten year series' textbook on these topics).

As one can imagine, work of such a scale often calls for multi-disciplinary legal knowledge for the delivery of an integrated solution to the client. This is where co-operation with other legal departments comes into play to deal with the wide-ranging legal issues that often arise. For example, in an acquisition of an uncompleted building, conveyancing lawyers will have to work closely (whether they like it or not, unfortunately) with construction lawyers to negotiate and draft the more technical aspects of the Sale and Purchase Agreement particularly with regards to terms like the appointment of project consultants, treatment of defects and assignment of various building works. A sale of a building from one global fund owner to another usually also entails a sale of shares or a share-swap. Corporate lawyers would have to be roped in to draft the share sale contracts and deal with all share sale compliance issues legislated under the Companies Act or the Listing Manual. Another example would be the assignment of intellectual property rights to a building's name, trademark and goodwill which would involve intellectual property lawyers. Such cross-disciplinary work is enjoyable, exciting and certainly widens the horizons, legal knowledge and expertise of the real estate lawyer.

REITs

As a brief explanation, REITs typically own shopping malls, office buildings, industrial buildings, carparks, serviced apartments or hotels. When a REIT buys a property, they will look at refurbishing it or changing its tenancy mix to boost yields. The rental collected from tenants of these properties is then mostly paid out to the REIT's shareholders (not unlike collecting rent on a Mayfair road hotel in a game of Monopoly). As REITs are traded like shares, they allow investors to 'own' a piece of property without actually buying one. Unlike buying an actual property, the capital outlay to buy a REIT is much lower and there is greater liquidity.

As mentioned earlier, the burgeoning REITS industry is widely regarded to be an important growth area, not just for Singapore but across Asian markets. This spells an urgent demand for legal skills in this area (please note, Monopoly skills are not considered legal skills). Unsurprisingly, REITs are governed by a complex regulatory framework governing the trustees and the fund, which includes the Securities and Futures Act, the Listing Manual of, the Code on Collective Investment Schemes, the Property Funds Guidelines, the Code of Corporate Governance and the Companies Act.

A real estate lawyer specialising in REITs will obviously have to be familiar with sale, acquisition and leasing of large-scale properties. Often, REITs also acquire industrial properties situated on sites owned by the Jurong Town Corporation ('JTC') or Housing Development Board ('HDB'). This means that various compliance requirements have to be met before the purchase is made. He or she would also have to be familiar with drafting the Put and Call Option Agreement and Lease-back Agreement. There are also usually extensive negotiations between the seller and the REIT in the preparation of these documents which the lawyer would have to handle.

Collective Sales

A collective sale (also commonly termed an en-bloc sale) is a combined sale by the owners of two or more property units to a common purchaser, usually a housing developer. The most common en-bloc sale is the sale of all the units in a strata or flatted development to a purchaser. The sale proceeds are then divided amongst all the unit owners. Other variations of en-bloc sales include the sale of all units in a development together with an adjoining development or landed properties. Due to Singapore's land constraints, collective sales are the main source of prime freehold land for developers (alas, we are still some years away

from an underground Atlantis metropolis) and are a creative way of freeing up land and utilising increased plot ratios to realise the full developmental potential of such land. It would be of interest to note that due to its unique land situation, Singapore has one of the most sophisticated en-bloc laws in the world. It is therefore exciting for the real estate lawyer to be at the forefront of such a development.

The real estate lawyer acting for the seller(s) in this case would have to take his or her client through the entire sale process from the appointing of the property consultants, forming the sale committee and advising it of its responsibilities, drafting and negotiating the Collective Sale Agreement and Sale and Purchase Agreement with the owners, appearing before the Strata Title Board when necessary, to the successful completion of the transaction.

The sheer volume of the transaction should also be noted. As most projects consist of numerous units, the usual checks on title and bankruptcy/winding up searches done in one traditional conveyancing transaction have to be multiplied, and in some projects, several hundred times over (at the expense of considerable eyeball strain and increased caffeine sales). To raise the standards of governance and disclosure in such transactions, the government has over the last few years made numerous amendments to the en-bloc legislation. The collective sale lawyer must therefore have the legislative requirements under the governing Land Titles (Strata) Act at his fingertips (and preferably in his head as well) in order to ensure compliance and, more importantly, to avoid potential disputes and objections raised by minority owners. This can cause serious hostility, dissatisfaction and even financial losses amongst the owners which you will want to avoid at all costs as a lawyer!

Real Estate Financing

The practice of real estate financing has changed drastically over the years (yes, property did exist back when buildings did not have air-conditioning). No longer do conveyancers only deal with traditional mortgage securitisation relating to retail conveyancing. These days, there is a broad spectrum of securitisation and structured real property related financing transactions. This is closely tied to the increased servicing of institutional clients in recent years. Lawyers will increasingly represent corporate borrowers, domestic/foreign banks, finance companies or institutions in their acquisitions of buildings and land parcels. These clients usually require advice relating to syndicated loan facilities and the lawyer's expertise includes advice on bridging loans, compliance and regulatory issues, land and construction loans, loan structuring and

restructuring and project management. The security documents that the lawyer will draft and negotiate are usually the Facility Agreement, Sale and Lease-back Agreements, Mortgage, Assignments of Rental Proceeds/Maintenance Contracts/ Insurance and others. Tax and revenue issues are addressed as well in a typical transaction.

4. Skills Required for a Real Estate Lawyer

Know The Law

Needless to say, any aspiring real estate lawyer should know his or her land law and relevant governing legislation thoroughly. This forms the basis upon which all other skills will be built. As such, if you are entering law school or still a law student, I would encourage you to read land law as a subject well (this may or may not be at the expense of your other subjects, let your professors fight it out)! This will no doubt put you in good stead for the future – many concepts will prove to be useful if you learn them well in school. For example, it will not be uncommon for you to have to go back to the fundamental principles of ownership and proprietary interests and rights, equity, caveats (particularly regarding priorities) and different trusts arrangements (and their respective implications) in the course of practice. A good understanding of legislation from the Land Titles Act, Conveyancing and Law of Property Act and Residential Property Act, to name a few, is also particularly important. While of course you will have textbooks and statutes at your disposal (pay attention, disposal does not mean you throw away your books) in practice, having the relevant knowledge at the back of one's head often makes the difference between a good and an average lawyer since the former will be better able to identify the issues to be red-flagged when preliminarily advising clients. This will be a great help in managing client's expectations.

Know The Practical Procedures

Unlike litigation and corporate practice, real estate practice and what it entails are usually very unfamiliar to the typical law student. This is perhaps the reason why very few law graduates even choose to enter this area of law – it is difficult to be attracted to the unknown (unless you fancy yourself a Bear Grylls thrillseeker)! Whilst land law as a subject is being taught in law school, the practice of it is seldom addressed and is sometimes vastly different from or unrelated to academia. The study of land law lays a good foundation for a real estate lawyer to build his practice on, but this is insufficient. One can be armed with all the theory of land law, yet have absolutely no clue how to handle the most

basic of conveyancing procedures – a redemption of a mortgage, or a straightforward sale and purchase of a residential home.

As such, the learning curve can initially be steep when one is thrown into the deep end of practice upon graduation. But I would encourage young associates (and the relatively young, or at least ‘young at heart’) to persevere – practical knowledge and skills will be honed and learnt in the course of practice and the pressure will ease once you have gained enough experience. It is important not to shy away from opportunities to handle files on your own, or to be on a team for a complex deal. These are the best ways to really learn and grow, of course together with your supervising partner’s guidance and mentorship. Do not be afraid to ask questions, even if you think they sound silly. It is much better to clarify early than to struggle through it alone or worse still, find yourself facing a potential negligence suit if things go wrong!

Have A Keen Interest In The Property Market

Like any occupation in the world, you will do well to be passionate about the subject matter of your job. It is impossible for real estate law to be divorced from the landscape of the property market. To find relevance in your area of practice and to understand the full implications of your actions on a client’s transaction, being in tune with the ebb and flow of market conditions and even familiarising yourself with the jargon and technicalities of the market will more than help your cause. For example, discussions on gross plot ratio will make no sense to you in development or collective sales work if you only concern yourself strictly with legal terms. I would strongly advocate aspiring (and current) real estate lawyers to make an effort to dive in and read up intimately on the industry (property watching is afterall, a national pastime, just behind our obsession with queueing up for Hello Kitty soft toys). Clients will always want their commercial needs to be met first and foremost, and to do that effectively it is crucial that a real estate lawyer must have keen commercial sense. Only with such a skill can you competently make decisions that will best assist the client in meeting his or her needs within the confines of the law. From this, you will also be in a better position to discern what items are deal-breakers in negotiations and what items are secondary. As an example, a REIT lawyer should be aware that sellers are usually obliged under the terms and conditions of the Lease-back Agreement to take up maintenance works to the building and should draft this into the document. This is because REITs often require that only buildings of a certain grade and quality be bought. A non-REIT buyer may not be as concerned about this requirement.

Have People Skills

Last but not least, a real estate lawyer meets people from all walks of life on a daily basis. It will not be surprising to meet with the man in the street for your retail conveyancing matter, and then move into the next meeting with the astute and perceptive director of a global fund for development work. Having good public relations skills and effectively managing client expectations are crucial to becoming a good real estate lawyer.

One obvious example will be in the area of collective sales. A special feature of such transactions is that they can become particularly acrimonious simply because the sale of one's home often touches a raw nerve. I have seen my fair share of meetings turning ugly due to differing opinions amongst neighbours. Some have even manifested in verbal and physical abuse (blood may have been shed, but thankfully none of it was mine)! I recall seeing the collective sale frenzy reach a fever pitch in the first half of 2007, with an unprecedented number of deals closed. Amid the exuberance fuelled by sky-rocketing prices, high-profile legal tussles between owners and purchasers became a common feature. Hostility was often created between consenting owners and non-consenting owners or owners who had consented but sought ways to rescind their consent to their sale agreement. To date, it is still common to hear dissenting voices complaining that rights of minorities are often railroaded in a transaction where 'tyranny of the majority' rules.

Besides putting in extra care from the outset to comply strictly with all legislative requirements to avoid accusations of unfairness, the collective sale lawyer should ensure that he knows how to control such difficult situations firmly yet fairly and even how to dispel tension at the slightest hint that things may get sour. It is a challenge to do this well as you may sometimes find yourself inundated with questions and/or complaints from hundreds of owners, each wanting to make a point and each wanting a portion of your time. Some of these people may hurl abuse at you or fail to appreciate your work but one has to always remain professional. These soft skills cannot be learnt in law school, and can only be acquired over time by experience and keen observation of your more senior colleagues.

5. Conclusion

I hope this chapter has given you at least a glimpse of what real estate practice is like. Hopefully, you can see that the future of conveyancing is bright and that the demand for experienced conveyancing lawyers with sound expertise and skills relating to real estate practice far exceeds

supply. In land scarce Singapore with a rapidly growing and upwardly mobile population, property transactions are definitely here to stay. After 30 years in this profession, I have found real estate practice to be ever-changing, exciting and challenging and I hope you will find the same satisfaction that I have experienced. In the words of business mogul Donald Trump, 'It's tangible, it's solid, it's beautiful. It's artistic, from my standpoint, and I just love real estate'.

