

Our Ref: LS/4(misc)/2007/ST

Your Ref:

FROM THE PRESIDENT

16 July 2007

Mr Kong Soon Wah
Forum Editor
The Straits Times
Singapore Press Holdings
News Centre 1000 Toa Payoh North
Podium Level 2 Singapore 318994

Via Email and fax no 6319 8289

Dear Sir

RULES HAVE BEEN STRENGTHENED TO SAFEGUARD PUBLIC

I refer to Dr Miles Upton's letter titled "Law Society should act to protect clients' interest" (ST, 12 July 2007).

We thank him for his interest in the legal profession. There are two quite separate matters that he writes about. First is protection for clients' monies held by a solicitor. The second is interest on stakeholders' monies.

Over the years the Society has strengthened controls over clients' accounts, and the requirements imposed are stricter than elsewhere, including Hong Kong, England or Australia. The Legal Profession (Solicitors' Accounts) Rules have been amended to require, among other things, a second signatory for any withdrawal from the client account exceeding \$30,000.00. If a solicitor does not have a second signatory then he cannot hold or receive conveyancing monies. Signatories must be solicitors.

Acting as a stakeholder of monies is the provision of an escrow agency service. The monies are not held on trust for or as agent of anyone else. By contract, the stakeholder has agreed to release the monies upon the happening of certain trigger events in accordance with the terms of the contract. It is not just solicitors who act as stakeholders or escrow agents. Banks sometimes do so as well.

In view of the large sums of money involved, Council would expect in any en bloc situation that the sales committee would discuss with the law firm appointed the safeguards that it has put in place concerning the holding of the stake.

Additional safeguards to that of two signatories can always be agreed. For example, two law firms (one representing the seller, and one representing the buyer) can act as joint stakeholders. Alternatively, a bank could be appointed as stakeholder instead.

Turning to the question of interest on stakeholders' monies, in law it belongs to the stakeholder and not to seller or buyer. It is open to the stakeholder (whether bank or solicitor) to agree otherwise. The stakeholder role entails legal obligations to both the buyer and seller to determine whether or not the necessary conditions for release have been satisfied before he may release the money to the party entitled. If the stakeholder mistakenly pays the party not entitled, he will be held liable to the other party.

So, while the Society is pleased that the public, including the letter writer, are keenly interested in issues surrounding the holding of clients' monies and stakeholding, it is quite wrong to suggest that the Society has been short-sighted in its approach. The truth is that these issues have been thoroughly discussed within the profession and safeguards have been pioneered and put in place by the Singapore profession.

Yours faithfully



Philip Jeyaretnam, SC
President



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