

30 September 1996

Legal Advisory and Conveyancing Office
Circular Memorandum No. 22

Apportionment of Government Rent on Sale and Purchase of Property

It has come to my attention as a result of several complaint cases from property owners to the Commissioner for Administrative Complaints, that some solicitors when acting for a purchaser do not check whether government rent is paid up to date before completing a sale and purchase. In view of this I wrote to the Law Society, which issued Law Society Circular No. 231/95 (PA) on 4.9.95 reiterating the need for conveyancing solicitors to protect the purchasers from demands for outstanding Government rent.

Payment of Government rent is an implied covenant in Part II of the First Schedule to the Conveyancing and Property Ordinance, commonly used in conveyancing transactions. Failure to pay Government rent in full is a breach of the lease and gives rise to a right of re-entry of the property by Government under the Crown Rights (Re-entry and Vesting Remedies) Ordinance. It is therefore essential when establishing good title to a property the conveyancing solicitor is satisfied that all arrears of Government rent are settled. Enquiries concerning outstanding Government rent can be made from the Treasury and this has already been publicised in the Law Society Circular.

In the event of unpaid Government rent the purchaser's solicitor should ensure that the liability to clear all arrears of rent up to the date of assignment is discharged by the vendor prior to completion of the sale and purchase. The solicitor acting for the purchaser should retain from the purchase money an appropriate amount on completion to meet the purchaser's potential liability to settle the current rent when the payment is demanded by the Treasury in the normal course of events.

As from 1.7.1997 onwards, many properties in Hong Kong will be subject to an annual rent equivalent to 3% of the rateable value of the property, adjusted in step with any changes in the rateable value from time to time. It is therefore important that when the 3% rental comes into effect and which involves greater sums of money, property buyers are not exposed to additional charges which should have been the responsibility of previous owners. Therefore, the respective liabilities to pay rent of both the vendor and purchaser should be properly apportioned at the time of conveyancing so that the interests of both parties will be safeguarded.

(T. E. Berry)
Principal Solicitor
for Director of Lands

To : All Solicitors