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JAWATANKUASA PEGUAM PULAU PINANG PENANG BAR COMMITTEE

CPC 3/24

8 Jan 2024

To Members of the Penang Bar,

Update: Direct Transfer Cases at the Office of Lands and Mines, Penang ("PTG PENANG")

Further to a meeting between the Office of Lands and Mines, Penang ("PTG Penang") and the Penang Bar's Conveyancing Practice Subcommittee ("CPC Subcommittee") on 10 Oct 2023 and to the subsequent queries raised by our Members in respect to the general Direct Transfer issues, the CPC Subcommittee has sought a clarification from the PTG Penang.

A copy of PTG Penang's reply on various circumstances pertaining to Direct Transfer issue is appended below for Members' attention and reference.

Members will be updated further as and when we receive additional information from PTG Penang.

Ong May Joyce
Chairman
Conveyancing Practice Subcommittee

	Issues/Confusion faced by Members	CPC's View	PTG Penang's stand
A	<p><u>Is Transmission required to be registered before transferring the property to the beneficiary I.e. when Section 346 NLC will be applicable?:</u></p> <p>(i) Perfection cases derived from Sub-sale completed previously via an assignment and now strata title issued and the last beneficial owner on the Developer's record is now deceased.</p> <p>Q: Is there a need to perfect the transfer from the Developer to the Executor/Administrator prior to transferring the property to the beneficiary?</p> <p>(ii) Perfection cases derived from Direct purchase from Developer cases, strata title is now issued but original purchaser is deceased.</p> <p>Q: Is there a need to perfect the transfer from the Developer to the Executor/Administrator prior to transferring the property to the beneficiary?</p> <p>(iii) Perfection cases derived from Sub-sale completed previously via an assignment and the Assignor is deceased at the time of issuance of strata title and the last beneficial owner on the Developer's record is the current new Purchaser.</p> <p>Q: Is there a need to perfect the transfer from the Developer to the Executor/Administrator of the late Assignor prior to transferring the</p>	<p>CPC's view is that Section 346 NLC is not applicable as the rights to transfer still lies in the hand of the Developer as the title has not been transferred to the deceased owner, thus direct transfer from the Developer to the beneficiary should be acceptable subject to the following documents being attached as supporting documents:-</p> <p>A) a copy of duly certified the Grant of Probate/Grant of LA;</p> <p>B) a copy of duly certified list of assets; and</p> <p>C) a copy of duly certified Vesting Order (for LA cases)</p> <p>Note: for LA cases, the high court might have already requested for the strata title to be registered in the name of the Administrator prior to the Vesting order application.</p> <p>Same as above</p> <p>CPC's view is that the right and interest in and to the Property has been passed to the new Purchaser via the duly stamped Deed of Assignment (by way of Transfer) and thus the the Transfer can be made directly in favour of the new Purchaser.</p>	<p>(i) Direct transfer from Developer to beneficiary is allowed.</p> <p>Refer to Section 22D(4) Housing Development (Control and Licensing) Act</p> <p>(ii) Direct transfer from Developer to beneficiary is allowed.</p> <p>Refer to Section 22D(4) Housing Development (Control and Licensing) Act</p> <p>(iii) Direct transfer from Developer to beneficiary is allowed</p> <p>Refer to Section 22D(4) Housing Development (Control and Licensing) Act</p>

	Issues/Confusion faced by Members	CPC's View	PTG Penang's stand
	<p>property to the new Purchaser?</p> <p>(iv) Grant of Probate cases whereby title is already in the name of the deceased.</p> <p>Q1: Can the Transmission and the subsequent Transfer be registered simultaneously?</p> <p>Q2: What about the subsequent Transfer to be dated later than the Transmission and to be registered simultaneously?</p> <p>(v) Grant of Probate cases whereby title is already in the name of the deceased and the beneficiary named in the Will (the named Beneficiary) choose to renounce/relinquish their rights and wish to give their portion to other beneficiary (new Beneficiary).</p> <p>Q1: Can the Transmission and the subsequent Transfer to the new Beneficiary be registered simultaneously?</p> <p>Q2: Is a statutory declaration by the named Beneficiary sufficient or a court order is required in the event there is no express restriction stated in the Will?</p> <p>(vi) Grant of LA (including LA granted by high court and also small estate department) cases whereby title is already in the name of the deceased.</p> <p>Q: Can the Transmission and the Vesting Order to the beneficiary be registered simultaneously?</p>	<p>Section 346 NLC is applicable thus Transmission must be registered first prior to the subsequent Transfer to the beneficiary.</p> <p>Section 346 NLC is applicable thus direct transfer to the named Beneficiary or new beneficiary is not acceptable and Transmission has to be registered prior to the subsequent Transfer to the named Beneficiary or new beneficiary, as the case may be.</p> <p>For the latter, a statutory declaration by the named Beneficiary should suffice provided that there is no express restriction stated in the Will for the Transfer to the new Beneficiary.</p> <p>On the other hand, a court order sanctioning the Transfer by the Executor to the new Beneficiary is required in the event there is express restriction mention in the Will for such transfer.</p> <p>Section 346 NLC is applicable thus direct transfer is not acceptable and Transmission has to be registered prior to the Vesting Order to the beneficiary.</p>	<p>(iv) Q1 Referring to Section 346 (5) NLC, representatives of the deceased must be registered first prior to transfer to beneficiary.</p> <p>Q2 Subsequent transfer and transmission should not be presented simultaneously even though the subsequent transfer is dated later than the transmission.</p> <p>(v) Q1 Refer to Section 346(5) NLC Q2 The Executor has to follow the will <u>strictly</u>. Beneficiary who wishes to forgo their portion can either: 1. Seek a court order to relinquish their rights over the said property and to allow their portion to be given to a new beneficiary in the will; or 2. To accept their portion as per the will and subsequently transfer their portion to the other/new beneficiary</p> <p>(vi) Referring to Section 346 (5), representative of the deceased must be registered prior to transfer to beneficiary. The court order obtained should not be a vesting order, only order to transfer to beneficiary.</p>