

何謂「送讓契」？ “D” FOR “DEED OF GIFT”



送讓契是一份由業主(贈與人)以饋贈方式將物業的法定擁有權轉讓予受贈人的文書。

根據《破產條例》(第6章)，倘若贈與人被判定破產，並在有關的破產呈請的提出當日起計之前的五年內作出饋贈或訂立一項沒有代價的交易，破產受託人可將有關的送讓契作廢，除非該人士(不論是否與贈與人訂立交易的人士)真誠地並付出價值取得該物業。因此，若賣方/賣方之前的業權人曾藉送讓契形式接受物業的轉讓，而破產受託人基於上述的情況將該送讓契作廢，則該物業的業權或會受到不良影響。

由於購買涉及送讓契的物業有潛在問題，例如：買方可能無法取得任何或足夠的按揭貸款以完成購買該物業及/或在轉售該物業時無法證明其良好業權，倘若物業現時的土地查冊顯示賣方持有物業少於五年，持牌人應就該物業進行過往及現時的土地查冊，以確定該物業是否有送讓契的註冊紀錄。

為保障其客戶的利益，倘若土地查冊顯示有送讓契的註冊紀錄而該送讓契的日期與土地查冊的日期相距少於五年，持牌人應如實告知客戶，並提醒客戶購買該等物業的潛在風險；以及建議客戶在訂立任何買賣協議前就買賣該物業的風險先尋求法律意見。

A deed of gift is an instrument which effects the transfer of legal ownership in a property from the owner (donor) by way of gift to the donee.

Under the Bankruptcy Ordinance (Cap. 6), a deed of gift may be set aside by the trustee in bankruptcy in cases where the donor is adjudged bankrupt and he has, during the period of five years ending with the day of the presentation of the bankruptcy petition on which the donor is adjudged bankrupt, made a gift or entered into a transaction receiving no consideration, unless the person, whether or not he is the person with whom the donor in question entered into the transaction, acquires the property in good faith and for value. Therefore, the title to a property may be adversely affected if a deed of gift in favour of the vendor/vendor's predecessor-in-title is so set aside by the trustee in bankruptcy.

In view of the potential problems of purchasing properties involving a deed of gift (for example, the purchaser may not be able to obtain any or sufficient mortgage loan to complete the purchase and/or to prove good title in the resale of the property), if the current land search reveals that the vendor has been the current registered owner of the property for less than five years, licensees should conduct a historical and current land search to see if there was any registration of a deed of gift against the property.

To protect their clients' interests, licensees should inform clients if there was any registration of a deed of gift within five years, alert them to the potential risks and advise clients to seek legal advice on the risk of selling/ purchasing the property before they enter into any agreement for sale and purchase of the property.