

WESTERN INDIA REGIONAL COUNCIL
OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA

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WORKSHOP ON DRAFTING OF DEEDS & DOCUMENTS

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Day & Date: Saturday, 6th July, 2013
Time : 10.00 a.m. to 12.00 p.m.
Venue : J.S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade,
Colaba, Mumbai – 400 005

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Subject : CONVEYANCING - AN OVERVIEW
Speaker : SHRI PRAVIN N. VEERA, Advocate & Solicitor

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CONVEYANCING AN OVERVIEW

- SHRI PRAVIN VEERA, Advocate & Solicitor

1. **Conveyancing in general:**
2. **Importance of conveyancing for Chartered Accountants, Advocates, Solicitors and Tax-Practitioners:**
3. **Important points to be considered while drafting a document:**
 - (a) Purpose of preparing the document :
 - (b) Date of the document:
 - (c) Place where document is to be executed:
 - (d) Parties to the document:
 - (1) Vendor:
 - (i) Individual
When Vendor is a Hindu
When the Vendor is a Muslim
When the Vendor is a Parsee
When the Vendor is a Lunatic person - Permission of Court.

When Vendor is a Minor it is necessary that the permission of the competent court sanctioning the sale of the minor's property/ minor's interest in the property is obtained.

(ii) H.U.F.: Complete family tree with the names and address and age of all the members should be obtained. The reasons for sale - legal necessity - benefit of the estate should be ascertained.

(iii) Company: Memorandum and Articles of association - Relevant resolution - Authority to specific director/officer - Power of Attorney - Common Seal.

(iv) Partnership Firm : Nature of business of the partnership firm - Copy of Partnership Deed - Certified Extract of Register of Firms - Whether it is necessary to get the document executed by all the partners of the firm or to get the document executed by only one of the partner on behalf of the firm.

(v) Public Charitable Trust : Provisions of Trust Deed/Deed of Settlement (Directions of Settlor) - Whether the trustees have the necessary power for sale - Permission of Charity Commissioner for sale/alienation of the property owned by a public Trust - Certified copies of the resolutions of the board of trustees - Specific authority given to any particular Trustee.

(vi) Private Trust: Provisions of Trust Deed/Deed of Settlement (Directions of Settlor) - Whether the trustees have the necessary power for sale - Certified copies of the resolutions of the board of trustees - Specific authority given to any particular Trustee. If possible the consent of the beneficiaries should be obtained. If the trustees do not have the power for sale given under the trust deed, the conveyance by the trustees will still be proper, provided all the beneficiaries, being sui juris, join in the conveyance as a party or separately confirming such conveyance.

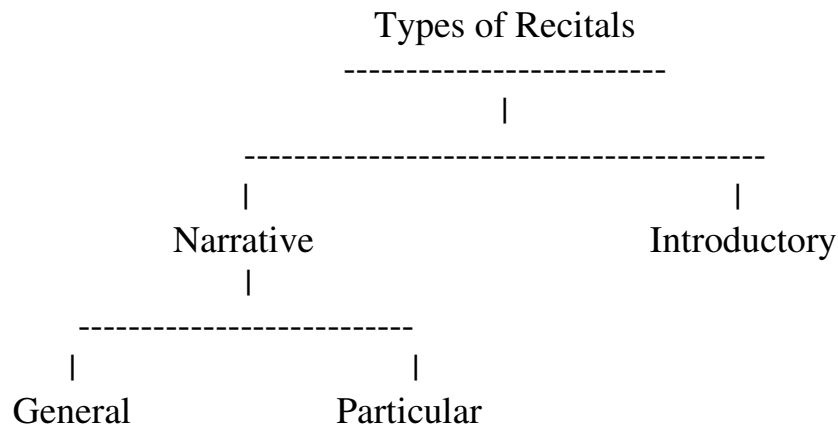
(vi) Co-operative Society : Bye-laws of society - Provisions of Co-operative Societies Act - Certified copies of the concerned resolutions - In case of alienation of immovable property owned by a society it is essential to obtain the consent of the members in the general body meetings by passing the appropriate resolution. - Authority to Office bearers - Common Seal.

(2)Purchaser: (In case of agricultural land purchaser must be an agriculturist - Sale permission under Tenancy Act) - If necessary, to see that the purchaser complies with the conditions which enable him to purchase/entitle him for allotment. (For e.g. Allotment of a flat in Housing Board/ CIDCO's building - income group - resident of the state for certain years etc.)

(e) Recitals - Importance of recitals - Recitals in the document more than 20 years old.

Care should be taken to see that recitals should contain a statement only of material facts.

As far as possible recitals should be in a chronological order



The object of the narrative recitals is to set out the facts and instruments so as to show the nature of the interest intended to be dealt with by the document. The object of introductory recitals is to explain the motive of the operative parts for the document i.e. what is intended to be done by the parties under the instrument.

General Recitals:

Particular Recitals:

Introductory Recitals: The object of introductory recitals is to link and connect the narrative with the operative parts of the instrument and they are framed in such a way as to explain what is intended to be done by the document.

Interpretation and Construction: It should be noted that in the event of there being any discrepancy between the operative parts of a deed and its recitals, the operative parts prevail unless they are ambiguous in which case the recitals may be referred for the purpose of interpretation and construction.

Recitals in the document more than 20 years old :

- (f) Proper description of the property, if any referred in the document (Survey No., Hissa No., City Survey No., T.P.S. No., Original Plot No., Final Plot No. , Area - H - A- P, Acre and Gunthas, _____ sq. yards, _____ sq.mtrs. - Boundaries - Roads, Municipal Ward.

Proper description of the property should be given in Recitals, operative part and schedule of the document.

In case of flats/shops etc. : Flat/shop No., Name of the building, Year of construction, No. of floors in the building, City Survey No.

- (g) **Consideration - Mode of payment/ Payment schedule**
 Consideration based on area - Joint survey of property - increase or decrease in total consideration based on joint survey - consideration

based on F.S.I. - proposed plans - actual F.S.I. based on sanctioned plans - increase or decrease in total consideration - In case on premises whether consideration is based on carpet area or built-up area or super built-up area.

- (h) Important terms and conditions
 - (i) possession
 - (ii) Outgoings, taxes etc. - apportionment thereof
 - (iii) Sale of property/premises free from all encumbrances - marketable title.
 - (iv) Various permissions - N.A. Permission, U.L.C. Order, Permission of Society.
 - (v) Sanction of plans
 - (vi) Vendors Certificate under Sec. 230A of the Income Tax Act.
- (i) **Attestation** : It is essential that the document is properly attested as required under the law. The object of Attestation is to provide protection against fraud and undue influence. It is advisable to get the document attested by the Advocate/Solicitor of the party when the parties are represented by Advocate/Solicitor.
 - (1) Lease : Lease must be attested by 2 witnesses.
 - (2) Mortgage : Mortgage must be attested by 2 witnesses.
 - (3) Will : Will must be attested by 2 witnesses.

Attesting witness : It is necessary that the witness should have put his signature amino attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose, e.g. as an identifier of a registering officer, he is not an attesting witness. (*M.L. Abdul Jabbar v/s. H. Venkata Sastri AIR 1969 SC 1147*).
- (j) **Signature** : Care must be taken to see that the parties sign the document properly. - Karta and Manager of H.U.F. must sign as Karta and Manager of H.U.F. - partner must sign as a partner of the firm. - Company - Common Seal.
- (k) **Stamp Duty** : Payment of proper stamp duty - the stamp duty to be born and paid by which party - reference of payment of full stamp duty on the principal document in the other ancillary documents.

- (l) **Registration:** Documents which are required to be registered compulsorily must be registered. It is advisable to register even those documents the registration of which is not compulsory. - Clarity about who should bear and pay the registration charges.
 - (m) **Consent of any other party :**
 - (n) **Map Plan:**
 - (o) **Earnest Money - Part Consideration :**
4. Other inquiries
- (a) Interests of the third parties
 - (b) Name in which the property stands
 - (c) Tenure
 - (d) Persons in possessions
 - (e) Tenants
 - (f) Easement or Restrictive Covenants
 - (g) Proceedings in Court
 - (h) Notice from public bodies
 - (i) Set back
 - (j) Encumbrances
5. **Study of relevant documents (Documents of title)**
6. **Study of relevant laws**
- (a) Transfer of Property Act : (Rights and duties of parties)
 - (b) Personal Laws of the parties - Hindu Law - Muslim Law, etc.
 - (c) Stamp Act : Bombay Stamp Act, Indian Stamp Act - Stamp duty applicable on various documents - Market value - Refund - Impounding of documents etc.
 - (d) Registration Act :
 - (e) Maharashtra Ownership Flats Act : (Sec.4 - Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.
 - (f) Urban Land Ceiling Act : Sec.6(i) - Return, Sec.8(4) Order - Sec.20, Sec. 26, Sec.27, - Restriction on Sale/Transfer of premises constructed on surplus vacant land under the scheme for weaker section.
 - (g) Maharashtra Land Revenue Code :

- (h) Bombay Tenancy and Agricultural Lands Act : In case of agricultural land - permission for sale.
- (i) Maharashtra Regional and Town Planning Act : (Permission for construction/development)
- (j) Maharashtra Co-operative Societies Act :
- (k) Companies Act :
- (l) Indian Partnership Act :
- (m) Indian Contract Act :
- (n) Sale of Goods Act :
- (o) Indian Succession Act :
- (p) Guardians And Wards Act :
- (q) Income Tax Act :
- (r) Wealth Tax Act :
- (s) Gift Tax Act :

7. **Consultation with other professionals** :

- (a) Architects
- (b) Chartered Accountants/ Tax Consultants
- (c) Advocates and Solicitors

8. **Site visit** : (in case of immovable properties)

9. **Some Documents** :

- (a) Agreement for Transfer of Flat in a co-operative society
- (b) Partnership Deed
- (c) Will
- (d) Family Arrangement - Deed of Partition
- (e) Deed of Trust
- (f) Agreement for Sale of immovable property

(g) Agreement for Development

(h) Power of Attorney

(i) Deed of Indemnity

(j) Declaration

(a) AGREEMENT FOR FLAT SALE/TRANSFER OF FLATS IN
A CO-OPERATIVE SOCIETY

Requirements from the Vendor/ Transferor

1. Xerox Copy of Agreement by which he has purchased the flat.
2. Xerox Copy of Share Certificate.
3. Copy of the latest bill of maintenance issued by the Society.
4. Xerox copy of the last Electricity bill.
5. Complete name & address where they will be shifting.
6. Notice of the last Annual General Meeting with Annual Report - if possible.

Inquiries to be made with the Society

1. Procedure for Transfer whether notice of intention to Transfer necessary.
2. Transfer fees payable.
3. Whether any amounts are due and payable by the Transferor.
4. Stamp Duty and Registration.

Papers and Documents to be prepared :

1. Agreement
2. Power of Attorney
3. Declaration
4. Deed of Indemnity
5. Resignation Letter cum Covering Letter of the Transferor and Transferee.

6. Transfer form.
7. Application form by the Transferee
8. Notice of Intention
9. Possession Letter
10. Receipt for balance payments.
11. Declaration of Transferor - ULC
12. Declaration of Transferee - ULC
13. Undertaking of Transferee to use the flat for the purpose for which it is allotted.
14. Letter of Transfer for Electric Meter if any necessary.

Documents to be collected from the Transferor

1. Original Agreement
2. Original Share Certificate
3. Latest Receipt for payment of the last maintenance bill of the Society.
4. In case of any loan on the flat N.O.C. from the Institution giving Loan for sale of the flat.
5. Letter releasing charge of the Institution on the flat addressed to Society.

(b) **Deed of Partnership**

Usual Partnership

1. Firm name
2. When will the partnership begin
3. Duration of the partnership-at will or till completion of a particular project.
4. Nature of business
5. Place or places of partnership business - ownership of such premises - tenancy rights
6. In what proportion the capital will be contributed by the partners - interest on capital - specific precaution to be taken when only one or some of the partners are major investors.
7. Good will - licence rights etc.
8. Loan from the partners/outsideers - interest on loan.
9. Drawings of partners - interest on drawings
10. Salary to partners - working partners (new scheme of assessment of the firm)
11. In what proportions will profits and losses (including capital profits and losses) be shared ?
12. Whether there are any minors to be admitted to the benefits of the partnership ?
13. Accounting year - maintenance of accounts - Settlement of accounts
14. Operation of bank account - which partners are authorise to operate bank account
15. Clarity about rights and duties of partners.

16. Death, retirement or insolvency of a partner
17. Arbitration clause

Partnership in case of Builders / Developers

- Care to protect the interest of the investing partner
- Operation of bank account
- Signing of agreements for sale of flats, shops etc.
- Settlement of accounts upon death, retirement or insolvency of a partner - profit to be ascertained on completion of the project
- Nomination clause - consent of other heirs ?

Partnership when some of the partners bring in Immoveable Property as their capital in the partnership:

- Complete description of the property (S.No. H.No., City Survey No., Sq.mtrs., revenue village etc.) - map.
- Clarity about the ownership of the property
- Property free from all encumbrances
- intention to bring the property as capital
- value of the property
- credit to the capital account of those partners
- genuineness of the firm -
- Consider the effect if within a short period all the old partners retire and only new partners remain .
- Minor
- No liabilities other than those reflected in the balance sheet.

(c) **Will**

- Name and address of the Testator
(clarity about the premises if it belongs to somebody i.e. one of his sons)
- Family tree
- list of properties.
- in case of immoveable property whether complete payment is made, possession taken etc.

- **Legal aspects**

- no specific form
- no stamp duty
- can be revoked at any time during the life time of the testator
- Attestation witnesses - Attestation of a will of ill person by a doctor and an advocate.