



—
Temporary relief for
property purchasers buying
homes from property
developers under the
Covid-19 (Temporary
Measures) Act 2020

The Ministry of Law in Singapore announced on 13 May 2020 that the Covid-19 (Temporary Measures) Act 2020 (the "**Act**") has been extended and enhanced to provide temporary relief for non-performing parties under certain contracts for the sale, purchase and lease of residential properties in Singapore. This article will give both housing developers (which includes the Housing and Development Board) and property purchasers of homes from housing developers an overview of the latest extension to the relief measures under the Act.

Which are the types of properties covered in the latest relief measures under the Act?

Types of properties

Industrial	X
Commercial	X
Residential	√

Only contracts for sale, purchase and lease of residential properties are covered in the latest relief measures under the Act. These latest relief measures do not apply to contracts for non-residential properties.

What are the types of contract for residential properties covered in the latest relief measures under the Act?

	Types of contract	
Housing Developers (new residential properties)	Option to Purchase	√
	Sale and Purchase Agreement	√
	Agreement for Lease	√
Non- Housing Developers (resale residential properties)	Option to Purchase	X
	Sale and Purchase Agreement	X
Short Term Leases and Tenancy Agreements		X

The latest relief measures under the Act only cover contracts for sale, purchase and lease of residential properties between property purchasers and private developers or the Housing and Development Board and do not cover such contracts where the seller is not a housing developer, such as a reseller or a contract between individuals. A reseller may have committed to purchase a replacement property upon entering into the contract to sell his property and is looking to use the sale proceeds from the sale of his property to finance the purchase of the replacement property. If the Act permits a purchaser in a resale transaction to seek relief under the Act, the reseller will be forced to postpone the completion of the resale transaction. In turn, the reseller may be in breach of his own contract for the purchase of the replacement property.

What are the conditions imposed under the Act in order for a purchaser to qualify for relief?

1. The applicable contract must have been entered into before 25 March 2020, with the contractual performance due on or after 1 February 2020.
2. The booking fee or other consideration paid under the Option to Purchase or Sale and Purchase Agreement or Agreement for Lease must not already have been forfeited or the Option to Purchase or Sale and Purchase Agreement or Agreement for Lease terminated.
3. The Purchaser's inability to perform the contractual obligation or make payment to the housing developer must be to a material extent caused by a Covid-19 event, which is defined under the Act to mean the Covid-19 epidemic or pandemic, or the operation of or compliance with any law of Singapore or another country or territory, or an order of the Government or any statutory body, or of the government or other public authority of another country or territory, being a law, order or direction that is made by reason of or in connection with Covid-19.

Most of the conditions are objective, save for the materiality test set out in Section 5(b) of the Act. While unemployment due to Covid-19 leading to a total loss of income would clearly satisfy the materiality test, it is not so clear in other cases where the applicant suffers a reduction in income. As the financial circumstances of each individual is different, it is perhaps intentional that the materiality test is imposed rather than providing prescribed figures or percentages in the reduction of income.

A housing developer can also serve a Notification for Relief (NFR) to seek temporary relief from being sued during the prescribed relief period if it is unable to perform its contractual obligations because of Covid-19.

How does a purchaser obtain relief under the Act?

To claim relief under the Act, a Purchaser must serve a NFR on the housing developer by filling up the prescribed form available on Ministry of Law's website and serving the duly completed document on the housing developer via the prescribed modes of service. The relief applies after the NFR is served.

What can a housing developer do if a purchaser applies for relief under the Act?

The table below sets out a non-exhaustive list of acts which can or cannot be done by a housing developer.

On or before 19 October 2020 (6 months from 20 April 2020)

Withhold or forfeit any part of the booking fee or other consideration paid under the Option to Purchase/ Sale and Purchase Agreement/ Agreement for Lease	X
Terminate the Sale and Purchase Agreement/Agreement for Lease on basis of the purchaser's inability to pay or non-performance	X
Impose new charges such as late penalties or increase the rate of late interest chargeable	X
Charge late interest pursuant to the existing terms of the Sale and Purchase Agreement/Agreement for Lease for missed payments	√
Continue to call for progressive payments as and when they fall due under the Sale and Purchase Agreement/Agreement for Lease, which will continue to accrue and be payable after 19 October 2020	√

A housing developer may disagree that the relief under the Act applies to a purchaser. In such cases, the housing developer can challenge the grant of relief sought by the purchaser by applying to the Registrar of assessors to appoint an assessor to make a determination on whether the purchaser is entitled to such relief under the Act and taking into account the ability and financial capacity of the party concerned to perform the contractual obligation and other prescribed factors and seeking to achieve an outcome that is just and equitable in the circumstances of the case. The determination by the appointed assessor is binding on the parties and cannot be appealed against.

The Act also does not allow any representation by an advocate or solicitor at proceedings before an assessor and each party shall bear its own costs for any proceedings before the assessor. The assessor's determination is binding on all parties and parties cannot appeal. As such, the housing developer and the purchaser should engage in discussions to work out an amicable settlement in the first instance before submitting the case to the assessor.

If the provisions under the Act are contravened without reasonable excuse, the person in contravention can be fined of up to S\$1,000 upon conviction.

Considerations before applying for relief under the Act

Some considerations which purchasers should take note before applying for relief under the Act are set out below.

Purchasers who qualify to seek relief under the Act should note that all payments which become due will continue to remain payable (together with late interest which accrues from the day immediately after the due date for payment) after the prescribed period in the Act. The prescribed period is currently 19 October 2020 and may or may not be extended by the Minister for Law.

The relief under the Act is also merely a temporary suspension of the housing developer's right to terminate the Sale and Purchase Agreement or the Agreement for Lease.

In a typical sale and purchase agreement for new residential properties, the housing developer may proceed to exercise its right to treat the contract as having repudiated by the purchaser after the prescribed period if any progress payments continue to remain unpaid. In addition, the housing developer also has the right to recover all interest owing from the monies paid previously by the purchaser.

While the enhancements to the Act aim to provide additional temporary relief to purchasers who are adversely affected by Covid-19, purchasers should ensure that they fully understand the consequences before applying for relief under the Act and also consider carefully their ability to perform the obligations under the relevant contract to decide whether to continue with the purchase of the property. The purchaser is encouraged to seek extensions from and to negotiate with the housing developer first and to consider serving the NFR if the terms of extension cannot be mutually agreed upon or negotiations are not possible.

Key contacts



Pearl Lim

Partner | Singapore

+65 6238 3218

pearllim@witherskhattarwong.com



Alex Toh

Senior Associate | Singapore

+65 6238 3138

alextoh@witherskhattarwong.com