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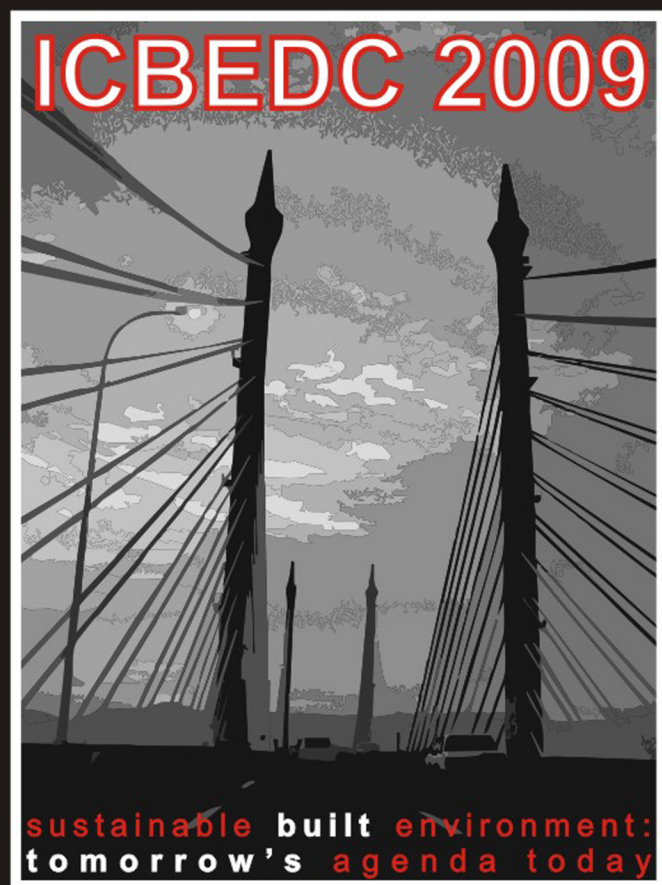
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## Strata Living in Peninsula Malaysia: Legal and Human Management Issues<sup>1</sup>

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### **Abstract**

*Strata living contribute in many ways to new features in urban development. In built environment theory housing developers are expected to provide conducive environments to promote a better life for residents. One of the encouraging environments is proper management of strata building. Consequently developers who develop strata buildings are expected to discharge their duties and obligations to manage the strata building efficiently and professionally. However under the Malaysian law, the duties to manage strata buildings are not only impose on developers but these responsibilities shall be shared by the house owners too. This paper analyses the problems dealing with strata in Peninsula Malaysia and the governing laws and regulations on strata. This paper then seeks to see to what extent the existing laws and regulations in Peninsula Malaysia facilitate the developers and purchasers as well as the local authority to regulate the living in strata buildings. It will focus on the rights and responsibilities of the developers that developed the strata projects, the community living within the strata as well as the government in managing the affairs within the strata. Discussions on these points are expected to reveal whether the existing laws are sufficient to manage the strata building. Discussions in this paper will involve various types of strata developed in Peninsular Malaysia, for instance condominiums, apartments, flats, serviced apartments and gated communities.*

**Keywords:** strata law, Management Corporation, joint management body, gated community, housing law.

### **1. Introduction**

Strata living are one of the results of urban development. The increase of value in landed property especially in urban areas has encouraged the developers to maximize their profit making in land development. This is followed by considerable demand from the property buyers.

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The trend occurs in all parts of the world. On one side of the story, strata living represent a modern life style (or luxurious lifestyle for those occupying the high-end strata unit) while developers may intent to minimize cost and maximize profit by offering multiples units to the market. The dilemma may occur when not all stakeholders within the strata development including purchasers understand their duties and obligations.

In this paper the authors will look into few selected rights and obligations of developers and house owners under the Strata Title Act 1985 (“STA”), Building and Common Property (Maintenance and Management) Act 2007 (“BCPMMA”) and other related laws and regulations that related to the management of the strata buildings. This would include the management of the common property within the gated community development scheme. The last part of this paper will forward few suggestions that may be relevant to improve the current dilemmas in strata living and gated community with regard to contribution towards sustainable built environment. The aim of this paper is to analyse whether the existing laws and regulations are adequate enough to manage the strata living in Peninsular Malaysia.

## **2. Rights and obligations in strata living**

The problems of management of strata building is almost synonym with the strata living in Malaysia.<sup>2</sup> Notwithstanding the existence of laws and regulations regulating the strata living, this issue seems never find any right tuning. Basically the management of strata building derived from the stipulated rights and obligations of developers and purchasers that contain in the contract as well as statutory duties that impose on all relevant stakeholders through the Housing development (Control and Licensing) Act 1966, (“HDA”), Housing Development (Control and Licensing) Regulations 1989 (“HD Regulations”), STA and the BCPMMA.

### **2.1 Contractual Rights and Obligations of Developers and Purchasers**

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<sup>2</sup> For instance according to the statistic compiled by the National Consumer Complaint Centre, delays in obtaining strata titles and poor management of the condominiums accounts were among the top two complaints received by the organization. In 2005, the centre received 1,105 complaints related to management committees of high-rise building and in 2006, it received 1,326 complaints. See New Sunday times, February 11, 2007.

The Malaysian law via the enforcement of the HDA requires that anyone who constructed more than four units of houses shall be licensed under the Act.<sup>3</sup> The licensing requirement then will be a method of controlling the developer duties and responsibilities by the respective authorities, i.e. Ministry of Housing and Local Government and local authority. The HDA requires a licensed developer to use a standard form of contract for sale and purchase of the strata unit i.e. either schedule H<sup>4</sup> or schedule J<sup>5</sup> of the Housing Development (Control and Licensing) Regulations 1989, as the case may be. Therefore these schedules are regulated contracts that define the scope of rights and obligations between developers and purchasers. However to what extent these regulated contracts are sufficient to monitor strata development is still disputable. This issue will be discussed by looking into some clauses in the standard form of contracts that related to rights and obligations of developers and purchasers in relation to management of strata building.

a. Clause 18: Common facilities and service

This clause clearly provides that it is the responsibility of the vendor (sometimes a vendor is also a developer but not all the time this will be the case) to provide and maintain common facilities as well as to provide services to the building until the parcel unit is handed over to the purchaser.

b. Clause 19: Payment of service charge

It is provided in this clause that prior to formation of the management corporation ("MC"), the duties to maintain the building and its common facilities are imposed on the vendor-developer and purchasers have to pay the service charge to the vendor-developer. The service charge paid by purchasers will be used for managing the strata building.

c. Clause 20; Sinking fund

The clause provides that from the date the purchaser takes possession of his parcel, he is required to contribute a sum equivalent to 10% of the services charges to a sinking fund. All funds accumulated in this sinking fund, (maintained by the developer), are held in trust for all purchasers, and the developer is required to transfer any accumulated funds

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<sup>3</sup> Section 3 of the HDA. Other than that, anyone selling more than four lots of land of any category shall be licensed under the Act too.

<sup>4</sup> Schedule H is the standard sale and purchase agreement that shall be used by any of the licensed developer when selling the sub divided unit of house.

<sup>5</sup> Schedule J is similar to schedule H but it shall be used by a licensed developer that utilizes the 10-90 concepts in its housing development.

into a sinking fund established under BCPMMA (Act 663). Upon establishment of the Joint management Body (“JMB”), the sinking fund will include a portion of the contribution to the Building Maintenance Fund as may be determined by the JMB and the purchaser is no longer required to make a separate and additional payment to such sinking fund. The imposition of payment of sinking fund is to enable the JMB and later the MC to manage the building.

d. Clause 21: Insurance

The duties are imposed on developer and purchasers to insure the building. Even though this may not directly involve the management of building, but it is no doubt ensuring the building insured in case of any unforeseen incidents may be part of the action that should be taken by the management that been authorized to take care of the strata building. The common argument is whether this payment should be optional or compulsory on the strata owners. Furthermore, there should be a definite set of standard to guide the insurer and the insurance agency as well as the developer in determining the scope of areas to be covered by the insurer.

e. Clause 22: Payment of outgoings

A purchaser is responsible to pay all the outgoing starting from taking vacant possession of the parcel until the separate strata title is issued to him. This payment is important as it will include the payment of the quit rent, taxes, and other charges that are importance for management of the building.

Basically all of the above clauses explain that a developer and purchaser, both are having certain rights and obligations. Meaning that if one of the parties breaches any of these clauses they can be sued before the court of law for breach of contract. As for the purchasers, they may bring their plight to Tribunal for Homebuyers’ Claim<sup>6</sup> as avenue to enforce their rights against the neglected developer in managing the building.<sup>7</sup> Nevertheless, their claims are limited to and subject to the jurisdiction of such tribunal. With the formation of JMB under the BCPMMA and MC under the STA that having the legal entity i.e. it may sue and can be sued, these two bodies may file their

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<sup>6</sup> The Tribunal for Homebuyers’ Claim has been established via amendment to the HDA in 2002. It came into force on the 1<sup>st</sup> December 2002. See section 16B of the HDA.

<sup>7</sup> Since the enforcement of the Tribunal, the most common cases filed and tried at the Tribunal are on late delivery and defective of workmanship and material. See for instance Utusan Malaysia, 16<sup>th</sup> January 2008.

case against any developer before the Tribunal.<sup>8</sup> However since the JMB consist of purchasers and a developer; it is quite insensible that JMB will take action against a developer. Unlike the MC that is fully controlled and managed by the purchasers, it is more of common sense that the MC may sue a developer before the Tribunal or even before the ordinary court. However as the action before the Tribunal can be filed within two years after the expiry of defect liability period,<sup>9</sup> the MC may not be able to sue a developer before the Tribunal. This constraint is due to the MC is formed only after few years later in which the period to bring the case before the Tribunal has already expired. Alternatively a purchaser himself may take action against a developer for breach of contract (of the standard contract of sale and purchase of schedule H or J as the case may be) for failure of the developer to manage the strata building either before the Tribunal or the ordinary court depending on the amount of claim that he intends to claim.<sup>10</sup> Under the BCPMMA, the JMB may first refer the matter to the Commissioner of Building or COB.<sup>11</sup>

However despite the availability of the above clear rights and obligations of both a vendor-developer and purchaser as well as the existence of the Tribunal, there are many other problems encountered by both parties. It is highly expected that even if Schedule H and J of the Housing Development (Control and Licensing) Regulations 1989 are the contractual obligations in which only the party privy to the contract can take action against one another, but since it is a regulated contract, the Housing Controller should take pro-active steps in ensuring that the licensed developer will discharge their contractual duties accordingly.

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<sup>8</sup> The maximum monetary jurisdiction of the Tribunal is only RM50,000. See section 16M(1) the HDA.

<sup>9</sup> Section 16N(2)(b) of the HDA.

<sup>10</sup> For instance in the case of *Syed Azman Syed Mohamed v Liang Seng (KL) Construction Co Sdn Bhd* [1992] 3 CLJ 625. In this case, the High Court has given the defendant (a developer) one month notice to apply for a long overdue strata title based on specific performance application by the plaintiff (purchaser). This claim was based on the failure of the developer to comply with section 8 of the STA that requires a developer to apply for strata title within 6 months after the execution of the sale and purchase agreement between a purchaser and a developer. However clause 11(1) of schedule H does not stipulate any definite period for a vendor-developer to apply for a strata title. It just states "expeditiously as possible". But it shall be understood that the STA must be read with this clause and thus a developer is required to apply for a strata title within 6 months as stated above. This case shows that when there is a breach by a developer of the contractual terms of the agreement, a developer can be sued by a purchaser. Under the Malaysian Rules of High Court 1980, a group of purchasers may take a representative action against a developer if they have the same cause of action against the same developer and claiming the same remedies. See Order 15 rule 5 Rules of High Court 1980. See also the case of *Sor Kor Wah & Four others v Draland Sdn Bhd* (1998) 4 AMR 3602.

<sup>11</sup> They are normally referred to the highest post in the Local Authority.



## **2.2 Rights and Obligations of Developers and Purchasers under STA and BCPMMA**

Prior to the enforcement of the BCPMMA, many purchasers complaints that there were many developers failed to manage the buildings for various reasons. Among others, some developers chose to increase the management fees beyond the amount that is affordable by purchasers and did not keep the building in repair. They never involve the purchasers in their decisions. The problem seems to be worst before the introduction of the BCPMMA and some are still persisting. Nothing much can be done by purchasers since all rights, obligations and powers to maintain the building prior to the formation of MC is in the hand of a developer. To make the situation worse, if a developer's company winding up before the MC is being formed, what would be the fate of purchasers? The only remedy for purchasers is to channel their problems and complaints on a developer through the Residents Association (commonly known as Persatuan Penduduk) which sometimes worked and most of the times not<sup>12</sup>. It is quite difficult for the Residents Association to challenge a developer since it does not have a legal entity to sue or take any legal action against a developer. Consequently it is quite common also for the residents association to use the political connection to urge a developer or any relevant authority to do certain acts whenever no MC is been formed. However if the Residents Association is registered, those purchasers may take a representative action to sue a developer accordingly.<sup>13</sup> In short under the old law, prior to the formation of MC, it is not that easy for purchasers to take action against a developer. Under the present law, even though there are provisions giving legal avenues for the JMB to sue the developer for any dissatisfaction, the action may not seem to be the best and the most practical as the developer, under the new law forming part of the JMB. Certainly, other means of amicable actions are more practical.

Thus the introduction of new law specifically to govern the management of strata building and common property<sup>14</sup> i.e. BCPMMA may be considered as the most welcome statute governing

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<sup>12</sup> It is difficult to get even the majority consensus among the owners.

<sup>13</sup> Under the Civil Procedure, societies have a right to sue, similar to other bodies.

<sup>14</sup> Definition of common property under the BCPMMA is more comprehensive than the definition provides by the Strata Title Act 1985 and schedule H of the Housing Development (Control and Licensing) Regulations 1989. Under the BCPMMA common property includes all structural elements of the building, stairs, stairways, fire escapes,

housing law in Malaysia.<sup>15</sup> The purpose of this Act is to provide for the proper management of buildings and common property during the interim period i.e. after delivery of vacant possession by the developer to the purchasers and before the management corporation is formed.<sup>16</sup> With the introduction of this new Act, the developer is not the only party that responsible to manage and maintain the building before the formation of the management corporation, but it shall be the joining body known as JMB. The BCPMMA is designed to complement Parts VI and VII of the STA with regards to rights and obligations of owners and strata management issues.

### **2.2.1. Formation of JMB**

The idea of formation of the JMB under the BCPMMA is to fill in the gap in managing the strata building prior to the establishment of MC before the issuance of strata title. The JMB consist of the developer and all the purchasers.<sup>17</sup> The duty is imposed on developers to convene the first meeting of all purchasers within the time set<sup>18</sup>, and on its failure to do the same, the Commissioner of Building (COB) may appoint a person to convene the first meeting.<sup>19</sup>

Looking to the provisions of the BCPMMA, the duties and powers of the JMB is almost similar to the MC,<sup>20</sup> the only dissimilarity is that the developer is part of the JMB whereby under the MC, the members are totally purchasers and developer is no longer responsible in maintaining

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entrances and exits, corridors, lobbies, exterior of all common parts of the building, playing fields and recreational areas, walls and fences. As oppose to the definition under the Strata Title Act 1985, it provides a very general definition as to the “common property” i.e. so much of the lot as is not comprised in any parcel. On the other hand, schedule H broaden up the definition by providing that common property include lifts, refuse chutes, drains, sewers, pipes, wires, cables, ducts and all facilities and installations used in common by all purchasers. The authors are of the opinion that the definition of common property under the Strata Title Act 1985 is already sufficient. The definition available under the BCPMMA and schedule H is mere elaboration as to the meaning of common property under the Strata Title Act 1985. As such if there is any conflict as to the meaning of common property, all these definitions must be read together.

<sup>15</sup> The Act came into force on 12<sup>th</sup> April, 2007 and applicable to all states in Peninsular Malaysia.

<sup>16</sup> Section 4(1) of the BCPMMA.

<sup>17</sup> Section 4(4) of the BCPMMA.

<sup>18</sup> If the development is completed before 12<sup>th</sup> April 2007, and vacant possession has been delivered to the purchasers and the MC is not in existence, the JMB must be established not later than 11<sup>th</sup> April 2008.(Section 4(1)(a) of the BCPMMA. On the other hand if the development is completed on or after 12<sup>th</sup> April 2007, the JMB shall be formed not later than twelve months from the date of delivery of vacant possession of the parcels to the purchasers.(Section 4(1)(b) of the BCPMMA.

<sup>19</sup> Section 5(3) of the BCPMMA.

<sup>20</sup> Among others the JMB has duties to maintain the common property and keep it serviceable repair, fix and impose charges for the maintenance work, insure the building and apply insurance moneys received for rebuilding and reinstatement. It has power to enforce house rules and collect maintenance charges from purchasers.

the building. However having provisions on JMB on its duties, functions and powers alone will not be sufficient. There is no specific regulation that may be used by the JMB as guidelines for them to discharge their duties. In most cases, when there is any uncertainties, they need to refer to the COB and COB may suggest a solution depending on its discretion. Another hiccup is that the JMB will be formed only after the developer's account is audited by the local authority. The issue here is whether the local authorities have sufficient manpower to handle this process. It is suggested that a specific body have to be formed to manage this and other related matters relating to management of high rise living without having to recourse to the local authorities.

### **2.2.2 Joint Management Committee (“JMC”)**

JMC is the committee that is responsible to manage the JMB where it will discharge all the duties and functions of the JMB.<sup>21</sup> It consists of the developer and not less than twelve purchasers where they can hold office for a period not exceeding three years or until the dissolution of the JMB i.e. when the MC comes into existence.<sup>22</sup> It seems that the JMC will be a proper committee to deal with the management of the JMB. However the sad point that the authors wish to highlight here is regarding the penalty provision<sup>23</sup> that may be imposed on the JMC if they fail to handover to the MC the house rules, the audited accounts of the Building Maintenance Fund (or unaudited account as the case may be) all assets and liabilities of the JMB, all records related to and necessary for maintenance of building and common property upon the handing over of the duties from JMB to MC. To a certain extent, this provision can be a “mood killer” for those who are interested to involve in the management of the strata scheme. It should be understood that it is not easy to have residents who voluntarily come forward to be the JMC and this provision will certainly demotivate them. Probably the reason behind this provision is to prevent any misuse of power. As such in order to balance this possibility with the service that

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<sup>21</sup> Section 11(1) of the BCPMMA provides that the members of the JMC are appointed by the JMB at its first meeting and thereafter at its annual general meeting.

<sup>22</sup> Section 11 (2) of the BCPMMA. Paragraph 2(1) of First Schedule of the BCPMMA states that a member elected to be the JMC shall continue to be a member until he resigns, dies, becomes a bankrupt or is no longer a parcel owner.

<sup>23</sup> Section 15(3) and (4) of the BCPMMA states that the penalty is a fine of not more than ten thousand ringgit during which the offence is continued, unless the member of the JMB proves that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

rendered by the JMC, there should be a proper regulation to govern their duties and conducts and it shall not involve that kind of penalty.

### **2.2.3. Commissioner of Building (“COB”)**

Under the new law, the responsibility to control the management and maintenance of the common property and strata building that are undertaken by developer, JMB and MC is put on the COB. The main function of COB is to enforce the law based on the STA and BCPMMA. Among others, the COB is to settle the disputes arise in relation to Account of Building Maintenance, to fix the date for first meeting of the JMB (after being informed by the developer that the first meeting to set up the JMB has failed) and to appoint the management agent to handle the first meeting for JMB or maintain and manage the building if the COB satisfied that such an action should be taken.<sup>24</sup> The issue here is whether the COB that is vested to the local authorities is capable to handle all its duties besides their existing responsibility which already considered as “packed and cramped.”

### **2.2.4 Bye-Laws and House Rules**

These bye laws and house rules are meant for giving guidelines to the developer, JMB, JMC and MC on certain “do’s” and “dont’s” of the strata living communities. The STA provides the bye-laws for the regulation of sub- divided building.<sup>25</sup> The same schedules may be adopted by the JMB and later the MC since there is no standard regulation that is compulsory to be followed by these two bodies. The JMB and the MC are free to add the Third schedule with its own bye-laws and house rules. The issue here is on efficiency of the JMB and MC to assure the bye-laws and house rules are being enforced. This problem of enforcement is very much connected to attitudes of some of the occupiers of the strata building who do not really transform themselves to the style of living at the strata building.

### **2.2.5 Management Agent**

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<sup>24</sup> Section 25 BCPMMA

<sup>25</sup> Third Schedule of the STA.



The new BCPMMA as well as the STA do not distinguish the strata building i.e. whether it is a low-cost building or not.<sup>26</sup> In other words the formation of MC for all types of buildings is now upon the opening of the book of strata register. Meanwhile as far as the low-cost is concerned, the state authority may on an application of the MC or on its own motion appoint a managing agent to exercise powers and discharge duties and functions of the MC.<sup>27</sup> For other types of building the Commissioner has the power to appoint a managing agent to maintain and manage the building and the common property when all members attending the first meeting of the JMB refuse to be the JMC, or when the Commissioner satisfies that the JMB and JMC fail to maintain or manage the building satisfactorily.<sup>28</sup> The authors are of the view that the managing agent is the best solution for problems of difficulty in getting purchasers to voluntarily serve as the members to the JMC or the JMB. Another reason is that the managing agent can manage the building professionally rather than let it to the MC whose members may not knowledgeable in management. However the issue that needs to be addressed here is on the capability of the managing agent themselves. There should be proper guidelines or even may be a regulation that regulates their conduct; for instance the registration of the management agent, qualifications of their team members and records of performance. At this moment there is no clear guideline on these points. In fact, there are two schools of thought as to who is better qualified in managing the building. One group maintains that only those registered under The Valuers, Appraisers and Estate Agent Act 1981(Act 242) are qualified person while the other is in the opinion that even those (who are currently running the management of strata building) but not registered under the earlier mentioned Act are equally qualified to manage strata building. The tussle seems to continue but manageable.<sup>29</sup>

### **2.2.6 Maintenance Charges**

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<sup>26</sup> Before the amendment of the STA, section 64 of the STA, the MC of a low-cost building comes into existence only upon the completion of the transfer of strata titles in respect of all the parcels by the original proprietor, unless the order has been made by the Director on application made by the parcel proprietors (other than the original proprietor) having share units totaling more than half of total share units of all parcels.

<sup>27</sup> Section 10B of the STA.

<sup>28</sup> Section 25(1)(a) and (b) of the BCPMMA.

<sup>29</sup> See, various reports in the newspaper about the tussle and lobbying involving these groups.

A maintenance charge that has to be paid by every purchaser is determined by the JMB based on the allocated share units.<sup>30</sup> The BCPMMA provides several steps and procedures that may be taken by the JMB in order to ensure that purchasers will pay the maintenance charge accordingly. The JMB is given power to institute legal proceeding, to proceed with the warrant of attachment if necessary and auction the movable property belonged to purchasers to recover the maintenance charge.<sup>31</sup> Similar powers are given to the MC under the STA. Thus, from a legal perspective, the JMB and MC having sufficient authorities and powers under the BCPMMA and STA respectively as regard to maintenance charge. The issue here is on the enforcement of this bye-laws and house rules by the JMB or MC. It is observed the above mentioned steps may not provide the practical solution to the problem. It is suggested that other initial stage such as calling the affected non paying owners for heart to heart discussion, given a reasonable notice within more than 14 days or issue letter of demand before resorting to the above mentioned actions as provided by law are more appropriate and promoting for more conducive strata living.

#### **2.2.7 Establishment of Strata Title Board<sup>32</sup>**

Technically Strata Title Board(STB) is the best mechanism that shall be utilized to manage and maintain the strata building especially after the formation of the MC. All disputes between the MC, JMB, purchasers and other matters related to strata building supposedly to be referred to the Strata Title Board. This Board may offer one of the best mode of alternate dispute resolution that actually should be encouraged because not all cases on management of the strata title can be referred to the Tribunal. For instance the dispute between purchasers and MC cannot be referred to the Tribunal because the Tribunal is only a forum for purchasers to sue the developer. The authors are of the view that there must be specific regulations to govern the running of the Strata Title Board. The JMB and MC as well as the authorities (Ministry of Housing and Local Government and local authorities) should play a role in explaining to the strata residents the existence and functions of the Strata Title Board to the strata communities.

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<sup>30</sup> Section 23(1) and (2) of the BCPMMA.

<sup>31</sup> See section 20(2), 23(3)(4)(5),32, 33(1)(3)(4)(7)(8) of the BCPMMA.

<sup>32</sup> The Board has been established via the amendment of the STA in 2007.

### **3. Management Issues in Gated Community Development**

Prior to the amendments of the STA<sup>33</sup>, the gated community development in Malaysia is considered as illegal.<sup>34</sup> Upon the amendment, buildings of not more than four storey may be erected on the land parcels intended to be subdivided and held under separate strata titles, or an accessory parcel.<sup>35</sup> It means that all provisions under the STA will apply to the gated communities as well. Accordingly the common property within the gated communities shall be maintained by the MC. Thus the MC may enforce the bye-laws and the clauses of the Deed of Mutual Covenant (commonly known as DMC) may be added as house rules by the MC and regulate the duties and responsibilities of the parcel proprietors within the gated communities. Apart from that, the management of gated communities can now also be carried out under the BCPMMA when the MC has not come into existence. However comparatively the gated communities may not be facing many problems as the other types of strata development since the parcel proprietors of the gated communities' scheme are high-end purchasers who normally aware from the beginning of the high maintenance charge that they have to pay. The authors are of the view that the MC of the gated communities can simply appoint the management agent to maintain and manage their common properties. Nevertheless, problems may crop-up in areas or project having mixed development consist of high-end owners, middle-income and low income owners occupying low cost strata. The role of JMB and MC seems to be more and varies which also require extra experts and creativity in dealing with the issues. Again, the COB, STB and the government should play extra role in managing these types of properties including the need to fairly determine the monthly fees, the fair distribution of facilities and common areas as well as the managing dispute when necessities.

### **4. Suggestions**

**4.1 Imposition of compulsory Insurance** – role of government and complacency attitude of the consumers- It is well known fact the Malaysian are still non receptive to any kind of service charges or of its kinds including insurance scheme. This has to a certain extent

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<sup>33</sup> The amendment came into force on 12<sup>th</sup> April 2007.

<sup>34</sup> See the discussions on the illegalities and complications of the gated and guarded community prior to the amendment of the STA in 2007 in Azlinor Sufian, A Legal Perspective on Gated Communities in Malaysia, *IIUMLJ* Vol. 14 2006.

<sup>35</sup> Section 6 of the STA

form the obstacle to the imposition of compulsory insurance scheme under strata title to protect the common properties. The attitude of lack sense of belonging or selfish are the main reasons why the collection of insurance scheme is very poor. Some owners believe that since they have covered their personal unit thus it is sufficient for them and refuse to contribute for the common areas. As such the contribution for insurance against fire or defect (which is said to be introduced soon by the government) must be made compulsory and a similar effect for non payment for management charges should be enforced for non paying owners)

#### **4.2 Imposition of compulsory attendance in meeting**

It is very common to hear that the meetings cannot be convened because of insufficient quorum of purchasers attending the meeting. Nevertheless, the common question is how to impose on them? Complacency and “I don’t care” attitude seem common in urban society and education is the best mode of changing the attitude. The JMB or MC should hold more social gatherings so the community will have more opportunity to get to know each other. As such, the JMB or MC should provide facilities which provide avenue for community get together such as community hall, sports facilities, surau or mosque, library or cyber café so that they can build sense of belonging to their homes.

#### **4.3 Government Publication and Information on Strata Living,**

Since strata living is already part of the style of life in Malaysia, especially within the urban areas such as Kuala Lumpur, Penang, Johore Bahru and Ipoh, the government should have taken a progressive step in educating residents of strata building irrespective whether they are occupiers of public housing, low-cost, medium cost or high-end strata building. Public should be well informed of their responsibilities and the expectation of government (or any related authorities and bodies such as local authorities, JMB and MC) if they were to decide to be part of the residents of the strata buildings.

#### **4.4 Involvement of non-governmental organization (“NGO”)**

The NGO should actively participate in promoting awareness in all related community activities and responsibilities. Most of the problems in strata related management and maintenance are due



to lack of sense of belonging, vandalism and individualistic. In this matter, apart from the government related agencies and schools, NGO shall provide various avenues in instilling the spirit of one Malaysia moving from the awareness and responsibilities and taking care of their properties and families. In the context of strata living, they are big family residing in a big and tall building.

#### **4.5. Alternative avenues for dispute resolution**

The present laws allow the parties in disputes to refer either to the Tribunal for Housing, the Commissioner of Building or the Strata Titles Board or lastly, the court of law depending on the issues faced by them. All the bodies have their own strengths and weaknesses. Time factor and cost are two common problems faced by the disputants. It is suggested that disputants should be guided to resort to mediation which should be either provided by the ministries, or other bodies or NGO. This method provides opportunity for problems to be worked out at an early stage and it is more practical as strata community requires harmonious and peaceful living. In addition, an organization such as Community Justice Centre in New South Wales Australia can be considered for adoption as despite it is cost effective, the centre also provides faster and cheaper solution to the parties through mediation as well.

#### **4.6. Security Issues in High-rise buildings**

The global phenomena around the world should provide a strong call for a serious consideration for various effort concerning security in the Malaysian high-rise properties. Compulsory insurance coverage, earthquake warning system, fire safety package as well as close circuit television services are essential elements of security that is timely to be made compulsory in any high-rise properties without sacrificing the rights of consumers.

### **5. Conclusion**

The problems revolving the development, management and maintenance of strata properties seem to continue no end. Part of the problems is caused by the ignorance and lack of understanding of the laws and other relevant policies. The other part goes to human factors. In

addition, some of the players, the owners and other relevant parties chose to ignore the laws as the implementation of the laws, to a certain extent delay the project and the administration become more costly. It is reasonably understood that those are part of the challenges faced by the owners, developers as well as the managing agent. Nevertheless, the government is continuously playing their roles so as to make the policy more acceptable and people friendly. It is a fact that Malaysian are still learning in so many things as far strata development and management is concerned. It is the hope and expectation of all that highrise properties should not become a piece of property which increases in value but equally costly for maintenance thus in the long run it fails to offer a good investment return to the owner.

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