

**UP 054. A LEGAL PERSPECTIVE ON DEVELOPMENT OF STRATA
MANAGEMENT IN PENINSULAR MALAYSIA: A REVIEW OF THE
STRATA TITLES ACT 1985**

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ABSTRACT: The strong growth of Malaysia's economy in over the last 20 years has led to the increase in urbanization which resulted in changes in the property development. Due to scarcity of land, the housing development tremendously changed from horizontal to vertical approach. In order to facilitate this development, the Strata Titles Act 1985 (Act 318) ("STA") was introduced to regulate matters related to strata buildings inter alia on the management and maintenance of common properties. The STA has been in existence for nearly 26 years and has been amended several times. Nevertheless the problem of maintenance and management of strata building continues to be one of the biggest problems in the building industry in Peninsular Malaysia. For instance, there have been numerous complaints on maintenance and management issues involving the developer and parcel owners. The objective of this paper is to review the legal aspects of the strata management as stipulated in the STA. It is to be noted that this paper is mainly focused on the evaluation of legal provisions of statutes. The research method used in writing up this paper is the qualitative research in which it will rely on the analysis of the relevant statutes, rules, regulations, books, journals, articles, thesis, monographs, research grants reports, seminar papers, electronic materials and various newspaper reports.

Keywords: multi-storey buildings, common property, management, strata titles

1. INTRODUCTION

A multi-storey building usually comprise a building which is subdivided into parcels which includes accessory parcel(s) and provisional blocks (if any) and everything else within the said multi-storey building shall be deemed as common property (i.e. corridors, lifts, external wall, open space, water tanks etc.). As such, each parcel owner shall be responsible only on the maintenance and repair of his parcel including any accessory parcel(s). With regards to the common property, it is a shared responsibility of all parcel owners to maintain it.⁴ Hence, there is a need for a medium or in other words a "party" to facilitate the proper control and maintenance of the common property.

In order to appreciate the importance of having concrete legal provisions to govern the development of management of the strata title building in

⁴ Mohd Helmi Md. Hussain, (1992) . Strata Titles. Seminar on Malaysian Land Laws and the Latest Amendments to the National Land Code, Kuala Lumpur, p.17. Kuala Lumpur

Peninsular Malaysia, it is very important to review the status of the strata management from the first amendment of the STA in 1990 (Act A753), second amendment in 1996 (Act A951), third amendment in 2001 (Act A1107) up to the fourth amendment in 2007 (Act A1290). In addition, this paper will further explain the various issues which arose on strata management which led to these STA amendments. This paper just presents the preliminary review of the past and current legal position with regards to management of the strata building. In this context, best practices from other jurisdictions have not been taken into account to consider what model would potentially be suitable for Peninsular Malaysia.

2. STATUS OF STRATA MANAGEMENT: PRE- AMENDMENT OF STA IN 2007

Prior to the amendment of the STA in 2007, the strata management of the multi storey buildings was divided into three (3) different periods which will be illustrated further in the following sub-headings. It is to be noted that as the development of the multi storey buildings evolved, the industry was faced with various challenges in strata management. Therefore, the author will explain the different status of strata management i.e. pre and post-amendment of STA in 2007 and discuss the issues of laws that leads to the amendments.

Primarily, the management of multi storey building in Malaysia prior to the amendment of the STA in 2007 can be categorised under three (3) periods as illustrated in Figure 1 below, namely before the establishment of the MC, during the initial period⁵ and after the original proprietor has handed over the MC to the residents.⁶ The management of the two (2) former periods is temporary in nature and parcel owners have no control in managing their own property.

⁵ Under Section 4 of the STA this period in relation to the MC, means the period commencing on the day on which the management corporation is formed and ending on the day on which there are parcels owners (other than the original proprietor of the lot who is registered as the proprietor of the parcel or parcels) the sum of whose share units is at least one-third of the aggregate share units.

⁶ DBKL.(2003). Strata Title and Management Corporation. Department of Housing Management, Kuala Lumpur City Hall 1999, Home Buyer Association, "Recommendations on stratified property presented to Deputy Minister of Land & Cooperative Development on 12th June 2003 <http://www.hba.org.my>, Sopian I. (2003). Building Maintenance Management & the Quality of Condominium living in Malaysia. The 2nd Seminar of Building Management & Maintenance, Kuala Lumpur and Zuhairuse Md Darus, Ahmad Ramly, Adi Irfan Che Ani et al. Correalational study between facilities management components of multi-ownership housing in Malaysia: a case study of Klang Valley.

Period	Duration	Act	Parties in control	Remark
First	After the completion of SPA & prior to the issuance of strata titles	Schedule H of the Housing Developers Rules 1989	Developer	Control-Temporary in nature
Initial	Once the strata titles is being issued & MC is automatically established	Section 4 of the STA	Developer	Control-Temporary in nature
Final	Upon the establishment of the MC	Section 39 of the STA	Parcel owners	Control-Permanent in nature

Figure 1 : Various Periods Of Strata Management- Pre Amendment of STA in 2007 (Act A1290)

a. First Period - Prior to the Establishment of MC

During this period, it is vital to point out that the developer will be having total control and responsibility for the management of the multi storey buildings. It begins right after the completion of the sale and purchase between the developer and the parcel owners and prior to the opening of the Strata Title Register. The maximum control by the developer on the management of the multi storey buildings is determined by the requirements of the standard Sale and Purchase Agreement, in Schedule H of the Housing Developers Rules of 1989. At this point, it is critical to emphasize that under Article 16 of Schedule H of the Housing Developers Rules 1989, the parcel owners are under the obligation to pay the services charges in respect of the maintenance and management of the common property for the services provided by the developer prior to the establishment of a MC under STA.⁷

It is essential to note that the period between the submission of the application of the strata titles by the original proprietor and the issuance of the

⁷ Gurjit Singh. (1992). Condominium Management: Principles into Practice. The Surveyor Vol. 27 No. 4, 4th Quarterly 1992. pp 17.

strata titles will normally take a long time⁸. Therefore it is without any doubt that during the said long duration, the management of the multi storey building will be solely in the hands of the developer. Hence this results in various disputes⁹ over issues regarding the maintenance of the said properties.¹⁰

b. Initial Period - Issuance of Strata Title and Convening of the First Annual General Meeting of MC

It is the intention of the STA to provide the MC with a viable management structure before the original proprietor departs from the development.¹¹ However, the problems encountered by the original proprietor in convening the first annual general meeting¹² of the MC amongst others include; the time period itself, the preparation of strata roll¹³, the eligibility of parcel owners to attend the meeting, the difficulty of fixing an appropriate time for the meeting, reluctance of the parcel owners to attend the meeting or to serve as Council members.¹⁴

The core responsibility to manage the multi storey buildings during this initial period is still with the developer. This period commences before the original proprietor transfers the parcels to the parcel owners whose share units constitute

⁸ I.M.Shukri, Ainul Jaria Maidin. (2010). Malaysian Strata Titles Law and Procedure. pp 150. Sweet & Maxwell Asia, Jamila Hussain. (1999). Strata Titles In Malaysia. pp 30, 117 and 159. Pelanduk Publications. Kuala Lumpur, Halim Abdullah. (1992). Everything the condominium developer should have told you but didn't. pp 112. Pelanduk Publications, Malaysia, Khadijah Hussin and Faridah Haji Pardi, "Apartment law in Malaysia buying properties without title : legal point of view".

⁹ As highlighted by Teoh Hock Siew. (1991). Management Corporations and The Law - Insights and Challenges Ahead. Seminar on Strata Title and Management Corporation. pp 11, the problems that arises with the original proprietor managing the multi storey building prior to the establishment of the MC include issues of law, complexities of administrative and financial management and practical problems faced in handing over management to the MC upon its establishment and by Azlinor Sufian and Norasiah Mohamad. (2009). Strata Living in Peninsular Malaysia : Legal and Human Management Issues. 3rd International Conference on Built Environment in Developing Countries, School of Housing, Building and Planning, University Science of Malaysia, the problems with some developers who chose to increase the management fees beyond the amount that is affordable to the parcel owners and did not keep the building in good condition.

¹⁰ Datuk Hj Zainuddin Bachik. (2001). A letter to Kementerian Tanah & Pembangunan Koperasi regarding Amendments to Strata Titles Act 1985 dated 12th March 2001 <http://www.hba.org.my>

¹¹ Leong Hoong Wah. (1990). Management of subdivided buildings (incorporating the 1989 amendments). Seminar pindaan-pindaan terbaru Kanun Tanah Negara 1965 dan Akta Hakmilik Strata 1985. pp 24. Kuala Lumpur and Teo Keang Sood. (1987). Strata Titles In Malaysia Law and Practice. pp 79. Butterworth.

¹² Within one month from the expiry of the initial period as required by law.

¹³ According to Leong Hoong Wah. (1990). Management of Subdivided Buildings (Incorporating the 1989 amendments). Seminar Pindaan-pindaan Terbaharu Kanun Tanah Negara 1965 dan Akta Hakmilik Strata 1985, Kuala Lumpur 19th March 1990. pp.24. Kuala Lumpur, strata roll is one of the most important documents of the MC.

¹⁴ Teoh Hock Siew. (1991). Management Corporations and The Law - Insights and Challenges Ahead. Seminar on Strata Title and Management Corporation, 11th March 1991. pp.12. .

one-third of the aggregate share units.¹⁵ Following the expiry of the initial period¹⁶, the original proprietor is under the duty to convene the first annual general meeting of the MC within one (1) month failing which the original proprietors are liable for an offence which is punishable on conviction with a fine of not exceeding one thousand Ringgit Malaysia.

In such event, the MC, a parcel owner or a chargee may apply to the Director¹⁷ to appoint a person to convene the first annual general meeting of the MC within such time as may be specified by the Director.¹⁸

It is pivotal to note that the duty of the original proprietor to manage the multi storey building during the initial period ends when the first annual general meeting of the MC has been successfully convened. The second phase of managing the multi storey building is set where the running of the MC takes on a more proper footing. At this point, the MC can be said to begin functioning in the total representative manner as envisaged by the spirit of the law, with the departure of the original proprietor of the multi storey building development.

c. Final Period - Establishment of the MC

Following the above discussion, the developer will first be a one-man corporation managing the multi storey building until the developer transfers the strata titles to the parcel owners. At this juncture, the developer will be keen to hand over the management to the MC. This is due to the fact that it is usually difficult to collect maintenance fees and carry out other administrative functions expected of the developer. Further to that, the developer will be obligated to call the first Annual General Meeting (AGM) within one month of the initial period. Despite the importance of these meetings, it has been observed that the participation by parcel owners is not very encouraging. The lack of participation may be attributed to the ignorance, a "cannot-be-bothered" attitude and other prevailing personal commitments which will take priority over the parcel owners' attendance to the said meeting. Some of the parcel owners would also argue that the burden of maintaining the multi storey building is actually the obligation of the developer. In addition, there

¹⁵ Leong Hoong Wah. (1990). Management of Subdivided Buildings (Incorporating the 1989 amendments). Seminar Pindaan-pindaan Terbaharu Kanun Tanah Negara 1965 dan Akta Hakmilik Strata 1985, Kuala Lumpur 19th March 1990. pp.21. Kuala Lumpur

¹⁶ Section 41(1) and paragraph 8(2) of the STA.

¹⁷ Director of Lands and Mines or the Land Executive Committee.

¹⁸ Section 41(2)-(3) of the STA.

are a significant number of parcel owners who purchased the parcel not for the purpose of personally occupying the parcel, but solely for investment purposes.¹⁹

Another reason the responsibility of managing the multi storey building falls on the shoulders of the developer is because of the delay in the issuance of strata titles. It proves to be an extra burden where cost and staff need to be involved to manage the multi storey building. The burden of existing staff increases because they need to take time off to settle the problems of the parcel owners. It is noted that the developer cannot discharge their responsibilities towards the management of the multi storey building until the MC can be officially established.

From the above discussion, it is clear that the management concept incorporated in the STA should be one of "self-management" by the members of the MC. Nevertheless, it has been found that the reluctance on the part of the parcel owners to interest themselves in the overall affairs of the MC constitutes a major and significant obstacle in the management of the multi storey buildings. In that respect, it is found that various problems²⁰ were encountered in the implementation of the STA with regards to the management of multi storey buildings.

Although the MC had come into existence when the book of strata register has been opened and the strata titles have been issued, the first annual general meeting of the MC cannot take place until at least a quarter of the aggregate share units have been registered in the name of the parcel owners.²¹ Over and above this requirement, the first annual general meeting must be held within one month after the expiry of the initial period.²²

In this regards, any delay in convening this first annual general meeting of the MC will mean that the parcel owners are unable to elect a Council to exercise the powers and perform the duties of the MC. Therefore, in practical terms, the MC

¹⁹ Edmund H.C Ng. (1981). Management Corporations. The Surveyor Vol. 16 No. 2 1981 April/June. pp 39.

²⁰ As highlighted by Teoh Hock Siew. (1991). Management Corporations and The Law - Insights and Challenges Ahead. Seminar on Strata Title and Management Corporation, 11th March 1991. pp11, the problems that arises with the original proprietor managing the multi storey building prior to the establishment of the MC include issues of law, complexities of administrative and financial management and practical problems faced in handing over management to the MC upon its establishment and problems mentioned in sub heading (b) of 3.1. and by Azlinor Sufian and Norasiah Mohamad. (2009). Strata Living in Peninsular Malaysia : Legal and Human Management Issues. 3rd International Conference on Built Environment in Developing Countries, School of Housing, Building and Planning, University Science of Malaysia 2nd-3rd Dec 2009, the problems with some developers who chose to increase the management fees beyond the amount that is affordable to the parcel owners and did not keep the building in good condition.

²¹ Andrew Wong. (2008). Penal Sanctions for Not Completing transfer of ownership of Strata Titles. Rehda Bulletin February 2008. pp 4.

²² Teo Keang Sood. (1986). The strata Titles Act 1985 – A legal view point (Part II). The Surveyor Vol. 21 No. 2, 2nd Quarterly 1986. pp 93.

has power to control all the management related activities after the first annual general meeting has been conducted.²³

3. STATUS OF STRATA MANAGEMENT: POST - AMENDMENT OF STA IN 2007 (ACT A1290)

The position after the amendment of STA in 2007 is actually connected with the enforcement of Building and Common Property (Maintenance and Management) Act 2007 ("BCPMMA")²⁴, where the management of strata building is divided into three (3) different periods as illustrated in Figure 2. The first period is known as the "Initial Period" which begins from the handing over of the vacant possession to the parcel owners by the developer. The second period is known as the "Interim Period", which takes effect twelve (12) months after the vacant possession. During the this period, the developer is responsible to call for the first Annual General Meeting²⁵ of a JMB which comprises of the developer and parcel owners. Meanwhile the third period is known as the "Final Period" which will commence from the first MC meeting. During the two (2) former periods, the management of the multi storey building is being governed by the newly introduced BCPMMA.

The main purpose of the BCPMMA is to provide for the proper maintenance and management of buildings and common property after the delivery of vacant possession by the developer to the parcel owners and before the MC comes into existence.²⁶ The BCPMMA is designed to complement Parts VI and VII of the STA with regards to the rights and obligations of parcel owners and management issues.²⁷ It is aimed at a more systematic approach to eliminate problems related to the maintenance and management of common property.

²³ Zuhairuse Md Darus, Ahmad Ramly, Adi Irfan Che Ani et al. (2007). Co-relational study between facilities management components of multi-ownership housing in Malaysia: a case study of Klang Valley.

²⁴ which came into force in 12th April 2007.

²⁵ In cases where the building concerned was completed before the commencement of BCPMM Act, the developer has a duty to convene the first meeting of the JMB no later than 12 months from the commencement of the BCPMM. In cases where the building is completed on or after the commencement of the BCPMM Act, the meeting must be held no later than 12 months from the delivery of vacant possession to the purchaser.

²⁶ Andrew Wong Fook Hin. (2007). Strata-maintenance of a building Part I. The Sun - Law & Realty 1st June 2007 <http://www.hba.org.my> 10/18/2008

²⁷ Building and Common Property (Maintenance & Management) Act 2007 (Act 633) — Highlights (Part I) by National House Buyers Association published in Iproperty Magazine. 15th November 2007. pp 1.

Period	Duration	Act	Parties in control	Remark
Initial	Begins from the handing over of the vacant possession	BCPMMA	Developer	Control- Temporary in nature
Interim	Takes effect twelve (12) months after the vacant possession	BCPMMA	JMB – parcel owners & developer	Control- Temporary in nature
Final	Upon the establishment of the MC	STA	MC – parcel owners	Control- Permanent in nature

Figure 2 : Various Periods Of Strata Management- Post Amendment of STA in 2007 (Act A1290)

a. Initial period - Handing Over of Vacant Possession

It is important to note that during this period, the parcel owners are not involved in the management and maintenance of the multi storey building. The responsibility to manage the multi storey buildings is solely on the developer. However, it is worth to note that with the current position and amendments to the STA, the parcel owners are at least assured that the developer is only having control over the management of the multi storey building for a one year term. At this juncture, the role and responsibilities of developer of multi storey buildings are limited to only one (1) year from the date of the delivery of vacant possession of the parcel.

b. Interim Period - Twelve Months After Vacant Possession

During the interim period, it is pertinent to note that the Joint Management Body²⁸ ("JMB") must be formed to manage and maintain the common property²⁹ until the

²⁸ JMB is a body corporate, having a common seal and therefore can sue and be sued in its name. JMB shall be deemed to be dissolved three (3) months from the date of the first meeting of the MC.

²⁹ Section 2 of the BCPMM Act defines common property more exhaustively than the STA and the Schedule H agreement under the Housing Development (Control & Licensing) Regulations 1989.

issuance of strata titles and formation of the MC.³⁰ JMB is an interim body established for the period before strata titles are issued and owners' MC is being established to take over from developer.³¹ Appropriately, when the JMB is formed, the parcel owners will be able to take active part in the management of the multi storey buildings development prior to the formation of the MC.

It is the duty of the developer to convene the first meeting of all parcel owners within the time frame i.e. not later than 12 months from the date of delivery of vacant possession of the parcels to the parcel owners.³²

At its first meeting, the JMB shall elect a Joint Management Committee³³ ("JMC") which shall consist of the developer and not less than five and not more than 12 parcel owners. A parcel owner who is elected to the JMC can only hold office for a period not exceeding three years or until the dissolution of the JMB when the MC comes into existence.³⁴

Under any circumstances, in the event that the developer fails to convene this first meeting, the developer shall be liable to a fine not exceeding RM20,000 or imprisonment for a term not exceeding three months or both³⁵. It is crucial to point out that the developer is responsible for the maintenance works including the responsibility to insure the building against fire and other risks until the JMB is established.

³⁰ Act comes under scrutiny. The Star 30th July 2007 Monday <http://www.biz.the.star.com.my>

³¹ Dato' Ahmad Fuad Ismail. (2007). *Perlaksanaan Akta Bangunan Dan Harta Bersama (Penyenggaraan Dan Pengurusan) 2007 Bagi Menangani Masalah Penyelenggaraan Dan Pengurusan Bangunan Dan Harta Bersama*. Persidangan mempertingkatkan system penyampaian perkhidmatan kerajaan – penambahbaikan urusan-urusan pemajuan serta penyelenggaraan dan pengurusan hartanah, 14th April 2007.pp7, Lee Siew Lian. (2008). Opinion : Apartment owners trapped in a limbo. New Sunday Times Sunday 4th May 2008 <http://www.malaysianbar.org.my> 10/17/2008, Nicholas Chang Chen Seng. (2007). Management of a strata titled development Part II. The Sun, Friday 23rd February 2007 <http://www.malaysianbar.org.my> and David Soong. (2007). Property: Joint Management Bodies- the missing link between Developer and Purchaser. Resume Summaries & Essays On Practice Issues Volume 1/2007. pp 7.

³² David Soong. (2007). Property: Joint Management Bodies- the missing link between Developer and Purchaser. Resume Summaries & Essays On Practice Issues Volume 1/2007. pp 7.

³³ Proceedings of the JMC are regulated by the First Schedule of the BCPMM Act and it is pertinent to note that the developer has a vote in the JMC even though the developer has no right to vote at the first meeting of the JMB. A member elected shall continue to be member of the JMC until he resigns, dies, becomes a bankrupt or is no longer a purchaser.

³⁴ Dato' Ahmad Fuad Ismail. (2007). *Perlaksanaan Akta Bangunan Dan Harta Bersama (Penyenggaraan Dan Pengurusan) 2007 Bagi Menangani Masalah Penyelenggaraan Dan Pengurusan Bangunan Dan Harta Bersama*. Persidangan mempertingkatkan system penyampaian perkhidmatan kerajaan – penambahbaikan urusan-urusan pemajuan serta penyelenggaraan dan pengurusan hartanah, 14th April 2007.pp 8 and Andrew Wong Fook Hin. (2008). Maintenance of a building before management corporation is formed-Part I. <http://www.malaysianbar.org.my> 10/18/2008

³⁵ Section 5(5) of the BCPMM Act.

Consequently its duties and powers under the BCPMMA tend to mirror those of the MC under the STA. On that account, the JMB is required to perform all acts required for the proper maintenance and management of the buildings.³⁶ The JMB is empowered to collect maintenance charges from parcel owners and deal with it for the benefit of all the parcel owners in connection with the common property.

It is crucial to note that the JMB shall be dissolved three months from the date of the first general meeting of the MC. In essence, there is also an election of Council members during the first meeting of the MC although the same set of owners of the same multi storey building could be elected.

By virtue of this Act, it is fundamental to acknowledge the transitional function and role of the Director³⁷ to the new authority known as the Commissioner of Building³⁸ ("COB"). The COB is a new authority established by the State Authority to oversee and enforce the developer, JMB, MC and parcel owners respectively; in maintaining or managing the building satisfactorily. The COB is also responsible for adjudicating all recovery procedures against errant parcel owners.³⁹ It is prudent to note that the COB has the power to appoint a managing agent⁴⁰ to maintain and manage the building or land intended for subdivision or common property. This can take place when all the members present at the first meeting of the JMB refuse to be members of the JMC. Over and above this, the COB is also empowered to appoint the managing agent when the COB is convinced that the developer or the JMB is not maintaining or managing the building satisfactorily.

c. Final Period - Establishment of MC

As discussed earlier, upon issuance of the strata title⁴¹, the MC will be established. However, this final period will commence from the first MC meeting date. The primary duties of the MC of multi storey buildings development are found in the STA. The duties of the MC include the MC's duty to control, manage and maintain the common property of the multi storey buildings development for the benefit of all the

³⁶ David Soong. (2007). Property: Joint Management Bodies- the missing link between Developer and Purchaser. Resume Summaries & Essays On Practice Issues Volume 1/200. pp 7-8.

³⁷ Land Administrator or Director of Land and Mines.

³⁸ As stated under section 3 of the BCPMM Act.

³⁹ "Act comes under scrutiny", The Star 30th July 2007 Monday <http://www.biz.the star.com.my>

⁴⁰ Section 25 of the BCPMM Act states that where (a) a situation under subsection 6(7) occurs or (b) the Commissioner is satisfied, after due inquiry has been carried out by him or a person appointed by him, that the maintenance and management of a building is not carried out satisfactorily by the developer or the Body, as the case may be, the Commissioner may appoint, by a written notification, one or more persons to act as managing agent to maintain and manage the building for a period to be specified by the Commissioner.

⁴¹ Pursuant to Section 39 of the STA.

parcel owners. The MC is entrusted with the responsibility to ensure that, on the whole, the management of the common property would be for the benefit of all the parcel owners.⁴²

4. LEGAL IMPROVEMENT OF THE STA TO STRENGTHEN THE MC'S POWERS AND FUNCTIONS

The STA was amended for the first time in 1990 and this was gazetted as Act A753, which came into force on the 23rd February 1993. The amendments⁴³ amongst others imposed additional functions on the MC⁴⁴ and to make more stringent limitations on the power of the MC on the maintenance fund⁴⁵ and also common property⁴⁶. This amendment further clarified some doubts on the definition of the 'proprietor' in the STA⁴⁷. It also empowers the MC, in the event of default by the parcel owner, to apply to the Land Administrator for the issuance of warrant of attachment authorising the attachment of any movable property belonging to the parcel owner⁴⁸. In addition, it emancipates the validity of the AGM of the MC notwithstanding the fact that it was held out of the fifteen (15) month period⁴⁹. Nevertheless, a penalty is to be imposed on the failure to comply to the said time requirement⁵⁰.

After the first set of amendments, there were further problems encountered by MC relating to the management of the multi storey buildings. This resulted in the

⁴² Nicholas Chang Chen Seng. (2007). Management of a strata titled development Part I. The Sun, 16th February 2007. Friday <http://www.malaysianbar.org.my>

⁴³ Leong Hoong Wah. (1990). Management of Subdivided Buildings (Incorporating the 1989 amendments). Seminar Pindaan-pindaan Terbaharu Kanun Tanah Negara 1965 dan Akta Hakmilik Strata 1985. Kuala Lumpur 19th March 1990.

⁴⁴ inserted paragraph 5(e) of the Third Schedule, without delay enter in the strata roll any intended change or any other dealing notified to it pursuant to subparagraph (g) of paragraph (1) of by-law 2.

⁴⁵ amended section 45(2), to invest any moneys in the Maintenance Fund, but only in such investments or in such manner as may be approved at the general meeting. Prior to the amendment, the MC may invest any moneys in the Maintenance Fund as it thinks fit.

⁴⁶ deleted section 47(1)(d) which empowers the MC to dispose of part of the common property to create a new parcel and substituting section 42(2)(ii) with a provision to expressly disallowing the MC to transfer any part of the common property which forms part of the building or of the land on which the building stands.

⁴⁷ the definition of 'proprietor' has been amended to expressly state that it refers to a proprietor of a parcel and a proprietor of a provisional block.

⁴⁸ section 53A has been inserted which corresponds to section 367A of the NLC which has since been repealed under the Fourth Schedule of the NLC. Nevertheless it continues to apply to MC established under the NLC by virtue of section 82(3) of the NLC.

⁴⁹ insertion of second proviso, paragraph 8(2) of the Second Schedule, that the holding of any annual general meeting out of time in breach of the fifteen month period shall not affect the validity of the annual general meeting.

⁵⁰ section 81(3) on MC should take note that the Strata Titles Rules may prescribe a penalty of a fine not exceeding one thousand ringgit for failure to comply with any of those requirements.

second set of amendments to the STA which was passed by the Parliament on 10th June 1996 and gazetted as Act A951.

In connection with the second set of amendments, it is to be noted that the original definition of “unanimous resolution” is quite stringent. The original definition requires those who are entitled to vote either personally or by proxy, to agree to the motion at the duly convened meeting. However, the new amendment⁵¹ has “relaxed” the provision relating to the need for a unanimous resolution. For that reason, after the said amendment, the requirement now is that at least twenty one (21) days notice is required for any proposed resolution. During a duly convened general meeting of the MC, any resolution may be passed and no vote is required to be casted.

In respect of “special resolutions”, the original definition prior to the amendment requires at least $\frac{3}{4}$ of the parcel owners holding at least $\frac{3}{4}$ of the aggregate share units to give notice of the proposed resolution. The said proposed resolution requires at least fourteen (14) days notice before a general meeting, in order for the said resolution to be duly passed in the meeting. In the new definition after the amendment⁵², the new requirement is that at least $\frac{1}{4}$ of the parcel owners holding at least $\frac{1}{4}$ of the aggregate share units must give notice of any proposed resolution, which needs to be given at least fourteen (14) days before a general meeting, in advance of any resolution which may be passed at the meeting.⁵³ With these amendments in place, it eased some difficulties faced by the MC in the management of the multi storey building.

Thereafter, the STA was again amended in 2001 which came into force on the 1st December 2001 and it was gazetted as Act A1107. This amendment helped streamline the areas of ineffectiveness of the STA and was intended to resolve disputes with regards to the smooth running of the MC. The most outstanding provision under this amendment is the setting up of the Strata Titles Board.⁵⁴ Further to that, in connection of ensuring the continuous positive performance of the MC,

⁵¹ It amended the definition of “unanimous resolution” to facilitate the management of the multi storey building.

⁵² It deleted paragraph 18 of the Second Schedule as the definition of “special resolution” is now introduced into Section 4 pertaining to the interpretation.

⁵³ Cheah Gaik Lian, “Strata Titles Amendments: An Overview”, *Seminar On Malaysian Land Laws, Kuala Lumpur, 1st August 1996*, p.7-8.

⁵⁴ Dr. Azimuddin Bahari. (2001). Latest Amendments of the Strata Titles Act 1985. National Convention on Strata Titles 2001, Melaka, 5&6 November 2001, pp 4 states that the provisions pertaining to the establishment of the board are under Sections 67A to 67X. With the establishment of the board, disputes between parcel owners and MC can be resolved without going to the courts and to that effect it will greatly reduce the burden of the courts.

new provisions have been inserted⁵⁵. Numerous sections and sub-section are being inserted and substituted in order to provide more protection on the interest of the parcel owners⁵⁶.

The most current amendment to the STA was made effective in 2007. It came into force on the 12th April 2007 and was gazetted as Act A1290. This latest amendments modified, deleted and substituted the provisions of the STA to improve numerous issues with regards to the administration before and after the strata titles are issued. The purpose of the amendments⁵⁷ were to overcome problems and challenges faced, to improve the functions of MC and to eliminate shortcomings in the existing provisions.⁵⁸ The most fundamental part to this set of amendments is the introduction of the new BCPMMA. Appropriately, under the BCPMMA, the roles of the developer, parcel owners and MC are clearly defined. It also introduced three

⁵⁵Several new sub-sections have been inserted in section 53A :- a. sub-section 2A, if the MC encounters difficulties in executing the warrant, it may seek the assistance of a police officer not below the rank of inspector; b. sub-section 3A, any tenant, sub-tenant or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the MC by the parcel owner, pays such sum may thereafter, in the absence of any written agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the parcel owners, and may retain possession until such amount has been fully reimbursed to him whether by deduction from the rent or otherwise; c. sub-section 3B, the receipt issued by the MC for any amount so paid by any such tenant, sub-tenant or occupier shall be deemed an acquittance in full for the like amount of rent and further to that a new section 55A has been inserted where any proprietor has failed to pay the contribution demanded by the MC in the manner set out in section 53, the proprietor shall be guilty of an offence and shall be liable on conviction pay a fine of not more than RM5,000.00 and an additional fine of not more than RM50.00 for each day the offence continues to be committed.

⁵⁶ i. in section 41 of the STA, sub-section (ba) was inserted under (b) which states, 'to determine the portion of contribution to the MF to be paid into the special account to be maintained under section 46'; ii. a new section 41A was inserted to protect the interest of parcel owners who are a minority where the first annual general meeting of a MC in respect of a multi storey building has not been convened. The owner of each of the parcels or provisional blocks, if any, in the sub-divided building shall, commencing from the opening of the book of the strata register in respect of the multi storey building, pay to the MC any such sum which has been approved by the Director as the amount payable for the maintenance of the multi storey building and the common property and such sum shall be deemed to be the amount determined by the MC as the contributions payable by the parcel owners to the management fund of the MC; iii. the original section 50 is being substituted by the new section 50 whereby the Director has the authority to appoint Managing Agents. In the substitution, the Director may, upon complaints by a proprietor or any other person or body having a registered interest in a parcel that the MC has not functioned satisfactorily. Further, if the Director is satisfied that it is in the interests of the parcel owners in the multi storey building concerned is going to be effected, then the Director may appoint a managing agent to exercise the powers and discharge the duties and functions of the MC.

⁵⁷ As discussed in great length by I.M. Shukri ,Ainul Jaria Maidin. (2010). Malaysian Strata Titles Law and Procedure. pp 44-62. Sweet & Maxwell Asia

⁵⁸I.M.Shukri ,Ainul Jaria Maidin. (2010). Malaysian Strata Titles Law and Procedure. pp 5,10,44. Sweet & Maxwell Asia

(3) new bodies in order to implement proper building maintenance, namely the JMB, the COB and managing agent.⁵⁹

5. CONCLUSION

In view of the above discussions, it can be safely said that there is a constant need to address the changing needs to manage the multi storey buildings. One of the mechanisms is by way of strengthening the legal provisions of the relevant statutes. Although there were four (4) fundamental amendments which have been successfully promulgated, it appears that a pro-active action should be taken in order to continuously address the issue of the management of the multi storey buildings in terms of debt recovery from the parcel owners and handing over of management from the developer to the parcel owners.

From the articulation of the various periods of the strata management, there appears to be more harmony in the multi storey buildings living; which will be achieved if the development is managed properly, the common property and facilities are maintained adequately and regularly. In view of the above, this can be achieved if the relevant parties involve comply to the existing rules and regulations.

⁵⁹ "Act comes under scrutiny", The Star 30th July 2007 Monday <http://www.biz.the-star.com.my>, Building and Common Property (Maintenance & Management) Act 2007 (Act 633) – Highlights (Part I) by National House Buyers Association published in Iproperty Magazine, 15th November 2007 pp 1.