

Strata Titles Act 1985 -Legal Needs, Implications and Impacts of the Recent Amendments: Part I

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Abstract

One of the present trends of the construction industry is on the construction of high-rise buildings which is to accommodate the growth in demand for property within the cities where land is a scarce resource. The requirement of ownership especially in the residential and commercial sub-sectors requires the sub-divisions of buildings which will give rise to demands for strata titles. In comparison to properties issued with land titles, properties issued with strata titles have three main stages instead of one. There are the pre-issuance, the issuance and post issuance stages. During the pre-issuance stage there are issues on meeting the requirements of the law for application of titles and the issues on building management by the developers. During the issuance stage there are issues of owners who pass away and companies that have wound up or are declared bankrupt and at the post-issuance stage, there are issues again on building management, this time under the management corporations. These issues have given rise to problems over the implementation of the Act and hence the Act was recently amended to meet the needs. One of the major amendments under the Act is the establishment of the Strata Titles Board. These amendments are not conclusive and are subject to further amendments in future.

Keywords: strata titles, sub-divided buildings, management corporations, strata titles board

Introduction

A present trend in the construction industry is that it is moving towards the construction of high rise buildings especially in the residential and commercial sub-sectors and, to a lesser extent, the light industrial sub-sector of property development. From the demand and supply perspective, rapid urbanisation, high population growth, increase in investment opportunities as well as increasing job opportunities in the cities are making land a scarce resource. The logical response is to maximise land use by building upwards.

Given that such is the case with land development, it follows that this will give rise to a compelling demand for strata titles to the individual units in the high-rise buildings. Undoubtedly, strata title is paramount to purchasers as proof of ownership on property. As evidence, 6,135 strata title applications involving 329,401 parcels have been received by 31 December 2000, of which 169,651 strata titles have been registered.

A comparison of the number of applications received and the number that have been processed shows the occurrence of some delay. On top of this, some developers of completed high-rise buildings have yet to apply for strata titles.

In contrast with landed properties such as houses where buildings sit on individual parcels of land, the development process on high-rise buildings does not end with the issuance of strata titles to the individual units. Other components in the process involve the management and maintenance of the buildings both before and after the issuance of strata titles. In other words, when buildings are subdivided for the issuance of strata titles, there is the pre-issuance phase, the issuance phase and the post-issuance phase.

The presence of these different components peculiar to multi-storey buildings requiring

strata titles, requires an effective legal framework. This framework is provided for by the various provisions under the Strata Titles Act 1985 that regulate the requirements for issuance of strata titles and other related matters. Nevertheless, there are also legal implications over its application. Hence, it is best to look at the requirements for the issuance of strata titles and other related issues. The discussions should be followed by looking at the implications of implementing the Act.

Basic Requirements For Issuance of Strata Titles

- Strata titles can only be registered and issued when the following basic requirements are met.:
 - a. There is a completed building on the land;
 - b. The building has two or more storeys, whether above or below the surface of the land;
 - c. The land is held under one lot;
 - d. The land is alienated land; and
 - e. The land is held under final title.

Application for Strata Titles

- The time taken for issuance of strata titles very much depends on whether the developers' submissions meet the requirements of the Strata Titles Act 1985. It is therefore necessary for developers to keep a check-list of the procedures and the requirements to be followed in their application for strata titles. A check-list that can be used as a guide for applying strata titles is as follows:

a. Application Form

The application for strata titles is to be made by using Form 1 under the First Schedule to the Strata Titles Act 1985. The form has to be signed by the proprietor/owner of the land.

b. Submission Requirements

- (i) the application fee as prescribed in the State's Strata Titles Rules;
 - (ii) 3 copies of approved building plan;
 - (iii) 3 copies of proposed strata plan which consists of the location plan, and the storey plan of the building which has been certified by a land surveyor;
 - (iv) permit to use air space, if applicable;
 - (v) certification by the architect, if applicable;
 - (vi) where applicable, the written consents of the chargee, lessee or lien-holder of the land, or chargee and lien-holder of the lease;
 - (vii) the issue document of title to the land;
 - (viii) 3 copies of the certified plan of the lot which has been approved by the Director of Survey, if the land is held under qualified title; and
 - (ix) where phased development is involved, 3 copies of the approved building plans of the provisional blocks, the location plan and 3 copies of the storey plan of the provisional blocks, and the proposed quantum of share units.
- In making the application, one of the most important factors to consider is the allocation of share units to each of the parcels to be issued with strata titles. There are a number of factors which may be taken into account in allocating share units to individual parcels. These include the sales price, floor area, or location, and whether there is any accessory attached to it,

e.g. a car parking bay. Generally, the floor area factor is usually adopted. However, if the development is a mix of commercial complex and condominium developments, then it may be based on the sales price. It may also be based on the floor area x a factor of 1 for condominium unit and a factor of 1.5 for a commercial unit. This is to distinguish the values between the two properties.

- With all the necessary requirements, the developer/proprietor then submits the application to the Land Office. In practice, the licensed land surveyor is usually engaged to prepare the application. This is the first of a 12-step process for strata titles. It should be pointed out that the Strata Titles Act 1985 was amended for the second time in 1996 to provide some leeway in enabling the developers to submit their applications very much earlier. Firstly, developers are now allowed to apply for strata titles although the land is still held under qualified title, but provided that a certified plan has been approved by the Director of Survey. However, the approval can only be granted when the final title is available. Secondly, developers are also allowed to apply for strata titles although the completed building has yet to be issued with a certificate of fitness.

These amendments are aimed at shortening the processing time for strata titles. The time frame set for the issuance of strata titles is 12 months, provided that the applications are complete and fulfill the requirement of, and the conditions for approval under, the Strata Titles Act 1985.

- Developers are also reminded of their legal duty to apply for strata title. Section 8 of the Strata Titles Act 1985 makes it mandatory for developers

who have sold or agreed to sell any of the parcels, to apply for strata titles within the specified time period. Generally, it is 6 months from the date of the issuance of the certificate of fitness. The penalty for failing to do so is a fine not exceeding RM5,000.00 and a further fine not exceeding RM1,000.00 for each day the offence continues to be committed. It has been observed that the penalty is too light to enforce conformance on the part of the developers. In the light of this, a higher amount was substituted in the recent amendment of the Strata Title Act 1985. The details of the amendments will be discussed later in the paper.

Management Of Buildings Upon Issuance of Strata Titles

- The issuance of strata titles constitutes only one part of the subdivision of buildings. The other part, management of building, represents a permanent duty that has to be shouldered as long as the strata titles exist. The management aspect is regulated in the Strata Titles Act 1985 because strata title ownership does not merely involve the individual ownership of the property, but also common ownership of areas outside the individual property which is known as common property. It is for this reason that the Strata Titles Act 1985 provides that the management of the building is to be undertaken collectively through a body known as the Management Corporation.
- Under the Strata Titles Act 1985, A Management Corporation is a body corporate to be established upon the registration of strata titles. As a collective body, the Management Corporation comprises all strata title owners. The Strata Titles Act lays down

a comprehensive code of regulations governing the management of buildings by the Management Corporation. It includes the duties and powers of the Council elected to carry out the duties and powers of the Management Corporation, the convening of meetings, the rights and obligations of parcel proprietors, and record-keeping.

Despite the several amendments made to the Strata Titles Act 1985, for the first time in 1990 and again in 1996, the Act is still seen as ineffective in meeting the needs of the affected public. Developers were still slow when it comes to submitting their applications, or worse, failed to submit their applications at all. Another outcome is that the Act lacks adequate provisions to handle particular issues and, as a result, there is an increasingly high number of complaints and reports on disputes occurring between the parcel owners themselves or between the parcel owners and the Management Corporations received by the Ministry of Land and Cooperative Development as well as the State Authorities. At present, excluding the state authorities, the Ministry has received 185 complaints on the management of multi-storey buildings. More than 80 per cent of the complaints come from the Federal Territory of Kuala Lumpur, Penang and Selangor. Among the complaints are poor keeping of account books and the minutes of the annual general meetings or subsequent meetings by the Management Corporations; the non-audit of Management Corporations' management funds; failure to conduct council meetings and annual general meetings by the Management Corporations; parcel owners' refusal to contribute towards the management funds under the Management Corporations; inadequate funds to manage the buildings; disputes between the parcel owners themselves and disputes between the parcel owners and the Management Corporations. The Management Corporations have to take their own initiative to resolve the disputes but when faced with complex situations, the corporations are not able to handle them.

Under such circumstances, the interference of the State Director of Lands and Mines is necessary but act more in an advisory capacity. As a last recourse, the matters have to be brought before the courts.

Obtaining remedy through the courts is costly and time-consuming. It is therefore very necessary to create mechanisms for handling disputes speedily. In view of such needs, the Act was further amended in early 2001.

The Recent Amendments of The Strata Titles Act 1985

The Strata Titles Act 1985 was again amended in 2001 to help address inadequacies in the Act. The amendments to the Act were intended to resolve disputes with regard to the running of the Management Corporations; overcoming delays in the application of strata titles; simplifying applications for strata titles; and above all, to promote conduciveness for harmonious living among parcel owners in this fairly new concept of community living under one roof and with common facilities to share. The most outstanding feature under this new amendment concerns the formation of the Strata Titles Board, which comes under Sections 67A to 67X of the new amendments. The Board's functions are similar to the one under the Australian and Singaporean acts on strata titles. With the establishment of the Board, all disputes be resolved without going to the courts and this greatly reduces the courts' burden. The provisions regarding the Strata Titles Board are discussed in detail later.

Apart from providing for the establishment of the Strata Titles Board, other provisions deemed necessary have been included in the amendments.

- **Amendment of Section 8 - Penalty for non-compliance**

Before the amendment, when an application for strata title is not made within the period specified, the

proprietor shall be subjected upon conviction to a fine of not exceeding RM5,000.00 and a further fine of not exceeding RM1,000.00 for each day the offence continues to be committed. In order to force developers to submit their applications for issuance of strata titles, the new amendment raised the fine to not less than RM10,000.00 but not more than RM100,000.00, and to a further fine of not less than RM100.00 but not more than RM1,000.00 for each day the offence continues to be committed.

- **Amendment of Section 15 - Registration of Caveats**

Caveats are registered in the master title of the main land lot of the subdivided buildings. This form of registration causes delay in the registration of strata titles as the caveats have to be endorsed on all the strata titles of the unit parcels in the building. At the same time, it creates inconvenience for the parcel owners to carry out dealings on their unit parcels. Under the new amendments, in order to simplify the registration of caveats, the Registrar shall, in the case of private caveats appearing on the register document of title to the lot, if satisfied that such caveats affect only particular parcels created on the subdivision, endorse such caveats on the register documents of title to the parcels in question. When the Registrar is unable to ascertain the caveats which affect the particular parcels, he may endorse a statement in Form 3 to the effect that the lot is so subject to the caveats entered on the register document of title to the lot. This is with the condition that if the Registrar may at any time thereafter that it can be ascertained that such caveats relate to particular parcels, endorse such caveats on the register documents of title to the parcels in question.

- **Amendment of Section 25 - Amalgamation of Parcels**

The amendment allows for amalgamation of parcel units even though it results in the creation of new common property areas. In this case, a parcel proprietor may, with the approval of the Director of Lands and Mines (DLM), divide his parcel into two or more new parcels, each to be held by him under a separate strata title; or where he holds two or more contiguous parcels, amalgamate them to form one parcel to be held by him under a single strata title. Under the new amendment, where the division of a parcel or the amalgamation of two or more parcels results in the creation of any additional or new common property, the proprietor shall obtain the written consent of the management corporation before making the application under section 28 for the approval of the Director of Lands and Mines.

- **New Section 33A - Common Property**

In relation to Section 25, upon registration of the strata title or titles to the new parcel or parcels and upon the division or amalgamation, the parts of any parcel which are created as common property shall be deemed to form part of the common property in relation to all the parcels comprised within the sub-divided building.

- **Amendment of Section 41- Distribution of Management Fund**

Under subsection (5), the first annual general meeting includes the following matters under its agenda:

- a. To decide whether to confirm, vary or extend insurances effected by the management corporation;

- b. To decide whether to confirm or vary any amounts determine as contributions to the management fund;

- c. To determine the number of members of the council and to elect the council where there are more than three proprietors; and

- d. To decide whether to amend, add or repeal the by-laws in force immediately before the holding of the meeting.

The agenda does not include a matter on the apportionment of the Management Fund for the Special Account. Therefore, the new amendment inserts sub-section (ba) under (b) with provision, 'To determine the portion of contribution to the management fund to be paid into the special account to be maintained under Section 46'.

- **New Section 41A - Contribution to Management Fund**

This new section was inserted to protect the interest of parcel owners who are a minority where the first annual general meeting of a management corporation in respect of a subdivided building has not been convened. The proprietor 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 sub-divided building, pay to the management corporation any such sum which has been approved by the Director as the amount payable for the maintenance of the sub-divided building and the common property and such sum shall be deemed to be the amount determined by the management corporation as the contributions payable by the proprietors to the management fund of the management corporation.

- **Substitution of section 50 - The Appointment of Managing Agents by the Director of Lands and Mines**

The original section 50 is being substituted by the new section 50 whereby the Director of Lands and Mines 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 management corporation has not functioned satisfactorily, if satisfied that it is in the interest of the parcel proprietors in the subdivided building concerned, appoint a managing agent to exercise the powers and discharge the duties and functions of the management corporation.

Where the Director makes the appointment under subsection (1), he may also specify that the managing agent shall have and may exercise and discharge -

All the powers, duties and functions of the management corporation for the subdivided building to which the appointment relates or of the council of the management corporation;

Anyone or more of those powers, duties and functions except those specified in the appointment.

The expenses incurred by the managing agent shall be charged on the management fund of the management corporation.

- **Amendment of section 53A - Recovery of sums by attachment of movable property**

a. Apart from obtaining a court order to obtain payment for non-payments and arrears over the

contributions to the Management Fund under the Management Corporation, a Management Corporation can request the Land Administrator to issue a warrant of attachment on the movable property to recover the payments. In this instance the Land Administrator may issue a warrant of attachment in Form 7A authorising the attachment of any movable property belonging to the defaulting proprietor. The warrant shall be executed by a member of the Council of the management corporation or by a person specially employed by the council to execute such warrants.

- b. Under the new insertion of subsection 2A, if the management corporation encounters difficulties in executing the warrant, it may seek the assistance of the Director and the Director may request for the assistance of a police officer not below the rank of Inspector.
- c. A person executing the warrant may in the day time effect forcible entry and shall make an inventory of the property attached under the warrant and serve a notice in Form 7B on the person in possession of the property.
- d. With the new insertion in subsection 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 management corporation by the parcel proprietor, 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 proprietor, and may retain

possession until such amount has been fully reimbursed to him whether by deduction from the rent or otherwise. In the new insertion in Sub-Section 3B, the receipt issued by the management corporation 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.

- **New Section 55A - Failure To Pay Contributions**

Where any proprietor has failed to pay the contribution demanded by the management corporation in the manner set out in section 53, the proprietor shall be guilty of an offence and shall be liable on conviction to 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.

- **Amendment of Section 64A - Order to Establish a Management Corporation**

In the management of low cost multi-storey buildings, there are cases where the parcel owners refuse to accept ownership of their unit parcels from the developers. The developers were not able to transfer ownership at 100 per cent and therefore could not impose upon the parcel owners to set up their own Management

Corporation which can relieve the developers of the responsibility for managing the buildings. Now with the new amendments the proprietors, other than the original proprietors, of parcels having share units totalling more than half of the total share units of all the parcels may apply to the Director for an order that a management corporation be established. At the same time with the new insertion in subsection 1A, where the original proprietor has transferred parcels having more than half of the total share units of all the parcels, he may also apply to the Director under subsection (1) for an order that a management corporation be established.

Furthermore, in the substitution for Sub-Section 2, upon receiving the application, the Director

- a. in the case of an application by proprietors other than the original proprietor, if satisfied that the original proprietor has failed to discharge his duties or exercise his powers satisfactorily; or
- b. in the case of an application by the original proprietor, if satisfied that good grounds exist in support thereof,

may order that a management corporation be established.

to be continued.....