
New Strata Rights in Malaysia

Tan Liat Choon¹, Muhamad Uznir Bin Ujang², Thoo Ai Chin³, Mohd Hanif Bin Abu Hasan⁴ & Shaيداتul Nur Wahidah Binti Muhamad Shah⁵

¹Universiti Teknologi Malaysia, Faculty of Geoinformation & Real Estate, Malaysia
(tanliatchoon@gmail.com, tlchoon@utm.my)

^{2,4,5}Universiti Teknologi Malaysia, Faculty of Geoinformation & Real Estate, Malaysia

³Universiti Teknologi Malaysia, Faculty of Management, Malaysia

Abstract: *Strata Title was first introduced into Peninsular Malaysia in National Land Code 1965 (Act 56) (NLC 1965) as subsidiary titles. Strata Titles Act 1985 (Act 318) (STA 1985) has been established with the increasing of multi-storey mix development. Under STA 1985, developers are required to apply for strata titles. Strata Titles (Amendment) Act 2013 (Act A1450) (STAA 2013) and Strata Management Act 2013 (Act 757) (SMA 2013) were brought into force on 1 June 2015 in Peninsular Malaysia and Federal Territory of Labuan. Provisions in STA 1985 are amended and harmonized with the NLC 1965. STAA 2013 has also carved out all the provisions regarding management of subdivided building under STA 1985 and placed it purely under the governance of SMA 2013. The implementation of SMA 2013 is complemented by the Strata Management (Maintenance & Management) Regulations 2015 which duly came into force on 2 June 2015. Combined effect of the strata legislation is to ensure strata titles being passed to buyers upon vacant possession, encourage confidence on the distribution of share units and greater guide on developers.*

1. Introduction

The Malaysian strata title registration, which owned its origin to the Australian New South Wales Conveyance (Strata Titles) Act 1961, was first introduced in Peninsular Malaysia on 1 January 1966 by the National Land Code 1965 (Act 56) (NLC 1965) under Section 355 to Section 374. They only dealt with subsidiary titles to each of the parcels within a building having two or more levels. With such strata titles, owners can enjoy the benefits of an

indefeasible title with the rights to charge, to transfer or lease their properties [1].

The rapid housing development growth in 1970s and 1980s introduced technological advancements in the construction industry and architectural innovations, making the provisions in NLC 1965 inadequate. Hence, certain amendments were made for further improvement to cope with the need at that time. The provisions of strata titles in the National Land Code 1965 (Act 56) were amended several times in 1977 (Act A386), 1979 (Act A444) and 1981 (Act A518) before 1985 (Act 318).

Life in stratified buildings is seen as a trend accepted by society, particularly among city communities. This is attributed to the scarcity of land and the rising prices of property. To ensure progress of structuring strata in peninsular Malaysia, therefore, a strata title has been implemented and enacted by the passage of time to deal with all the problems that exist in the strata title.

After STA 1985 became as the principal Act, the various amendments introduces to solve the current issues to make an improvement legislations in 1990 (Act A753), 1996 (Act A951), 2001 (Act A1107), 2007 (Act A1290) until the enforcement of the Strata Titles (Amendment) Act 2013 (Act A1450) (STAA 2013) was published in the Gazette on 7 February 2013. The Strata Management Act 2013 (Act 757) (SMA 2013) was published in the Gazette on 8 February 2013 in conjunction with STAA 2013. Both Acts have come into force on 1 June 2015.

Before STAA 2013 and SMA 2013 come into force, maintenance and management of strata-titled properties are currently regulated by two separate legislations where the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) (BCPMMA 2007), for a building intended for subdivision, and STA 1985, for a subdivided building and after the Management Corporation (MC) comes into existence. When the legislations come into force, some parts of STA 1985 on

management of a subdivided building will be carved out and deleted. BCPMMA 2007 will be repealed and some of its provisions will be re-enacted with amendments. Those parts of STA 1985 that are carved out and the re-enacted provisions of BCPMMA 2007 are combined into a single legislation that is the SMA 2013.

2. History of Strata Titles Legislation

Strata titles ownership in Malaysia was refurbished from the Australian New South Wales Conveyance (Strata Titles) Act 1961, and was first introduced in Peninsular Malaysia on 1 January 1966, through the NLC 1965. The predecessor of the NLC 1965, the Federated Malay States Land Code 1926, did not provide for strata titles ownership. Many efforts were carried out in order to settle the rise in demand for such individually owned flats or condominiums. These included a grant of a lease, the home unit company system, and the device of tenancy in common.

This title became more and more pronounced, as complex multi-storey buildings were created in the 1960's in response to urbanization and the need to resettle urban squatters. On 1 January 1966, the NLC 1965 was introduced into Peninsular Malaysia with totally new concept strata titles or the subdivision of building into parcels. The ownership of such parcels was evidenced by the issue of a subsidiary title. Later, the provisions relating to the subdivision of the building under the NLC 1965 were amended from time to time to assist their effectiveness. Finally, in order to control and deal the inadequacies of the provisions in the NLC 1965 and to meet current development and socioeconomic needs, the subsidiary titles provisions, then existing under the NLC 1965, were repealed and replaced by the Strata Titles Act 1985 (Act 318) which came into force on 1 June 1985.

At first, STA 1985 maintains the former provisions relating to subsidiary titles under the National Land Code. It also modernized these provisions and added new provisions relating to, accessory parcels, as parking places and storage areas, accommodation for employees, provisional blocks to allow building projects to be developed in stages and special provisions for low-cost strata schemes. Despite STA 1985 has repealed the provisions relating to subsidiary titles in the NLC 1965, STA 1985 was needed to be read and construed together with the provisions and rules of the NLC 1965 as such provisions and rules were not inconsistent with the provisions of STA 1985.

Therefore, the provisions of the NLC 1965 relating to the subsidiary title on parcels, common property, and management corporations and councils, which were in existence prior to 1 June 1985 was repealed and still continue to apply. It shows that no provision of STA 1985 shall enforce

in any state until the respective state authorities have taken the rules providing for their application and with such modifications, additions or exclusions as the state authorities may seem needed or suitable. Further, the continuance in force of any rule, order, regulation or notice made, given or issued under the NLC 1965, before the commencement of STA 1985 are also reared.

3. The Legislation Development of Strata Titles Act 1985 (Act 318)

STA 1985 has been amended several times since its promulgation: first by the Strata Titles (Amendment) Act 1990 (Act A753), subsequently by the Strata Titles (Amendment) Act 1996 (Act A951), third by the Strata Titles (Amendment) Act 2001 (Act A1107), forth by the Strata Titles (Amendment) Act 2007 (Act A1290) and finally by STAA 2013 [2, 3]. The latest Features legislations in STAA 2013 are:

- a. Accelerate application for a building or land subdivision and issuance of strata titles.
- b. Gave way to the delivery of vacant houses and dwellings after the strata title has been issued.
- c. Require a developer to file a schedule of parcels before any sale of a parcel in a development area intended for subdivision into parcels.
- d. Permit the designation of limited common property and the creation of subsidiary management corporations in a two-tier management corporation scheme.
- e. Provide for a compulsory damage insurance policy to be taken out by the person who has a duty or is responsible to maintain and manage any building.
- f. Establish a new Strata Management Tribunal to hear and determine disputes relating to strata-titled properties.
- g. Provide for a presumption to be made in respect of any alleged defect in a parcel situated immediately above another parcel.

4. The Legislation Development of Strata Management Act 2013 (Act 757)

SMA 2013 was published in the Gazette on 8 February 2013. As the country enters a new era of democracy, it is the time to realise how important that can be aware based on our rights, obligations and responsibilities. Thus as an owner are more concern about the management and maintenance of their stratified properties. The Strata Management (Maintenance & Management) Regulations 2015 has resulted in the repeal of the BCPMMA 2007 that has outlived its effectiveness.

SMA 2013 is a victory to the National House Buyers Association and for those who has fought for

welfare of stratified properties owners in facing the problem that related to the proper maintenance and management of buildings and also common property. Thus it is ensure that uniformity of laws and policies shows the concern of local government.

The enactment of SMA 2013 has seen various improvements made to all aspects of the governance of strata schemes in Peninsular Malaysia and Federal Territory of Labuan such as the expansion of the department of the Commissioner of Buildings (COB) at local authority level, improvements in the provisions for the management of buildings intended for subdivision, improvements in the provisions for management of buildings by the MC, enforcements and penalties, the establishment of maintenance and sinking fund accounts, appointment of managing agents, by laws and various aspects of insurances of central importance to these improvements have been those changes made to the regulatory roles of the COB and the dispute resolution process.

The COB has been given more powers to enforce the statutory provisions pertaining to the management and maintenance of high-rise buildings before and after subdivision processes. SMA 2013 also establishes the tribunal to adjudicate disputes in strata schemes. While the improvements made in SMA 2013 could potentially increase efficiency in the governance of strata schemes, this paper argues that the scope of dispute resolution processes under SMA 2013 is still limited to enforcement and short-term adjudicative solutions. In order to highlight the current development of dispute resolution processes in the strata legislation in Peninsular Malaysia, various strata rights are analysed in next section.

5. Strata Rights

Under Malaysian strata titles statutes, parcels/land parcels created from strata titles can be divided into three dimensions, viz. dimension on surface, dimension above surface and dimension below surface. In a strata subdivision, the land and improvements erected on it are divided into parcels, land parcels and common properties. Section 6 of STA 1985 allows any building having two or more storeys on alienated land and any alienated land having two or more buildings held as one lot under the final title to be subdivided into parcels, each of which is to be held under a strata title or an accessory parcel [4].

According to [5] and [6], the strata scheme offers a place to stay that comes with a new life style, there are many reasons for buying a strata property. Among them are a change of life style and the benefits of strata scheme living. Unlike the purchase of a terrace house, a semi-detached house or bungalow, the purchase of a strata property involves the transfer of rights of parcel/land parcel. What is purchased are the rights to a parcel/land parcel under

STA 1985. All property rights, pending the issue of strata titles, are contained in the sale and purchase contract document alone. The document attests to ownership of rights to the property developer. To own the strata property itself, the purchaser has to procure the strata title.

5.1 Conditions Imposed on Provisional Block

The Malaysian statute under STA 1985 defines a provisional block as a block in respect of a proposed building or land, for which a separate provisional strata title is applied or is to be registered. This concept of provisional block, which allows for phase development, is to overcome the financial burdens faced by the developers for further construction of the uncompleted buildings. Phase development also allows developers to take into account the changing market conditions. Moreover, phase development also allows purchasers to obtain strata titles in the earlier phases without having to wait for the whole strata scheme to be completed. In turn, this will enable financial institutions to obtain better securities from their borrowers.

To prevent the developers from taking advantage of the provisions relating to the phase development and to protect the interest of the purchasers of parcels in the earlier stages, more specific conditions and additional requirements must be complied with in applications for strata titles under Section 9A, 9B and 19 related to phase development, low-cost building and provisional share units of a provisional block respectively. Furthermore, under Section 70 of STA 1985, in any dealing of a provisional block that has been registered, the registration should not pass any title or interest in the said provisional block; the Registrar should, upon discovery of the registration, cancel the registration and no person or body affected by such cancellation would be entitled to any compensation.

Finally, under Section 20 of STA 1985, upon the completion of all the buildings within the provisional block, the original proprietor of the building must make an application, within six months from the date the building is certified by the public or local authority to be fit for occupation or use, for the issue of separate strata titles to the completed parcels. Under this provision, the purchasers of the provisional block are assured the issuance of strata titles without further delay. In fact, failure to apply within the stipulated period will be subjected to a penalty and the extension period would be granted only one time not exceeding three months.

5.2 Common Rights

Common property is owned by the strata lot owners, as tenants in common, whether it is an open access resource or a limited access and managed resource [7]. In Malaysia, STA 1985 defines common property as an area that not comprised in any parcel (including any accessory parcel), or any provisional block. For example, common property includes hallways, elevators, recreational amenities and building exteriors such as the roof. In addition, pipes, wires, cables, chutes, ducts and other facilities for passage or provisions of water, sewage, gas, oil or other similar services may also be common property.

The concept of common property facilitates identification of the part of the strata scheme that falls under the management corporation's responsibility. It is the management corporation's duty to carry out the necessary repair or maintenance on the relevant part of the building, which is part of the common property. As for the part of the building that forms part of the parcel, such duty falls on the proprietor when damage is happened inside the parcel. However, the determination of where the boundary lies between a parcel and common property is important because the proprietor has the right or power to deal with the former whilst the Management Corporation (MC) deals with the latter.

STA 2013, section 17A was introduced to establish the limited common property (LCP) that allows the MC to established Subsidiary Management Corporation (Sub-MC). SMA 2013 interpreters LCP as the exclusive benefit of the proprietors of two or more, but not all, parcels; and managed by the Sub-MC. To understand the different types of property within a strata corporation and to correctly identify the common property and LCP is very important. The different types of property can make a difference on who is responsible for paying for repairs and who can use the property. LCP is designated by a comprehensive resolution passed by the MC shall be described, identified or define the boundaries area of the LCP in a plan, shall be specifies each parcel comprised in that plan whose properties are entitled to the exclusive benefit of the LCP and to conform to other details.

5.3 Rights to Make Rules

According to Section 21 of SMA 2013, the Joint Management Body (JMB) shall keep a record of the house rules in force from time to time. The JMB must supply a copy of house rules at a reasonable cost to the purchaser on receipt of an application in writing and make such house rules available for inspection. The JMB shall lodge the house rules with the COB within fourteen days of the passing of the resolution by the JMB approving

the house rules. The State authority may, in respect of a local authority area or any other area, appoint a COB for the purpose of administering on issues on management of stratified building.

In brief, these by-laws are primarily to clarify the duties expected of a proprietor within a subdivided building or land and the prohibitions imposed on him, as well as to ensure the reasonable use and enjoyment of the common property in relation to other proprietors. The by-laws in force in the subdivided buildings or lands are binding on the MC and all the proprietors. The by-laws empower the MC to make agreements with a particular proprietor for the provision of amenities or services by the MC to and in respect of his parcel. The by-laws also require the MC to maintain in a state of good and serviceable repair as well as produce all insurance policies effected by the MC.

5.4 Rights to Manage Strata Scheme

When we talk about the management of a subdivided building or land, we are essentially referring to the concept of a MC, which is incorporated under the law to play the pivotal role of managing the building. As strata schemes are becoming more common, it is of utmost importance to ensure that such schemes are properly managed.

In a strata scheme, there may be one or more completed buildings or lands, which are subdivided in parcels or land parcels, including accessory parcels and provisional blocks. Meanwhile, all other parts, for example, corridors, lifts external wall and open spaces are deemed common property. The maintenance and repair of an individual unit, including any accessory parcel, is the responsibility of the proprietor himself, while the maintenance of common property is a shared responsibility. Therefore, the law provides for the formation of MC to facilitate the proper control and management of common property for the benefit of all the proprietors.

Strata title ownership also implies a new lifestyle or close community living whereby all the owners need to co-exist peaceably with one another and cooperate to achieve common goals for mutual benefit. Fees need to be imposed for maintenance services to the parcel/land parcel owners. The proper management of common facilities and amenities is also vital for the enjoyment of all proprietors. In brief, the interests of the proprietors in a strata scheme are indivisibly linked to a system of community of property. This community cannot function effectively without a properly structured organisation to handle the problems and everyday details involved in keeping the scheme functioning smoothly and efficiently. It is clear then that there is a need for all the parcel proprietors to articulate their ideas or feelings as a collective whole through a representative body.

In short, the MC is an integral part of strata living. It is common for the MC to be formed on completion of the condominium or, which is far too late, when grievances start to arise. Condominium management is not simple. It is defined as the overall control and supervision of the condominium, within pre-set income and expenditure levels, in order to enhance the values of the strata units in that complex. The aim, in short, is to achieve value-added management. Such value-added management can only materialize if the condominium is being run effectively and smoothly to the overall satisfaction of the owners and residents. A natural consequence of this will be an increase in the values of the units in that condominium.

For effective management of this category of common property, MC create one or more Sub-MC and delegate the management of limited common properties to the same, for the purpose of representing the different interests of parcel proprietors. The creation of a Sub-MC is governed closely under the new section 17A Strata Title Act 1985 [8]. Section 64 of SMA 2013 provided the duty of the Sub-MC that Sub-MC shall have the same duties and powers as the MC with respect to any matter that relates solely to the LCP designated for the exclusive benefits of all proprietors comprising the Sub-MC.

The MC shall retain its power and duties in matters concerning common property of development area which is not designated as LCP. Here the powers and duties of the Sub-MC which Sub-MC established its own maintenance account and sinking fund account for the common expenses of its LCP, pay the charges, and contribution to the sinking fund by proprietors of parcels in Sub-MC, enforce the by-law relating to its LCP and control, management and administration of its LCP. The Sub-MC may obtain insurance only against risk that is not insured by the MC or for amounts that are in excess of amounts insured by the MC.

5.5 Rights to Settle Dispute

STA 1985 allows under certain conditions to determine and record the exact line of boundaries on a register title, to avoid any future boundary dispute. Parcel/land parcel proprietors in strata schemes frequently interact with each other as they enter the building's lobby, elevator, parking lot or common recreational facilities. The closer the proximity and the more frequent the interaction, the greater the opportunity for personality clashes to arise.

A property in a subdivided building or land is known as a parcel/land parcel for which a strata title is registered. Under Section 13(3) of STA 1985, the common boundary of a parcel with another parcel or with the common property is taken to be the centre of the floor, wall, ceiling unless provided otherwise in the relevant storey plans. However, the problem

with this definition of boundary is that there may be disputes when damage is sustained to a wall, window or door as to who is responsible for fixing it and to what extent. Here, party wall means a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied by different persons either constructed or abutting a common boundary.

Generally speaking, the MC often lacks the required toughness or mediation skills to resolve disputes. Furthermore, their impartiality is often suspect because of conflict of interest or inconsistency in their application of house rules. The doors of the civil courts are naturally open to hear these disputes. However, because of excessive delays, the costliness and technicalities of the adversarial litigation system and the ill will and hatred generated between the combating litigants or courts are often perceived to be an inappropriate forum for the settlement of disputes in strata title schemes.

In Malaysian strata scheme, the MC previously had to take the initiative in addressing conflicts. However, the corporations were not able to handle complex conflicts. To avoid a costly and time-consuming court procedure, the Malaysian legislation amended STA 1985 in 2001 to provide for the establishment of the Strata Titles Board through Strata Titles (Amendment) Act 2001 (Act A1107). However, this Strata Titles Board has been replaced by the Strata Management Tribunal under SMA 2013 with additional features. The Strata Management Tribunal was set up as a mechanism to settle disputes amongst the parcel/land parcel proprietors and the MC as well as to enforce strata title legislation more effectively.

5.6 Termination of Strata Titles

Section 56 of Strata Titles Act 1985 (Act 318) provides that when a subdivided building is damaged but is not totally destroyed, a court of competent jurisdiction, on the application of the MC, a parcel proprietor, or a registered chargee of any parcel, may order the settling of a scheme for the reinstatement or the continued use of the building in whole or in part. Any such scheme may include provision for the transfer of the interests of the proprietors of parcels, which have been wholly or partially destroyed to the other parcel proprietors in proportion to the open market capital value of the parcels. After the termination of subdivision, the MC shall become the proprietor of the lot as the trustee of the former proprietors.

6. Result and Discussion

STA 1985 that started on 1 June 1985 in Peninsular Malaysia, is the law that allows an alienated land to have separate titles (multi-layer

ownership) by Issuance of strata titles through subdivision of multi-level buildings or land parcel; and establishment of a MC as a mechanism for the management of self-governance that oversees the administration of the stratified development after the strata titles are registered. It experienced an amendment by several times to meet the needs and requirements of strata titles. Among these amendments are:

- a. 1 January 1966 - National Land Code 1965 (Act 56) - Subsidiary titles for units in a subdivided building
- b. 1 June 1985 - Strata Titles Act 1985 (Act 318) - Facilitate subdivision of a building into parcels to be held under separate strata titles.
- c. 23 February 1990 - Strata Titles (Amendment) Act 1990 (Act A753) - Introduce provisional strata title for a provisional block in a phase development and other amendments.
- d. 2 August 1996 - Strata Titles (Amendment) Act 1996 (Act A951) - Permit application for strata titles with a qualified title for lot of land, and other amendments.
- e. 1 December 2001 - Strata Titles (Amendment) Act 2001 (Act A1107) - Introduce the Strata Titles Board and other amendments.
- f. 12 April 2007 - Strata Titles (Amendment) Act 2007 (Act A1290) - Introduce land parcels and other amendments in line with the enactment of BCPMMA 2007.
- g. 1 June 2015 - Strata Titles (Amendment) Act 2013 (Act A1450) - Introduce LCP, Sub-MC and Share Units Certification Formula (SiFUS).

The amendment to STA 1985 via STAA 2013 has introduced a new concept of issuance of strata titles with vacant possession. With the introduction of the new concept, the duration of the work process of issuance of strata titles will be shortened and owners of strata units will be able to receive their strata titles sooner. Generally, the basis of the amendment under STAA 2013 is to insist on the need to make the strata title's management to the needs and interests of the buyers (customer-focused services) and aim at improving the delivery system of land administration in the management and issuance of strata titles. Listed below are the summary of amendment in STAA 2013:

- a. Introduce Electronic Land Administration System.
- b. Application to subdivide a building at super structure stage.
- c. Certificate of proposed strata plan.
- d. Allow issue of provisional strata title for a provisional block in respect of land parcels.
- e. Provide for the establishment of the MC.

- f. Designation of limited common property and creation of Sub-MC.
- g. Time period to transfer strata title reduced from 12 months from date of issue to 1 month from the date of issue.
- h. Distribution of profits on termination of subdivision based on open market capital values of parcels.
- i. Strata Titles Board replaced by Strata Management Tribunal.

In this new legislation, the application for subdivision of a building or land and the issue of strata titles will be launch. When strata title has been issued, the delivery for vacant possession of housing can be given to the owner. For any sale of parcel in a development area, the developers are requiring to file a schedule of parcel for subdivision into parcels. The designation of LCP and creation of Sub-MC have to permit in a two-tier management corporation scheme. The compulsory damage insurance policy will be provided to the person who has a responsible to maintain and manage any building. The new Strata Management Tribunal will be established to determine the disputes that are relating to strata titled properties. The presumption will be provided in respect of any alleged defect in parcel situated immediately above another parcel [9].

7. Conclusion

The latest updates of STAA 2013 brings a significant change to the landscape of strata developments and common property management. The amendments under STAA 2013 include the introduction of the Electronic Land Administration System of Strata Titles, the designation of limited common property and the creation of one or more subsidiary management corporations to represent the different interests of parcel proprietors [10].

With the ever-progressive construction and development industry, Malaysian law needs to keep abreast with current advancements and STAA 2013 represents a significant indication that Malaysian lawmakers are prepared to adjust and adapt to address those necessities. Nevertheless, the fruition of this initiative will depend on how effectively it is implemented and it may be some time after the commencement of STAA 2013 before see its benefits.

The establishment of a JMB, MC, Sub-MC and the appointment duties and power of a COB are the new legislation that exists as rules relating to the rights and obligations of owners. The legal framework governing the management of subdivided buildings or land after the issuance of strata titles is a very important part of strata titles. The management has to run the building on a self-governance or self-management basis and ensure harmonious community living. The management of the building will go on until the termination of the

subdivision that is the building is destroyed or when all the parcels are owned by the same proprietor and he decides to terminate the subdivision. Thus, it is vital that the provisions of the strata title laws are fully understood so that the management of the building is properly undertaken, in accordance with the provisions of the law.

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