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Condominium Rights in Malaysia

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The 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 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 law is to ensure strata titles being passed to buyers upon delivery of vacant possession, encourage confidence on the distribution of share units and greater guide on developers¹.

Keywords: Strata Titles, Common Property, Management Corporation.

1. INTRODUCTION

The Malaysian strata title registration was originally from 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). They only dealt with subsidiary titles of the parcels within a building having two or more stories. With the strata title, owners can enjoy the benefits of an indefeasible title with the rights to perform any dealing on their properties².

The speedy housing development in 1980s introduced technological advancements in the building industry and architectural revolutions, making the provisions in NLC 1965 inadequate. Therefore, certain revisions were made for further enhancement to cope with the need at that time.

After STA 1985 became as the principal Act, various amendments introduces to solve the existing 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.

2. THE LEGISLATIVE DEVELOPMENT OF STRATA TITLES ACT 1985 (ACT 318)

The STA 318 has been amended several times: first by the Strata Titles (Amendment) Act 1990 (Act A753), then by the Strata Titles (Amendment) Act 1996 (Act A951), third by the Strata Titles (Amendment) Act 2001 (Act A1107), fourth by the Strata Titles (Amendment) Act 2007 (Act A1290) and finally by the Strata Titles (Amendment) Act 2013 (Act A1450)³⁻⁴. The latest Features legislations in STAA 2013 are:

- a) Speed up 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.
- d) Allow the designation of limited common property as well as the formation of subsidiary management corporations.
- e) Provide for a compulsory damage insurance policy.
- f) Establish a new Strata Management Tribunal to receive and regulate arguments relating.
- g) Provide for a presumption to be made in respect of any alleged defect in a parcel situated immediately above another parcel.

3. THE LEGISLATIVE 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 important to realize and aware on our rights, obligations and responsibilities. Thus as an owner are more worry about the management and maintenance of their properties. SMA 2013 is a victory to the National House Buyers Association and for those who has fought for wellbeing of strata properties owners in facing the problem that related to the proper maintenance and management of buildings and common properties.

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 Management Corporation (MC), enforcements and penalties, the establishment of maintenance and sinking fund accounts, appointment of managing agents, by laws and various aspects of insurances have been changes made to the regulatory roles of the COB and the dispute resolution process.

The COB has been given extra powers to enforce the statutory provisions relating to the management and maintenance of multistory buildings before and after subdivision processes. SMA 2013 also establishes the tribunal to adjudicate disputes in strata schemes. The improvements made in SMA 2013 could possibly increase effectiveness in the governance of strata schemes. In order to highlight the current development of dispute resolution processes in the strata legislation in Peninsular Malaysia, various strata rights are analyzed in next section.

4. STRATA RIGHTS

Below Malaysian strata titles laws, parcels or land parcels made from strata titles can be separated into three dimensions, viz. dimension on, above and below surface. In a strata subdivision, the land and improvements erected on it are divided into parcels, land parcels and common properties. STA 1985 allows any building having two or more storeys on alienated land consist 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 parcel⁵.

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 resource⁶. In Malaysia, STA 1985 defines common property as an area that not included in any parcel, accessory parcel, or provisional block. For example, corridor and elevators. 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.

STA 2013 introduces limited common property (LCP) that allows the MC to established Subsidiary Management Corporation (Sub-MC) to manage it. To understand the

different types of property within a strata scheme and to correctly identify the common property and LCP is very important. The different types of property can make a difference on who is answerable for paying for repairs and the use of the properties.

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. The maintenance and repair of an individual unit, including any accessory parcel, is the responsibility of the proprietor, 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 properties for the benefit of all the proprietors. For effective management of this category of common properties, MC create one or more Sub-MC and delegate the management of LCP to the same, for the purpose of representing the different interests of parcel proprietors. 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 issue that relates merely to the LCP designated for the exclusive benefits of all owners containing the Sub-MC.

STA 1985 allows under certain circumstances to define and record the limit of boundaries on a register title, to avoid any future boundary dispute. In the 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. EXPERIMENTAL RESULT

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 period of the work process of issuance of strata titles will be reduced and owners of strata units will be able to receive their strata titles sooner. Usually, 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 purchasers (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.
- e) Designation of limited common property and creation of Sub-MC.
- f) Time period to handover strata title reduced from twelve months to one month from the date of issue.
- g) Dissemination of profits on termination of subdivision based on open market capital values of parcels.
- h) Strata Titles Board replaced by Strata Management Tribunal.

In this new legislation, the application for subdivision of 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 regulate the disputes that are involving to strata title properties. The presupposition will be provided in respect of any unproven defect in parcel situated immediately above another parcel⁷.

6. CONCLUSIONS

The updates of STAA 2013 brings a substantial change to strata developments and management of common properties. The amendments under STAA 2013 include the introduction of the Electronic Land Administration System of Strata Titles, the designation of LCP and the creation of one or more Sub-MC to represent the different benefits of parcel proprietors⁸.

The establishment of 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 proprietors. 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-management basis and ensure pleasant 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 owner 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 correctly undertaken, in accordance with the provisions of the law.

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