Developer’s Edition:
Current Issues on Strata Management Act & Regulations

How to manage key challenges moving forward?

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Homebuyers’ protection over Investor’s protection

Strata is the way of life

Property Management is the Driver

5 MUST KNOW LEGAL TRENDS

Collective Investment

Harder to be Developer
National Land Code 1965

Strata Titles Act 1985

Building and Common Property (Management and Maintenance) Act 2007

Strata Management Act 2013 (effective date 1.6.2015)
One Year On.......... Challenges?
Lack of Awareness/ Knowledge

• Owners/ Committee Members (JMB/ MC) – processes, fillings and liabilities etc.
• Developer (Management/ Staff) – APDL/ management handover etc.
• Outsource Property Manager (licensed/ unlicensed)
• Real Estate Agents
• State VS Federal – Confusion/ Readiness (Selangor 1/1/16, NS only recently)
• Authorities – non-committal, passing the balls (PTG/JUPEM/COB)
Schedule of Parcel

Contribution by Unsold Parcel

Computation of Share Units

COB vs Strata Management Tribunal

Tenure of Committee in Management

Limited Common Property

Committee Member’s Liability

CHALLENGES
Schedule of Parcel

• Developer before the selling (or continue to sell) of any parcel or proposed parcel shall file schedule of parcel (SOP) with the Commissioner: -
  – Developer have to committ to the entire development before selling; no more testing the market or adjustment for commercial feasibility.
  – Amendment ALMOST impossible.
  – Mindset: Developer SELL ASAP; Consultant can always amend (eg. Building Plans).
• Problem of adjustment, i.e.:
  – Block A’s drawing already firm up and Block B, C and D not to firm up pending A’s market demand.
  – In this situation, the Developer cannot do so because the developer have to file the schedule of parcels for the entire piece of land.
  – Should SOP adjustment be made possible if everyone is benefiting? – Under the current law: we can only lobby the authority now to instruct the developer.
Computation of Share Units

“Per Square Foot”

• Old law – Share Unit is for Control; not as a basis of Contribution.
• The way to compute monthly service fees and sinking fund: Size of the parcel
• Problem? – psf is so entrenched and acceptable
  Difficulties in explanation and justification
Computation of Share Units

“Share Unit”

- New law – for both Control and Contribution
- Formula provided to compute allocated share units

| Allocated share units of a parcel | = | (area of parcel x WF1 x WF2) | + | (area of accessory parcel x WF3) |

- WF1 = weightage factor for the type of parcel as specified in Table 1
- WF2 = weightage factor for whole floor parcel as specified in Table 2
- WF3 = weightage factor for accessory parcel as specified in Table 3
## Computation of Share Units

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of parcel</th>
<th>Without air-conditioning to common areas of corridors, lobbies and foyers</th>
<th>With air-conditioning to common areas of corridors, lobbies and foyers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$WF$, having benefit of common lift/escalator facility</td>
<td>$WF$, having no benefit of common lift/escalator facility</td>
</tr>
<tr>
<td>1.</td>
<td>Apartment/Small Office Home Office (SOHO)</td>
<td>1.00</td>
<td>0.85</td>
</tr>
<tr>
<td>2.</td>
<td>Office/Institution (College) complex</td>
<td>1.00</td>
<td>0.85</td>
</tr>
<tr>
<td>3.</td>
<td>Retail complex</td>
<td>2.00</td>
<td>1.70</td>
</tr>
<tr>
<td>4.</td>
<td>Hotel/Medical centre complex</td>
<td>2.20</td>
<td>1.90</td>
</tr>
<tr>
<td>5.</td>
<td>Industrial complex</td>
<td>1.00</td>
<td>0.85</td>
</tr>
<tr>
<td>6.</td>
<td>Car park (whole floor parcel)</td>
<td>0.75</td>
<td>0.65</td>
</tr>
<tr>
<td>7.</td>
<td>Shop-houses, shop-apartments and shop-offices—</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Upper floor parcel</td>
<td>1.00</td>
<td>0.85</td>
</tr>
<tr>
<td></td>
<td>(b) Ground floor parcel</td>
<td>0.85</td>
<td>0.85</td>
</tr>
<tr>
<td>8.</td>
<td>Land parcels</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

Table 1
## Computation of Share Units

<table>
<thead>
<tr>
<th>No.</th>
<th>Parcel</th>
<th>$WF_2$</th>
<th>Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Whole floor parcel excluding area of vertical transportation core</td>
<td>0.85</td>
<td>(a) To reflect an equivalent net lettable area after taking into account its large circulation area only.</td>
</tr>
<tr>
<td></td>
<td>(lifts or escalators)</td>
<td></td>
<td>(b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.</td>
</tr>
<tr>
<td>2.</td>
<td>Whole floor parcel including area of vertical transportation core</td>
<td>0.80</td>
<td>(a) To reflect an equivalent net lettable area after taking into account its large circulation area and vertical transportation core (lifts or escalators).</td>
</tr>
<tr>
<td></td>
<td>(lifts or escalators)</td>
<td></td>
<td>(b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.</td>
</tr>
<tr>
<td>3.</td>
<td>Not whole floor parcel</td>
<td>1</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
Computing Share Units

<table>
<thead>
<tr>
<th>No.</th>
<th>Accessory parcel</th>
<th>$WF_3$</th>
<th>Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Outside building</td>
<td>0.25</td>
<td>To reflect a non-habitable open or enclosed area outside the building.</td>
</tr>
<tr>
<td>2.</td>
<td>Within building</td>
<td>0.5</td>
<td>To reflect a non-habitable open or enclosed area within the building.</td>
</tr>
</tbody>
</table>
Computation of Share Units

Challenges

• Is maintenance fees computed based on the old law disputable?
• Can the allocated share units under the old law be challenged?
  – Some maintenance fees computed based on the old law may be cheaper / more expensive; and
  – Vice versa for the maintenance fees computed based on the new law.
Tenure of Committee in Management

• After handover from the developer, owners are required to participate in the council.

• However, what is the participation rate for most strata properties nowadays?

• High or low?
Committee Member’s Liability

• Strata Management Act 2013 laid out the management corporation’s and joint management body’s duties.
• However, are there any liabilities imposed on the committee members themselves?
• Are there any liabilities imposed on the developer if the developer is part of the committee member?
• There many filling requirements under the new regime, are the members equiped to comply? What about costs? More staffs and even legal consultation?
Committee Member’s Liability

• Example:-
  – Section 26(5) : Duties of JMB in relation to accounts

  • “If the joint management body fails to comply with ... every member of the joint management committee commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.”
Committee Member’s Liability

• Example:-
  – Section 72(3) : Strata Roll
    • If a management corporation fails to comply... every member of the management committee commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.”
Limited Common Property

• Submission
  MC to make application for **APPROVAL** with **PRESCRIBED FEE**

Questions
• Are there any successful approval up to this moment?
• Are there even submission?
• How much MC has to pay?
  (Surveyor for the special plan and submission; and Lawyer to advise on the processed – comprehensive resolution.)
Limited Common Property

• Comprehensive Resolution – 2/3 of the total share units (not quorum)
  ✓ All share units under the SOP?
  ✓ Transferred only?
  ✓ Provisional blocks of the subsequent phases?
  ✓ Unsold units counted in favour of the developers?
  ✓ How to conduct the poll?
Limited Common Property

• Formation of sub-management corporation
  – If Sub-MC is not performing up to par, can Sub-MC be fired (like Singapore)? Subsequently can MC regain control? Separate legal entity now.
Limited Common Property

- Limited Common Property vs Common Property
  - When conflict, who will win?
In a situation where there is only one lift access to the LCP and the lift is a Common Property asset. In a situation where the lift is faulty, who should pay for the repair fee?

Only 1 lift to access the entire building
Limited Common Property

• 2 tiers system – “Malaysia”
  – Disputes between the main and subsidiary management corporations

  – Conflicts between subsidiary management corporations concerning boundaries, common services and limited common property, as ambiguities may arise from delineation, marking or description.

  – More members are required in a 2-tier management corporation – more participation or more devision?
Commissioner of Building (COB) vs Strata Management Tribunal (SMT)

• Division of power
  – Confusion as to approaching which body first.
  – Is there a need to go through COB first?

  – Example:
  – Inter-floor leakage situation
  – If both the party responsible to rectify the leakage and the management failed to do so, should the victim make a complain to COB or SMT? Furthermore, should the victim make a reference to COB first then follow up with filing a claim to SMT?
Commissioner of Building (COB) vs Strata Management Tribunal (SMT)

- Too easy to file in SMT – only RM100 to start a claim – should there be a mediation first? Should COB be the mediator? – Staff/ Support/ Efficiency?
- JMB/ MC equipped to submit defence to any claim?
- Should SMT be under the Ministry of Housing? There are strata beyond residential usage.
- COB is a state appointee and SMT is federal, who shall take precedence over the other?
Contribution by Unsold Parcel

- Unsold Parcel

- Provisional Unit
  (in provisional block)

A provisional block is also defined as
(a) a block in respect of a building proposed to be, or in the course of being, erected on building or land, for which a separate provisional strata title is applied for;
(b) in relation to an approved strata plan, such a block shown therein, for which a provisional strata title is to be registered; and
(c) in relation to a book of strata register, such a block shown therein, for which a provisional strata title has been registered.
Contribution by Unsold Parcel

• Problem
  – Are there any requirement for unsold parcel and provisional unit to pay for Service Fee and Sinking Fund?
Moving forward

- The success of any strata developments is on the management upon the delivery – branding benchmark for Developer.
- Compulsory education for Committee Members (JMB/MC)?
- Continuous communication by all stakeholders to ensure timely improvement on the enforcement and processes.
- Developer to fund the LCP submission?
- Income generating Common Property?
  - Billboard
  - Designated commercial area to collect rental
    - Laundry, commercial stall, clinic
  - Community garden
    - To plant vegetables and able to sell off to generate income
  - Swimming pool/ Gym – pay per use?
What should I do if I have further questions in regards to strata management?

You may post your questions to www.facebook.com/christan.my
GET YOUR COPY!

STRATA OMG
(OWNER’S MANUAL & GUIDEBOOK)
askCA@Thursday

Ask a Legal Question and let CA Community help you find answers and information. Here is how:

1. Post your legal questions on our Facebook wall every Thursday.
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3. Be reminded to check out for Answers on Tuesday posted in CA Facebook Notes.

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About

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Chris Tan and 8 other friends