

MANAGEMENT BODIES

Towards comfortable,
secure strata living

IVAN CHAN

STRATA living has become a way of life. In the market you will see that strata developments are increasingly being constructed by developers to meet the demand for strata living.

As a strata property owner it is important to be aware of your rights and obligations to take responsibility for the maintenance and management of the strata building in the stratified development.

Residents of stratified buildings need to understand the functions of the strata management bodies in order to work with these bodies in ensuring a comfortable and secure strata living community and environment.

The strata management bodies, such as the Joint Management Body (JMB) and the Management Corporation (MC), are established to provide proper maintenance and management of the stratified development.

The collection of service charges and sinking fund from residents provide for the maintenance of strata buildings.

The maintenance and management of residential stratified properties such as apartments and condominiums, landed strata properties in gated-and-guarded developments, and commercial stratified properties are governed by the Strata Management Act 2013 (Laws of Malaysia, Act 757) (SMA 2013) which came into operation on June 1 2015 in most states in Peninsular Malaysia.

SMA 2013 is enacted for the proper maintenance and management of buildings and common property, and for related matters and applies only to Peninsular Malaysia and the Federal Territory of Labuan.

The Strata Management (Maintenance & Management) Regulations 2015 (the SMA Regulations) came into operation on June 2 2015, the purpose of which is to carry out the provisions of SMA 2013.

Section 102 of SMA 2013 provides for the establishment of a tribunal known as the Strata Management Tribunal (SMT) to hear and determine strata management claims and disputes in a stratified development without having to go to court.

The Strata Management (Strata Management Tribunal) Regulations 2015 came into operation on July 1 2015 and governs the function, operation and procedure of the SMT. The SMT shall have jurisdiction to hear and determine any claims specified in Part 1 of the Fourth Schedule of SMA 2013, and where the total amount in respect of which an award of the SMT is sought does not exceed RM250,000 or such other amount as may be prescribed to substitute the total amount.

SMA 2013 sets out (inter alia) the duties and functions of the JMB and the MC. Two new features under SMA 2013 are the subsidiary management corporation (SMC) and limited common property.

The MC will delegate the management of limited common properties to the SMC for the purpose of representing the different interests of parcel proprietors. The SMC will comprise all parcel proprietors of all parcels comprised in the development area for whose exclusive benefit the limited common property is designated. Limited common property is appropriate for mixed development projects.

The function of the SMC is to manage different types of limited common properties for the various owners. For example, a residential SMC manages the resident-only facilities, an office SMC manages the office block amenities and a shop lot SMC manages the shop facilities.

The by-laws for the MC and the SMC on strata maintenance and management are found in the Third Schedule of the SMA Regulations. The said by-laws and any additional by-laws made under SMA 2013 shall bind the developer, the JMB, the MC or the SMC, as the case may be, and the purchaser, parcel owners or proprietors, and any chargee or assignee, lessee, tenant or occupier of a parcel to the same extent as if the by-laws or the additional by-laws have been signed or sealed by each of the aforesaid person or body, and contain mutual covenants to observe, comply and perform all the provisions of the by-laws or additional by-laws.

The by-laws in the Third Schedule consist of eight parts and run into 15 pages setting out details concerning the functions and powers of the MC and its responsibility in controlling, managing and administering the common property for the benefit of all proprietors.

Part 2 of the by-laws describes the functions of the MC, including what constitutes default, and also how defaulters are to be dealt with.

Part 3 of the by-laws sets out (inter alia) the general duties of a proprietor, the various prohibitions restraining a proprietor, and the consequences of breach of the by-laws and any additional by-laws by the proprietor.

Part 4 of the by-laws deals with the management of the common property by the MC.

Part 5 of the by-laws deal with the consequences of obstruction caused by parking of vehicles outside of the designated car parking bay.

Part 6 deals with

The strata management bodies, such as the Joint Management Body and the Management Corporation, are established to provide proper maintenance and management of the stratified development.



The strata management bodies, such as the Joint Management Body (JMB) and the Management Corporation (MC), are established to provide proper maintenance and management of the stratified development.

IVAN CHAN

the disposal of solid waste.

Part 7 requires a proprietor to carry out renovation works to his parcel by obtaining a prior written approval from the MC or from the appropriate authority, and also sets out other responsibilities of the proprietor in carrying out the renovation works.

Part 8 of the by-laws deals with the power of the MC to take proceedings as agent for proprietors in case of defects to parcels caused by the condition of any parcel in the development area.

SMA 2013 comes equipped with enforcement provisions found in sections 125 to section 141 thereof.

The Commissioner of Buildings (COB) shall have charge of the administration of SMA 2013 and may perform such duties as are imposed and may exercise such powers as are conferred upon him.

Where for example, a proprietor has failed to pay the maintenance fees at the expiry of the period specified in a notice issued to him, the MC or the SMC, as the case may be, may file a summons or claim in a court of competent jurisdiction or before the SMT for the recovery thereof, or alternatively may make an application in writing to the COB who may issue a warrant of attachment authorising the attachment of any movable property belonging to the defaulting proprietor which may be found in his parcel.

The aim of SMA 2013 is to provide for the management and maintenance of stratified properties in a proper and efficient manner to benefit and contribute to the success of the strata development. It is imperative that rigid enforcement of SMA 2013 is effected, otherwise the law will be ignored and the problems which the law was intended to address and resolve will continue to exist. As is often said, the law is only as good as its enforcement.

The writer is a legal practitioner at Messrs Amir Toh Francis & Partners, Kuala Lumpur



Strata living has become a way of life for more house buyers.